

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

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### Paper-14: Indirect and Direct - Tax Management

Answer Question No. 1 (carrying 25 marks), which is compulsory and any five from the rest.

1. Fill up the blanks:

[1×25]

- (i) According to Section 2(3) of the Customs Act, 1962, baggage includes unaccompanied baggage but does not include \_\_\_\_\_.
- (ii) Section 13 of the Customs Act, 1962 provides that, if the pilfered goods are restored to the importer after pilferage, the importer shall \_\_\_\_\_.
- (iii) In the case of goods imported or exported by post, any label or declaration accompanying the goods which contains the description, quantity and value thereof shall be deemed to be \_\_\_\_\_ for import or export, as the case may be, for the purposes of the Customs Act, 1962.
- (iv) Section 117 of the Customs Act, 1962 provides general penalty to a person who contravenes any provisions of the Act or abets in contravention and if no penalty has been prescribed, the penalty would be up to \_\_\_\_\_.
- (v) Under the provisions of the Central Excise Act, 1944, if a registration certificate is granted by the central excise authorities, it will \_\_\_\_\_, unless it is suspended or revoked by the appropriate authority or is surrendered by the person/ company concerned or it ceases to be valid on the death of the individual owner.
- (vi) The application for refund under Section 11B of the Central Excise Act, 1944 has to be filed within \_\_\_\_\_.
- (vii) In the fifteen digit registration number (Excise Control Code), under the Central Excise Act, 1944, the first ten characters represent \_\_\_\_\_.
- (viii) Rule 6 of the Central Excise Rules, 2002 governs \_\_\_\_\_.
- (ix) Under Section 2(f) of the Central Excise Act, 1944, 'Labelling or re-labelling' of containers and re-packing from bulk packs to retail packs of natural or artificial mineral waters shall be considered as \_\_\_\_\_.
- (x) The Customs, Excise, Service Tax Appellate Tribunal (CESTAT) may in its discretion, refuse to admit an appeal where the amount of fine or penalty determined does not exceed \_\_\_\_\_.
- (xi) Section 4 of the Central Excise Act, 1944 provides for determination of excise duty liability on the basis of \_\_\_\_\_ of excisable goods.

## **Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3**

---

- (xii) Explanation to Rule 3(4) of CENVAT Credit Rules, provides that CENVAT Credit \_\_\_\_\_ utilized for payment of service tax in respect of services where the person liable to pay tax is the service recipient.
- (xiii) \_\_\_\_\_ governs the valuation of taxable services, for the purposes of levy of service tax.
- (xiv) As per Rule 6(1) of the Service Tax Rules, 1994 \_\_\_\_\_ is the due date for payment of service tax, in case of a partnership firm.
- (xv) Service tax is levied on services provided within the taxable territory of India including territorial waters of India extending up to \_\_\_\_\_ (under International Sea Act).
- (xvi) To avoid disputes between sale of goods and services, Section 66E of the Finance Act, 1994 provides certain activities to be specifically treated as \_\_\_\_\_.
- (xvii) Section 2(42C) of the Income Tax Act, 1961 defines \_\_\_\_\_ as, the transfer of one or more undertakings as a result of the sale, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
- (xviii) Section 17(2)(iv) of the Income Tax Act, 1961 provides that, amount paid by \_\_\_\_\_, in respect of any obligation which otherwise would have been payable by the employee, is taxable as a perquisite in the hands of the employee.
- (xix) Section 2(29C) of the Income Tax Act, 1961 defines \_\_\_\_\_ as the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals] as specified in the Finance Act of the relevant year.
- (xx) Section 194B of the Income Tax Act, 1961 provides that, any person responsible for paying to any person any income by way of winnings from lottery, or crossword puzzle or card game and other game of any sort shall be liable to deduct tax at source, at the time of \_\_\_\_\_ of such income @ 30%.
- (xxi) Section 139(4) of the Income Tax Act, 1961 provides that, a belated return can be filed by the assessee for any previous year at any time, before the \_\_\_\_\_.
- (xxii) Section 272B of the Income Tax Act, 1961 provides that, if any person fails to comply with the provisions of Section 139A or to quote or intimate his Permanent Account Number, as required under section 139A or willfully quotes or intimates a number which is false, then he shall be liable to a penalty of \_\_\_\_\_.

- (xxiii) Section 271(1)(c) of the Income Tax Act, 1961 provides that, if the Assessing Officer is satisfied that, any person has concealed the particulars of his income; or furnished inaccurate particulars of such income, then, he may direct such person to pay the penalty, in addition to tax, if any, payable by him, which shall not be less than the amount of tax sought to be evaded, but not exceeding \_\_\_\_\_.
- (xxiv) Section 206A of the Income Tax Act, 1961 provides that, any banking company, a co-operative society, or a public company, who is responsible for paying to a resident, interest (other than interest on securities), not exceeding ₹5,000, the person responsible for making the payment, is \_\_\_\_\_ to deduct tax at source under Section 194A.
- (xxv) Rule 10A(a) of the Income Tax Rules dealing with the Transfer Pricing Regulations defines an “uncontrolled transaction” to mean a transaction between enterprises other than \_\_\_\_\_ enterprises, whether resident or non-resident.

**Solution:**

- (i) Motor Vehicles.
- (ii) Be liable to pay duty.
- (iii) 'Entry'.
- (iv) One Lakh Rupees.
- (v) Have Permanent Status.
- (vi) One year from the relevant date.
- (vii) The Permanent Account Number (PAN) allotted by the Income Tax Department.
- (viii) Self-assessment of duty.
- (ix) Deemed Manufacture.
- (x) One Lakh Rupees.
- (xi) Transaction Value.
- (xii) Cannot be.
- (xiii) Section 67 of the Finance Act 1994.
- (xiv) 5<sup>th</sup> day of the month immediately following every quarter of a financial year.
- (xv) 12 nautical miles.
- (xvi) Declared Services.
- (xvii) Slump Sale.
- (xviii) Employer.
- (xix) Maximum marginal rate of tax.
- (xx) Payment.
- (xxi) Expiry of 1 year from the relevant assessment year or the completion of assessment, whichever is earlier.
- (xxii) ₹10,000.
- (xxiii) Three times the amount of such tax sought to be evaded.
- (xxiv) Not required.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

---

(xxv) Associated.

### Question 2

- (a) M/s. XYZ Ltd., a manufacturer of various excisable goods, furnishes you with the following information for the year ended 31st March, 2014. From the under mentioned information, determine whether the company will be entitled to avail SSI exemption under Notification No. 8/2003 dated 01-03-2003 during the financial year 2014-15:
- (i) Clearances of finished excisable goods covered under Section 4A of Central Excise Act [Notified abatement 20% of RSP of goods] ₹150 lakhs;
  - (ii) Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken - ₹25 lakhs;
  - (iii) Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of XYZ Ltd. - ₹86 lakhs;
  - (iv) Value of clearance as licensee of goods carrying the brand name of another person upon full payment of duty - ₹250 lakhs;
  - (v) Value of clearance of waste and scrap which were exempt from duty - ₹30 lakhs;
  - (vi) Value of clearances of plastic containers for packing of pickles produced by them under brand name of Nilons Pickles. Nilons pickles use these plastic containers- ₹30 lakhs;
  - (vii) Clearances of other excisable goods - ₹134 lakhs.
- (b) "A 100% Export-Oriented Undertaking (EOU) engaged in manufacture of excisable goods should pay excise duty in a special manner and general provisions do not apply to them." Discuss.
- (c) A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975.

Following particulars are made available:

CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable : ₹60=US\$1

Basic customs duty: 20%.

Education and Secondary and Higher Education Cess as applicable.

As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

---

**Appraise the liability on account of normal duties, cess and the anti-dumping duty.**

**Assume that only 'Basic Customs Duty' (BCD) and education and secondary and higher education cess are payable.**

**[5+5+5]**

**Solution:**

**(a)** Computation of value of clearances in the financial year 2013-14 (*₹ in lakhs*):

<b>(i)</b> Clearances of finished excisable goods covered under Section 4A of Central Excise Act (₹150 lakhs - 20% of ₹150 lakhs)	120
<b>(ii)</b> Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken. <span style="float: right;"><b>[WN-1]</b></span>	-
<b>(iii)</b> Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of ABC Ltd. <span style="float: right;"><b>[WN-2]</b></span>	86
<b>(iv)</b> Value of clearance as licensee of goods carrying the brand name of another person upon full payment of duty <span style="float: right;"><b>[WN-3]</b></span>	-
<b>(v)</b> Value of clearance of waste and scrap which were exempt from duty <b>[WN-4]</b>	30
<b>(vi)</b> Value of clearances of plastic containers packing of pickles produced by them under brand name of Nilons Pickles <span style="float: right;"><b>[WN-5]</b></span>	30
<b>(vii)</b> Clearances of other excisable goods	134
<b>Total value of clearances</b>	<b>400</b>

**Working Note:**

- (1)** As per Circular No. 57/88, dated 27-10-1988 in case inputs on which Cenvat credit has been taken are removed as such, the value of such input shall not be included in the value of clearances of ₹400 lakhs.
- (2)** In case if trade mark of foreign company is assigned in favour of assessee, then assessee becomes the owner of such trade mark and exemption in respect of clearances made under such brand name will be available, hence the same shall be included in determination of value of clearances of ₹400 lakhs.
- (3)** Since the said goods are manufactured in brand name of another person, hence the same are not eligible for exemption and the value of the same shall not be included in determination of ₹400 lakhs.
- (4)** Clearances of waste and scrap shall be includible in value of clearance for determination of ₹400 lakhs even if the same are exempt from duty.
- (5)** Clearances of plastic containers bearing the brand name of others is included

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

---

provided that such plastic containers are meant for use as packing materials by the person whose brand name such goods bear. Hence, clearances of plastic containers bearing the brand name of Nilons Pickles would be included.

### Conclusion:

Since the value of clearance of excisable goods for home consumption does not exceed ₹400 lakhs in the financial year 2013-14, XYZ Ltd. is eligible to claim the benefit of exemption under Notification No. 8/2003 - G.E. dated 01.03.2003 in the financial year 2014-15.

(b) The aforesaid statement is correct. The relevant provisions, in relation to 100% Export Oriented Undertakings, are discussed as under -

(i) **100% EOU removing goods in Domestic Tariff Area (DTA) i.e. other parts of India:** Proviso of Section 3(1) of Central Excise Act, 1944, provides that in case of any excisable goods which are, produced or manufactured by a 100% EOU and brought to any other place in India, the duties of excise which shall be levied and collected thereon, shall be an amount equal to the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962, on like goods produced or manufactured outside India if imported into India.

(ii) **Valuation of goods as per provisions of Customs Act, 1962:** The value of such goods will be determined in accordance with the provisions of Customs Act, 1962 and Customs Tariff Act, 1975 if the duty to be levied is ad-valorem.

(iii) **Highest rate to be levied :** Where, in respect of any such like goods, any duty of customs is leviable at different rates, then, such duty shall be deemed to be leviable at the highest of those rates.

(iv) **Exemption in respect of clearances made by 100% EOU to DTA [Notification No. 23/2003-C.E., dated 31-3-2003]:** DTA clearances by 100% EOU are exempt from -

(a) 50% of the basic customs duties leviable thereon;

(b) additional duty of customs under section 3(5) of Customs Tariff Act, 1975.

Exemption from additional duty under section 3(5) is available only if the goods so removed are not exempt from payment of sales tax/VAT in India. Thus, if goods are leviable to VAT/sales tax in India, then such goods will be exempt from levy of additional duty of customs under section 3(5).

(c) The following points are to be taken note of -

(1) The question clearly states that only basic customs duty, EC and SHEC thereon and anti-dumping duty are leviable on the goods in question and no other duty viz.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

additional duty of customs u/s 3(1) or special additional duty of customs under section 3(5) is leviable.

- (2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.

- (3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under (*amounts in ₹*) -

Particulars	Amount (₹)
CIF Value of the consignment (in Indian ₹) [US \$ 25000 ×60]	15,00,000
<b>Add:</b> Landing Charges @ 1 %	15,000
<b>Assessable Value</b>	<b>15,15,000</b>
<b>Add:</b> Basic Customs Duty @ 20% [A]	3,03,000
<b>Add:</b> EC and SHEC @ 3% on Basic Customs Duty [B]	9,090
<b>Landed Value/Cost of the goods [C]</b>	<b>18,27,090</b>
Cost of commodity for the purposes of anti-dumping notification [500 Kg. x US\$ 70 per Kg. x ₹60 per dollar] [D]	21,00,000
<b>Anti dumping duty [E]=[D – C]</b>	<b>2,72,910</b>
<b>Duty Liability of the importer, including Anti Dumping Duty [F] = [A+B+E]</b>	<b>5,85,000</b>

### Question 3

- (a) List out the member of Approval Committee under Special Economic Zones Act, 2005.
- (b) Gopal Care Ltd. imported a lift from England at an invoice price of ₹17,50,000. The assessee had supplied raw material worth ₹7,50,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading to ₹25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹50,000. The importer was also required to pay ship demurrage charges ₹10,000. The lift was imported at an actual cost of transport ₹45,000 and insurance charges ₹20,000. Compute its assessable value.

- (c) Determine the value of purchases eligible for input credit in the case given below –

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

<b>Inputs purchased from a registered dealer (however, the dealer has opted for the composite scheme under the VAT)</b>	<b>8,00,000</b>
<b>Raw material purchased from unregistered dealer</b>	<b>1,50,000</b>
<b>Inputs used for being used in the execution of work contract</b>	<b>80,000</b>
<b>High seas purchase of inputs</b>	<b>75,000</b>
<b>Goods purchased for sale to other parts of India in course of inter-state trade or commerce</b>	<b>10,00,000</b>

**[5+5+5]**

**Solution:**

**(a)** Every Approval Committee shall consist of :

- (i)** the Development Commissioner-Chairperson, ex officio;
- (ii)** two officers of the Central Government to be nominated by that Government-Members, ex officio;
- (iii)** two officers of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with revenue-Members, ex officio;
- (iv)** one officer of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with Economic affairs (financial services)-Member, ex officio;
- (v)** two officers of the State Government concerned to be nominated by that State Government- Members, ex officio;
- (vi)** a representative of the Developer concerned-Special invitee.

**(b)**

<b>Particulars</b>	<b>Amount (₹)</b>	<b>Amount (₹)</b>
FOB value being the invoice price		17,50,000
Add: Raw material supplied by assessee under Rule 10(1)(b)		7,50,000
<b>FOB Value</b>		25,00,000
Transportation under Rule 10(2) <span style="float: right;"><b>[WN-1]</b></span>		
Add: Sea Freight	45,000	
Add: Ship demurrage charges	10,000	
Add: Lighterage	25,000	
Add: Barge charges	50,000	1,30,000
Add: Actual cost of insurance		20,000
<b>CIF Value</b>		26,50,000
Add; Landing Charges @ 1% <span style="float: right;"><b>[WN-2]</b></span>		26,500



## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

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<b>Assessable Value</b>		26,76,500
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**Working Notes:**

- (1) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
  
- (2) The landing charges @1% of CIF value relate to loading, unloading and handling charges at port.

(c)

<b>The following are not qualified for input credit -</b>	
Inputs purchased from a registered dealer (who has opted for the composite scheme under the VAT)	8,00,000
Raw material purchased from unregistered dealer	1,50,000
High seas purchase of inputs	75,000
<b>The following are qualified for input credit -</b>	
Inputs used for being used in the execution of work contract	80,000
Goods purchased for sale to other parts of India in course of inter-state trade or commerce	10,00,000

**Question 4**

- (a) Discuss with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 in respect of the goods purchased on high seas.
  
- (b) X provides computer maintenance service since 2002. During the quarter ending December 31, 2013, he provides computer maintenance service to A Ltd. X receives ₹15,00,000 from A Ltd. and ₹16,40,000 from holding company of A Ltd. A Ltd. is of the view that only ₹15,00,000 is chargeable to tax (service tax on ₹15,00,000 will be paid by A Ltd.). Find out service tax liability in this case on the assumption that any additional liability will be borne by X (and not by A Ltd. or its holding company).
  
- (c) Discuss whether the following services are chargeable to service tax -
  - (i) Marketing service provided by Punjab Government to a business entity.
  - (ii) Development of course contents for Delhi University against a charge.
  - (iii) Service provided as agents for inland waterways.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

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(iv) Sale of time for broadcasting on Radio Mirchi.

[5+5+5]

**Solution:**

**(a) Valuation in case goods are purchased on high seas:** Section 14(1) of the Customs Act, 1962 provides that the value of goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

Purchase on high sea basis means that the imported goods are acquired by a buyer from the original importer while they are in the high seas i.e., the purchase takes place before they reach India.

In case of imported goods purchased on high sea sales basis, the price, at which the goods are acquired by the buyer from the original importer, can be the price for the delivery of such goods at the time and place of importation and, therefore, such price would be taken to be the value of such goods. In case of more than one high sea sales, the last sale price i.e., the actual high-seas-sale-contract price paid by the last buyer would be taken as the value of such goods.

**(b)** Consideration received for an activity carried by a person from another person is chargeable to service tax. It is not necessary that the service provider should receive consideration from the recipient of service. Consideration can be paid by any other person on behalf of the recipient of service. Consequently, even ₹16,40,000 received from holding company of recipient of service is chargeable to tax. Service tax liability in this case will be calculated as follows –

Particulars	Amount (₹)
Consideration paid by A Ltd.	15,00,000
Consideration paid by holding company [since service tax on this consideration is not additionally paid, value of taxable service out of this consideration will be ₹14,59,594 (i.e., ₹16,40,000 x 100 ÷ 112.36)]	14,59,594
Value of taxable service	29,59,594
Service tax @ 12.36%	3,65,806

**(c)**

**(i)** Marketing service - Marketing service is a support service. It is provided by Government of Punjab to a business entity. It is not in negative list and chargeable to tax.

**(ii)** Development of course contents - It is a service provided to an educational institute in respect of education which is not chargeable to service tax. Consequently, service tax is not applicable. It is given in Mega Exemption Notification.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

(iii) Services provided as agents for inland waterways - These services are not covered in the negative list. These are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and, consequently, covered by service tax.

(iv) Broadcasting - Sale of space or time for advertisement to be broadcast on radio or TV, is not in the negative list and chargeable to tax.

### Question 5

(a) ABC Ltd. is engaged in manufacture of chemical (since 1960) and paper (since 2009). The following data is noted from the balance sheet of ABC Ltd. as on March 31, 2013:

Particulars	Amount (₹)
Equity share capital	60,00,000
Preference share capital	10,00,000
General reserve	40,00,000
Revaluation reserve	6,00,000
Share premium Total	8,00,000
<b>Total</b>	<b>1,24,00,000</b>

	Amount (₹)		
	Chemical division	Paper division	Total
Land	30,00,000	20,00,000	50,00,000
Plant and machinery	16,00,000	36,00,000	52,00,000
Stock	5,00,000	9,00,000	14,00,000
Debtors and other current assets	4,00,000	11,00,000	15,00,000
Less : Creditors	4,00,000	3,00,000	7,00,000
<b>Total</b>	<b>51,00,000</b>	<b>73,00,000</b>	<b>1,24,00,000</b>

Revaluation reserve was created by making upward revision of land belonging to chemical division (₹1 lakh) and paper divisions (₹5 lakh). The company wants to transfer paper division on April 1, 2013 by way of slump sale for a total consideration of ₹108 lakh (transfer expenses being ₹38,000). By taking into consideration the following additional information, find out the amount of capital gains and other tax consequences.

1. Transfer agreement does not specify value of individual assets/liabilities. However, the value of land of paper division for the purpose of stamp duty is ₹46 lakh. The same amount is adopted by the stamp valuation authority of the MP Government.
2. The rate of depreciation on plant and machinery owned by ABC Ltd. is 15 per cent. The depreciated value of the block (consisting of chemical division and paper division) on

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

---

April 1, 2013 is ₹70 lakh for income-tax purpose. Apart from transferring plant and machinery of paper division, the company purchases an old Plant P for ₹1 lakh and sells Plant Q for ₹20 lakh (situation 1) or ₹50 lakh (situation 2) in September 2013. Plant P and Q belong to chemical division.

Plant and machinery (old) of the paper division was purchased in May 2009 for ₹95 lakh. The division started commercial production in June 2009. However, one of the plant (cost ₹10 lakh) was put to use in March 2010. No other asset for paper division is purchased/sold between May 2009 and March 2013.

(b) Discuss whether the following services are chargeable to service tax -

- (i) Commission received for canvassing advertisement for publishing.
- (ii) Pre-school education provided by Star Play School. Star Play School is not recognized by any authority.
- (iii) Charges are collected by a developer for distribution of electricity within a residential complex.
- (iv) Publication of advertisement in Hindustan Times.

[10+5]

**Solution:**

- (a) ABC Ltd. transfers paper division for a lump sum consideration. Transfer satisfies all conditions of section 2(42C). Paper division was set up in 2009 and it is transferred on April 1, 2013. The capital gain (or loss) will be long-term. The sale consideration is ₹108 lakh. The cost of acquisition is net worth of paper division which will be determined as follows—

Computation of written down value for the purpose of computing depreciation

Particulars	Situation 1 ₹	Situation 2 ₹
Depreciated value of the block of assets of chemical and paper divisions on April 1, 2013	70,00,000	70,00,000
Add : Cost of Plant P	(+ )1,00,000	(+ )1,00,000
Less : Sale proceeds of Plant Q	(-)20,00,000	(-)50,00,000
Balance (a)	51,00,000	21,00,000
Less : Depreciated value of assets of paper division, it cannot exceed (a) <b>[see Note 1]</b>	(-)50,05,119	(-)21,00,000

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

Written down value	94,881	Nil
Less : Depreciation available to X Ltd. for the previous year 2013-14	14,232	Nil
Written Down Value as on 01.04.2014	80,649	Nil

**Note 1** - Computation of depreciated value of assets of paper division (as if only paper division) is owned by ABC Ltd.—

Depreciated value on April 1, 2009	Nil
<b>Add</b> : Cost of assets acquired and put to use during 2009-10	95,00,000
Written down value on March 31, 2010	95,00,000
<b>Less</b> : Depreciation for 2009-10 (15% of ₹85 lakh + 7.5% of ₹10 lakh)	13,50,000
Depreciated value on April 1, 2010	81,50,000
<b>Less</b> : Depreciation for 2010-11	12,22,500
Depreciated value on April 1, 2011	69,27,500
<b>Less</b> : Depreciation for 2011-12	10,39,125
Depreciated value on April 1, 2012	58,88,375
<b>Less</b> : Depreciation for 2012 -13	8,83,256
Depreciated value on April 1, 2013	50,05,119

### Computation of net worth of paper division

Particulars	Situation 1 ₹	Situation 2 ₹
Land (excluding ₹5 lakh which was added by revaluation)	15,00,000	15,00,000
Plant and machinery (i.e., amount considered while computing written down value)	50,05,119	21,00,000
Stock	9,00,000	9,00,000
Debtors and other current assets	11,00,000	11,00,000
Total	85,05,119	56,00,000
Less : Creditors	3,00,000	3,00,000
Net worth	82,05,119	53,00,000

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

---

Particulars	Situation 1 ₹	Situation 2 ₹
Computation of capital gain on transfer of paper division		
Sale consideration	1,08,00,000	1,08,00,000
Less: Cost of acquisition (being net worth, indexation benefits is not available)	82,05,119	53,00,000
Expenses on transfer	38,000	38,000
Long-term capital gain	25,56,881	54,62,000

(b)

- (i) **Canvassing advertisement** - It is not in the negative list and chargeable to tax.
- (ii) **Pre-school education** - It is in negative list under Category 12. It is not chargeable to tax. Even if school is not recognized, it is not chargeable to tax.
- (iii) **Collection by a developer for distribution of electricity** - Such service is not covered in the negative list and chargeable to service tax. The developer or the housing society would be covered under the negative list only if it is entrusted with such function by Central or a State Government or if it has a license under the Electricity Act, 2003 for distribution of electricity.
- (iv) **Advertisement** - Charges for publication of advertisement in a magazine/newspaper is covered in the negative list (Category 7). It is not chargeable to tax.

### Question 6

- (a) X, Y and Z are members of X (HUF). They are also partners of XYZ & Co., a partnership firm. X (HUF) deposits ₹ 90,000 in XYZ & Co. (interest rate being 20 per cent). On April 1, 2013 there is a partial partition of X(HUF) and after partial partition, the deposit of ₹90,000 with the firm is divided between the three members- X, Y and Z equally. In other words, from April 1, 2013, deposit of ₹90,000 is transferred in the individual names of X, Y and Z and the firm pays interest on the deposit to the individual partners. Discuss whether interest on deposit is covered by section 40(b) and interest will be partly disallowed.
  
- (b) For the assessment year 2009-10, assessment of X Ltd. is completed under section 143(1) [income assessed: ₹ 4,47,000]. On March 28, 2014, the Assessing Officer issues a notice

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

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under section 148 to X Ltd. that an income of ₹ 45,760 has escaped assessment. The said notice is received by X Ltd. on April 3, 2014. Is the notice valid?

- (c) X is aged 35 years. His father has settled a house property in trust giving whole life interest therein to X. The income from the property for the years 2010-11 to 2013-14 was ₹70,000, ₹81,000, ₹82,000 and ₹86,000 respectively. The expenses incurred each year were ₹3,000, ₹17,000, ₹500 and ₹18,000 respectively. Calculate the value of life interest of X in the property so settled on the valuation date March 31, 2014 on the assumption that the value of house as per Schedule III is (a) ₹15 lakh, or (b) ₹6 lakh. [Multiplier at the age of 35 is 10.804].

[5+5+5]

**Solution:**

- (a) A reading of section 171(9) clearly shows that a partial partition effected in a HUF after December 31, 1978 is held to be null and void and clause (b) of sub-section (9) of section 171 provides that the joint family shall continue to be assessed under the Act as if no partial partition has taken place.

It is not possible to accept the submission that when the partial partition had been declared null and void, it should be limited only for the purpose of assessment of the joint family and it would not extend to other purposes like claiming deduction or grant of exemption which is available under other provisions of the Act. Once the partial partition is declared to be null and void, it is null and void for the purposes of the Act and the interest paid by the firm, though to the erstwhile members of the joint family, should be treated as if the interest is paid to the joint family.

Therefore, the interest payments made by the firm, would be treated as if the firm had made the interest payments to the joint family and such payments are not hit by section 40(b) – CIT v. B.S. Sundaravadivel Mudaliar & Cons [2003] 128 Taxman 74 (Mad.).

- (b) In this case notice can be issued up to March 31, 2014. A clear distinction has been made out between "issue of notice" and "service of notice" under the Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of reassessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Assessing Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice is issued within the prescribed period of limitation as March 31, 2014 is the last day of that period. Service under the Act is not a condition precedent to conferment of jurisdiction on the Assessing

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

Officer to deal with the matter but it is a condition precedent to the making of the order of assessment. The Assessing Officer has issued notice within limitation — R.K. Upadhaya v. Shanabhai P. Patel [1987] 166 ITR 163 (SC).

**(c) Situation (a)** - X has a life interest in the property which has been settled by his father. The value of the life interest has to be determined under Rule 17 of Schedule III to Wealth-tax Act. The multiplier at the age of 35 is given as 10.804. The value of life interest, therefore, comes to ₹8,51,895 (i.e., ₹78,850 x 10.804) **(Note 1). The value of life interest of X in the house will be taken as ₹8,51,895 (as it is less than ₹15,00,000).**

**Note:** The average annual income from one property for the years 2011-12 to 2013-14 is determined as under:

**(All Amount in ₹)**

Years	2011-12	2012-13	2013-14	Total	Average
Income (i)	81,000	82,000	86,000	2,49,000	83,000
Expenses	17,000	500	18,000	35,500	11,833
Less : Expenses (₹11,833 or 5% of ₹83,000 whichever is less) (ii)					4,150
Average annual income [(i) - (ii)]					78,850

**Situation (b)** - The value of life interest is ₹8,51,895. However, value of the house in respect of which X has interest is ₹6,00,000. Therefore, value of life interest shall be taken as equal to ₹6,00,000 (it cannot be more than value of the house).



## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

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### Question 7

- (a) Company X which has an accumulated business loss of ₹10,00,000 and unabsorbed depreciation of ₹7,00,000 wants to reorganize its business by amalgamating with a rival company Y, which is engaged in the same line of production but with a smaller capital, but has an efficient management set up and more modern machinery. Company Y is agreeable to the amalgamation.

What are the alternative courses available to the companies for effecting the merger and how would you advise them as to the best course of action?

- (b) X furnishes the following particulars for the compilation of his wealth-tax return for assessment year 2014-15:

Particulars	₹
1. Gifts of jewellery made to wife from time to time aggregating ₹60,000 market value on valuation date	3,00,000
2. Flat purchased under installment payment scheme in 1972 for ₹7,50,000, used for purposes of his residence and market value as on March 31, 2014 (installment remaining unpaid : ₹50,000)	18,00,000
3. Urban land transferred to minor handicapped child valued on March 31, 2014	5,00,000

Compute the net wealth of Mr. X, as on 31.03.2014. Make suitable assumptions, if required.

- (c) Who can be treated as an agent of a non-resident foreign collaborator for the purpose of proceedings and/or any other matters under the Income Tax Act?

### Solution:

- (a) The alternatives for merger that are available to X and Y are:

- (i) merger of X into Y, whereby X goes out of existence;
- (ii) merger of Y into X, whereby Y goes out of existence; and
- (iii) merger of X and Y into a new company, whereby a new company, say Z, is formed and both X and Y go out of existence.

All the three mergers can take place under one of the following situations—

- a. If the merger is not an "amalgamation" within the meaning of section 2(1B).
- b. If the merger is an "amalgamation" within the meaning of section 2(1B), though it does not satisfy provisions of section 72A.
- c. If the merger satisfies conditions of sections 2(1B) and 72A.

## Answer to PTP\_Final\_Syllabus 2008\_Jun 2014\_Set 3

Under the aforesaid situations, the set off of accumulated business loss of ₹10,00,000 and unabsorbed depreciation of ₹7,00,000 is possible in the following cases :

	Whether set off of unabsorbed business loss/ depreciation allowance is possible?		
	Situation (a)	Situation (b)	Situation (c)
(i) Merger of X into Y (X goes out of existence after merger)	No	No	Yes
(ii) Merger of Y into X (Y goes out of existence)	Yes	Yes	Yes
(iii) Merger of X and Y into Z (X and Y go out of existence, Z is formed as a new company)	No	No	Yes

To conclude, it can be said that if the conditions of section 72A are satisfied, any of the three alternatives for mergers can be adopted, as in all the cases the loss can be set off by the amalgamated company. If, however, conditions of section 72A are not satisfied, alternative (ii) (i.e., merger of company Y into X) should be adopted, as in this case, company X would be able to carry forward and set off of loss/depreciation even if the merger does not fulfill the requirement of section 2(1B). This kind of merger is also known as reverse merger.

**(b) Computation of net wealth of X**

	₹	₹
Jewellery held by wife		3,00,000
Flat:	7,50,000	
Less: Debt due	50,000	
Balance [exempt under section 5(vi)]	7,00,000	---
Urban land held by minor child [not to be included as the minor child is handicapped]		---
<b>Net wealth</b>		<b>3,00,000</b>

(c) Section 2(7) defines the term 'assessee' to include a representative assessee within its scope. The Assessing Officer is statutorily empowered to issue notice under section 163 to any person to deem him as the agent of the non-resident foreign collaborator.

Section 163 of the Income Tax Act, 1961 defines the term 'agent', in relation to a non-resident, to include any person in India:

- (i) who is employed by or on behalf of the non-resident; or
- (ii) who has any business connection with the non-resident within the meaning of Section 9(1)(i); or
- (iii) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
- (iv) who is the trustee of the non-resident,
- (v) and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India.

However, a broker in India who, in respect of any transaction, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of the income attributable to those transactions provided the following conditions are fulfilled:

- (i) the transactions are carried on in the ordinary course of business through the first mentioned broker; and
- (ii) the non-resident is carrying on such transactions in the ordinary course of his business and not as a principal.