

# GUIDELINE ANSWERS

## PROFESSIONAL PROGRAMME (*New Syllabus*)

JUNE 2021 Session

MODULE 1



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

Phones : 41504444, 45341000; Fax : 011-24626727

E-mail : [info@icsi.edu](mailto:info@icsi.edu); Website : [www.icsi.edu](http://www.icsi.edu)

These answers have been written by competent persons and the Institute hope that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

## **C O N T E N T S**

*Page*

### **MODULE 1**

1. Governance, Risk Management, Compliances and Ethics	1
2. Advanced Tax Laws	24
3. Drafting, Pleadings and Appearances	50

**PROFESSIONAL PROGRAMME EXAMINATION**

JUNE 2021

**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES  
AND ETHICS**

*Time allowed : 3 hours*

*Maximum marks : 100*

**NOTE:** Answer **ALL** Questions.

**PART - I**

**Question 1**

*ABC Ltd., is a Joint Venture between an Indian Company and a Multi-National Company. In present Covid pandemic situation, a Board Meeting through video conference was held on 29th October, 2020 at a shorter notice of 3 days. One of the agenda items was approval of the financial statements for the quarter ended 30th September, 2020.*

*One of the Directors joined late in the Board Meeting and was not present while discussing one agenda item. None of the Independent Directors were present.*

*The Company needs funds and is proposing to issue rights shares. Board recommended increase in authorised share capital as well as approved convening of an EGM through Video Conference on 31st December, 2020.*

*The Board discussed on a business proposal at length in the Board Meeting. When minutes were circulated by the Company Secretary, both the joint venture nominee Directors on the Board of the Company had different views on the discussions made and suggested modifications to the minutes which were not in harmony with the minutes circulated by the Company Secretary.*

*Chairman of the Board of Directors is nominee of Indian Company. He is firm that Chairman's decision is final in finalising the minutes of the meeting*

*Based on the above facts, answer the following questions :*

- (a) Discuss whether the financial statements can be approved in Board Meeting through Video Conferencing ?*
- (b) What is the procedure to be followed by the Company Secretary when conducting Board Meeting through Video Conferencing as per SS-1 ?*
- (c) How is proceeding of the Meeting is recorded by the Company Secretary in the Board Meeting ? Discuss on recording and finalisation of minutes in light of the provisions of applicable SS-1.*
- (d) Can EGM be held through Video Conferencing? (5 marks each)*

**Answer 1(a)**

Approval of financial statements for the quarter ended 30th September 2020 should have been approved at a physically held Board Meeting as per Section 173 and Section

179 of the Companies Act, 2013 read with Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014.

However, on account of current scenario due to COVID-19 pandemic, Ministry of Corporate Affairs had relaxed these provisions vide Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated 19th March 2020 by providing that for the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June 2020 (later extended upto 30th June, 2021), the meetings on all matters referred to in sub-rule (1) of Rule 4 may be held through video conferencing or other audio visual means in accordance with rule 3. Therefore, the resolution passed is proper.

*(Note: Rule 4 has been omitted vide the Companies (Meetings of Board and its Powers) Amendment Rules, 2021 dated 15.06.2021 implying that all business matters can now be dealt in meetings held through video conferencing or other audio visual means in accordance with Rule 3)*

#### **Answer 1(b)**

The complete process for conducting of board meetings through video conferencing is prescribed under Section 173 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules), 2014 and Secretarial Standard 1.

Process to be followed by Company Secretary when conducting the Board Meeting through Video Conference is as below:

The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode. The notice shall also contain all the necessary information to enable the directors to participate through video conferencing mode, like contact number or email address of the chairman or any other person authorised by the board, to whom the director shall confirm in this regard.

The notice shall also seek advance confirmation from the directors as to whether they will participate through electronic mode in the meeting. Director who intends to participate through video conferencing shall give prior intimation to chairman of the company well in advance so that the company can make necessary arrangements in this behalf.

At the commencement of the meeting, a roll call shall be taken by the chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:

- a) Name
- b) The location from where he is participating,
- c) That he has received the agenda and all the relevant material for the meeting like draft resolution, notes to agenda etc, and
- d) That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location.

After the roll call, the chairperson shall confirm that the required quorum is complete.

Every participant shall identify himself for the record before speaking on any item of business on the agenda. If statement of a director in the meeting through video

conferencing or other audio-visual means is interrupted or garbled, the chairperson shall request for a repeat or reiteration by the director.

The minutes of the meeting shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio-visual means and the location from where and the agenda items in which he participated.

#### **Answer 1(c)**

As per Clause 7 of SS- 1, the Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded. The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

Minutes need not be an exact transcript of the proceedings at the Meeting. In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

In case of meetings held through electronic mode, all the recordings of the proceedings of the Meeting, shall be deemed to be made at the venue of the meeting as mentioned in the Notice. The proceedings of Meetings held through video conferencing or other audio visual means shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

**Finalisation of Minutes** : Within 15 days from the date of the conclusion of the Meeting, the draft Minutes thereof shall be circulated to all the members of the Board, as on the date of the Meeting, for their comments. The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within 7 days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of 30 days. Minutes shall be entered in the Minutes Book within 30 days from the date of conclusion of the Meeting.

#### **Answer 1(d)**

The Companies Act, 2013 does not contain any specific provisions allowing or disallowing conduct of members' meetings through Video Conferencing or other audio-visual means. In other words, it is silent on the matter.

However, in view of the current extra-ordinary circumstances due to COVID-19 Pandemic MCA has vide their circular No. 14 dated 8th April 2020, circular No. 17 dated 13th, April 2020, circular No. 22 dated 15th June 2020, circular No. 33 dated 28th September 2020 and circular no. 39 dated 31st December 2020 allowed companies to hold EGMs through Video Conference or other audio visual means or postal ballot subject to some guidelines prescribed under the above circulars.

*(Note: As per the recent circular issued on 23rd June 2021, companies can hold Extra-ordinary general meeting through Video Conference or other audio-visual means or transact items through postal ballot subject to compliance with the guidelines prescribed in the above circulars upto 31st December 2021)*

**Attempt all parts of either Q. No. 2 or Q. No. 2A****Question 2**

- (a) The 'Fit and Proper' criteria for nomination of directors applies only to private sector banks. Do you agree with the statement ? Describe the phrase 'Fit and Proper'. (5 marks)
- (b) During the Meeting of Audit Committee of PQR Ltd. (BSE Listed Company), the member of the Audit Committee so desired to detailed information on material management control at depot. He also required the financial control system on material movement. The Project Head opined that Audit Committee has no such power. In light of the provisions of the Companies Act, 2013 and SEBI (LODR), Regulations 2015, explain whether such information can be called by Audit Committee. What penal provisions are applicable in case of Audit Committee is not constituted as per section 177 of the Act ? (5 marks)
- (c) What are the Materiality Guidelines ? Prepare a note on Disclosures of events upon application of the Materiality Guidelines. (5 marks)

**OR (Alternate question to Q. No. 2)****Question 2A**

- (i) Which Authority issued code on Stewardship for Insurer in India ? What are the Principles of such Guidelines ? (5 marks)
- (ii) The Finnish Corporate Governance Code 2020 (2020 CG Code) came into force and applicable to listed companies on Nasdaq Helsinki Ltd. (Helsinki Stock Exchange). What is the key recommendation with respect to Related Party Transaction in this Code ? (5 marks)
- (iii) Define the role of Stakeholders in Corporate Governance under SEBI (LODR) Regulations, 2015. (5 marks)

**Answer 2(a)**

Yes, some of the recommendations made by the Ganguly Committee are applicable only to private sector banks. Among some of the recommendations, one of the eligibility criteria for nomination of directors is 'fit and proper'. The recommendations in this regard are as under:

- (a) The Board of Directors of the banks while nominating/ co-opting directors should be guided by certain broad 'fit and proper' norms for directors, viz. formal qualification, experience, track record, integrity etc. For assessing integrity and suitability features like criminal records, financial position, civil actions initiated to pursue personal debts, refusal of admission to or expulsion from professional bodies, sanctions applied by regulators or similar bodies, previous questionable business practices etc. should be considered. The Board of Directors may, therefore, evolve appropriate systems for ensuring 'fit and proper' norms for directors, which may include calling for information by way of self-declaration, verification reports from market, etc.
- (b) The following criteria, which is in vogue in respect of nomination to the boards of

public sector banks, may also be followed for nominating independent/ non-executive directors on private sector banks:

- i. The candidate should normally be a graduate (which can be relaxed while selecting directors for the categories of farmers, depositors, artisans, etc.)
- ii. He/she should be between 35 and 65 years of age.
- iii. He/ she should not be a Member of Parliament/ Member of Legislative Assembly/ Member of Legislative Council.

### Answer 2(b)

#### Powers of the Audit Committee

<i>Section 177 (5),(6) and (7) of the Companies Act, 2013</i>	<i>Regulation 18(2)(c) of the SEBI Listing Regulations, 2015</i>
<ol style="list-style-type: none"> <li>1. The Audit Committee has the power to call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company. [Section 177(5)]</li> <li>2. Audit Committee shall have authority to investigate into any matter in relation to the items specified in terms of reference or referred to it by the Board and for this purpose the Committee has power to obtain professional advice from external sources. The Committee for this purpose shall have full access to information contained in the records of the company. [Section 177(6)]</li> <li>3. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote. [Section 177(7)]</li> </ol>	<p>The Audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.</p>

As per section 178(8) of the Companies Act, 2013, in case of any contravention of the provisions of section 177 of the Companies Act, 2013, the Company shall be liable to a penalty of Rs. 5 Lakhs and every officer of the Company who is in default shall be liable to a penalty of Rs. 1 Lakh.

**Answer 2(c)**

As per Regulation 30 of the Listing Regulations, every listed entity shall make disclosure of any event or information which, in the opinion of the board of directors of the listed company, is material.

**Materiality Guidelines**

As per Regulation 30(4), the listed entity shall frame a policy for determination of materiality of events/ information, approved by the board of directors and which shall be disclosed on its website.

The criteria for determination of materiality of events/informations is:

- a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date; or
- c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

**Disclosures of events upon application of the Materiality Guidelines**

Regulation 30(3) of the SEBI (LODR) Regulations, 2015 specifies that the listed entity shall make disclosure of events specified in Para B of Part 'A' of Schedule III, based on application of the guidelines for materiality. These are as follows:

1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.
2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).
3. Capacity addition or product launch.
4. Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.
6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity
8. Litigation(s) / dispute(s) / regulatory action(s) with impact.



9. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
10. Options to purchase securities including any ESOP/ESPS Scheme.
11. Giving of guarantees or indemnity or becoming a surety for any third party.
12. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

#### **Answer 2A(i)**

IRDAI had issued a code for stewardship for the insurance companies vide its circular ref: IRDA/F&A/GDL/CMP/059/03/2017 on 20th March, 2017. The code was in the form of a set of principles which the insurance companies needed to adopt and made applicable from FY 2017-18. Guidelines for each principle under the code had also been prescribed by IRDAI. As per the code, insurer should have a board approved stewardship policy which should identify and define the stewardship responsibilities that the insurer wishes to undertake and how the policy intends to fulfill the responsibilities to enhance the wealth of its policyholders who are ultimate beneficiaries.

Further, the IRDAI decided to review the existing guidelines on stewardship code based on the experience in implementation, compliance by the insurers and the recent developments in this regard. Accordingly, a revised guidance on stewardship code has been prepared and known as Revised Guidelines on Stewardship Code for Insurers in India. The Principles under this code are:

---

#### *S. No. Principles*

---

- |   |   |
|---|---|
| 1 | Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it.   |
| 2 | Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.   |
| 3 | Insurers should monitor their investee companies.   |
| 4 | Insurers should have a clear policy on intervention in their investee companies.  |
| 5 | Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors), which should be disclosed. |
| 6 | Insurers should have a clear policy on voting and disclosure of voting activity.  |
| 7 | Insurers should report periodically on their stewardship activities.  |
- 

#### **Answer 2A(ii)**

The Finnish Corporate Governance Code, 2020 is a collection of recommendations on good corporate governance for listed companies. The recommendations of the Corporate Governance Code supplement the obligations set forth in legislation.

On the matter of related party transactions, the code contains that the company

procedure concerning related party transactions is also a part of good corporate governance. Whenever the company conducts business transactions with related parties, the company must ensure that the transactions are appropriate from the perspective of the company and the shareholders. The company must take into account the legislation that sets specific requirements for the monitoring, assessment, deciding, and disclosure of related-party.

Recommendation 27 requires that Companies define and report their principles for monitoring and evaluation of related party transactions. The purpose of the principles is to ensure proper decision making in related party transactions in accordance with new requirement of the Limited Liability Companies Act.

The Board of Directors should consider in particular how the company identifies related party transactions who shall be the receiving party for related party transaction reports and how the procedure will be supervised.

The relevant 'related party transaction' is defined as a transaction that is carried out outside the ordinary course of the Company's business or that is not carried out on normal business terms. To identify these transactions, the company must be liable to identify its related parties and the transactions carried out by the Company with the related parties.

The main features of the related party transactions principle will be disclosed in the Company's CG report. As a result of that, Company listed on the Helsinki Stock Exchange should without delay review and if needed, update their related party transactions principles to enable them to fulfil the CG reporting requirement.

### **Answer 2A(iii)**

#### **Role of Stakeholders in Corporate Governance**

As per Regulation 4(2)(d) of SEBI (LODR) Regulations, 2015 the listed entity should recognise the rights of stakeholders and encourage co-operation between listed entity and the stakeholders in the following manner:-

- (i) The listed entity should respect the rights of stakeholders that are established by law or through mutual agreements.
- (ii) Stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- (iii) Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.
- (iv) The listed entity should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

*(Note: According to SEBI (LODR) 2nd Amendment Regulations, 2021 dt. 5th May, 2021, in regulation 4(2)(d)(iv) the words 'vigil mechanism/ whistle blower policy' shall be used instead of the words 'whistle blower mechanism')*

**Question 3**

- (a) Write the short notes on CSR Audit.
- (b) ICSI Recommendations to strengthen Corporate Governance framework suggests for constitution of Corporate Compliance Committee on mandatory basis. If such recommendations are accepted by competent authority, what will be the applicability? Highlight any 3 major functions, that may be included in charter of the Committee.
- (c) Prepare a brief note on Corporate Secretaries International Association Limited.
- (d) “Governance, Risk and Compliance (GRC) is the integrated collection of capabilities that enable an organization to reliably achieve objectives, address uncertainty and act with integrity.” Explain.
- (e) When will a transaction with a related party be material? (3 marks each)

**Answer 3(a)**

To ensure that the Companies comply with the provisions of Section 135 of the Companies Act, 2013 and rule made thereunder and genuinely spend the CSR amount on the eligible welfare projects, it is imperative to improve governance and transparency in CSR sphere.

Akin to other areas of corporate activity requiring compliance, need for a dedicated independent professional has been felt in the area of social responsibility as well. In this regard, an independent CSR Audit/ Review and issue of CSR Audit / Review Report by the Company Secretaries in Practice shall not only give the existing CSR Mechanism much needed support and give necessary comfort to the Stakeholders, regulators and the society at large that the companies are complying with the legal requirements but will also give authentic information about utilization of CSR Fund by the Companies in specified CSR activities.

The Companies Act, 2013 does not contain any provision relating to CSR Audit. However, monitoring of CSR activities and its reporting is mandatory as per the Companies (Company Social Responsibility Policy) Rules 2014. Also, it is the responsibility of the Company through the CSR Committee to monitor the funds of the Company which are to be utilized as per the CSR Policy of the Company. So, Companies may voluntarily get an Audit conducted of its CSR initiatives and compliances.

**Answer 3(b)**

ICSI Recommendations to strengthen Corporate Governance framework suggests for constitution of Corporate Compliance Committee on mandatory basis in respect of all public limited companies having a paid-up capital of Rs.5 crore or more.

The charter of the committee may include:

1. To oversee the Company’s compliance efforts with respect to relevant Company policies, the Company’s Code of Conduct, and other relevant laws and regulations and monitor the Company’s efforts to implement legal obligations arising from agreements and other similar documents;

2. To review the Company's overall compliance programme to ensure that it is well communicated, supports lawful and ethical business conduct by employees, and reduces risk to the Company for non-compliance with laws and regulations related to the Company's business;
3. To review complaints received from internal and external sources, regarding matters other than the financial matters which are within the purview of the Audit Committee;
4. To periodically present to the Board for adoption appropriate changes to the policies, and oversee implementation of and compliance with these policies;
5. To review regularly the company's compliance risk assessment plan;
6. To investigate or cause to be investigated any significant instances of non-compliance, or potential compliance violations that are reported to the committee;
7. To coordinate with other committees regarding matters brought to the committees attention that relate to issues of compliance with applicable laws and regulations;
8. Regularly report to the Board on the Committee's activities, recommendations and conclusions;
9. To discuss any significant compliance issues with the Chief Executive officer;
10. To periodically report to the Board and CEO on the adequacy and effectiveness of the company's compliance programme;
11. To retain at the company's expense, independent advisors to assist the committee with carrying out its responsibilities from time to time;
12. To perform such other duties and responsibilities as may be assigned to the committee by the board.

**Answer 3(c)**

Corporate Secretaries International Association Limited (CSIA) was established on February 10, 2017 as a Company limited by Guarantee in Hong Kong. It is an international federation of governance professional bodies for corporate secretaries & governance professional and represents those who work as frontline practitioners of governance throughout the world.

CSIA is governed by a council consisting of the honorary members (President, Vice-President, Secretary and Treasurer as elected from the member bodies), past presidents, co-opted members and representatives of each national member organisation.

CSIA is an international association of 14 national professional bodies, representing more than 100,000 corporate secretaries and governance professionals in more than 70 countries throughout the world. CSIA has 10 full members which include Institute of Chartered Secretaries from South Africa, Hong Kong, Kenya, Nigeria, Zimbabwe, UK, Bangladesh, India, Malaysia and Singapore.

*Objectives of CSIA are:*

1. To promote the professional status of suitably qualified chartered secretaries, Corporate Secretaries, Company Secretaries, board secretaries and other governance professionals.

2. To establish and maintain good relations and exchanges between organisations dedicated to the promotion and practice of secretaryship and/or the promotion of good governance.
3. To develop and improve their services and professionalism of their members.
4. To assist in the creation of such organisations in countries or regions in which they do not currently exist.
5. To promote the growth, development, study and practice of secretaryship and assist their members develop and improve their services and professional standards.
6. To advocate for good governance through carrying out research, developing standards and raising awareness.
7. To promote the recognition and influence in respect of secretaryship and its professional practitioners to national governments and their supplementary/ sponsored organisations, international organisations and the global business community.

**Answer 3(d)**

Governance, Risk and Compliance (GRC) is the integrated collection of capabilities that enable an organization to reliably achieve objectives, address uncertainty and act with integrity. GRC refers to a strategy for managing an organization's overall governance, enterprise risk management and compliance with regulations. GRC is a set of processes and practices that runs across departments and functions. GRC might be enabled by a dedicated platform and other tools, although this is not mandatory. While organizations generally don't need to maintain a separate GRC department, most organizations have a team in place to manage the GRC platform and tools. The scope of GRC doesn't end with just governance, risk, and compliance management, but also includes assurance and performance management, information security management, quality management, ethics and values management, and business continuity management.

Effective GRC implementation helps the organization to reduce risk and improve control effectiveness, security and compliance through an integrated and unified approach that reduces the ill effects of organizational silos and redundancies.

**Answer 3(e)**

According to Regulation 23(1) and (1A) of SEBI (LODR) Regulations- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. With effect from July 01, 2019, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

**PART II****Question 4**

- (a) *What type of risk is the Covid Pandemic ?*
- (b) *Is Risk Management Policy mandatory for private companies ? What are the advantages of Risk management ?*
- (c) *Write short notes on ISO 31000.*
- (d) *What is Reputation Risk ? How is it managed ?* (5 marks each)

**Answer 4(a)**

Covid Pandemic is a Systemic Risk due to the following reasons:

- It is not fully controllable by any organisation.
- It is not entirely predictable.
- It is of a macro nature.
- It usually affects a large number of organisations operating under a similar stream.
- It cannot be fully assessed and anticipated in advance in terms of timing and gravity.

**Answer 4(b)**

The Companies Act, 2013 does not seem to mandate framing of a Risk Management Policy for Private Companies. However, Section 134(3) of the Companies Act, 2013 which provides disclosures to be made in the Board's Report of company, inter alia provides that the Board's Report must include a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.

As per the above statement, it may be inferred that Companies, including Private Companies are required to develop and implement a Risk management Policy.

**Advantages of Risk Management:**

1. Risk management in the long run always results in significant cost savings and prevents wastage of time and effort in firefighting. It develops robust contingency planning.
2. It can help plan and prepare for the opportunities that unravel during the course of a project or business.
3. Risk management improves strategic and business planning. It reduces cost by limiting legal action or preventing breakages.
4. It establishes improved reliability among the stakeholders leading to an enhanced reputation.
5. Sound risk management practices reassure key stakeholders throughout the organisation.

**Answer 4(c)**

ISO 31000 is the international standard for risk management. This standard was published in the year 2009. It helps organisations with their risk analysis and risk assessments. ISO 31000 applies to most business activities including planning, management operations and communication processes. While all organisations manage risk to some extent, this international standard's best practice recommendations were developed to improve management techniques and ensure safety and security in the workplace at all times.

By implementing the principles and guidelines of ISO 31000 in organisation, the organisation is able to improve operational efficiency, governance and stakeholder confidence, while minimising losses. This international standard also helps to boost health and safety performance, establish a strong foundation for decision making and encourage proactive management in all areas.

**Answer 4(d)**

Reputation risk is a type of non-financial risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt holders, market analysts, other relevant parties or regulators that can adversely affect an entity's ability to maintain existing, or establish new, business relationships and continued access to sources of funding.

This type of risk is multi-dimensional and reflects the perception of other market participants. Exposure to reputational risk is essentially a function of the adequacy of the entity's internal risk management processes, as well as the manner and efficiency with which the management responds to external influences on entity's related transactions.

Reputational risk can be managed based on the following principles:

1. Integration of risk while formulating business strategy.
2. Effective board oversight.
3. Image building through effective communication.
4. Promoting compliance culture to have good governance.
5. Persistently following up the corporate values.
6. Due care, interaction and feedback from the stakeholders.
7. Strong internal checks and controls.
8. Peer review and evaluating the company's performance.
9. Quality report/ newsletter publications.
10. Cultural alignments.

**PART III****Attempt all parts of either Q. No. 5 or Q. No. 5A****Question 5**

- (a) *You are newly appointed as the Company Secretary of ABC Pvt Ltd. Rama, who is the CEO of the Company, is not clear on concept and applicability of internal audit to your company. She approaches you to understand the same. Prepare a short note to brief Rama on concept and applicability of internal audit as per the provisions of Companies Act, 2013 to your company.*
- (b) *Why Non-Financial Reporting is important for companies ?*
- (c) *Administrative Controls have an indirect relationship with financial records. Do you agree with this statement ?*
- (d) *Sustainability Reporting being relatively a new concept, what challenges do you foresee in mainstreaming sustainability reporting ? (5 marks each)*

*OR (Alternate question to Q. No. 5)***Question 5A**

- (i) *Elucidate the purposes and limitations of Financial Reporting.*
- (ii) *Explain the meaning of internal control and internal audit and also mention how these two are different from each other.*
- (iii) *What are the Guiding Principles for preparation of an integrated report ?*
- (iv) *Discuss the relation between integrated reporting and sustainability reporting. (5 marks each)*

**Answer 5(a)**

According to Institute of Internal Auditors “Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”

**Applicability of Internal Audit:**

As per Section 138 of the Companies Act, 2013 and Companies (Accounts) Rules, 2016, the following class of companies shall be required to appoint an internal auditor:-

- (a) every listed company
- (b) every unlisted public company having :-
- (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
- (ii) turnover of two hundred crore rupees or more during the preceding financial year; or



- (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
  - (iv) outstanding deposits of twenty-five crore rupees or more at any point of time during the preceding financial year; and
- (c) every private company having :-
- (i) turnover of two hundred crore rupees or more during the preceding financial year; or
  - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

An Internal Auditor may be either an individual or a partnership firm or a body corporate. An internal auditor can be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The internal auditor may or may not be an employee of the company. The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

#### **Answer 5(b)**

Non-Financial reporting is a structured way of presenting information about one's performance. It is the practice of measuring, disclosing and being accountable to internal and external stakeholders for organisational performance towards the goal of sustainable and inclusive development. It epitomises that a company's financial health is dependent on much more than the assets on its balance sheet and the movements on its profit and loss account.

Non-financial reporting is an opportunity to communicate in an open and transparent way with stakeholders. In their non-financial reports, companies report an overview of their environmental and social impact during the previous year. The information in non-financial reports contributes to building up a company's risk-return profile. Non-financial reporting includes -

1. Board's Report
2. Corporate Social Responsibility Report
3. Corporate Sustainability Report

During the initial phases, corporate performance was mainly judged by market capitalization, share price and certain financial ratios such as Earnings Per Share (EPS), Return on Equity (ROE), etc. Now in the 21st century, corporate performance is being judged by corporate social responsibility reporting and Sustainability reporting whose disclosure will fall under non-financial reporting.

One of the critical parameters to be evaluated in this context would be the value created by the firm for society and whether such value creation is going to be enduring

in nature. As a result, non-financial reporting will be extremely important for companies and its relevance is only going to increase in times to come. Just as financial reporting is not only concerned with returns but the risk return trade-off, similarly, non-financial reporting is also about the risks that one creates in the society and measures adopted to mitigate the same.

**Answer 5(c)**

Administrative Controls have an indirect relationship with financial records. Operational controls are those which help in improving the efficiency and productivity of an organisation and not necessarily enter the accounting systems.

A number of controls falling under operational controls can also be administrative controls. Examples of such controls are quality control, work standards, periodic reporting, policy appraisal etc. The administrative controls are very wide in their scope and they include all other managerial controls concerned with decision making process. They are concerned with the authorization of transactions and include anything from plan of organization to procedures, record keeping, distribution of authority and the process of decision making. They include controls such as time and motion studies, quality control through inspection, performance budgeting, responsibility accounting and performance evaluation. Accounting controls pertain purely to the accounting system which enter finally in the preparation of financial statements and information which are subject to the expression of opinion by the auditors.

Whereas operational controls which can also be termed as administrative controls have an indirect relationship with financial records and the auditor may evaluate only those administrative controls which have a bearing on the financial records.

**Answer 5(d)**

Since the Sustainability Reporting is relatively a new concept, many organizations find it difficult to prepare sustainability reports. Following may be considered as the challenges in mainstreaming sustainability reporting:

1. *Awareness* : lack of awareness about the emerging concept of sustainability reporting is also a major challenge which the government and corporate governance bodies need to address by arranging the sustainability awareness programme for the Professionals, Board of Directors and Management in the corporate sector, as these are the persons who will drive sustainability reporting initiative for an organisation. The government/regulators should organize such awareness programme jointly with the experts in the field of Sustainability Reporting.
2. *Expertise Knowledge* : Sustainability Reporting is relatively a new concept in many jurisdictions and organization found it very difficult to prepare a sustainability report in the absence of expert guidance on the subject. The Sustainability Reporting concept is emerging as a good tool to showcase the corporate governance practices of an organisation and this area demand professionals having expert knowledge of sustainability reporting. The professional bodies in various jurisdictions should impart the expert knowledge of sustainability reporting to their members to develop a good cadre of experts in this emerging area of sustainability reporting.

3. *Investor Behaviour*: It is a recognized principle that investors should consider the Environmental, Social and Governance (ESG) issues while making investment decisions. There are specific regulators guidelines for the institutional investor to be vigilant on voting aspects and be concerned about the governance practices of the companies in which they invest. However, the investor behaviour may vary from company to company and sometimes they invest in companies without considering the ESG issues either due to lack of awareness on ESG issues or some other business reasons. It should be made a practice that the investor fund flow to those organization following the good governance including reporting on sustainability aspects.
4. *Cost Factor*: Many elements of the reporting process can contribute to its cost, including:
  - o Time for senior management and other staff to discuss report contents.
  - o Developing and implementing data gathering systems
  - o Time for gathering and inputting data
  - o Implementing new processes, including staff training on data collection
  - o Time for checking information
  - o Preparing the report itself, involving internal resources (time, capacity building, etc.), and potentially external resources (consultancy, writing/ editing, layout, printing, etc.)
  - o External verification or auditing, if applicable.

#### **Answer 5A(i)**

Financial reporting is the process of producing statements that disclose an organisation's financial status to management, investors and the government. Financial Reporting involves the disclosure of financial information to the various stakeholders about the financial performance and financial position of the organisation over a specified period of time. These stakeholders include – investors, creditors, public, debt providers, governments & government agencies. In case of listed companies the frequency of financial reporting is quarterly & annual.

Financial reporting serves two primary purposes. First, it helps management to engage in effective decision- making concerning the company's objectives and overall strategies. The data disclosed in the reports can help management discern the strengths and weaknesses of the company, as well as its overall financial health. Second, financial reporting provides vital information about the financial health and activities of the company to its stakeholders including its shareholders, potential investors, consumers, and government regulators. It's a means of ensuring that the company is being run appropriately.

The importance of financial reporting cannot be over emphasised. But still financial reporting has some limitations. The current financial reporting model was developed in the 1930's for an industrial world. In general, the model provides a backwards-looking review of performance and does not provide enough relevant information for decision-

making today. The financial reporting model is like “looking in the rear-view mirror,” when in fact the road ahead is very turbulent and there are huge impacts on the company, both societal and environmental.

It is not necessarily the volume of information, but the lack of a comprehensive story, which is where improvements in financial reporting are needed. Investors expect information about:

- Business model and strategy,
- Intangible factors and sustainability (i.e. economic, environmental, social) commitments,
- Impacts and performance that affect a company’s value today and its ability to create value in the future,
- Key aspects of corporate governance,
- Internal controls,
- Human rights / diversity practices and policies,
- Key financial ratios.

#### **Answer 5A(ii)**

The term internal control is defined as a system or plan of accounting and financial organization within a business comprising all the methods and measures necessary for safeguarding its assets, checking the accuracy of its accounting data or otherwise substantiating its financial statements, and policing previously adopted rules, procedures and policies as to compliance and effectiveness. Internal control is not necessarily a control over finance only. Its scope is wider as it covers the control of the whole management system.

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

The scope of internal auditing is broad. It may involve topics such as an organisation's governance, risk management and management controls over efficiency of operations, reliability of financial and management reporting and compliance with laws and regulations.

#### **Differences between Internal Control and Internal Audit:**

<i>Basis</i>	<i>Internal Control</i>	<i>Internal Audit</i>
Meaning	Internal Control means the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement	Internal auditing means an audit on behalf of management to ensure the adequacy and effectiveness of internal controls, accuracy and timeliness of financial and other records and reports and adherence to the laid down policies

	of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.	and procedures by each unit of the organization.
Verification	It is a self-balancing mechanism implemented by the management, so as to ensure that the entire work process is divisible in parts, so that not a single person may have the access to complete the entire process.	The entire work process / system is checked and reviewed by the internal auditor.
Reporting	It is a mechanism introduced by the management.	Internal auditor submit its report to the management.
What it is?	It is a system introduced by the management.	It is an activity done by the internal auditor.
When it is done?	Internal Control is a policy decision by the management and is a continuous process.	Its periodicity may be yearly or half yearly or quarterly, as decided by the management.
Purpose	Formulation and circulation of management principles and policies and effective and speedy execution thereof with the help of internal checking and internal audit activities.	Detecting and reporting errors and frauds and irregularities regarding assets committed, if any detection and prevention activity.
Scope	Wider in scope than internal audit.	Limited to a continuous internal system of checking financial and non-financial operations and reporting to internal top management.

### Answer 5A(iii)

The following Guiding Principles underpin the preparation of an integrated report, informing the content of the report and how information is presented:

1. *Strategic focus and future orientation*: An integrated report should provide insight into the organization's strategy, and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on the capitals.
2. *Connectivity of information*: An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time.
3. *Stakeholder relationships*: An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders,

including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests.

4. *Materiality* : An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term.
5. *Conciseness* : An integrated report should be concise.
6. *Reliability and completeness* : An integrated report should include all material matters, both positive and negative, in a balanced way and without material error
7. *Consistency and comparability* : The information in an integrated report should be presented: (a) on a basis that is consistent over time; and (b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.

#### **Answer 5A(iv)**

Sustainability reporting is a process that assists organizations in setting goals, measuring performance and managing change towards a sustainable global economy – one that combines long term profitability with social responsibility and environmental care. Sustainability reporting – mainly through but not limited to a sustainability report – is the key platform for communicating the organization's economic, environmental, social and governance performance, reflecting positive and negative impacts. The aspects that the organization deems to be material, in response to its stakeholders' expectations and interests, drive sustainability reporting. Stakeholders can include those who are invested in the organization as well as those who have other relationships with the organization.

Integrated reporting is an emerging and evolving trend in corporate reporting, which in general aims primarily to offer an organization's providers of financial capital with an integrated representation of the key factors that are material to its present and future value creation. Integrated reporters build on sustainability reporting foundations and disclosures in preparing their integrated report. Through the integrated report, an organization provides a concise communication about how its strategy, governance, performance and prospects lead to the creation of value over time. Therefore, the integrated report is not intended to be an extract of the traditional annual report nor a combination of the annual financial statements and the sustainability report. However, the integrated report interacts with other reports and communications by making reference to additional detailed information that is provided separately.

Although the objectives of sustainability reporting and integrated reporting may be different, sustainability reporting is an intrinsic element of integrated reporting. Sustainability reporting considers the relevance of sustainability to an organization and also addresses sustainability priorities and key topics, focusing on the impact of sustainability trends, risks and opportunities on the long term prospects and financial performance of the organization. Sustainability reporting is fundamental to an organization's integrated thinking and reporting process in providing input into the organization's identification of its material issues, its strategic objectives, and the assessment of its ability to achieve those objectives and create value over time.

**PART IV****Question 6**

- (a) Explain specific additional provisions for Board Members and Management Committee Members in a Model Code of Business Conduct and Ethics. (5 marks)
- (b) Define the following terms:
- (i) Standard and Poor’s ESG India Index
  - (ii) Sustainable Value Added (SVA)
  - (iii) “Undue Advantage” as per Prevention of Corruption Act, 1988
  - (iv) “Bribery” under ICSI Anti Bribery Code
  - (v) Central Vigilance Commission. (5 marks)

**Answer 6(a)**

The Model Code of conduct is applicable to the Board Members and all employees in and above Officers level. Everyone must read and understand the Model Code and ensure to abide by it in their day-to-day activities. Apart from general moral imperatives and Specific Professional Responsibilities, there are some specific additional provisions for Board Members and Management Committee Members.

The following specific additional provisions would be incorporated in the Model Code of Business Conduct and Ethics:

**As Board members**

1. They undertake to inform the Chairman of the Board of any changes in our other board positions, relationship with other business and other events/ circumstances/ conditions that may interfere with our ability to perform Board/Board Committee duties or may impact the judgment of the Board as to whether we meet the independence requirements of Listing Agreement with Stock Exchanges.
2. Board members must also undertake that without prior approval of the disinterested members of the Board, we will avoid apparent conflict of interest. Conflict of interest may exist when we have personal interest that may have a potential conflict with the interest of the company at large. Some illustrative cases can be:
  - *Related Party Transactions* : Entering into any transactions or relationship with the Company or its subsidiaries in which they have a financial or other personal interest (either directly or indirectly such as through a family member or other person or other organisation with which they are associated).
  - *Outside Directorship* : Accepting Directorship on the Board of any other Company that compete with the business of Company.
  - *Consultancy/Business/Employment* : Engaging in any activity (be it in the nature of providing consultancy service, carrying on business, accepting employment) which is likely to interfere or conflict with their duties/

responsibilities towards the Company. They should not invest or associate themselves in any other manner with any supplier, service provider or customer of the Company.

- Use of Official position for personal gains: They should not use their official position for their personal gains.

**As Board Members and Management Committee members**, they must undertake to actively participate in meetings of Board, or the Committees thereof and the meetings of management committee on which they serve.

### **Answer 6(b)**

#### **(i) Standards and Poor’s ESG India Index**

Standard & Poor’s ESG India index provides investors with exposure to a liquid and tradable index of 50 of the best performing stocks in the Indian market as measured by environmental, social, and governance parameters. The index employs a unique and innovative methodology that quantifies a company’s ESG practices and translates them into a scoring system which is then used to rank each company against their peers in the Indian market. Its quantitative scoring system offers investors complete transparency.

The creation of the index involves a two-step process, the first of which uses a multi-layered approach to determine an ‘ESG’ score for each company. The second step determines the weighting of the index by score. Index constituents are derived from the top 500 Indian companies by total market capitalizations that are listed on National Stock Exchange of India Ltd. (NSE). These stocks are then subjected to a screening process which yields a score based on a company’s ESG disclosure practices in the public domain.

#### **(ii) Sustainable Value Added (SVA)**

Sustainable development is a normative concept laid out as the combination of economic prosperity, environmental integrity and social equity. Value is created whenever benefits exceed costs. There are two approaches to measure corporate contribution to sustainability i.e. Absolute Measures and Relative Measures.

Sustainable Value Added takes into account both, the efficiency and the absolute level (effectiveness) of resource use. It has never been more important for businesses to use their economic, environmental and social resources efficiently. Conceptually, SVA stresses the complementary disposition of economic, environmental and social resources. Sustainable Value Added is the extra value created when the overall level of environmental and social impacts is kept constant.

#### **(iii) “Undue Advantage” as per Prevention of Corruption Act, 1988**

In terms of Section 2(d), “Undue advantage” means any gratification whatever, other than legal remuneration.

*Explanation* : For the purposes of this clause, –

- (a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;



- (b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.

**(iv) “Bribery” under ICSI Anti Bribery Code**

‘Bribery’ includes giving or receiving bribe and third party gratification. The act of giving bribe is when committed intentionally in the course of economic, financial or commercial activities and when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, act or refrain from acting.

**(v) Central Vigilance Commission**

The Central Vigilance Commission (CVC) is the body constituted by the Government in the year 1964 on the proposal of the Santharam Committee on the Prevention of Corruption. The body was established with an intention to check corruption in the Government departments. The Commission is an independent statutory body exempted from the authority of the executive. The CVC attained statutory recognition by an ordinance of 1998 and in September 12, 2003 the ordinance was replaced by The Central Vigilance Commission Act enacted by the Legislative Department under the Ministry of Law and Justice. The main purpose of the Act was to establish the Central Vigilance Commission to investigate the offences punishable under the Prevention of Corruption Act, 1988 by the public servants working under the Central Government, Corporations constituted under the Act of Parliament, Government companies, and local bodies owned and managed by the Centre.

\*\*\*

## ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

- NOTE :** 1. Answer ALL Questions.
2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2021-22 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

### PART I

#### Question 1

- (a) M/s Basundhara Properties is a registered person under GST. Its main business is renting of various Immovable properties owned by them. The following collections are made in the course of its business during the month of March, 2021 :
- |  |        |
|--|--------|
| (i) Building let to a theatre  | 50,000 |
| (ii) Premises let to a charitable trust  | 45,000 |
| (iii) Land let for use by Asian Circus   | 90,000 |
| (iv) Houses let to individuals for residential purposes                        | 30,000 |
| (v) Vacant land let used for agriculture purposes                              | 40,000 |
| (vi) Land given on lease to Titu Ltd. for construction of a commercial complex | 60,000 |
| (vii) Building let to a coaching centre  | 45,000 |
| (viii) Building let to a hotel   | 50,000 |
- You are required to calculate the GST payable by M/s Basundhara Properties (GST rate applicable is 18%). (5 marks)
- (b) What do you mean by zero rated supply ? List the essential features of zero rated supply. Explain the procedure for claiming refund for zero rated supply. (5 marks)
- (c) (i) Discuss briefly the salient features of Quarterly Return Monthly Payment (QRMP) scheme under GST. (2 marks)
- (ii) Explain the provisions of CGST Act and rules regarding Annual Return for the financial year 2019-20. (3 marks)
- (d) State with reasons whether the following statements are true or false under GST Law :
- (i) CGST Balance of one state can be adjusted to set off CGST Liability of another state.

- (ii) No e-way bill is required if a Registered person from West Bengal purchases goods from Delhi valuing 1,12,000 (including tax) and carries the same with him in train.
- (iii) A person exclusively dealing in goods not liable to tax or wholly exempt from tax having a turnover of 1,00,00,000 is required to get registered under GST.
- (iv) TCS is not required to be collected on supplies on which the recipient is liable to pay tax on Reverse charge basis.
- (v) Malaysia was the first country to have Anti-profiteering provisions.

(1 × 5 = 5 marks)

### Answer 1(a)

#### Computation of GST Payable for the month of March, 2021

Particulars	Amount (Rs.)
(i) Building let to a theater	50,000
(ii) Premises let to a Charitable Trust	45,000
(iii) Land let for use by Asian Circus	90,000
(iv) Houses let to individuals for residential purpose	NIL
(v) Vacant land let used for Agriculture purposes	NIL
(vi) Land given on lease to Titu Ltd. for construction of a commercial complex	60,000
(vii) Building let to a coaching centre	45,000
(viii) Building let to a Hotel	50,000
<b>Total Taxable Supply</b>	<b>3,40,000</b>
<b>GST Payable on 3,40,000 @ 18%</b>	<b>61,200</b>

#### Note:

- i. As per Entry No. 12 of Notification no. 12/2017 Central Tax (Rate) dated June 28, 2017 Services by way of renting of immovable properties for use as residence are exempt.
- ii. As per Entry No. 54 of Notification no. 12/2017 Central Tax (Rate) Services by way of renting or leasing of agro machinery or vacant land with or without a structure incidental to its use relating to cultivation of plants and rearing of all life form of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce are exempt.
- iii. GST is on reverse charge for Long term lease of land (30 years or more) by any person against consideration in the form of an upfront amount (called as premium, salami, cost, price, development charges, or by any other name) and/or periodic rent for construction of a project by a promoter. [Notification 05/2019 Central Tax (Rate)]

It is assumed that in Point (vi), it is not long term lease and hence forward charge is applicable.

**Answer 1(b)****Zero rated Supply - Section 16 of the Integrated Goods and Services Act, 2017**

Zero Rated Supply shall be any of the following supplies of goods or services or both, namely;

- Export of goods or services or both; or
- Supply of goods or services or both to a Special Economic Zone Developer or a Special Economic Zone Unit.

**Essential Features of Zero rated supply:**

- Zero rated supply connotes the situation where output as well as input tax effectively remains Nil.
- The exporter has been given an option to either pay Integrated Goods and Services Tax (IGST) on exports and claim refund or opts to export without payment of IGST under Letter of Undertaking (LUT) or bond.
- The inward supplies to the exporter are charged to normal tax but the exporter is entitled to avail input tax credit of such tax and can use it for other tax liabilities and the credit remaining utilized can be claimed as refund.

**Procedure to claim refund:**

*Procedure to claim refund: Rule 96 & 96A of CGST Rules*

The exporters of goods and services can claim refund of Input Tax paid by them on Zero rated goods or services as follows:

- i. According to Rule 96A of CGST Rules an exporter may export the goods / services under a letter of undertaking without payment of GST and claim refund of unutilized Input Tax Credit.

In this respect the exporter has to:

- Ensure that No GST is charged in the export - import.
  - Submit proof of export and satisfy all other conditions prescribed.
  - Claim Input Tax credit relates to the outward export supply.
  - File form GST RFD-01 for claiming refund.
  - The exporter may supply goods or services or both after payment of GST charged on tax invoice in INR meant only for GST purpose and their claim refund thereof.
- ii. In this respect the Exporter has to file the Shipping Bill in respect of exports of goods / services and such application of refund is deemed to have been filed when:
    - The person in charge of the conveyance crossing the exported goods file an export manifest or export report giving the number and date of shipping bills or bills of export; and

- The applicant furnishes a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be.
- iii. The details of the relevant export invoices in FORM GSTR-1 shall be electronically transmitted by the common portal to the designated system of customs where in return shall confirm that the goods covers by this proposed invoices have been exported out of India.

### **Answer 1(c)**

#### **(i) Quarterly Return Monthly Payment (QRMP) Scheme**

To help the small tax payers whose aggregate annual turnover is up to Rs. 5 crore in the preceding financial year 2019-20. CBIC has launched Quarterly Return Monthly Payment (QRMP) scheme under GST. This scheme allows the taxpayers to file form GSTR-3B on a quarterly basis and pay tax every month. This is an optional scheme. Registered person opting for the scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly as per Rule 59 of the GST Rules. At the same time, the tax payer has been given a facility to upload their tax invoices on monthly basis on Invoice Furnishing Facility available on GSTN Portal.

#### **(ii) Annual Return**

Every Registered person other than an Input Service Distributor (ISD), a person paying tax under section 51 or section 52 a casual taxable person shall furnish an annual return as specified under section 44 (1) of Central Goods and Services Tax Act, 2017 electronically in FORM GSTR - 9. However a person paying tax under section 10 shall furnish the annual return in FORM GSTR - 9A and every electronic commerce operator requires to deduct tax at source under section 52 shall furnish the annual return in FORM GSTR - 9B.

The due date in above cases is 31st day of December following the end of such Financial Year.

As per section 44 of the Central Goods and Services Tax Act, 2017 and notifications issued thereunder. Annual return for Financial year 2019-20 was required to be filed by all registered person whose aggregate annual turnover during the year 2019-20 did not exceed two crore rupees shall have the option to furnish the annual return. In other words, filing GSTR - 9 was optional for registered persons having turnover upto rupees Two Crores and mandatory for registered person having turnover above 2 crores. The last date for furnishing the Annual Return for 2019-20 was 31.03.2021. However registered Person having turnover below Rupees two crore would be deemed to have furnished their Annual Return if they fail to do so.

In case of registered person whose turnover exceeds Five crores it is also mandatory to get their accounts audited under GST from a practicing Chartered Accountant or a practicing Cost and Management Accountant and to submit a copy of Audited Annual Accounts and a reconciliation statement duly certified in FORM GSTR - 9C for the financial year 2019-20.

**Answer 1(d)**

- (i) **False.** CGST balance of one state cannot be adjusted to setoff CGST liability of another state. Under the GST Laws, there is no provision permitting utilization of input tax credit balance of one registered person by another registered person in the same state or any other state even both the registered persons are distinct or related persons.
- (ii) **False.** E-way bill is necessary. It has to be generated by either the supplier or the recipient either before or after the commencement of the movement of goods when goods are transported by railways.
- (iii) **False.** As per Section 23 (1) of the Central Goods and Services Tax Act, 2017, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods & Services Act, 2017 (IGST Act), is not liable for registration.
- (iv) **True.** TCS is not required to be collected when the recipient is required to pay tax on Reverse charge basis as according to the explanation to section 52 of Central Goods and Services Tax Act, 2017 the expression net value of taxable supplies or when TCS is to be collected shall mean the aggregate value of taxable supplies of goods or services or both other than services notified under section 9(5) made during any month by the registered person through the operator as reduced by aggregate value of taxable supplies returned to the supplies during the said month.
- (v) **False.** Australia was the first country to have anti-profiteering provision (Australian Competition & Consumer Commission) in 2000.

**(Attempt all parts of either Q. No. 2 or 2A)**

**Question 2**

- (a) A.K. Services registered under GST in Chennai is engaged in supply and service of various goods and services. For the month of November, 2020, it has provided the following data :

<i>Particulars of Work</i>	<i>Contract 1</i>	<i>Contract 2</i>
<i>Place of supply</i>	<i>Chennai</i>	<i>Chennai</i>
<i>Place of Recipient</i>	<i>Chennai</i>	<i>Karnataka</i>
<i>Monthly value of executed contracts (excluding GST)</i>	<i>₹1,80,000</i>	<i>₹2,50,000</i>
<i>Monthly value of goods supplied (excluding GST)</i>	<i>₹70,000</i>	<i>₹40,000</i>

*If the goods and services supplied by A.K. Services are taxable under GST @ 12% :*

- (i) *Calculate the TDS deductible by the recipients, who are notified under Section*

51 of the CGST Act 2017, if any, in respect of the aforesaid two independent contracts.

- (ii) State whether the deductee can claim credit of TDS deducted under GST. (5 marks)
- (b) Jinia is a Garments manufacturer registered under GST. It received a Government order for making Garments for Defence Personnel (exempted from GST under a special notification by the Government of India) for which it procured fabric separately. To execute the work Jinia also procured buttons, threads, collars and lining materials which are also used for the production of other goods in the factory, ITC (Input Tax Credit) available in respect of thread, buttons and collars for the month of January, 2021 was ₹25,000, ₹45,000 and ₹50,000 respectively and the taxable and exempted supplies during the month were ₹10 lakh and ₹2 lakh respectively. Calculate the eligible ITC that can be availed by Jinia for the month of January 2021 in respect of thread, buttons and collars. (5 marks)
- (c) (i) X Ltd. availing the composition scheme under GST Act and paying taxes accordingly had a turnover from the supply of goods of Rupees 150 Lakhs. upto 31st December, 2020. On the 1st of January, 2021 (01.01.2021) another supply of Rupees 1.20 Lakhs was made. Explain whether X Ltd can continue to avail the composition scheme and the relevant provision of GST Act, 2017 in this regard. (2 marks)
- (ii) Z Ltd. registered under GST and having opted for simplified composition scheme (as prescribed under Notification No. 2/2019 – CT (Rate) has furnished the following details :
- |  |           |
|--|-----------|
| Supply of services (attracting GST @ 18%)  | 20,00,000 |
| Supply of goods (attracting GST @ 12%)   | 20,00,000 |
| Inward supplies (subject to reverse charge under section 9(3) of CGST Act 2017 attracting GST @ 18%) | 5,00,000  |
- Calculate the tax liability of Z Ltd. (3 marks)
- (d) Discuss the provisions of GST laws in respect of the following circumstances :
- (i) R.K. Steel company received an order for supply of 1000 ton steel and supplied the same in installments as a continuous supply. What will be the due date of invoice in such transaction ?
- (ii) What will be the due date of invoice if goods sent on approval for sale or return ?
- (iii) Farmer A is engaged in farming and cultivates agricultural produce from his own land. He supplies agricultural produce worth Rupees 41 lakh cultivated by him and Rupees 6 lakh belonging to his friend to Traders. Whether he has to get registered under GST Act ?
- (iv) W Ltd. provides consultancy services without consideration to V Ltd. in

which W Ltd. has holding rights. These technical services have been provided for the benefit of the entire group. Analyse the taxability of the service to determine whether it constitutes a supply under GST. (5 marks)

**OR (Alternate question to Q. No. 2)**

**Question 2A**

- (i) State with reasons, whether the following statements are true or false under GST law :
- (a) The rates for CGST are rates as may be notified by the Government on the recommendations of the GST council. However, maximum rate will be 28%.
- (b) Natural Gas is taxable @ 12% under GST Act, 2017.
- (c) Jai Singh has GST registration in two different states in his own Permanent Account Number. He cannot opt. for composition scheme in one state and normal scheme in another state.
- (d) TDS under section 51 of CGST Act should be paid to the Government by the deductor within 15 days after the end of the month in which the deduction is made.
- (e) Mohit, a registered person under GST of U.P. has intra-state sales of Rupees 1.30 crores and purchases from Delhi of Rupees 1.10 crores. He is eligible to opt for composition scheme of GST. (5 marks)
- (ii) (a) The assessable value of a commodity imported into India is ₹10,000, Basic Customs Duty is 10%, Social welfare cess @ 10% of Customs Duty and the IGST is leviable @ 18%. Calculate the IGST and the total duty chargeable on imports. (2 marks)
- (b) The assessable value of a commodity inclusive of landing charges is ₹50,000 IGST @ 28%. Basic Customs Duty @ 10%, countervailing Duty @ 12%, Social Security Cess (SCC) @ 10% and Compensation Cess 10% are leviable on the imported goods. Calculate all duties and taxes in this case. (3 marks)
- (iii) From the following information determine the value of taxable supply as per the provision of section 15 of the CGST Act, 2017.
- |   |            |
|---|------------|
| Contracted value of supply excluding GST (inclusive of cost of primary packaging of Rupees 25,000 and protective packing at the request of customer of Rupees 15,000) | ₹12,50,000 |
| Weighment charges shown separately in the invoice   | ₹9,500     |
| Commission paid to local Agent on instruction of supplier   | ₹5,000     |
| Freight and insurance charges paid by receiptent on behalf of supplier  | ₹8,000     |
- Prompt payment discount, indicated in invoice 1%, if payment made within one month. The buyer availed the discount. (5 marks)



(iv) State the consequences of the following violations/default under the provisions of GST Laws:

- (a) A fails to pay GST of Rupees 50,000 to the Government on the due date prescribed.
- (b) Chauhan Trader makes an Input Tax Credit (ITC) claim of Rupees 40,000 in respect of a car purchased for use by the proprietor in the business.
- (c) K, a registered person purchased goods from L and claimed Rupee 1,20,000 as input tax credit while L, the seller, declared Rupees 1,00,000 as outward tax in respect of the goods sold by him to K. L. did not rectify this mismatch till the time allowed to rectify the discrepancy.
- (d) Refund of unutilized Input Tax Credit delayed by the department beyond 60 days after the order passed by proper officer.
- (e) Govind failed to furnish the annual return under section 44 of the CGST Act, 2017 by the due date. (5 marks)

**Answer 2(a)**

- (i) According to Section 51 of the Central Goods and Services Tax Act, 2017, TDS is to be deducted @ 1% by the recipient from the payment made or credited to the supplier (Deductee) of taxable goods or services or both, where the total value of such supply under a contract exceeds two lakh and fifty thousand (2,50,000) rupees.

Since in this case of Contract 1 the contract value including goods and services (excluding GST) is ₹2,50,000 (1,80,000+70,000) it does not fall under the provisions of TDS. Hence no, tax at source is required to be deducted in this case.

As per the provision in section 51(1) of the Central Goods and Services Tax Act, 2017 no deduction of tax at source shall be made if the location of the supplier and the place of supply is in a State or Union Territory which is different from the State or as the case may be Union Territory of registration of the recipient.

Since in the case Contract 2 the location of the supplier is in Chennai and the place of supply also is in Chennai but the place of location of the recipient is in Karnataka it appropriately falls in the exception envisaged in this provision and therefore, no tax is liable to be deducted.

- (ii) According to section 51 (5) of Central Goods and Services Tax Act, 2017 the deductee shall claim credit in his electronic cash ledger, of the tax deducted and reflected in the tax return of the deductor furnished under section 39 (3) in such manner as may be prescribed.

**Answer 2(b)**

As per Section 17 of the Central Goods and Services Tax Act, 2017 read with Rule 42 of CGST Rules law if goods or services or both are used by the registered person partly for effecting taxable supplies including Zero rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Act, the amount of

credit shall be restricted to so much of the input tax as is attributable to taxable supplies including Zero rated supplies.

In the given case Thread, Buttons and Collars are used for both taxable as well as exempt supplies.

**As per the manner of apportionment prescribed in CGST Act.**

$$\text{Credit attributable to exempt supplies} = \frac{\text{Common Credit} \times \text{Exempt Turnover}}{\text{Total Turnover}}$$

In the given case

$$\text{Common ITC credit (Rs. 25,000 + 45,000 + 50,000)} = ₹1,20,000$$

$$\text{Exempt Turnover} = ₹2,00,000$$

$$\text{Total Turnover (Rs. 10,00,000 + 2,00,000)} = ₹12,00,000$$

Therefore,

$$\text{Credit attributable to Exempt supplies} = \frac{(1,20,000 \times 2,00,000)}{12,00,000}$$

$$= \text{Rs. 20,000}$$

Hence, Jinia would have to reverse ITC of Rupees 20,000 in its GSTR - 3B in the month of January 2021 and only ₹1,00,000 (₹1,20,000 – ₹20,000) can be availed by June as ITC in respect of Thread, Buttons and Collars.

**Answer 2(c)**

- (i) No, a registered person is entitled to avail of the composition scheme only up to the date on which his aggregate turnover under GST does not exceed ₹150 Lakhs. Accordingly, in this case since the limit of ₹1.5 crore is reached on 31st December, 2020 the composition scheme is not available to X Ltd. any more and normal scheme will be applicable henceforth. To convert to normal scheme the dealer will file intimation for withdrawal from composition scheme in the prescribed FORM GST CMP - 04 within seven days from 31st December, 2020.

**(ii) Calculation of Tax Liability of Z Ltd. under New Composition Scheme**

Particulars	Amount	Tax Rate	CGST	SGST	Total
Supply of Services	20,00,000	3% + 3%	60,000	60,000	1,20,000
Supply of Goods	20,00,000	3% + 3%	60,000	60,000	1,20,000
Inward Supplies					
attracting RCM	5,00,000	9% + 9%	45,000	45,000	90,000
<b>Total Tax Liability</b>	<b>45,00,000</b>		<b>1,65,000</b>	<b>1,65,000</b>	<b>3,30,000</b>

**Total Tax liability of ₹3,30,000 shall be paid through electronic cash ledger.**

**Answer 2(d)**

- (i) As per Section 31 of the Central Goods and Services Tax Act, 2017 in case of continuous supply of goods where successive statements of accounts or successive payments are involved the invoice shall be issued before or at the time each such statement is issued or as the case may be each such payment is received.

Hence, in this case, R. K. Steel Company shall issue invoice either before or at the time of issuance of account statement or at the time of receipt of each payment.

- (ii) Section 31(7) of the Central Goods and Services Tax Act, 2017 provides that where the goods are being sent or taken or approved for sale or return are removed before the supply takes place, then the invoice shall be issued before or at the time of supply or six month from the date of removal whichever is earlier.
- (iii) In terms of section 23(i) of the Central Goods and Services Tax Act, 2017, farmer shall not be liable to get registered under GST Act being an agriculturist to the extent of supply of produce out of cultivation of land. In this given case however, as the farmer has also supplied agricultural products processed by his friend his total turnover crosses rupees Forty lakhs (₹41 lakh + ₹6 lakh), which is beyond the threshold limit for getting registered. Hence, he will be liable to get registered.
- (iv) As per section 7(1) (c) read with schedule I of Central Goods and Services Tax Act, 2017 supply of goods or services between related person is treated as supply even if it is without consideration. As per explanation to Section 15 of Central Goods and Services Tax Act, 2017 person shall be deemed to be related persons if one of them directly or indirectly controls the other.

Since, W Ltd. holds rights of V Ltd., they will be treated as related person and the said transaction will qualify as supply even though no consideration is involved.

**Answer 2A(i)**

- (a) **False.** In terms of provisions of Section 9(1) Central Goods and Services Tax Act, 2017, CGST rates may be notified by the Government on the recommendations of the GST Council. But such rates cannot exceed twenty percent (20%).
- (b) **False.** Since as per Section 9(2) of Central Goods and Services Tax Act, 2017 central tax on the supply of Natural Gas shall be levied from such date as may be notified by the Government on the recommendations of GST Council and the Government has not yet notified such date.
- (c) **True.** According to Section 10(2) of Central Goods and Services Tax Act, 2017, all registered persons having same Permanent Account Number (PAN) have to opt for Composition Scheme together. If one opts for composition levy for one registered place, then all places will be covered under Composition scheme. Thus, Jai Singh cannot opt for composition scheme in one state and Normal scheme in another.

- (d) **False.** As per Section 51(2) of Central Goods and Services Tax Act, 2017 the amount deducted as tax under Section 51 shall be paid to the Government by the deductor within ten days (10 days) after the end of the month in which deduction is made in such manner as may be prescribed.
- (e) **True.** The Composition Scheme under GST is optional and alternative method specially designed for the small taxpayers whose turnover is up to ₹1.5 Crores. In the present case Mohit's aggregate turnover is ₹1.3 crore and does not exceed ₹1.5 crores. Further He cannot make inter-state sales but can make inter-state purchases.

**Answer 2A(ii)****(a) Computation of IGST and total duty chargeable on imports**

S. No.	Particulars	Amount (₹)
1.	Assessable Value	10,000
2.	Add : Basic Customs Duty @ 10%	1,000
3.	Add : Social welfare cess @ 10% of Custom Duty	100
4.	<b>Sub-total</b>	<b>11,100</b>
5.	Integrated Tax @ 18% of Rs. 11,100	1,998
6.	<b>Total Duty and Integrated tax payable [(2+3+5)]</b>	<b>3,098</b>

**(b) Calculations of duties and Taxes:**

$$\text{Assessable value} = ₹50,000$$

$$\text{Basic Customs Duty 10\%} = ₹5,000$$

$$\begin{aligned} \text{Countervailing Duty} &= 12\% \text{ of (Assessable Value + Basic Customs Duty)} \\ &= 12\% \text{ of (Rs. 50,000 + Rs. 5,000)} \\ &= 12\% \text{ of Rs. 55,000} \\ &= ₹6,600 \end{aligned}$$

$$\begin{aligned} \text{Social Security Cess (SSC)} &= 10\% \text{ of (Basic Customs Duty +} \\ &\quad \text{Countervailing Duty)} \\ &= 10\% \text{ of (₹5,000 + 6,600)} \\ &= 10\% \text{ of 11,600} \\ &= ₹1160 \end{aligned}$$

$$\begin{aligned} \text{Integrated Goods and Services Tax (IGST)} &= 28\% \text{ of [Assessable Value +} \\ &\quad \text{Basic Customs Duty +} \\ &\quad \text{Countervailing Duty + SSC]} \\ &= 28\% \text{ of (₹50,000 + 5,000 + 6,600 + 1,160)} \\ &= 28\% \text{ of ₹ 62,760} \\ &= ₹17,572.80 \end{aligned}$$

$$\begin{aligned}
 \text{Compensation Cess} &= 10\% \text{ of [Assessable Value + Basic Customs Duty} \\
 &\quad \text{+ Countervailing Duty + SSC]} \\
 &= 10\% \text{ of } (50,000 + 5,000 + 6,600 + 1,160) \\
 &= 10\% \text{ of } 62,760 \\
 &= \text{₹ } 6,276
 \end{aligned}$$

**Answer 2A(iii)****Calculation of Taxable Supply**

<i>Particulars</i>	<i>₹</i>
Contracted Value of Supply	12,50,000
(Cost of Primary and Protective Packaging at the request of the customer) [Note 1]	
Weighment Charges	9,500
Commission paid to Local Agent on instruction of supplier	5,000
Freight and Insurance charges paid by recipient on behalf of supplier	8,000
Total	12,72,500
Less : Discount @ 1%	12,500
<b>Taxable Value</b>	<b>12,60,000</b>

*Note 1:* As per Section 15(2)(c) of Central Goods and Services Tax Act, 2017, incidental expenses,, including commission and packing charged by the supplier to the recipient of a supply should be included in the value.

**Answer 2A(iv)**

- (a) As per Section 50(1) of Central Goods and Services Tax Act, 2017 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 period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at the rate of 18%.

Accordingly in the given situation, A would have to pay interest on ₹50,000 @ 18% for the period during which the Goods and Services Tax of ₹50,000 remain unpaid.

- (b) In terms of Section 17(5) sub-section (1) of Central Goods and Services Tax Act, 2017, Input Tax Credit (ITC) shall not be available in respect of Motor Vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for:
- A) further supply of such vehicles or conveyances ; or
  - B) transportation of passengers; or

- C) imparting training on driving, flying, navigating such vehicles or conveyances; or for transportation of goods (for other transporters and not goods transport agencies).

Hence, Chauhan Trader would not be able to take ITC for car purchased for use by the proprietor and shall have to pay the ITC wrongly sought to be claimed amounting to ₹40,000 along with interest @ 18% for the period during which this amount remain unpaid.

- (c) As per Section 50(3) of Central Goods and Services Tax Act, 2017, a taxable person who makes an undue or excess claim of input tax credit or undue or excess reduction in output tax liability shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at the rate of 24% per annum.

Hence, K is liable to pay interest on excess ITC claim of ₹20,000 @ 24% per annum.

- (d) Section 56 of the Central Goods and Services Tax Act, 2017 provides that if any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application. Interest at the rate of 6 % shall be payable from the date immediately after the expiry of 60 days from the date of receipt of refund application.

Accordingly in the instant case the Government shall be liable to pay interest @ 6% on the refund of tax for delay in payment.

- (e) According to Section 44 of Central Goods and Services Tax Act, 2017 every registered person, other than an Input Service provider, a casual taxable person and a non – resident person shall furnish an annual return for every financial year in such manner and form as may be prescribed on or before the 31st day of December of the following financial year.

Section 47 of Central Goods and Services Tax Act, 2017 states that any registered person required to file Annual Return who fails to furnish the Annual return by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent (¼%) of his turnover in the State or Union territory.

### Question 3

- (a) State briefly the features of Quarterly Return Monthly Payment (QRMP) scheme of furnishing GST return under CGST Act, 2017. (4 marks)
- (b) Mention the due date/maximum time allowed for the following :
- (i) Issue of orders u/s 74(10) of the CGST Act, 2017.
  - (ii) Withdrawal period for application for advance ruling under Customs Act, 1962.
  - (iii) Period of punishment for tempering of records by a dealer.
  - (iv) Time of supply of goods when :
    - A supplied goods to S on 15th March, 2020 for 11,800 taxable @ 18% GST.

- GST rate reduced to 12% on 20th March, 2020.
  - S made payment to A on 25th March, 2020. (4 marks)
- (c) A person dealing in supply of taxable goods is doing business since 01.01.2021. He crossed the mandatory thresholds for registration of 40 Lakhs on 22.01.2021. He was required to get registered under GST within one month i.e. by 21st February 2021. He did not get himself registered. If his tax liability is of 85,900, state the consequences of his not registering under GST laws. (4 marks)
- (d) A registered person under GST failed to file his returns for a period of the last six consecutive months. For this period his liability under GST works out to 20,000 (CGST ₹10,000, SGST ₹10,000). The department blocked his facility to generate e-way bills and the appropriate authority also issued a show cause notice to him as to why his registration should not be cancelled and afforded him an opportunity to present his case. As the registered person failed to respond to the notice his registration was cancelled. The registered person is of the view that since his registration has been cancelled he is not required to pay anything to the Government. Advise the registered person in this context as per the CGST Act, 2017. (4 marks)
- (e) Determine the time of supply in the following transactions :
- (i) Grocery supplier company issues a voucher of 3,500 for purchase of any item from its stores against bulk purchase.
  - (ii) Grocery supplier company issues a voucher only to buy an Electric Fan for 3,500, on 15th September, 2019.
  - (iii) Ram purchases goods worth 10,000 on 10.01.2021 and later on paid 10,600 with interest on 10.03.2021. Mention the time of supply for the interest payment of 600.
  - (iv) Saroj consultancy services received advance of 50,000 from clients on 31.12.2020 for services to be rendered in the month of March, 2021. (4 marks)

### Answer 3(a)

A new scheme named Quarterly Return Monthly Payment (QRMP) under GST has been launched recently to help small taxpayers having aggregate annual turnover up to Rs. Five Crores in the preceding Financial Year 2019-20.

- (i) The scheme allows the taxpayers to file Form GSTR - 3B on a quarterly basis and pay taxes every month.
- (ii) It is an optional scheme.
- (iii) The registered persons opting for the scheme would be required to furnish the details of outward supply in Form GSTR - 1 on a quarterly basis.
- (iv) However, the registered persons opting for such scheme can furnish the details of outward supply on Invoice Furnishing Facility.

**Answer 3(b)**

- (i) The proper officer shall issue the orders under Section 74(10) within a period of five years from the due date of furnishing of annual return for the financial year for which the tax has not been paid or short-paid or input tax wrongly availed or utilized relates to or within 5 years from the date of erroneous refund.
- (ii) An application for advance ruling can be withdrawn by the applicant within thirty days from the date of application. If applicant wants to withdraw after thirty days it can be withdrawn after obtaining permission of the Appellate Authority according to Section 28H of the Customs Act, 1962.
- (iii) As per Section 132(1) of Central Goods and Services Tax Act, 2017, whoever commits, or causes to commit and retain the benefits arising out of the offence of tempering of records shall be punishable with imprisonment for a term which may extend to 6 months or with fine or with both.
- (iv) As per Section 12 of the Central Goods and Services Tax Act, 2017, Time of supply is Date of issue of invoice or last date of issue of invoice, whichever is earlier. Further Section 14 of the Central Goods and Services Tax Act, 2017 determines time of supply in case of change in GST rates, but as per Notification no 66/2017, Section 14 will not apply for change in GST rate of goods but Time of supply will be determined under Section 12.

Here, invoice date is 15th March, 2020. Hence, the time of supply is 15th March, 2020.

**Answer 3(c)**

According to Section 22 of the Central Goods and Services Tax Act, 2017 every person making supply of taxable goods or services beyond the threshold limit of ₹40 Lakhs in a financial year is required to get registered under the Act.

Further according to section 25 every person liable to be registered under the Act shall apply for registration within thirty days from the date on which he becomes liable for registration.

According to Section 122(1)(xi) of Central Goods and Services Tax Act, 2017 if a taxable person who is liable to be registered under CGST Act, 2017 but fails to obtain registration he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted or short deducted but not paid to the Government, etc.

Hence, in this case the person is liable to a penalty of ₹85,900.

**Answer 3(d)**

According to Section 29 of Central Goods and Services Tax Act, 2017 the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where any registered person has not furnished returns for a consecutive period of six months after giving him an opportunity of being heard. The section further provides that cancellation of registration hereunder shall not affect the liability of the person to pay tax and other dues under this Act or to any obligation under



this Act or Rules made thereunder for any period prior to the date of cancellation whether or not such tax and dues are determined before or after the date of cancellation.

Hence, in this case the dealer has to pay the tax of Rs. 20,000 along with interest to the Government.

### Answer 3(e)

- (i) Since as per Section 12(4) of Central Goods and Services Tax Act, 2017 the voucher of ₹3,500 is an unidentifiable voucher the date of redemption of the voucher would be the time of supply.
- (ii) In this case it is an identifiable voucher and hence the date of voucher shall be the time of supply i.e. 15th September, 2019.
- (iii) Time of Supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which such supplier receives such additions in value. Hence, in this case the time of supply for ₹10,000 shall be 10.1.2021 and the time of supply for interest i.e. ₹600 shall be 10.03.2021.
- (iv) As per Section 13(2) of Central Goods and Services Tax Act, 2017 advances received are taxable at the time when such advances are received. Accordingly 31.12.2020 shall be the time of supply for advance payment of ₹50,000 received by Saroj Consultancy services.

### Question 4

- (a) *Rise India Ltd. has exported goods to Germany out of its imports from Japan. Calculate the Duty Drawback admissible to Rise India Ltd. under section 75 of Customs Act, 1962 in each of the following cases giving reasons for the same:*

<i>Product</i>	<i>FOB Value of Exported Goods ₹</i>	<i>Market Price of Goods ₹</i>	<i>Duty Draw Back Rate</i>
<i>A</i>	<i>3,00,000</i>	<i>2,10,000</i>	<i>30% of FOB</i>
<i>B</i>	<i>4,00,000</i>	<i>4,60,000</i>	<i>35% of FOB</i>
<i>C</i>	<i>2,00,000</i>	<i>2,50,000</i>	<i>20% of FOB</i>

*Note:*

- 1 Value of imported material of product B is 5 Lakh.*
  - 2 Product C is manufactured out of the imported input for which no duty has been paid.*
- (b) *Distinguish between Protective Duty and Safeguard Duty under Custom Tariff Act, 1975. (5 marks each)*

**Answer 4(a)****Computation of Duty Drawback of Rise Ltd.**

<i>Product</i>	<i>FOB Value of Exported Goods</i>	<i>Market Value of Goods</i>	<i>Rate of Duty Drawback</i>	<i>Amount of Duty Drawback</i>	<i>Eligible Amount of Duty Drawback</i>
A	3,00,000	2,10,000	30% of FOB	90,000	70,000
B	4,00,000	4,60,000	35% of FOB	NIL	NIL
C	2,00,000	2,50,000	20% of FOB	NIL	NIL

*Working Notes:*

- (i) Product A: Maximum Duty Drawback is 1/3 of Market price (₹ 2,10,000 x 1/3).
- (ii) Product B: FOB Value of exported goods is less than value of imported goods.
- (iii) Product C: Where no Custom Duty paid no Duty Drawback can be allowed.

**Answer 4(b)****Distinction between Protective Duty & Safeguard Duty**

1. Protective duties are levied by the Central Government on being satisfied that circumstances exist which render it necessary to protect industries established in India.  
  
On the other hand The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry.
2. Protective Duties are industry specific while safeguard Duties are product specific.
3. Protective Duties shall be effective only up to and inclusive of the date if any specified in the first schedule but on the other side total period of levy of the safeguard duty is 10 years.
4. Section 7(2) of the Customs Tariff Act, 1975 provides that the Central Government may reduce or increase the duty as might be deemed fit in the case of protective duty and similarly the central government when it feels that increased imports have not caused serious injury to the domestic industry it shall refund the safeguard duty collected.

**PART – II****Question 5**

- (a) *What are the practical difficulties in applying Arm's length price ?*
- (b) *Narrate any three evil consequences of tax avoidance.*
- (c) *Discuss the exclusions provided from the provisions of GAAR.*

(d) A person whose turnover during the previous year ended 31.03.2020 was 15 crores. From 01.04.2020 to 30.09.2020 he received 55 lakhs from A against sales made by him. During the month of October, 2020 he receives another 3 lakh from A against consideration from sales. What amount of TCS is required to be deducted in this case if :

- (i) A has a PAN number.
- (ii) A does not have any PAN number.

(e) A person fails to furnish audit report under section 92E of the Income Tax Act, 1961. The Income Tax Officer imposes penalty on the assessee. Assessee challenges the penalty stating that there was reasonable cause for not furnishing the report. Can the assessee escape the penalty if the cause was genuine.

(3 marks each)

#### Answer 5 (a)

The practical difficulties involved in application of Arm's length price are as follows:

- True comparison difficult in certain cases.
- Availability of data and reliability of available data.
- Absence of market price.
- Absence of comparable market price for "intangible" transactions.
- Administrative burden.
- Time lag.

#### Answer 5(b)

The evil consequences of Tax Avoidance may be listed as under:

- i. Substantial loss of much needed public revenue particularly in welfare state like India.
- ii. Serious disturbance caused to the economy of the country by piling up of black money directly causing inflation.
- iii. Large hidden loss to the community by perpetual engagement of best brains in litigation.
- iv. Sense of injustice and inequality which tax avoidance arouses in the breasts of those unwilling or unable to profit by it.
- v. Ethics or unethical behaviour causing burden of tax liability to good, taxpaying citizens.

#### Answer 5(c)

Rule 10U of the Income-tax Rules, 1962 'the Rules' provides for certain exclusions from the provisions of GAAR, which are as follows:-

1. An arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of Rs. 3 crore;

2. A Foreign Institutional Investor, who is an assessee under the Income-tax Act, 1961, and has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;
3. A non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
4. Any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the [1st day of April, 2017] by such person.

**Answer 5(d)**

As per section 206C (1H) of the Income-tax Act, 1961, every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 % of the sale consideration exceeding fifty lakh rupees as Income-tax.

“seller” means a person whose total sales or gross receipt or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out.

If the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the rate of TCS will be 1% under this section.

The above provision has been effective w.e.f. 1st October, 2020. Therefore, amount received on or after 1st October, 2020 will be considered for the TCS purpose.

- (i) Rs. 300 if purchaser having PAN. [0 .1% of Rs. 3,00,000]
- (ii) Rs. 3000 if purchaser not having PAN [1% of Rs. 3,00,000]

*Note :*

Since, the rate of TCS has been reduced by 25% during the Covid pandemic period, therefore, answers considering the reduced rate of TCS as follow :

- Rs. 225 if purchaser having PAN. [0 .075% of Rs. 3,00,000]
- Rs. 2250 if purchaser not having PAN [.75% of Rs. 3,00,000]

**Answer 5(e)**

As per section 271BA of the Income-tax Act, 1961 “the Act”, if any person fails to furnish audit report as required under section 92E of the Act, then the assessing officer may direct that such person shall pay, by way of penalty, a sum of Rs. 1 lakh.

However, as per section 273B of the Act, penalty shall not be levied if the assessee proves that there was reasonable cause for such failure.

In this case, as the assessee is able to prove genuine reasonable cause of failure to furnish report u/s 92E, the assessing officer is not justified in imposing the penalty.

**(Attempt all parts of either Q. No. 6 or 6A)**

**Question 6**

- (a) *In the books of a sole proprietor carrying on business the block of fixed assets stood at 01.04.2020 as 4,00,000. If the rate of depreciation is 15% and another machinery was purchased on 15.10.2020 worth 1,00,000 of the same block of fixed assets and the proprietary business is succeeded by a company on 01.11.2020, determine the depreciation allowable to both the proprietary concern and the company before or after the merger for Assessment Year 2021-22.*  
(5 marks)
- (b) *XYZ Inc., a company incorporated in U.S. is engaged in management consultancy. It has set up a branch office in India which qualifies to be a permanent establishment in terms of India-U.S Tax treaty. During the previous year 2019-20, it has earned the following incomes from India :*
- (i) *Fee for Technical Services of ₹75,00,000 taxable @ 10% under section 115A of the Act. Tax rate provided on such income under India-U.S tax treaty is 10%.*
- (ii) *Dividend of ₹17,00,000 received from Indian companies. Tax rate provided on such income under India-U.S tax treaty is 25%.*
- (iii) *XYZ Inc. incurred expenses of ₹3,00,000 and ₹75,000 respectively in earning income from fee for technical services and dividend. Compute the tax payable by XYZ Inc. in India after considering the provisions of Section 115B (MAT), if applicable.*  
(5 marks)
- (c) *Discuss the relevant provisions of Income Tax Act, 1961 in respect of the following transactions :*
- (i) *Mr. Aslam purchased a house property in Ajmer from Mr. Salim on 28.08.2020 for a consideration of ₹70 lakhs. The stamp duty value of the property was ₹75 lakhs. Explain briefly what will be the value of sales consideration of the property for Income Tax purpose in Mr. Salim's hands.*  
(2 marks)
- (ii) *Mr. Joy has entered into International transactions aggregating to 75 lakhs and specified domestic transactions aggregating to ₹5 crores. He did not mention any document/information relating to transfer pricing nor has filed any report/certificate/document/information with the tax authorities. Discuss penal consequences, if any.*  
(3 marks)

**OR (Alternate question to Q. No. 6)**

**Question 6A**

- (i) *Find out the amount of advance tax payable by Mr. A on specified dates under the Income Tax Act, 1961 for the financial year 2020-21 from the following information :*

	₹
<i>Business Income Long Term</i>	4,00,000
<i>Capital Gain (on 31.05.2020)</i>	60,000
<i>Winning from Lotteries (on 31.12.2020)</i>	50,000
<i>Interest on Loan</i>	10,000
<i>Other Income</i>	5,000
<i>Investment in notified equity shares</i>	10,000
<i>Tax deducted at source</i>	29,000
	(5 marks)

(ii) Comment on the following independent situations, whether X Ltd. and Y Ltd. constitute associated enterprises under the provisions of Section 92A :

(a) Book value of total assets of X Ltd. is Rupees 100 crores, Y Ltd. has advanced a loan of Rupees 80 crores to its wholly subsidiary A Ltd., A Ltd., in turn advanced a loan of Rupees 80 crore to X Ltd.

(b) Y Ltd. is engaged in trading of furniture. During the previous year 2020-21 it purchases furniture of Rupees 50 lakh from X Ltd. Total purchases of Y Ltd. during the year is Rupees 55 lakh.

(c) X Ltd. has two units, Unit A and Unit B, Unit A manufactures industrial equipment using the manufacturing process exclusively owned by Y Ltd. Unit B is engaged in buying and selling of toys.

(d) X Ltd. holds whole of equity share capital of C Ltd. C Ltd. holds 30% equity shares of Y Ltd. X Ltd. also holds 60% of preference share capital of Y Ltd.

(e) Y Ltd. has the right to appoint one of the executive director of X Ltd. However Y Ltd. does not exercise its right and therefore it did not appoint any executive director of X Ltd. (5 marks)

(iii) For the Assessment Year 2021-22 DD Ltd. paid Tax @ 15% on its book profit computed under section 115 JB. During the assessment proceedings the Assessing officer wants to charge interest under Section 234B and 234C as the company did not pay advance tax during the financial year 2020-21. The company seeks your advice in this regard. (5 marks)

### Answer 6(a)

#### Computation of Depreciation for AY 2021-22

Particulars	Amount (Rs.)
Opening WDV of the Block of Assets	4,00,000
Add : Purchase of Assets in same Block on 15.10.2020	1,00,000
Total	5,00,000
Depreciation Allowable (400000 x 15% + 100000 x 7.5%)	67,500

This depreciation will be apportioned on the basis of number of days of use

<i>Particulars</i>	<i>Sole proprietary concern</i>	<i>Company</i>
No. of Days opening block used by the Concern	214 days	151 days
A. Proportionate Depreciation on opening Block (Note1)	Rs. 35,178	Rs. 24,822
No. of Days New Block used by the Concern	17 Days	151 Days
B. Proportionate Depreciation on New Block (Note2)	Rs. 759	Rs. 6741
Total Depreciation (A+B)	Rs. 35,937	Rs. 31,563

**Note 1**

Sole Proprietary Concern = Rs. 60,000 x 214/365 = Rs. 35,178

Company = Rs. 60,000 x 151/365 = Rs. 24,822

**Note 2**

Sole Proprietary Concern = Rs. 7,500 x 17/168 = Rs. 759

Company = Rs. 7,500 x 151/168 = Rs. 6741

**Answer 6(b)**

**Computation of Tax Payable under the normal provisions  
of the Income-tax Act, 1961**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Fee for Technical Services	75,00,000
Dividend Income from Indian Company	17,00,000
Total Income	92,00,000
Income Tax @ 10% on fee for technical services (as per India-US tax treaty)	7,50,000
Income Tax @ 20% on Dividend Income	3,40,000
Total Tax	10,90,000
Add : Health and Education Cess @ 4% (only in respect of dividend income) (4% of Rs. 3,40,000)	13,600
Tax Payable	11,03,600

**Computation of Tax Payable u/s 115JB**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Fee for technical services		Nil
Dividend Income from Indian Company	17,00,000	
Less : Expenses incurred	75,000	16,25,000
Book Profit		16,25,000
Tax payable u/s 115JB @ 15.60% (15% + 4%) (cess)		2,53,500
Tax payable by assessee (Higher of (i) tax payable under the normal provisions; and (ii) tax payable under MAT)		11,03,600

**Notes:**

- Under section 115A, fee for technical services and dividend income are taxable on gross basis without allowing deduction for any expenses. Hence, Rs. 3,00,000 and Rs. 75,000 incurred for earning the above income are not allowed as deduction.
- Income tax is payable at the rate provided under the Act or treaty, whichever is beneficial to assessee. Fees for technical services is taxable @ 10% + cess (4%) under the Act. However, treaty provides tax rate of 10% on such income. Cess rate is not added to rates prescribed under the treaty. Hence, in this case, fees for technical service shall be taxable @ 10% without including cess of 4%. Similarly, dividend income is taxable @ 20% + Cess (4%) under the Act. The treaty provides tax rate of 25% on such income. Hence, dividend income shall be taxable @ 20.80%.
- MAT provisions u/s 115JB are applicable to foreign company having a permanent establishment in India in terms of provisions of relevant double taxation avoidance agreement. In this case, provisions of section 115JB shall be applicable to XYZ Inc. since it has a permanent establishment in India.
- Under section 115JB, fee for technical services which is taxable at a rate lower than 15% is to be reduced while calculating book profits. In this case, fees for technical services is taxable @ 10%, hence, the same is to be reduced in computing book profits.
- XYZ Inc. is liable to pay tax as per normal provisions of the Act, the same being higher than the MAT.

**Answer 6(c)**

- As per section 50C of the Income-tax Act, 1961, the sale consideration in the hands of the seller will be the amount of the stamp duty value if it exceeds 110% of the actual sale consideration.

In the given question, the actual sale price is Rs. 70 lakh, while the stamp duty



value is Rs. 75 lakh which is less than 110% of the actual sale consideration (i.e. Rs. 77 lakh). Hence, the sale consideration in the hands of Mr. Salim shall be Rs. 70 lakh.

- (ii) Mr. Joy is not required to maintain information and documents since neither the aggregated value of international transactions exceed Rs. 1 crore, nor the aggregated value of specified domestic transactions exceed Rs. 20 Crore.

Therefore, no penalty shall be levied for non-maintenance of information and documents.

However, Mr. Joy is required to obtain and furnish the audit report u/s 92E even if the aggregated value of international transactions does not exceed Rs. 1 crore or specified domestic transaction does not exceed Rs. 20 crore. Hence, Mr. Joy was required to obtain and furnish audit report u/s 92E in respect of international transactions aggregating to Rs. 75 lakh and specified domestic transaction aggregating to Rs. 5 crore. He shall be liable to penalty u/s 271BA of Rs. 1,00,000 for such default.

#### Answer 6A(i)

#### Calculation of Total Tax FY 2020-21

<i>Particulars</i>	<i>Amount (Rs.)</i>
Business Income	4,00,000
Long Term Capital Gain (31.05.2020)	60,000
Winning from Lotteries (31.12.2020)	50,000
Interest on Loan	10,000
Other Income	5,000
Gross Total Income	5,25,000
<i>Less:</i> Deduction u/s 80C [Investment in notified equity shares]	(10,000)
Total Income	5,15,000
Tax on Total Income	
Long Term Capital Gain (31.05.2020) @ 20%	12,000
Winning from Lotteries (31.12.2020) @ 30%	15,000
Tax on Rs. 405000 as per normal slab rate (515000-60000-50000)	7,750
Total Tax	34,750
<i>Add:</i> HEC @4%	1390
Total Tax including HEC 36140	
<i>Less:</i> TDS	29,000
Total Advance Tax Payable	7,140

[Since, the amount of advance tax payable is less than Rs. 10,000, Mr. A is not liable to pay advance tax.]

*Note :*

- It is assumed that the assessee has not opted for Section 115BAC of the Income-tax Act, 1961.

**Answer 6A(ii)**

**(a) X Ltd. and Y Ltd. are not Associated Enterprise.**

As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprise if loan advanced by one enterprise to another enterprise constitutes not less than 51% of book value of the total asset of the other enterprise. Under this clause, direct loans are covered and loan advanced indirectly is not covered. In this case, Y Ltd. has not directly given loan to X Ltd. and hence they do not qualify as Associated Enterprises.

**(b) X Ltd. and Y Ltd. are not Associated Enterprise.**

As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if 90% or more of the raw material required for the manufacture or processing of goods carried out by one enterprise, are supplied by the other enterprise. This clause is applicable only if the purchasing enterprise is engaged in manufacturing or processing of goods. In this case, Y Ltd. is not engaged in manufacturing or processing of goods and hence, X Ltd. and Y Ltd. do not qualify as Associated Enterprises.

**(c) X Ltd. and Y Ltd. are not associated enterprises.**

As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if the business carried on by one enterprise is 'wholly' dependent upon the intangible owned by the other enterprise.

In this case, X Ltd. is engaged in two businesses, out of which only one business is dependent on Y Ltd. Thus, X Ltd.'s business is not wholly dependent upon Y Ltd. and therefore they do not qualify As associated Enterprises.

**(d) X Ltd. and Y Ltd. are Associated Enterprises.**

As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if one enterprise holds, directly or indirectly, shares carrying not less than 26% of voting power in other enterprise.

In this case, X Ltd. indirectly (through C Ltd.) holds more than 26% equity shares (i.e. 30%) in Y Ltd. and thus they qualify as associated enterprises.

**(e) X Ltd. and Y Ltd. are not associated enterprises.**

As per section 92A of the Income-tax Act, 1961, two or more enterprises are deemed as associated enterprises if one or more executive director of one enterprise is appointed by other enterprise. In this case, Y Ltd. has actually not appointed any executive director of X Ltd. Merely having a right to appoint is not sufficient. Hence, X Ltd. and Y Ltd. do not qualify as associated enterprises.

**Answer 6(A)(iii)**

The issue in this case is whether interest is charged under section 234B and 234C, if the Company is paying tax on the basis of book profit under section 115JB of the Income-tax Act, 1961.

Though 115JB is a self-contained section pertaining to Minimum Alternate Tax 'MAT' provision but sub-section (5) of section 115JB specifies that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company mentioned in that section. Therefore, except for substitution of tax payable and the manner of computation of book profits, all the provisions relating to charge, definitions, recoveries, payment, assessment, etc., would apply in respect of the provisions of this Section. Accordingly, the payment of Advance Tax would be required.

Further, according to section 207 of the Income-tax Act, 1961, tax shall be payable in advance during any financial year in accordance with the provisions of section 208 to 209. As book profit is deemed to be total income, therefore as per the provisions of section 207, advance tax is required to be paid. If a Company defaults in payment of advance tax under section 115JB, it would be liable to pay interest under section 234B and 234C.

From the above analysis, it is concluded that Assessing Officer is right in charging interest under section 234B and 234C.

\*\*\*

## **DRAFTING, PLEADINGS AND APPEARANCES**

*Time allowed : 3 hours*

*Maximum marks : 100*

**NOTE:** Answer ALL Questions.

### **Question 1**

- (a) *Illuminate the consequence of a civil suit in the following independent situations:*
- (i) *Defendant has not appeared on the day fixed and the case not been adjourned.*
  - (ii) *It was found that summons was not served to defendant for the day so fixed for appearance.*
  - (iii) *Neither the plaintiff nor the defendant appears before the court on the day so fixed.*
  - (iv) *The defendant appears and does not admit claim partly or wholly, but the plaintiff does not appear.*
  - (v) *The defendant appears and admits claim partly or wholly, but the plaintiff does not appear.*
- (b) *Discuss the guidelines for use of particular words and phrases in the conveyancing.*
- (c) *“No revision where right to appeal exists”. Comment and state when revision may be treated as an appeal ?*
- (d) *Illustrate the exceptions to the general rule of pleadings that pleading must state material facts only. (5 marks each)*

### **Answer 1(a)**

- (i) If defendant is absent, court may proceed ex-parte, if case not been adjourned.
- (ii) If it is observed that summon is not been served, the court may dismiss the suit.
- (iii) Where neither the plaintiff nor the defendant appears, the court may dismiss the suit.
- (iv) Where the defendant does not admit the plaintiff's claim and plaintiff does not appear, the court may dismiss it.
- (v) Where the defendant admits the plaintiff's claim partly or wholly, the decree will be passed accordingly. If the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

### **Answer 1(b)**

There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be

cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

- (1) For general words refer to ordinary dictionary for ascertaining the meaning of the words. For example, Oxford Dictionary or Webster's Dictionary.
- (2) For legal terms refer to legal dictionary like Wharton's Law Lexicon or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, Mitra's Legal and Commercial Dictionary is quite sufficient to meet the requirements of draftsman.
- (3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.
- (4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.
- (5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.
- (6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes.

### **Answer 1(c)**

Section 401(4) of the Code of Criminal Procedure, 1973 (Cr. P.C.), provides that the party having right of appeal cannot apply for revision. The Cr. P.C. provides a remedy, by way of revision under Chapter XXX and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order.

But legal bar does not stand in the way of High Court's exercise of power of revision *suomotu*. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

According to section 115(2) the Code of Civil Procedure, 1908, the High Court shall not, under section 115, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

According to section 401(5) if an appeal lies under the Code of Criminal Procedure, 1973 but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interest of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

### **Answer 1(d)**

The second fundamental rule of pleading, namely, that every pleading must state all

the material facts and the material facts only is subject to the following well known exceptions:

- i. *Condition Precedent*: The performance or occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading. This follows from the provision contained in Order VI Rule 6 C.P.C. which runs thus:

“Any condition Precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.”

- ii. *Presumption of Law*: Order VI Rule 13, C.P.C., provides that neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. For example in a suit on a promissory note the plaintiff need not allege consideration as Section 118 of Negotiable Instruments Act, 1881 raises a presumption in his favour. It is also not necessary to state that the defendant executed the bond of his own free will and without any force or fraud because the burden of proving any fact invalidating the bond lies upon the defendant.
- iii. *Matters of Inducement*: Another exception to the general rule is regarding facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such prefatory remarks are cut down to the minimum.

**Attempt all parts of either Q. No. 2 or Q. No. 2A**

### Question 2

Write notes on the following :

- (a) *Conditions to be kept in mind while drafting a Sale Deed.*
- (b) *Underwriting and Brokerage Agreement.*
- (c) *Latent Deed and Special Warranty Deed.*
- (d) *Engrossment and Stamping of a Deed.* (4 marks each)

**OR (Alternate question to Q. No. 2)**

### Question 2A

- (i) *Illustrate, whether stamp duty and registration of a gift deed is compulsory ?*
- (ii) *Illustrate the provisions of appeal from orders of a tribunal under the Companies Act, 2013.*

(iii) *“Tribunals are a part of the executive branch of the government which are assigned with the powers and duties to act in judicial capacity for settlement of disputes.” Comment and name any four of such tribunals along with the aim of formation.*

(iv) *Draft a specimen plaint of a suit for the arrears of rent. Assume facts.*

*(4 marks each)*

### **Answer 2(a)**

#### **Conditions to be kept in mind while drafting a Sale Deed**

Some of the important conditions which a draftsman should bear in mind while drafting a Sale Deed are as under:

##### **(a) Lawful Consideration and Object**

The property must be purchased as a part of legal transaction having paid the consideration as required under the provisions of the Indian Contract Act, 1872 for a valid contract. Besides, the objectives for which the property is being purchased by the buyer should be lawful, i.e., not forbidden by law, not to defeat the provisions of any law, not to be fraudulent, not to involve or impart injury to the person or property of another and should not be regarded by the court of law as immoral or opposed to public policy.

##### **(b) Competence of Person to Transfer**

For a company, the test of competence to enter into a transaction of sale or purchase is that its Board of Directors should authorise a person under the resolution passed in their meeting held in conformity with the Articles of Association and having object clause to sell or purchase immovable property under its Memorandum of Association. In case the other party is an individual who is either selling to the company or purchasing from the company any land or immovable property such individual should be considered competent to transfer if it fulfils the necessary conditions prescribed under the Indian Contract Act.

##### **(c) Transfer of All Interest**

In the Property, all interests which a transferor is capable of passing in the property as legal incident of the transfer should be explained in the document, for example, if it is transfer of land, the easements annexed thereto, the rents of profits thereof, things attached thereto etc.

##### **(d) Absolute Transfer**

The transfer should be free of any conditions or limitations which may inhibit the other party to make full use of the property in exercise of legal rights.

##### **(e) Absolute Interest in the Property**

The interest being transferred in the property should not be conditional which may restrict full enjoyment of the property by the transferee

##### **(f) Justification for Transfer**

Cogent reasons for the transfer be given so as to establish bona fide base for the transaction and to avoid eventualities of fraud and multiple litigation therefrom.

**(g) Protection of Creditors' Interest**

Law protects creditors' interest in the transferred property.

**(h) Enforcement of Rights Attached to Property on Valid Transfer**

If a transferee is aware of such rights attached to the property and the transfer is gratuitous then the person can enforce such rights against transferee. But this could be avoided if the transferee has no notice about such rights attached to property and also has paid full consideration for the transaction.

**(i) Property to be Free from Conditions**

The property being transferred should be free from any rights or obligations which a third person can enforce legally against transferee for enjoying any benefits.

**(j) Transfer in Good Faith and with Full Authority**

Where the property is transferred by a person not the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith.

**(k) Protection for Defective Title**

Law protects the transferee who acquires the immovable property under good faith and for bona fide consideration but by any circumstance unknown to him is rendered to have defective title, Section 51 of the Transfer of Property Act, 1882 provides such protection to bona fide transferees acquiring properties in good faith.

**(l) Precautions**

The draftsman should know beforehand that the property under transfer is free from encumbrances and no litigation questioning such property or rights or interest connected therewith is pending in any court. To avoid fraudulent transfers, the draftsman should ensure that the title to such property has been investigated by competent advocate and he has certified the title is free from any encumbrance whatsoever.

In the case of a company, it must be ensured that the Board of Directors have requisite powers under Companies Act, 2013 to sell, lease or otherwise dispose of the property of company.

**Answer 2(b)****Underwriting and Brokerage Agreements**

Underwriting is an insurance against risk. When shares or debentures of a company are issued to the public, they are, by and large, underwritten to ensure that all the shares or debentures issued are taken up and thus the required capital is raised.

Before entering into an underwriting arrangement with a member of any recognised stock exchange, it is the duty of the directors of the concerned company to ensure that the underwriter has sufficient financial resources to meet any obligation which may devolve upon him in the event of the issue not being fully subscribed by public.



Brokerage Agreements are those agreements in which a party agree to accept certain percentage as brokerage from other party on happening or non-happening of an event. In these agreement, one party acts as the broker for the other party.

### **Answer 2(c)**

#### **Latent Deed and Special Warranty Deed**

A latent deed is a deed kept for twenty years or more in man's strong box.

Special warranty deed which is in terms a general warranty deed, but warrants title only against those claiming by, through, or under the grantor, conveys the described land itself, and the limited warranty does not, of itself, carry notice of title defects.

### **Answer 2(d)**

#### **Engrossment and Stamping of a Deed**

The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution. The document after approval is engrossed, i.e., copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution. If a document is not properly stamped, it is rendered inadmissible in evidence nor it will be registered with Registrar of Assurances.

### **Answer 2A(i)**

Yes, the value of the property gifted must be set forth in the deed of gift. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899. If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act (Muhamad Muzaffar Ali ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted.

Gift deed of immovable property is compulsorily registrable as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.

### **Answer 2A(ii)**

#### **Appeal from Orders of Tribunal**

Section 421 of the Companies Act, 2013 provides that any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

It may be noted that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law.

### **Answer 2A(iii)**

Tribunals in India are a part of the Executive Branch of the Government which are assigned with the powers and duties to act in judicial capacity for settlement of disputes. Part XIVA of the Constitution of India makes provisions for establishment and functioning of the Tribunals in India. They are quasi-judicial bodies that are less formal, less expensive and enable speedy disposal of cases.

- (i) Debt Recovering Tribunal (DRT) has been established for expeditious adjudication and recovery of debts in order to reduce the non-performing assets.
- (ii) National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of Company Law Board, Board for Industrial and Financial Reconstruction, Appellate Authority for industrial and financial reconstruction and winding up matters etc. vested with High Court.
- (iii) Consumer Forum has been established for settlement of consumer disputes.
- (iv) Motor Accident Claims Tribunal deals with matters relating to compensation of motor accidents.
- (v) National Green Tribunal disposes cases relating to environmental protection and conservation of forests etc.

### **Answer 2A (iv)**

#### **Suit for Arrears of Rent**

In the Court of Small Cause, ..... Suit No. .... Of .....

(Space for Court-fee Stamp)

AB S/o CD Age..... Resident of ..... Plaintiff

*Versus*

PQ S/o RS Age..... Resident Of ..... Defendant

Suit for Ejectment, Arrears of Rent and Mesne Profits

The above-named plaintiff states as follows:-

1. That the plaintiff is the owner of the house no. .... situated at ..... and bounded as below: - Boundaries of the Houses.
2. That under verbal agreement made on ..... 20 ..... the defendant became a monthly tenant to the plaintiff in respect to the house described in paragraph 1 above at the rent of Rupees ..... Per month and has been in occupation of the said house as such tenant since the above mentioned date of the agreement.
3. That the defendant has not paid the rent w.e.f.....
4. That the plaintiff duly determined the said tenancy by serving on the defendant, by registered post on (Date)..... a notice to quit the said house within thirty days of the receipt of the notice and pay the entire arrears of rent from (Date)..... It is submitted that the said notice was served upon the defendant on (Date)..... yet the defendant has not vacated the house, nor has he paid the said arrears of rent or any part thereof. Hence the defendant is liable to Ejectment under section .....
5. That now a total sum of Rupees ..... is due to the plaintiff as against the defendant, that is Rupees ..... on account of arrears of rent from (Date)..... to (Date)....., and Rupees ..... On account of damages for use and occupation from (Date)....., to (Date), the date of filing the suit.
6. That the cause of action for the said arose on (Date)....., when the period stipulated in the said notice expired.
7. That the defendant resides at .... within the jurisdiction of this Honourable court.
8. That the valuation of the suit for the purpose of jurisdiction and payment of court-fee is Rupees ..... .. the requisite court fee has been paid.

Wherefore the plaintiff claims –

- a) That the decree for Ejectment of the defendant from the house described in paragraph 1 above be passed in favour of the plaintiff as against the defendant..
- b) That the decree of Rupees on account of arrears of rent from (Date).....to (Date)..... be passed in favour of the plaintiff.
- c) That a decree for Rupees .... on account of damages for use and occupation at the rate of Rupees ..... per month from (Date)....., to (Date)....., the date of suit, be passed in favour of the plaintiff as against the defendant.
- d) That a decree for further damages for use and occupation at the aforesaid rate till the Ejectment of the defendant be passed in favour of the plaintiff as against the defendant on payment of additional court-fee.
- e) That cost of the suit be allowed to the plaintiff.

Place: ..... AB

Date: ..... Plaintiff

Through

Advocate

Verification

I, AB, the aforesaid, plaintiff, do hereby verify the contents of paragraphs ..... and ..... of the above plaint are true to my personal knowledge and the contents of the paragraphs ..... and ....., I believe to be true on information received.

Signed and verified this ..... day of. 20.. ....., at .....

AB

Plaintiff

**Attempt all parts of either Q. No. 3 or Q. No. 3A**

**Question 3**

- (a) A Power of Attorney (POA) is executed in West Bengal and stamped amount of ₹100/- as per stamp duty of the State, now the POA is to be sent to Bihar, where stamp duty is ₹150/-. Comment on the validity of POA.
- (b) Draft a specimen notice of a board meeting. Assume facts.
- (c) Draft a Special Leave Petition to the Supreme Court of India against NCLT decision of liquidation of your company. If required, assume other facts.
- (d) Illustrate rule of adverse inference. (4 marks each)

**OR (Alternate question to Q. No. 3)**

**Question 3A**

- (i) Explain Indenture and Cyrographum in relation of a deed. (4 marks)
- (ii) Mention the practical aspects while drafting resolutions both for board and general meeting. (4 marks)
- (iii) Draft a specimen notice in newspaper for postponement of AGM. (4 marks)
- (iv) Comment on applicability of Secretarial Standard (SS) under the following circumstances :
  - (a) One Person Company (OPC) default in filing financial statements u/s 137 and annual return u/s 92 of the Companies Act, 2013.
  - (b) Private Company having two directors, default in submitting financial statements u/s 137 and annual return u/s 92 of the said Act.
  - (c) Entity u/s 8 of the Companies Act, 2013, default in filing financial statement u/s 137 of the said Act.
  - (d) Entity u/s 8 of the Companies Act, 2013, default in filing annual return u/s 92 of the said Act. (1 mark each)

**Answer 3(a)**

The exact amount of stamp duty on a Power of Attorney (POA) depends upon the State in which the POA is executed. If a POA executed in one state has to be sent to another state where the stamp, duty is higher, for use, then POA should be stamped with the difference in the duty before it is so used.

Hence, in this case, the differential stamp duty of Rs.50/- (i.e., 150-100) is to be paid before its use.

Section 35 of the Indian Stamp Act, 1899 provides that an unstamped or inadequately stamped document is inadmissible in evidence.

**Answer 3(b)**

Name of the Company .....

Registered Address.....

CIN - ..... Email- ..... Telephone: .....

Website: .....

NOTICE OF ..... (SERIAL NUMBER OF MEETING) BOARD MEETING

Mr. ....

Director,

New Delhi.

Dear Sir,

1. NOTICE is hereby given that the ..... (serial number of Meeting) Meeting of the Board of Directors of the company will be held on ..... (day of the week), the ..... (date) ..... (month) ..... (year) at ..... (a.m./p.m.) at ..... (Venue)
2. The Agenda of the business to be transacted at the Meeting is enclosed/will follow.
3. You may attend the Meeting through Electronic Mode, the details of which are enclosed. In case you desire to participate through such mode, please send a confirmation in this regard to ..... (Name of Company Secretary/ Chairman/other Authorised Person), email ....., Tel No. .... within ..... days (time frame) to enable making of necessary arrangements.

Kindly make it convenient to attend the Meeting.

Yours faithfully,

For.....Limited/Pvt Limited

(Signature)

(Name)

(Designation)

**Answer 3(c)**

**In the Supreme Court of India  
CIVIL APPELLATE JURISDICTION**

**IN THE MATTER OF:**

Special Leave Petition under Article 136 of the Constitution of India

*AND*

**IN THE MATTER OF:**

XYZ Company Ltd., a company registered under the Companies Act, 2013 through  
..... Chairman/Managing Director the company, having registered office at  
.....  
.....Petitioner

*Versus*

1. .... S/o .....R/o.....
2. Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi
3. The Registrar of Companies .....

.....Respondents

The Hon'ble Chief Justice of India and His Lordship's Companion Judges of the Supreme Court.

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the petitioner is a company duly incorporated under the provisions of the Companies Act, 2013 and is challenging by way of this special leave petition the judgment and order of the NCLT of .....dated.....in proceeding under section..... of the Companies Act, 2013.
2. That the question of law involved in this matter are as follows:
  - (a) Whether the NCLT has fallen into error in taking the view that.....?
  - (b) Whether it would be a good ground for winding up of the petitioner-company that two of its directors are not on speaking terms and there is, thus, a deadlock in the administration of the affairs of the company.
3. That respondent No. 1 herein had filed a petition before the Hon'ble NCLT of ..... seeking the relief..... which petition was contested by the petitioner-company inter alia on the grounds that.....
4. That the NCLT after hearing the parties through their respective Counsel allowed the said petition, holding that sufficient grounds had been made out for winding up of the petitioner-company.
5. That the aforesaid findings and final judgements/order of the NCLT are assailed on the following; amongst, other.

Grounds

5.1 That .....

5.2 That .....

5.3 That.....

- 6. That the petitioner has not filed any appeal or other proceeding relating to this matter in the Hon'ble Court or any other Court.

**RELIEF**

The petitioner company accordingly prays that this Hon'ble Court be pleased to grant Special Leave to Appeal in the matter and to allow the appeal, by setting aside the impugned judgement/order passed by the NCLT and dismiss the petition filed by the respondent (No. ....) in the NCLT.

**PETITIONER**

**AFFIDAVIT**

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF

.....

.....petitioner

*Versus*

1. ....

2. ....

3. ....

.....Respondents

**AFFIDAVIT**

I.....company through the petitioner in the SLP titled as above do hereby solemnly affirm and state as under:

- 1. That I am the petitioner and am fully aware of and conversant with the relevant facts concerning the matter in issue in this petition.
- 2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
- 3. That no relevant fact has been concealed or kept back in the S.L.P.  
.....

I, further solemnly affirm at..... (place) this the..... day of..... that the above averments are true and correct. Nothing material has been concealed therefrom.

**DEPONENT**

**Answer 3(d)**

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294 of the Code of Criminal Procedure, 1973.

It is incumbent upon a party in possession of best evidence on the issue involved,

to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [*Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr.*, 2003 NCJ 787 (NC)].

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. [*Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr.*, 2003 NCJ 800 (NC)].

### **Answer 3A (i)**

#### **Indenture**

Indenture are those deeds in which there are two or more parties. It is written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they were indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment. This practice of indenting of deeds is no more used in England and at present indenture means a deed between two or more persons / parties importing the meaning of executed contract of conveyancing.

#### **Cyrographum**

This was another type of indenture in olden times. The word “Cyrographum” was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original.

### **Answer 3A(ii)**

The following points should be kept in mind while drafting resolutions both for Board and General meeting:

- (i) All essential facts are included in the resolutions.
- (ii) Surplus and meaningless words or phrases should not be included.
- (iii) Reference to documents approved at a meeting should be clearly identified.
- (iv) Resolutions must indicate the relevant provisions of the Act and the Rules.
- (v) If a resolution is one which requires approval the Central Government or confirmation of NCLT/Court, this must be stated in the resolution.
- (vi) A resolution must indicate when it will be effective.
- (vii) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
- (viii) A resolution must be concise, precise and flexible enough to take care of eventuality.



- (ix) Lengthy resolutions should be divided into paragraphs and arranged in a logical manner.
- (x) Anybody not present at the meeting will know clearly what decision was taken.

**Answer 3A(iii)****Specimen Notice in Newspapers of postponement of Annual General Meeting**

Name of the Company .....

Registered Address .....

CIN : ..... Email : ..... Telephone: .....

Website: .....

**NOTICE: POSTPONEMENT OF ANNUAL GENERAL MEETING**

Members are hereby informed that, due to the unforeseen circumstances, it is not possible for the Company to convene the ..... Annual General Meeting of the Company, which was scheduled to be held on .....20.....

Accordingly, the Board of Directors of the Company has decided to postpone the said Annual General Meeting, which now will be convened on .....20.... Notice and other documents, if any, relevant to the re-convened Meeting will be dispatched to the Members shortly.

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped, signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By Order of the Board of Directors

For .....

.....(Signature)

Place : .....

Date : .....20.....

(ACS/FCS No.....)

**Answer 3A(iv)**

Secretarial Standard (SS) is applicable to every company except companies as provided under section 118(10) of the Companies Act, 2013:

- (a) Secretarial Standard does not apply to One Person Company, it is irrelevant whether there is default in filing financial statement or annual return.
- (b) Secretarial Standard applies to a private company, it is irrelevant whether there is default in filing financial statement or annual return.
- (c) Secretarial Standard does not apply to section 8 company generally, but if it is in

default in filing financial statements u/s 137 of the Companies Act, 2013, then Secretarial Standard will be applicable to such company.

- (d) Secretarial Standard does not apply to section 8 company generally, but if it is default in filing annual return u/s 92 of the Companies Act, 2013, then Secretarial Standard will be applicable to such company.

#### Question 4

- (a) *A trust is created for two purposes, of which one is lawful and another unlawful, two purposes cannot be separated, what will be the consequences ? What would be your answer, if two purposes can be separated ?*
- (b) *Mention usual important conditions of debenture trust deed. Is debenture trust deed registrable ?*
- (c) *“An arbitrator is not bound by the strict rules of evidence of court of law”. Comment and state the methods of arbitration in the light of this statement.*
- (d) *Draft a deed of Dissolution of partnership. (4 marks each)*

#### Answer 4(a)

- (i) Every trust the purpose of which is unlawful will be void.
- (ii) If the object is both lawful and unlawful and two operations cannot be separated, the whole trust would be void.
- (iii) If two operations can be separated, it will be void as far as unlawful part of the object which can be separated.
- (iv) The object of the Trust must be feasible and adequately defined, otherwise, the trust agreement shall be void and the situation shall be restored to what it was before the creation of the Trust.

#### Answer 4(b)

The usual important conditions of debenture trust deeds are as follows:

1. The main term of this trust deed must be an undertaking by the company to pay the debenture holders' principal and interest amount.
2. The trust deed usually gives a legal mortgage on block capital and a floating security on the other assets of the company in favour of the trustee on behalf of the debenture holders.
3. The trust deed gives in detail the conditions under which the loan is advanced.
4. The trust deed should specify in some detail the remuneration payable to the trustee, their duties and responsibilities in relation to the trust property.
5. It also gives in detail the rights of debenture holders to be exercised through the trustees in case of default by the company in payment of interest and principal as agreed upon.
6. The trust deed should give the trustee the power to take possession of the property charged when the security becomes enforceable.

The debenture trust deed is registrable and can be registered with the Registrar of

Assurances at the place where the registered office of the company is situated.

**Answer 4(c)**

The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference, that is, to state clearly and precisely the matter the arbitrator is required to decide. While deciding the matters, he follows the practice of presentation and conduct of a case in a court of law. Most of the evidence is in writing, party may be cross-examined on the written evidence of both the parties, and then the arbitrator makes his award in writing within the terms of reference. It is for the arbitral tribunal to lay down its own procedure during the arbitration proceedings. The power of the arbitral tribunal includes the power to determine the admissibility, relevance and significance of any evidence before it. So an arbitrator is not bound by the strict rules of evidence of courts of law.

It is for the arbitral Tribunal to lay down its own procedure during the arbitration proceedings. The law should however, be fair and reasonable. The tribunal may decide to ask the parties to adduce evidence by way of affidavits. In that case, it would be fair and just to allow cross-examination of the witness whose affidavit has been filed.

Apart from Arbitration, conciliation and mediation etc. are other methods for Alternate Dispute Resolution.

**Answer 4(d)**

**Deed of Dissolution of Partnership**

(To be executed on Non Judicial Stamp Paper as prescribed)

THIS DEED OF DISSOLUTION OF PARTNERSHIP is made at ..... on  
the..... day of..... 20....

BETWEEN

A .....S/o .....aged .....  
R/o..... of the first part

AND

B .....S/o .....aged .....  
R/o..... of the other part.

WHEREAS the parties hereto under a deed of partnership dated..... made between them formed themselves into a business firm and carried on business under the name and style of..... pursuant to the covenants, stipulations and provision contained in the said deed.

AND WHEREAS it has been mutually decided between the parties that the said partnership shall be dissolved, and the said trade and business shall be wound up and the stock-in-trade, assets and credits realized and called in, and the net proceeds after payment and satisfaction of all debts and liabilities divided between the partners according to the covenants in this behalf appearing in the deed of partnership.

NOW THIS DEED WITNESSES that in pursuance of the said agreement it is hereby declared and agreed by and between the parties hereto as follows, that is to say:

1. The said partnership between the partners hereto under the deed, dated..... hereunto appended shall be determined and stand dissolved as from the..... day of..... 2020. And the parties hereto singly or jointly shall not carry on the business of the said firm of..... under the said name and style for a period of..... years hence.
2. The parties hereto shall on the aforesaid date of..... sign notices of the dissolution and forthwith advertise in the local Official Gazette the fact of dissolution as required by Section 45 of the Indian Partnership Act AND shall also intimate the fact of dissolution to the Registrar of Firms under the provisions of Section 63 of the said Act.
3. Within..... days after the dissolution of the partnership a full and general account and balance sheet shall be taken and made of the property, assets and liabilities of the partnership; and a full and particular inventory and valuation of all the machinery, plants, tools, utensils, stock in hand, office equipment, materials and effects belonging to the firm shall be made by the parties or such other person as the partners may choose to appoint, whose decision shall be final and binding upon the partners, and all debts owing to the firm shall be collected and got in by the parties or such other persons as the parties may by instrument in his behalf appoint.
4. That as soon as may be, after the property, assets and liabilities have been got in and disbursed the parties or such other person or persons whom the parties may have appointed under the foregoing clause shall divide and apportion the share of the parties, in the proportion of the contribution of the parties towards the capital. In such division any amounts paid earlier or due to the parties according to the books of the partnership shall be taken into account. That the cost of liquidation proceedings shall also be deemed to be a liability of the partnership and paid from the funds of the partnership.
5. That in case the winding up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts of the partnership then the partners shall forthwith pay such losses in the proportion of their contribution to the capital.
6. Each of the parties shall, so soon as the others or any of them, or their or his representatives, shall have executed and done all the assurances, acts or things hereby agreed to be done by them respectively and at the request and cost of such other or others, or their or his representatives execute to them or him such releases, indemnifies, and assurances as may be reasonable and proper;

IN WITNESS WHEREOF the said AB, CD and EF have hereto signed and executed this agreement of dissolution and appended it to the said deed of partnership, dated.....

WITNESSES:

1. Sd/- A.B.
2. Sd/- C.D.
3. Sd/- E.F.

(Signatures of the parties)

**Question 5**

- (a) *What is Promissory Note and parties thereto ? What are essentials of a Promissory Note ? Draft a specimen promissory note.* (6 marks)
- (b) *“Family arrangements are governed by a special equitable principles peculiar to themselves”. Comment in light of Kale v. Dy. Director of Consolidation, AIR 1976 SC 807 and elucidate the essentials for a family settlement ? When a family settlement can be enforced ?* (6 marks)
- (c) *Mention the points which will cover a legal opinion.* (4 marks)

**Answer 5(a)****Promissory note**

Promissory note is one of the negotiable instruments recognized under the Negotiable Instruments Act, 1881. A “promissory note” is defined under Section 4 of the Negotiable Instruments Act, 1881 as “an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument”.

**Parties to the Promissory note**

1. Maker
2. Payee
3. Holder

**Essentials of a Promissory Note**

To be a promissory note, an instrument must possess the following essentials:

- (a) It must be in writing. An oral promise to pay will not do.
- (b) It must contain an express promise or clear undertaking to pay.
- (c) The promise or undertaking to pay must be unconditional. A promise to pay “when able”, or “as soon as possible”, or “after your marriage to D”, is conditional.
- (d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- (e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.

**Promissory Note Payable on Demand**

On Demand we, A.B., aged about ..... years, son of Shri ..... Resident of ..... AND C.D., aged about ..... Years, son of Shri ..... Resident of ..... jointly and severally promise to pay to E.F., aged about ..... years, son of Shri ..... resident of ..... or order the sum of Rupees ..... (Rs. ....) only, with interest at the rate of .....% per annum until repayment for value received. DATED AND DELIVERED at ..... this the .....day of ..... 2020.

Sd. A.B.

Sd. C.D.

**Answer 5(b)**

The principles, which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

In *Kale v. Dy. Director of Consolidation, AIR 1976 SC 807* the Supreme Court has laid down the following propositions to put the binding effect and the essentials of a family settlement in a concretised form:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
- (3) The family arrangement may be even oral in which case no registration is necessary.
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the mischief of Section 17 (2) (sic) (Section 17 (1) (b)) of the Registration Act and is, therefore, not compulsorily registrable.
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties of the settlement has no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.
- (6) Even in bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.

The fifth proposition quoted above clearly contemplates that even if a party to the settlement had no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same. [*CIT v. R. Ponnammal, (1987) 164 ITR 706 (Mad)*].

**Family Arrangement when enforceable?**

No doubt, a family arrangement, which is for the benefit of the family generally, can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. [*Lakshmi Perumallu v. Krishnavenamma, AIR 1965 SC 825 : 1965 (1) SCR 261.*]

**Answer 5(c)**

There is no form for a legal opinion prescribed by law or rule. In general a legal opinion will cover the following:

- (i) Introductory matters, such as the date, identity of the opinion, and the purpose for which the opinion is given.
- (ii) A general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including various factual assumptions.
- (iii) The legal conclusions expressed in the opinion and any qualifications to the legal conclusions.
- (iv) Matters peculiar to the particular opinion, such as matter relative to opinions of local counsel in other jurisdictions and specific limitations.
- (v) The person giving such legal opinion is desirable to use the usual disclaimers that the opinion is based on the facts and the documents that were supplied by the concerned person.
- (vi) The signature of the opinion giver.

**Question 6**

- (a) *Draft a deed of redemption or re-conveyance of mortgage property by the mortgagee in favour of the mortgagor. (6 marks)*
- (b) *Draft a specimen deed of assignment of business debts. (6 marks)*
- (c) *Explain the right to legal representation of a Company Secretary under the Competition Act, 2002 and Real Estate (Regulation and Development) Act, 2016. (4 marks)*

**Answer 6(a)**

THIS DEED is made the..... day of..... 20..

Between

'A' of etc. (hereinafter called "the mortgagee") of the One Part

And

'B' of etc. (hereinafter called "the mortgagor") of the Other Part.

WHEREBY by a mortgage deed dated..... the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs..... with interest @ ..... per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated..... having been paid, the receipt whereof the said 'A' hereby acknowledges.

The said 'A' as mortgagee hereby redeems or reconveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same upto and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

Mortgagee

Mortgagor

Witness

Witness

Date & Place

Answer 6(b)

SPECIMEN DEED

This dated of Assignment is made this..... day of .....

Between

CD s/o..... residing at .....(hereinafter referred to as the ASSSIGNOR or which term shall include his heirs legal representative) of one part and AB s/o of .....residing at .....(hereinafter referred to as the ASSIGNEE(S) of other part.

WHEREAS THE ASSIGNOR has for some time past carried on the trade or business of, etc, in the course whereof the several persons whose names, address and occupation are mentioned in the schedule hereunder written, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names, and

WHEREAS THE ASSIGNOR has contracted with the ASSIGNEE for the absolute sale to him of the said business debts at and for the sum of Rs.....

NOW THIS DEED WITNESSES that is consideration of the sum of Rs.....now paid to the ASSIGNOR by the ASSIGNEE (the receipt of the sum ASSIGNOR hereby acknowledges), the said CD sells, transfers and assigns unto the said AB all the several said debts and sum of money specified in the said schedule which are now due and owing to the ASSIGNOR TO HAVE AND TO RECEIVE them for his absolute use and benefit with absolute power to enforce payment thereof by suit AND that the ASSIGNOR does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive and further that he has not entered into any arrangement with any of them AND that the ASSIGNOR shall at all times hereafter do execute, and perform all such and other acts, deeds etc. As may be reasonably required for further and better transferring and /or assuring them or any of them.

Schedule above referred to

Signed, sealed, sealed and delivered etc.

Witness :

Assignor

Witness:

Assignee



**Answer 6(c)****Right to Legal Representation under Competition Act, 2002**

Competition Authorities and the companies world over avail services of professionals to guide and advise them on various aspects of competition law. Professionals also assist companies in designing, implementing and maintaining effective competition compliance programmes.

Section 35 of the Competition Act, 2002, authorises Company Secretaries in practice to appear before Competition Commission of India. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

According to Section 35 of the Competition Act, 2002 a person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

**Right to Legal Representation under Real Estate (Regulation and Development) Act, 2016**

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of the applicant or appellant as the case may be.

According to the said section the applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Hence a Company Secretary holding certificate of practice can -

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project.
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

\*\*\*

© THE INSTITUTE OF COMPANY SECRETARIES OF INDIA