

Income Tax Act, 2058 (2002)

Date of Authentication and the Publication

2058-12-29-2 (18 April, 2002)

An Act Made to Amend and Consolidate the Law relating to Income Tax

Preamble: Whereas, it is expedient to make timely the law relating to income tax by amending and consolidating it in order to enhance revenue mobilization by making the process of collecting revenue effective for the economic development of the country;

Now, therefore, be it enacted by Parliament in the first year of reign of His Majesty the King Gyanendra Bir Bikram Shah Dev.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the Income tax Act, 2058 (2002).

(2) This Act shall come into force throughout Nepal and also apply to the resident person in any place outside the Nepal.

(3) This Act shall come into force immediately.
2. **Definitions:** Unless the subject or the context otherwise requires in this Act,-

(a) "Person withholding advance tax" means a person with a duty to withhold advance tax pursuant to Chapter-17 in making payments

for employment, investment return, service charge and contract or contraction, as well.

- (b) "Officer" means the Director General, Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer, Tax Officer and other Officers in the Department, as referred to in Section 72.
- (c) "Payment from which tax is withheld finally" means any dividend, rent, profit, interest and payment from which tax has to be withheld made to the non-resident person, as referred to in Section 92.
- (d) "Retirement fund" means an entity established with a sole objective to accept retirement contribution funds for the purpose of making retirement payments from the fund to the entity's beneficiary natural persons or their dependents, and invest such funds.
- (e) "Retirement payment" means any payment made to the following person:
 - (1) Payment made to a natural person where such person has got retirement, or
 - (2) Payment to the dependent of a natural person where such person has died.
- (f) "Retirement contribution fund" means any payment made to a retirement fund for provisions of retirement payment or for future provisions thereof.
- (g) "Incapacitated person" means a person who is not capable of making his dealings because of physical or mental illness.

- (h) "Income" means the income earned by any person from employment, profession or investment and the total amount of that income calculated under this Act.
- (i) "Income year" means a period from the first day of Shrawan (tentatively 15 July) of any year to the last day of *Ashad* (tentatively 14 July) of the next year.
- (j) "Gift" means any payment made without any consideration or in the case of any payment with consideration, where the market value of payment exceeds the market value of consideration, payment to the extent of such excess.
- (k) "Debt liability" means the liability equivalent to the debt claim.
- (l) "Debt claim" means the right of any person to receive payment from another person, and this term also includes the right of any person to have repaid a loan lent by such person to another person, the right to receive deposits made in a bank and financial institution, to receive sums to which such person is entitled and to receive moneys from the sale of debentures, bills of exchange, bonds, rights under annuities, financial lease and installments.
- (m) "Company" means any company incorporated under the companies' law in force, and for the purpose of tax the following institutions shall also be treated as if they were companies:
 - (1) Any corporate body established under the law in force,
 - (2) Any unincorporated union, board, association or society or sole proprietorship whether incorporated or not and any group of persons or trust except a partnership,
 - (3) Any partnership firm consisting of Twenty or more partners whether registered or not under the law in force,

any retirement fund, cooperative institution, unit trust, joint venture,

- (4) Any foreign company;
 - (5) Any other foreign institution as specified by the Director General.
- (n) "Tax" means the tax chargeable under this Act, and this term also includes the following payments:
- (1) The expenditures referred to in clause (a) of Sub-section (8) of Section 104 as incurred by the department for any claim in respect of, and auction sale of, the property in which the tax is due and outstanding,
 - (2) The amount payable by the person withholding advance tax or the person subject to tax withholding under Section 90 or the amount payable by the person making payment in installment under section 94 or the amount payable after the assessment of tax under Sections 99, 100 and 101,
 - (3) The amount payable to the Department in respect of tax liability of the third party under Sub-section (2) of Section 107, Sub-section (3) or (4) of Section 108, Sub-section (1) of Section 109, Sub-section (1) of Section 110,
 - (4) The amount as referred to in Chapter -22 payable for a fee and interest, and
 - (5) The amount of fine referred to in section 129 required to be paid as per the order of the department.
- (o) "Person subject to tax withholding" means any person who receives payment or has the right to receive payment by withholding tax under Chapter-17 in making payment for

employment, investment return, service fee or contract or contraction.

- (p) "Tax assessment" means the assessment of tax to be made under this Act and this term includes the assessment of a fee and interest under Section 122.

Provided that, this term does not mean the previous tax assessment substituted by the amended tax assessment under section 101.

- (q) "Non-resident person" means any person save the resident person.

- (r) "Non-occupational taxable assets" means any land, building and interest or security in any entity except the following properties:

- (1) Occupational assets, depreciable assets or stocks-in-trade,
- (2) A private building owned by a natural person in the following situation,-

(a) Being under ownership for a continuous period of three years or more, and

(b) Where that person has resided for a total period of Three years or more continuously or at several times.

- (3) A private building belonging to and disposed of by any natural person for a value less than ten million rupees, or

- (4) An asset disposed of by way of transfer in any manner other than the purchase and sale within three generations.

- (s) "Organization entitled to enjoy exemption" means the following entity:

- (1) A social, religious, educational or benevolent organization of public nature established with non-profit motive,
- (2) An amateur sports organization so formed with a view to promoting social or sports related facilities that the organization or its members does not derive profits,
- (3) A political party registered in the Election Commission,
- (4) Village Development Committee, Municipality or District Development Committee,
- (5) Nepal Rastra Bank,
- (6) Government of Nepal,
- (7) An entity as prescribed and entitled to use tax exemption by an advance ruling issued under Section 76,

Provided that, in cases where any person has derived any benefit from the property of that organization and the monies obtained from that organization except in making payment for the property or the service provided by any person to that organization or in discharging functions in consonance with the objective of the organization entitled to exemption, tax exemption shall not be granted.

- (t) "Trust" means an arrangement whereby a trustee holds any property.

Provided that, this term does not include a partnership, corporate body or organization referred to in sub-clause (3) of clause (m).

- (u) "Trustee" means a natural person, trust (*Guthi*) or other body corporate who, individually or jointly with other natural person, trust (*Guthi*) or corporate body, holds a property in trust, and this term includes the following person:
- (1) The operator or administrator of the assets of a deceased,
 - (2) A liquidator, recipient or trustee,
 - (3) Any person who protects, directs, controls or manages the assets of an incapacitated person in individual or official capacity,
 - (4) Any person who manages the assets under a private enterprise or similar other enterprise, and
 - (5) Any other person in a position similar to that of the person as referred to in clauses (1), (2), (3) and (4).
- (v) "Long-term contract" means a contract referred to in Section 26 of which validity period is more than twelve months.
- (w) "Relative" means a natural person's husband, wife, son, daughter (adopted son, daughter as well), father, mother, grand-father, grand-mother, elder brother, younger brother, sister-in-law, daughter-in-law, elder sister, younger sister, father-in-law, mother-in-law, brother-in-law, elder brother-in-law, wife's sister, uncle, aunt, nephew, niece, grand-son and grand-daughter.
- (x) "Entity" means the following organization or body:
- (1) A partnership, trust or company,
 - (2) Village Development Committee, Municipality or District Development Committee,
 - (3) Government of Nepal,

- (4) Any foreign government or provincial or local government under that government or a public international organization established by any treaty, or
- (5) A permanent establishment of the organization or body referred to in clauses (1), (2) and (3), which is not situated in a country of which it is a resident.
- (y) "Interest in entity" means and includes the contingent right to receive income or capital of any entity.
- (z) "Disposal" means a disposal inclusive of the sale or transfer of any property or liability as mentioned in Section 40.
- (aa) "Vested ownership" means the following ownership:
 - (1) In the case of any entity, ownership created on the basis of the interest which any natural person or any entity in which a natural person has no interest has in that entity directly or indirectly through one or more interposed entities, or
 - (2) In the case of the assets owned by any entity, ownership of the assets as determined in proportion to the ownership of the persons who have vested ownership in that entity.
- (ab) "Lease" means the provisional right of any person to enjoy or use any property except movable property belonging to another person, and this term also includes a license, rent agreement, trenches, royalty agreement or right of a lessee/ tenant.
- (ac) "Natural person" means an individual, and, for the purposes of this Act this term includes a sole proprietorship owned by an individual, whether registered or not, and a spouse so selected under Section 50 as to be considered as the single individual.

- (ad) "Payment for natural resources" means an amount of any of the following payments:
- (1) Amounts received for having extracted water, minerals or other living and non-living resources from the earth, or
 - (2) Amounts calculated in full or in part on the basis of the quantity or value of living or non-living resources of the natural resources and minerals extracted from the earth.
- (ae) "Market value" means ordinary transaction value of any property or service in the ordinary course of trade between unrelated persons in respect of such property or service.
- (af) "Rent" means a premium received for the house rent as well as for the lease of a tangible property and payment for the provision of that lease. Provided that, this term does not include any payment made for natural resources.
- (ag) "Payment" means the following activities:
- (1) If the money or property owned by any one person is transferred to another person and the liability of any other person is transferred to that person,
 - (2) If the ownership over any property created by any person devolves on another person after the creation of that property or if any person bears the onus of liability of another person,
 - (3) If any person delivers service to another person,
 - (4) If any person uses any property owned by another person or such property is available for such use.

- (ah) "Distribution of profit" means the distribution of profits of any entity made pursuant to Section 53, including the capitalization of profits.
- (ai) "Unit trust" means a trust to be divided on the basis fixed with the number of the units holding the right of the persons entitled to participate in income or capital, with a provision that the trustee holds property for the benefits of at least twenty persons.
- (aj) "Employment" means any kind of past, present or future employment.
- (ak) "Royalty" means any payment made under the lease of any intangible property, and this term includes any payment made for the following purpose:
- (1) To use or have the right to use a copy right, patent, design, model, plan, secret formula or process or trademark,
 - (2) To render technical know-how,
 - (3) To provide the right to use any motion picture film, video tape, sound recording or similar other means and to render industrial, occupational or scientific experience,
 - (4) To render any assistance in a manner to be ancillary to the matters referred to in clauses (1), (2), or (3), or
 - (5) To have full or partial restrictions on the matters referred to in (1), (2), or (3) or (4).

Provided that, this term does not mean any payment made for natural resources.

(al) "Investment" means the act of holding one or more properties of similar nature used in an integrated manner or investing such properties, except with the followings:

- (1) Holding any property other than a non-occupational taxable property used by the owner thereof in personal use or investing money in such property, or
- (2) Employment or occupation.

(am) "Investment insurance" means any of the following insurance:

- (1) An insurance against the death of the insured or of the associated person of the insured,
- (2) An insurance against personal injuries of the insured or his associated person or against any event leading to incapacity in any particular manner,

Provided that, the validity period of the insurance contract shall be at least five years or the contract shall be without any validity period and the contract is so made that it cannot be terminated by the insurer prior to expiration of a period of five years except in exceptional circumstances.

- (3) An insurance so made that any money or series of moneys are paid to the insured in the future,
- (4) Reinsurance of the insurance referred to in clauses (1), (2) or (3), or
- (5) Reinsurance of the reinsurance referred to in clause (4).

(an) "Dividend" means the distribution to be made by an entity.

(ao) "Resident person" means the following person in respect of any income year:

- (1) In respect of a natural person,
 - (a) Whose normal abode is in Nepal,
 - (b) Who has resided in Nepal for 183 days or more during a continuous period of 365 days of any income year, or
 - (c) Who is deputed by Government of Nepal to a foreign country in any time of the income year.
- (2) A partnership firm,
- (3) In respect of a trust, such trust
 - (a) Which is established in Nepal,
 - (b) The trustee of which is a resident person in an income year,
 - (c) Which is controlled by a resident person or by a group of persons comprising such a person, directly or through one or more interposed entities,
- (4) In respect of a company, such company,
 - (a) Which is incorporated under the law of Nepal,
 - (b) Management of which has been effective in Nepal in any income year.
- (5) Village Development Committee, Municipality, or District Development Committee,

- (6) In respect of an entity of any foreign government or provincial and local government under that government, such entity,
 - (a) Which is established under the laws of Nepal, or
 - (b) Management of which is effective in Nepal in any income year.
 - (7) An organization or entity established under any treaty or agreement, and
 - (8) A foreign permanent establishment of a non-resident person situated in Nepal.
- (ap) "Person" means a natural person or entity.
- (aq) "Manager" means any person involved in making managerial decisions of any entity, and this term includes a trustee of any trust and a person having ownership in a foreign permanent establishment.
- (ar) "Occupation" means any kind of industry, business, profession or business transactions of similar other nature, and this term includes past, present or future occupations of similar type.

Provided that, this term does not include employment.

- (as) "Interest" means the following payment or profit:
- (1) Payment under debt liability except the principal,
 - (2) Profit made from concession, premium, alteration payment or from similar payment, and
 - (3) The amounts referred to in Section 32 receivable as an interest out of the payment to be made by a person who

acquires any property under annuities or installment sale or of the payment made to any person for the use of any property under a financial lease.

(at) "Stock-in-trade" means the property owned by any person and sold or to be sold in the course of regular business carried on by such person, the property in work-in-progress and the inventory of materials to be incorporated in the property. Provided that, this term does not include a property held in foreign currency.

(au) "Occupational asset" means any property used in any occupation.

Provided that, this term does not mean stock-in-trade or depreciable assets of the occupation.

(av) "Distribution" means a distribution to be made by any entity as referred to in Section 53.

(aw) "Income sent abroad" means an income required to be sent abroad by a foreign permanent establishment of a non-resident person situated in Nepal as referred to in Section 68, which has been sent abroad through a bank or paid in any other manner.

(ax) "Foreign income tax" means a foreign income tax referred to in Sub-section (8) of Section 69 levied by any foreign country.

(ay) "Foreign permanent establishment" means an entity referred to in paragraph (4) of clause (x).

(az) "Department" means the Department of Inland Revenue.

(aaa) "Property held in foreign currency" means any property held in a foreign currency other than Nepalese rupees.

(aab) "Permanent establishment" means a place where any person carries on a business fully or partly, and this term includes the following place:

- (1) A place where any person carries on a business fully or partly, through any agent except a general agent who acts independently in the ordinary course of carrying on business,
- (2) A place where any person's main equipment or main machinery is situated or used or installed,
- (3) One or more than one place in any country where any person has delivered technical, professional or consultancy service through an employee or in any other manner for more than ninety days at one or several times in a period of any twelve months, or
- (4) A place where any person is involved in a construction, installation or establishment project and has carried out supervisory works of that project for a period of ninety days or more.

(aac) "Property" means a tangible or intangible property of any kind, and this term includes currency, good-will, technological knowledge, assets, any person's ownership or interest in a foreign branch, a right to make income or acquire income in the future and any part of such property.

(aad) "Associated person" means any one or more than one person or group of persons who act as per the intention of each other, and this term includes the following persons:

- (1) A natural person and relative of that person or any person or a partner of that person,

- (2) A foreign permanent establishment and a person having ownership in that establishment, and
- (3) Any entity which by itself or jointly with any other person related with it or with an assisting entity or any other person or entity related with such assisting entity controls Fifty percent or more of the income, capital or voting right of any entity or derives benefits therefrom.

Provided that, the following person shall not be an associated person:

- (1) An employee,
- (2) A person specified by the Department as a non-associated person.

(aae) "Partnership" means a firm consisting of less than twenty partners, whether registered under the law in force or not.

Provided that, this term does not include a sole proprietorship or joint venture, whether registered or not.

(aaf) "General insurance" means insurance other than investment insurance.

(aag) "General interest rate" means the rate of interest by Fifteen percent per annum.

(aah) "Approved retirement fund" means a retirement fund having obtained approval from the Department pursuant to Sub-section (1) of Section 63.

(aai) "Service charge" means any charge paid to any person, according to the market value, for the service rendered by such a person,

and this term includes any commission, meeting allowance, management fee or technical service charge.

- (aaj) "Shareholder" means a beneficiary of any company.
- (aak) "Depreciable property" means a property, which is used in any business or investment for earning income, and declines in value because of wear and tear, being old or passage of time.

Provided that, this term does not mean stock-in-trade.

- (aal) "Beneficiary" means a person who has an interest in any entity related with the work.
- (aam) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Tax Bases

- 3. **Tax to be levied:** Tax shall be levied on each of the following persons in each income year and be collected/ realized pursuant to this Act:
 - (a) A person who has taxable income in any income year,
 - (b) A non-resident person's foreign permanent establishment situated in Nepal, which sends income of any income year pursuant to Sub-sections (3) and (4) of Section 68, and
 - (c) A person who receives payment final tax withholding in any income year.

4. **Computation and rate of tax:** (1) The amount of tax required to be paid by any person referred to in Section 3 for any income year shall be equal to the total amount of tax required to be paid by such person.

(2) In computing the tax required to be paid by any person referred to in clause (a) of Section 3, it shall be computed by applying the related rates mentioned in Schedule-1 to the taxable income of that person. In so computing the tax, it shall be computed by deducting the amount that is adjustable in tax, and claimed by that person pursuant to Section 51 or 71.

(3) Notwithstanding anything contained in Sub-section (2), the tax payable by a resident natural person referred to in clause (a) of Section 3, who has fulfilled all of the following requirements, shall be equal to the total amount of tax deducted pursuant to Section 87 from the payments made by the employer to such a natural person in that income year:

- (a) Only the income of any employment having source in Nepal is included in the income of that income year,
- (b) All employers have become non-resident persons in that income year and there is only one employer at one time, and
- (c) The employer has not made a claim for the adjustment of tax pursuant to Section 51 in taxable income, except for the medical expenses and retirement contribution paid by him and for subtraction of the expenses referred to in Sub-sections (2) and (3) of Section 63 and of the expenses referred to in Section 12.

(4) Notwithstanding anything contained in Sub-section (2), the tax payable in any income year by a resident natural person referred in clause (a) of Section 3, who has fulfilled all of the following requirements, shall be equal to the amount mentioned in Sub-section (7) of Section (1) of Schedule –1:

- (a) That person has only income earned from his business having source in Nepal in that income year,
- (b) The income earned from the business and turnover of the business do not exceed the ceiling mentioned in Sub-section (6) of Section (1) of Schedule –1, and
- (c) That person has so opted that this provision is applicable in that income year.

(5) In computing the tax required to be paid by any foreign permanent establishment referred to in clause (b) of Section 3, it shall be computed by applying the related rates mentioned in Sub-section (6) of Section 2 of Schedule-1 to the income sent abroad by such establishment in that income year.

(6) The amount of tax required to be paid by the person referred to in clause (c) of Section 3 shall be equal to the total amount computed by applying the rates mentioned in section to the amount of each payment liable to final tax deduction received by that person in that income year.

5. **Taxable income and classification of income headings:** The taxable income of any person in any income year shall be equal to the amount computed by subtracting the amount, if any, claimed pursuant to Section

12 or 63 from the grand total amount of assessable income of each of the following income headings in that income year:

- (a) Business,
- (b) Employment, and
- (c) Investment.

6. **Assessable income:** Subject to this Act, the following incomes earned by any person for any business, employment or investment in any income year shall be considered assessable income:

- (a) Income earned by any resident person from his employment, business or investment in that income year irrespective of the place of his source of income, and
- (b) Income earned in that income year by any non-resident person from employment, business or investment having income source in Nepal.

Provided that, the assessable income shall not include any income exempted from tax pursuant to section 11 or 64.

Chapter-3

Computation of Tax

7. **Computation of income from business:** (1) The profits and benefits made by any person in any year from any business shall be computed in the income of that business of that person in that income year.

(2) In computing the profits and benefits earned by any person from the business in any income year, it shall be computed so as to include the following amounts received by that person within that year:

- (a) Service charge,

- (b) Amount obtained from the disposal of stock-in-trade,
- (c) Net profit derived from the business property or business liability of any person computed pursuant to Chapter-8,
- (d) Amount considered to have been derived pursuant to clause (a) of Sub-section (2) of Section 4 of Schedule-2 from the disposal of depreciable property of the business,
- (e) Gift received from any person in respect of the business,
- (f) Amount received for having accepted any restriction in respect of the operation of the business,
- (g) Notwithstanding that the amount received by any person is of such nature that it is included in income from investment, the amount received by such a person being directly related with his business, and
- (h) Other amounts liable to be included pursuant to Chapter-6 or 7 or Section 56 or 60.

(3) Notwithstanding anything contained in Sub-section (2), the amounts deductible under sections 10, 54 and 69 and payments from which tax is withheld finally may not be included in computing the profits and benefits derived from the operation of business.

8. **Computation of income earned from employment:** (1) The remuneration derived by any natural person from employment in any

income year shall be computed as the income earned by that person in that year.

(2) The following payments made by an employer to a natural person in any income year shall be included in computing the remuneration earned by such natural person from employment in that income year:

- (a) Amount for wages, salary, leave, amount for overtime work, fee, commission, prize, gift, bonus, and payment for other facilities,
- (b) Payment for any personal allowance including amount for dear allowance, subsistence allowance, entertainment and transport allowance,
- (c) Payment received for settlement of or reimbursement of expenses incurred by him/her or his/her associated person for personal purpose,
- (d) Payment made for having given consent to any terms of employment,
- (e) Payment made for termination, loss of employment, or for compulsory retirement,
- (f) Retirement payment and retirement contribution including the amount deposited by the employer for that employee in the retirement fund,
- (g) Other payments made in respect of employment, and
- (h) Other amounts required to be included pursuant to Chapter-6 or 7.

(3) Notwithstanding anything contained in Sub-section (2), the following matters need not be included in computing the remuneration earned by any natural person from employment:

- (a) The amounts deductible under Sections 10 and payment from which tax is withheld finally,
- (b) Food and Tiffin provided by the employer to the employee at the work site in a manner that it is available to all employees on the same terms,
- (c) The settlement or reimbursement of the following expenditure incurred by any employee:
 - 1. The expenditure fulfils the business purpose of the employer, or
 - 2. The expenditure exempted or to be exempted in the computation of the income earned from investment.
- (d) Payment of such petty amounts of which accounts are impracticable to be maintained or difficult to be maintained administratively as prescribed.

Explanation: For purposes of this section, "payment" means the payment:-

- (a) made by the employer,
- (b) made by the associated person of the employer, and
- (c) made by any third person as referred to in the agreement made with the employer or his associated person.

9. **Computation of income earned from investment:** (1) the profits and benefits derived by any person from investment in any income year shall be computed as the income earned by that person from investment in that year.

(2) The following amounts received by any person in any income year shall be included in computing the profits and benefits derived by that person from investment in that income year:

- (a) Dividend, interest derived from that investment, payment for natural resources, rent, royalty, profit from investment insurance, profit from interest in a retirement fund which has not got approval pursuant to Sub-section (1) of Section 63 or retirement payment made from the approved retirement fund,
- (b) Net profits derived from the disposal of non-business taxable property of the investment of that person, computed pursuant to Chapter-8,
- (c) If, in disposing the depreciable property of the investment made by that person, the incomings to be received exceed the remaining value comprising the outgoings made for the property of the group of depreciable property pursuant to clause (a) of Sub-section (2) of section 4 of Schedule-2, the excess amount,
- (d) Gift received by that person in respect of investment,
- (e) Retirement payment made in respect of that investment and retirement contribution including

the amount deposited in the retirement fund for that person,

- (f) Amounts received for having accepted any restriction in respect of investment, and
- (g) Other amounts required to be included pursuant to Chapter-6 or 7 or Section 56.

(3) Notwithstanding anything contained in Sub-section (2), the following matters shall not be included in computing profits and benefits derived by any person from investment:

- (a) The amounts deductible under Sections 10, 54 and 69 and payment from which tax is withheld finally, and
- (b) The amounts to be included in computing income by that person from employment or business.

Chapter-4

Exemptible Amounts and Other Exemptions

10. **Exemptible amounts:** The following amounts shall be exempted from tax:

- (a) Amount exempted from tax granted to any person entitled to tax exemption facility as provided for in a bilateral or multilateral treaty concluded between Government of Nepal and any foreign country or international organization,
- (b) Amount received by any natural person for doing employment in the governmental service of a foreign country,

Provided that, -

- (1) The person has to be a resident or non-resident person only because of doing employment, and
 - (2) Such amounts have to be paid from the governmental fund of that country.
- (c) Amount received by a natural person referred to in clause (b) who is not a citizen of Nepal or by his/her nearest family member from the governmental fund of a foreign country,
- (d) Amount received by a non-Nepalese citizen appointed in the service of Government of Nepal under a the term and condition of tax exemption,
- (e) Allowances provided by Government of Nepal to the widow, aged (senior citizen) or disabled,
- (f) Amounts received as gift, inheritance or scholarship except the amounts required to be included in computing income pursuant to Sections 7, 8 or 9,
- (g) Amounts received by an organization entitled to exemption for the following:
 - (1) Donation, gift,
 - (2) Other contributions directly related with an organization entitled to exemption as referred to in Clause (d) of Section 2 without having consideration or without hoping for such contribution, or
 - (3) Amount earned by *Nepal Rastra Bank* in consonance with its objectives, or

- (h) Amount received for pension by a Nepalese citizen having retired from the military or police service of a foreign country from the governmental fund of that country.

11. **Professional exemptions and facilities:** (1) No tax shall be levied on an income earned by carrying on an agricultural business by getting one registered as a firm, company, partnership and corporate body and on agricultural income other than that earned from an agricultural business in the land as referred to in clauses (d) and (e) of Section 12 of the Act relating to Land, 2021(1964).

(2) No tax shall be levied on the income of a cooperative organization and saving and credit cooperative organization or institution, which has been registered and operated under the Cooperatives Act, 2048 (1991) and which carries on agricultural and forest based industries such as professional forest related enterprises inclusive of sericulture and silk production, horticulture and fruits processing, animal husbandry, dairy industry, poultry farming, fishery, tea gardening and processing, coffee farming and processing, herbiculture and herb processing, vegetable seeds farming, bee keeping, honey production, rubber farming, floriculture and production, leasehold forestry, agro-forestry etc., cold storage established for the storage of fruits, agro-seeds, pesticides, fertilizers and agricultural inputs (except those operated with mechanical power). No tax shall also be levied on the dividends distributed by such organization or institution.

(3) Tax shall be levied as follows on the income earned by any person from a special industry in an income year:

- (a) If the person give direct employment to Six Hundred or more Nepalese citizens through out the year, Ninety percent of the rate of tax leviable on the income of that year,

- (b) If a special industry has been operated in remote, undeveloped and underdeveloped areas, respectively Seventy, Seventy-Five and Eighty percent of the tax leviable on income of the years for ten income years including the income year in which such an industry started operating.

(4) In computing the income by the person entitled to exemption pursuant to Sub-sections (1), (2) or (3), such person has to compute the income as mentioned in the Sub-sections as if that only income were derived by other separate persons.

(5) A person who is in a position to have more than one exemption in respect of the same income pursuant to clauses (a) and (b) of Sub-section (3) shall enjoy only one exemption chosen by him.

(6) Notwithstanding anything contained in Sub-section (3), in cases where any other person has used the properties used to operate the industry referred to in clause (b) for the operation of the industry of the same type previously, the period during which they have been so used shall also be reckoned, while reckoning the time-limit referred to in that Sub-section.

Explanation: For purposes of this Section:-

- (a) "Agricultural business" means a business of producing crops from a public or private land or acquiring rent or crops from a tenant using the land.
- (b) "Remote", "undeveloped" and "underdeveloped area" means the areas as referred to in Schedule-3 of the Industrial Enterprises Act, 2049(1992).
- (c) "Special industry" means a production-oriented industry as classified in Section 3 of the industrial Enterprises Act,

2049 (1992) except an industry producing cigarette, *Bidi*, *Sigar*, tobacco, *Khaini*, other productions of the same nature involving tobacco as the principal raw materials, liquors, beer and products of similar kind.

12. **Donation, gift given to organizations entitled to tax exemption:** (1) In computing his taxable income in any income year, any person may make claim to subtract the amount of donation, gift given to an organization entitled to tax exemption approved by the Department for the purpose of this section.

(2) Notwithstanding anything contained in Sub-section (1), the expenditure deductible in any income year under that Sub-section shall not exceed One Hundred Thousand Rupees or five percent of the taxable income assessed without making deduction for the gift of that person in that year as referred to in Sub-section (1) and without including in the computation the limits referred to in Sub-section (2) of Section 17 and Sub-section (2) of Section 18, whichever is lesser.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), in any special situation, Government of Nepal may, by a notification in the Nepal Gazette, so specify that any amount spent or donated by any person for any specified work may be deducted fully or partly for expenditure, in determining the income of that person.

Chapter-5

Deductible Amounts

13. **General deduction:** Any person may, for the purpose of computing his income from any business or investment in any income year, deduct the following expenditures related with the transactions, subject to this Act:-
- (a) Made in that income year,

- (b) Made by that year, and
- (c) Made in earning income from the business or investment.

14. **Interest deduction:** (1) Any person may, for the purpose of computing his income from any business or investment in any income year, deduct all interests chargeable in that year under the following debt liabilities of that person:-

- (a) If the debt liability has created for having borrowed any amount, and that amount has been used in that year or used to buy any property used in that year, or
- (b) That debt liability has been created in any other circumstance.

Provided that, such a debt liability has to be created for the act in which income is earned from a business or investment.

(2) Notwithstanding anything contained in Sub-section (1), the total interest amount which a resident entity controlled by an organization entitled to tax exemption can deduct under that Sub-section in any income year shall not exceed the total of the following amounts:

- (a) All interest amounts obtained in that year to be included in the computation of the taxable income of that entity, and
- (b) Fifty percent amount of the taxable income of that entity in that year, which has been computed excluding any interest derived by that entity or without deducting any interest paid by that entity.

(3) Any interest not allowed to be deducted or not deducted pursuant to Sub-section (2) may be carried forward or credited in the forthcoming income year.

Explanation: For purposes of this section, " a resident entity controlled by an organization entitled to tax exemption" means an entity which, being a resident entity in that year, is subject to a vested ownership or control of twenty five percent or more of the following persons or organizations in any time of that year:-

- (a) An organization entitled to tax exemption and a person associated with that organization,
- (b) A person entitled to tax exemption pursuant to section 11 in that year or a person associated with that person,
- (c) A non-resident person or a person associated with the non-resident person, or
- (d) Any combination of the persons referred to in clauses (a), (b) and (c).

15. **Allowances for cost of stock-in-trade:** (1) For the purpose of computing the income earned by any person from any business in any year, any other allowances shall be allowed except the allowances for the cost computed pursuant to Sub-section (2) in respect of the disposal of the stocks-in-trade of the business of that person in that year.

(2) The allowance for the cost referred to in Sub-section (1) shall be computed as follows by deducting the amount referred to in clause (b) from the amount referred to in clause (a):-

- (a) The amount to be set by adding the cost of the stock-in-trade derived from any business in any

income year to the initial value of the stock-in-trade of that business in that year,

- (b) The amount of final value of the stock-in-trade of any business in an income year referred to in clause (a).

(3) The initial value of the stock-in-trade of any business in any income year shall be the final value of the stock-in-trade of that business at the end of last income year.

(4) Whichever is lesser out of the following amounts shall be considered the final value of the stock-in-trade of that business of that income year:-

- (a) The cost of the stock-in-trade of that business at the end of that income year, or
- (b) The market value of the stock-in-trade of that business at the end of that income year.

(5) In computing the cost of the stock-in-trade of a business, a person has to do as follows subject to Section 45 and Sub-section (6):-

- (a) In computing the income of a business, in the case of a person maintaining the accounts on the cash basis, by using the method of cost price or consumption cost, and
- (b) In computing the income of a business, in the case of a person maintaining the accounts on the accrual basis, by using the method of consumption cost.

(6) If the stock-in-trade of business of any person cannot be determined, that person may choose to the first in first out method or average cost method to compute the cost of stock-in-trade.

Provided that, once such a method is selected, that method cannot be altered without written permission of the Department.

(7) In computing the cost of stock-in-trade pursuant to Sub-section (5), it has to be computed by the following method:-

- (a) In computing as per the consumption cost method, to so compute the cost of the stock-in-trade under the widely recognized accounting principle that it is equal to the sum total of direct material cost, direct labor cost and overhead cost of factory.
- (b) In computing as per the cost price method, to so compute the cost of the stock-in-trade under the widely recognized accounting principle that it is equal to the total sum of direct material cost, direct labor cost and alterable overhead cost of factory.

(8) In computing the cost of stock-in-trade pursuant to Sub-section (6), it has to be computed by the following method:-

- (a) In computing as per the average cost method, to compute on the basis of all weightage average costs of the stock-in-trade of the same type in the business under the widely recognized accounting principle.
- (b) In computing as per the first in first out method, to compute on the basis that the stock-in-trade received first is also disposed first, under the widely recognized accounting principle.

Explanation: For purposes of this Section,-

- (a) "Direct labour cost" means the labor cost directly related with the production of the stock- in-trade.

- (b) "Direct material cost" means the cost of materials which are or will be an integral part of the stock-in-trade.
- (c) "Overhead cost of factory" means the total cost incurred in producing stock-in-trade except the direct labor cost and direct material cost.
- (d) "Alterable overhead cost of factory" means the overhead cost of factory that alters directly with a change in the produced quantity of stocks in-trade.

16. **Repair and maintenance expenses:** (1) In computing the income of any business or investment in any income year, a person may deduct all expenses incurred in the repair and maintenance of the depreciable property owned and used in that year to earn income from that business or investment.

(2) Notwithstanding anything contained in Sub-section (1), in deducting the expenses allowable under that Sub-section, it shall not exceed five percent of the depreciation base amount of the group of property remaining at the end of that income year, and in cases where expenses are incurred in excess thereof, such deduction can be made only as per the order of such expenses incurred.

(3) Any excess expense or part thereof which is not deductible pursuant to Sub-section (1) because of the limit referred to in Sub-section (2) may be added to the depreciation base amount of the group of the concerned property pursuant to Sub-section (5) of Section 2 of Schedule 2.

17. **Pollution control expenses:** (1) For purposes of computing the income earned by any person from any business in any income year, such person

may deduct the pollution control expenses to the extent incurred in the operation of that business in that year.

(2) Notwithstanding anything contained in Sub-section (1), in computing the limit of expenses deductible under that Sub-section in any income year, it shall not exceed Fifty percent of the taxable income computed without deducting pollution control expenses of all businesses operated by that person and without including in computation the limits referred to in Sub-section (2) of Section 12 and Sub-section (2) of Section 18.

(3) Any excess expense or part thereof which is not deductible in excess of the limit referred to in Sub-section (2) may be capitalized and depreciated pursuant to Schedule-2.

Explanation: For purposes of this Section, "pollution control expenses" means the expenses incurred by any person related with any process for the purpose of controlling pollution or protecting or conserving the environment in other manner.

18. **Research and development expenses:** (1) For purposes of computing the income earned by any person from any business in any income year, such person may deduct the research and development expenses to the extent incurred in the operation of that business in that year.

(2) Notwithstanding anything contained in Sub-section (1), in computing the limit of expenses deductible under that Sub-section in any income year, it shall not exceed Fifty percent of the taxable income of that person computed without deducting research and development expenses of all businesses operated by that person and without including in computation the limits referred to in Sub-section (2) of Section 12 and Sub-section (2) of Section 17.

(3) Any excess expense or part thereof which is not deductible in excess of the limit referred to in Sub-section (2) may be capitalized and depreciated pursuant to Schedule-2.

Explanation: For purposes of this Section, "research and development expenses" means the expenses incurred by any person for the purpose of controlling developing his business and improving commercial production and process.

Provided that, such expenses shall not include the cost at the time of acquiring any property referred to in Sub-section (3) of Section 1 of Schedule-2.

19. **Depreciation deduction expenses:** (1) For purposes of computing the income earned by any person from any business or investment in any income year, such person may deduct depreciation pursuant to Schedule-2 in lieu of depreciation of the depreciable properties owned and used by that person in that year in making income from that business or investment.

(2) Notwithstanding anything contained in Sub-section (1), the following provisions shall be applicable in respect of the deduction for depreciation of the devices, equipment and other machineries installed by any entity in the projects which involve construction and operation of public infrastructures and are transferred to Government of Nepal and in the projects on construction of powerhouses and generation and transmission of electricity:-

- (a) If the devices, equipment and other machineries installed previously become obsolete because of being old or worn and torn and new devices, equipment and other machineries have to be installed in lieu thereof, the value which remains by subtracting depreciation deduction until the income

year from the cost of the property, which has become obsolete property because of being old or worn and torn, installed previously in that income year in which they were so installed may be deducted as expenses.

- (b) In respect of properties other than the old properties replaced pursuant to clause (a), if any value remains by subtracting depreciation deduction until the income year when transfer takes place from the cost of those properties at the time when the entity transfers such a project to Government of Nepal, the entity may deduct such a remaining value as expenses.

20. **Loss from business or investment:** (1) For purposes of computing the income earned by any person from any business or investment in any income year, such person may deduct the loss as mentioned below:-

- (a) Loss suffered by that person from any other business and not deducted in that year, and
- (b) Loss suffered by that person from any business and not deducted in the last four income years.

Provided that, in the case of the projects which involve construction and operation of public infrastructures and are transferred to Government of Nepal and the projects on construction of powerhouses and generation and transmission of electricity, loss not deducted in the last seven income years.

(2) For purposes of computing the income earned by any person from any investment in any income year, such person may deduct the

loss suffered by that person from any other investment and not deducted in that year.

(3) Subject to Sub-sections (1) and (2) and for purposes of these Sub-sections, any loss suffered by any person in respect of the foreign source and not deducted may be deducted only in computing the income earned by that person from his foreign source, and the loss suffered in earning any non-taxable income and not deducted may be deducted only in computing non-taxable income of that person.

(4) Subject to Sub-sections (1) and (2), if any person suffers a loss in an income year when a long-term contract obtained by any person by making competition of the business at the international level was completed or when a disposal was made in any other manner or a loss which was not deducted and the liability whereof is allowed to be carried forward in the coming year pursuant to clause (b) of Sub-section (1) is related with a long-term contract, the Department may, by a notice in writing, give permission to deal with that loss as follows:-

(a) The loss may be carried backward in last income year or years, and

(b) The loss may be treated as not deducted only to the extent of the excess where, in computing the income of the business related with that long-term contract, the amounts to be included in the incomings exceed the amounts to be included in the outgoings.

(5) The following loss suffered by any person in any income year has to be allocated as if it were related with a long-term contract or contracts of that person:-

- (a) The loss resulted from a long-term contract or contracts related with the business, and
- (b) The loss on excess of the expenses to be deductible in computing the income earned from that business in the year related with the contract for each such contract.

(6) If, in computing the income earned by any person in any income from more than one business or investment, that person is allowed to deduct the loss not deducted from more than one business or investment, that person may on his own determine the priority of the business or investment from which the portion of loss is deducted.

(7) If, in computing the loss suffered by any person from any business or investment in any income year, this section is not used and the deductible amounts exceed the amounts includable in computing the income from the business or investment of that person, such excess amounts have to be computed.

Explanation: For purposes of this Section, "the loss not deducted" means the loss to the extent not deducted in computing the income of any person pursuant to Sub-sections (1), (2) or (4).

21. **Expenses that may not be deducted:** (1) Notwithstanding anything contained elsewhere in this Act, for the purpose of computing the income earned by any person from any business, employment or investment in any income year, the following expenses or amounts shall not be deducted:-

- (a) Expenses of domestic or personal nature,
- (b) Tax payable under this Act and a fine or similar other fee paid to the government of any country or

any local body thereof for a violation of any law or regulation, byelaw framed thereunder,

- (c) Expenses to the extent of those spent by any person to obtain the amounts enjoying exemption pursuant to section 10 or expenses made to obtain the amounts from which tax has been deducted finally,
- (d) Expenses for the payments referred to in Sub-section (2),
- (e) Distribution of profits by any entity, or
- (f) Similar other amounts despite that they are not so mentioned in clauses (a), (b), (c), (d) and (e) as not to be deductible, except those allowable under this Chapter or Chapters-6, 7, 10, 12 or 13.

(2) If a person, whose annual turnover is more than two million rupees in any income year, makes a cash payment of more than Fifty Thousand Rupees at a time in that income year except in the following circumstances, he shall not be allowed to make that deduction:-

- (a) Payment made to Government of Nepal, constitutional body, corporation or bank or financial institution owned by Government of Nepal,
- (b) Payment made to a farmers or producer producing a primary agro-product and payment to a farmer who has processed such product on his own, notwithstanding that primary processing of such product has already been carried out,

- (c) Payment for retirement contribution or retirement payment,
- (d) Payment made in a place where banking services are not available,
- (e) Payment made on the day when banking services are closed or payment involving a mandatory provision of payment in cash, or
- (f) Amount deposited in a bank account of the recipient of payment.

(3) Subject to the provisions of Sections 14, 15, 16, 17, 18, 19, 20 and 71, no amount shall be deductible for capital expenses or foreign income tax.

Explanation: For purposes of this section,-

- (a) "Expenses of domestic or personal nature" means the following expenses:-
 - (1) Expenses made for any natural person, and inclusive of the following expenses made for the interest of a loan to the extent that the loan has been used for personal purpose:
 - (a) Expenses made for a natural person for the provision of lodging, fooding, tiffin, and other activities of entertainment or amusement,
 - (b) Expenses for the movement by a natural person from his house to the place where the business or investment is operated except for the movement in the course of business or investment,

- (c) Expenses made to purchase clothes for a natural person except those clothes which are not proper to put on at other times than working times, and
- (d) Expenses made for education or training.

Provided that, the expenses made only for the education directly related with the business or investment, where no degree or diploma is achieved.

- (2) Except in the following conditions and to that extent, expenses incurred in respect of a payment made by any person to any natural person and expenses made for a third person:-

- (a) If that payment has been included in computing the income of a natural person,
- (b) If the natural person has made, as a consideration, a return payment to that person in a sum equal to the market value of the payment received by him,
- (c) If payment is made for such prescribed petty amounts of which accounts are difficult or administratively impracticable to be maintained.

- (b) " Place where banking service is available" means any place within ten kilometers area whereof banking service is available.
- (c) " Cash payment" means a payment except a payment by a letter of credit, cheque, draft, money order, telegraphic transfer, money transfer (*hundi*) through a bank or financial institution and a transfer

made by any other means between banks or financial institutions.

(d) "Capital expenses" means the following expenses:-

- (1) Expenses incurred in feasibility study, exploration and development of natural resources,
- (2) Expenses incurred in acquiring any property with useful life for more than twelve months, or
- (3) Expenses in disposing a liability.

Chapter-6

Tax Accounting and Time

22. **Method of tax accounting:** (1) The matter when any person gets any income or makes any expense shall be determined in accordance with the widely recognized accounting principle, subject to this Act.

(2) A natural person shall, while computing the income to be earned from his employment and investment, maintain accounts on the cash basis, for purposes of tax.

(3) A company shall maintain accounts on the accrual basis, for purposes of tax.

(4) Except in cases where the Department has otherwise specified by issuing a notice in writing, any person may, for purposes of income tax, maintain accounts on the cash or accrual basis, subject to Sub-sections (1), (2) and (3).

(5) Any person may make an application to change the method of accounting for tax purposes, subject to Sub-sections (2) and (3). If the Department thinks that it is necessary to change the method of

accounting to clearly show the income of such person, the Department may give permission to change the method of accounting.

(6) If the method of accounting of any person for purposes of tax is changed pursuant to Sub-section (5), in computing the income of that person in the income year when such change is made, adjustment has to be so made that no amounts out of those included, deducted or to be included or deducted are omitted or duplicated.

23. **Cash basis accounting:** Any person shall, in maintaining accounts on cash basis of his income earned from employment, business or investment for tax purposes, subject to this Act, do as follows:-

(a) To treat as income only that which is received at the time when payment is received by him or made available to him and include it in his income.

(b) To deduct for expense only after he pays out.

24. **Accrual basis accounting:** (1) Any person shall, in maintaining accounts on the accrual basis of his income earned from business or investment subject to this Act, for purposes of tax, any income shall be included in computation of his income, considering that any payment has been received immediately when the right to receive such payment is created.

(2) For purposes of making deduction from computation of income earned by any person as mentioned in Sub-section (1), the following expenses shall be deemed to have been borne:-

(a) If any payment involving such expenses has been made in lieu of a payment made by any other person, the expenses shall be deemed to have been borne in the following conditions:-

- (1) The person has the liability to make that person,
- (2) The value of such liability can be ascertained in a proper and real manner, and
- (3) Payment has been received from another person.

- (b) In all other circumstances except those mentioned in clause (a), an expense shall be deemed to have been borne at the time when payment is made.

(3) If the tax is reduced, the Department may, in the following circumstances, and by a written notice to a person who maintains accounts on the accrual basis to compute the income earned from any investment or business, adjust the time of making payment in order to stop carrying forward or reducing income for purposes of tax:-

- (a) If the following circumstance occurs,-
- (b) If any expense could be deducted in computing the income for any income year but that person had to maintain accounts on the cash basis for tax purposes, that expense could have been deducted in any forthcoming income year,
- (c) Any person received any payment that has to be included only in computing the income of the coming income year but if he had to maintain accounts on cash basis for tax purposes, the amount of payment would have been included in the income year of receipt of that payment, and

- (d) If the receiving and making of payment by any person in any income year reduced the total amount of tax payable.

(4) In computing, on the accrual basis, the income earned by any person from a business or investment, the differences that could occur in the following circumstances have to be adjusted properly in receiving or making payment:-

- (a) If that person includes any payment in quantity which he could receive or deducts any payment in quantity which he has to bear, and
- (b) If there occurs difference in the amount received or borne by receiving or making payment by that person in different quantity, because of, *inter alia*, difference in valuation of the currency after the performance of the act referred to in clause (a).

25. **Reverse of the amounts including bad debts:** (1) In maintaining accounts of the amounts received and expenses borne in the computation of the income earned by any person from any employment, business or investment, the person has to make proper adjustments at the time of reimbursement, recovery, relinquishment of claim, writing off, or remission in any of the following circumstances:-

- (a) Where the person subsequently gets the amount reimbursed, or recovers the expense, as the case may be,
- (b) Where the accounts of the amount received have been maintained on the accrual basis and the person subsequently relinquishes his right to receive that

amount or where that amount is a debt claim of that person and he writes off the debt as a bad debt, or

- (c) Where the accounts of the expense incurred have been maintained on the accrual basis and the person subsequently relinquishes his liability to incur such expense or where that expense is a debt claim, the person whom the debt is to be repaid remits the debt.

(2) Any person may relinquish the right to receive any amount or to write off the debt liability of that person as a bad debt only in the following circumstances:-

- (a) In the case of a debt claim of any financial institution or bank, the debt claim is converted into a bad debt as per the specified criteria, and
- (b) If, after having followed all proper measures to receive payment in circumstances other than those referred to in clause (a), that person is reasonably satisfied that the right or debt claim cannot be realized or recovered.

26. **Method of deriving the average of the amounts includible and deductible under a long-term contract:** (1) For purposes of computing the income earned by any person from any employment, business or investment in any income year, the estimated amounts includible and deductible according to the sum of sequential increase as per the percentage of completion of the contract under the long-term contract of that person, shall be deemed to have been received or spent.

Explanation: For purposes of this section, "long-term contract" means a contract in the following circumstance":-

- (a) A contract with a validity period of more than twelve months, and
- (b) A contract with a deferred consideration except a contract which is concluded for production, installation or construction or for the discharge for relevant services for each of such works or which does not contain such elements.

(2) A contract with a deferred consideration, a contract to be included according to the sum of sequential increase, a contract to be deducted according to the sum of sequential increase, an excluded contract and a contract of completion percentage shall be as prescribed.

Chapter-7

Quantification, Allocation and Characterization of Amounts

27. **Quantification of amounts**: (1) Any payment has to be quantified equal to the following amount:

- (a) In the case of a payment made by way of transferring money or property by any person to another person, amount equal to the market value of the transferred money or property,
- (b) The amount to be determined as prescribed for the payment made for the provision of the following matters or the amounts to be determined pursuant to clause (e) where there is no provision for determining the amount:-

- (1) A motor vehicle used or made available for use for personal purposes of the recipient of payment in full or in part, or
 - (2) A building made available for the recipient of payment.
- (c) The amount which remains by deducting the contributions of the recipient of payment from the expenditure made by the person making payment for the provision of the following things:-
- (1) The services of a caretaker of the house, cook, driver, gardener or other domestic assistant,
 - (2) Any food, drinking or entertainment, or
 - (3) Services like water tap, electricity, telephone installed in the residence of the recipient,
- (d) If the interest paid by any person who has to receive payment in any income year for a loan is less than the amount of interest to be paid as per the prevailing interest rate, the amount to the extent of such a less,
- (e) In respect of a payment except the payment referred to in clauses (a), (b), (c) and (d), if a third person receives payment instead of the recipient of payment, the amount equal to the value of benefit derivable generally.

(2) The time when a payment is earned, received, made, borne or otherwise worked out for tax purposes in respect of clauses (a) and (e) of

Sub-section (1) shall be the time when the quantification of amounts has been made.

28. **Conversion in money:** (1) If the income of a person and the amounts to be included and deducted in assessing the income has been quoted in other currency except Nepalese rupees, such amounts have to be converted into Nepalese rupees.

(2) If the amounts to be included or deducted in computing the income of any person in any income year have been quoted in other currency except Nepalese rupees, such currency has to be converted into Nepalese rupees as per the exchange rate prevailing at the time when the amount was received, expended, paid, or otherwise worked out for tax purposes.

(3) Notwithstanding anything contained in Sub-section (2), in cases where the department has, by issuing a notice in writing, given permission for purposes of that Sub-section, any person may apply the average exchange rate prescribed by the Department.

29. **Indirect payments:** In cases where any person intends to render benefits to other person through payments made by the payer or a person associated with him as follows, the Department may, by issuing a notice in writing, treat such other person or the specified person as the recipient of payment:-

- (a) Where benefit is derived from any payment indirectly, or
- (b) Where the recipient of any payment is specified.

30. **Investment under joint ownership:** Any person has to allocate the amounts to be included or deducted in computing the income for purposes of computing the income earned from the investment under joint ownership with other persons on the basis of proportion of the respective interests of the joint owners in that investment.

31. **Characterization of payment for compensation:** In cases where any person or his associated person has received any compensation amount for the following matters including payments for insurance, at the time of receipt of the amount for the compensation, such amount has to be included, as the case may be, in computing the income earned from employment, business or investment:-

- (a) Compensation for any income earned or likely to be earned by that person from any business or investment or for any amount to be included in the computation of that income, or
- (b) Compensation for any loss suffered or likely to be suffered by that person from any business or investment or for any expenses to be deducted in the computation of that income.

32. **Characterization of payment under annuities, installment sale and financial lease:** (1) Any payment made by the person who acquires a property under annuities or installment sale or payment made to any person for the use of any property under a financial lease has to be treated as the interest and return of capital under the debt claim under this Section.

(2) All payments referred to in Sub-section (1) have to be calculated in gross and the total sum thereof has to be divided into two portions as follows:-

- (a) Capital portion comprising all payments for annuities as per necessity or equivalent to the market value of any property at the time of selling that property by installment or leasing it, and
- (b) Interest portion to be set by subtracting the capital portion from the total sum of all payments referred to in Sub-section (1).

- (1) In determining installments at the very time when annuities, installment sale or financial lease is carried out pursuant to Sub-section (2), the seller has to provide a total payment schedule clearly setting out the capital and interest portions. One who cannot provide such schedule has to treat the interest and principal portion, annuities, installment sale or financial lease as if they were mixed loans with interest to be kept on adding in every six months and allocate them in payments as referred to in Sub-section (1).
- (2) The borrower has to pay the principal in part and the interest in part by working out the portion of interest in the due and payable principal at the time of each payment in a manner that the rate of interest is the same during the period of loan of payment to be made pursuant to Sub-section (1) as if it were a mixed loan.
- (3) The following terms have to be fulfilled in making a lease under a financial lease pursuant to this section:-
 - (a) Where the lease agreement contains an option that ownership is transferred after expire of the validity period of the lease or the lessee can purchase that property at a certain price or a foreseen price after expire of the validity period of the lease,

- (b) Where the period of lease exceeds Seventy-Five percent of the useful life of that property,
- (c) Where the estimated market value of that property after expire of the period of the lease is less than twenty percent of the market value of that property prevailing at the beginning of the lease,
- (d) In the case of a lease that commences prior to the ultimate twenty-five percent life of the useful life of the property, where the current value of the minimum lease payment is equal to ninety percent of the market value of that property at the time of commencement of the period of the lease or more than that, or
- (e) Where a property has been prepared in a special manner for the lessee and, after expire of the period of lease, that property is not of practical use for any other person except the lessee.

(6) Each payment referred to in Sub-section (1) shall be divided into two portions pursuant to Sub-section (3), and the interest portion under the debt claim has to be treated as paid or to be paid interest and the capital portion as repayment of capital.

(7) A lessee under a financial lease shall be treated as the person having ownership of the property leased, and the lesser shall be treated as having debt claim over the lessee.

(8) The current value of the lease payment has to be computed by applying discount rate equal to the normal interest rate.

Explanation: "Period of lease" means and includes an additional period for which the lessee is entitled to have the lease renewed.

33. **Price transferring and other arrangements between associated**

persons: (1) In cases where any provision is made between the associated persons and the provision is operated as per arms length, the Department may, by issuing a notice in writing, distribute, appropriate or allocate the amounts to be included or deducted in computing the income between those persons in such a manner as to reflect the taxable income or the payable tax that could be set for them.

(2) In carrying anything mentioned in Sub-section (1), the Department may do as follows:-

(a) To re-characterize any income, loss, amount or source and type of payment, or

(b) Where various expenses including main office expenses which any person had to incur to operate any business have yielded benefits to the associated person or persons, to allocate such expenses between the associated persons on the comparative basis of the turnover of the business.

34. **Division of income:** (1) If any person attempts to divide his income with another person and it appears that it will anyhow lessen the payable tax, the Department may, in order not to allow such less in liability, have the

amounts to be included or deducted in computing the income of each person adjusted by giving a notice in writing.

(2) The transfer of the following amounts by one or more interposed entities directly or indirectly between persons and associated persons as mentioned in Sub-section (1) and circumstances where attempts are made to divide income to lessen the tax required to be paid by the persons or associated persons by virtue of that transfer shall also be included:-

- (a) The amounts to be received and expenses to be incurred, or
- (b) The amounts to be received or used from any property by the transferee of that property or expenses incurred or payment made by that person for the acquisition of ownership of that property.

(3) In determining as to whether or not any person has attempted to divide any income pursuant to Sub-section (2), the Department shall take the market value of any payment made for the transfer as the basis.

35. **General rule against tax avoidance:** For purposes of ascertaining the tax liability pursuant to this Act, the Department may carry out the followings:

- (a) To re-characterize any arrangement or any part of such arrangement made or attempted to be made as a part of a tax avoidance scheme,
- (b) To disregard any arrangement or any part of such arrangement that does not show any substantial effect, or
- (c) To re-characterize any arrangement or any part of such arrangement that does not show any substantial element.

Explanation: For purposes of this Section, 'tax avoidance scheme' means any arrangement with a main objective to have avoidance of tax liability or to lessen the tax liability.

Chapter-8

Assessment of Net Profit from Property and Liability

36. **Net profits from property and liability:** (1) The net profits derived from the disposal of business property or liability of a business of any person for any income year shall be computed by deducting the following losses from the sum of all profits derived from the disposal of business property or liability of that business in that income year:-

- (a) The sum of all losses suffered in that year from the disposal of business property or liability,
- (b) The loss that could not be deducted elsewhere out of the net loss suffered from any other business of that person in that year, and
- (c) The loss that could not be deducted out of the net loss suffered from that business in any income year or from any other business of that person in the past.

(2) The net profits derived from the disposal of taxable non-business property of investment of any person for any income year shall be computed by deducting the following losses from the sum of all

profits derived from the disposal of taxable non-business of that investment in that income year:-

- (a) The sum of all losses suffered in that year from the disposal of taxable non-business property of that investment,
- (b) The loss that could not be deducted elsewhere out of the net loss suffered from any other business or investment of that person in that year, and
- (c) The loss that could not be deducted out of the net loss suffered from that investment, any business or any other investment of that person in any past income year.

(3) Any person can make a claim for deduction pursuant to sub-section (1) or (2) in respect of a loss suffered from the disposal of the property or liability of foreign source only to the extent of the benefit derived from the disposal of any property or liability of foreign source.

(4) If any person is entitled, under Sub-section (1) or (2) to deduct the net loss suffered from a business or investment in more than one computation pursuant to Sub-section (1) or (2), he may select computations for the purpose of deducting that loss or portion thereof.

Explanation: For purposes of this Act,-

- (1) "Net loss" means,-
 - (a) In respect of any business, the amount to the extent that the loss suffered from the disposal of the business property or liability of that business in any income year exceeds the profit derived from the disposal of business property or liability of that business in that year, and

(b) In respect of any investment, the amount to the extent that the loss suffered from the disposal of the taxable non-business property of that investment in any income year exceeds the profit derived from the disposal of taxable non-business property of that investment in that year.

(2) "Net loss that could not be deducted" means of any business or investment,-

(a) The loss that could not be deducted pursuant to clause (b) or (c) of Sub-section (1) or clause (b) or (c) of Sub-section (2) out of the net loss suffered in that year, and

(b) Any loss of that business or investment that could not be deducted referred to in Sub-section (7) of Section 20, which could not be remitted by virtue of the time limit referred to in Sub-section (1) or (2) of Section 20.

37. **Profit and loss made from property and liability:** (1) The profit derived by any person from the disposal of any property or liability has to be computed, considering it to be the extent that the sum of the income derived from that property or liability exceeds the sum of the outgoings for that property or liability at the time of disposal.

(2) The loss suffered by any person from the disposal of any property or liability has to be computed, considering it to be the extent that the sum of the outgoings for that property or liability exceeds the sum of the income earned from that property or liability at the time of disposal.

38. **Expenses and net expenses for property and liability:** (1) The following expenses shall be included in the expenses for the property or liability of any person, subject to this Act:-

(a) In respect of any property, the expenses made by that person in acquiring that property, inclusive of the following amounts:-

(1) The related expenses made in the construction and production of that property, and

(2) Any amount required to be included in the assessment of the income of that person as a result of acquisition.

(b) The expenses made by that person in obtaining the ownership of that property or liability, inclusive of the expenses incurred in the alteration, improvement and repair and maintenance of the property or liability, and the expenses in the repair and maintenance of the property,

(c) The expenses made by him in the disposal of the property or liability, and

(d) Casual expenses made by him in acquiring the property or bearing liability and disposing such property or liability.

Provided that, the expenses referred to in clauses (a), (b), (c), (d), and (e) of Sub-section (1) of Section 21 and the expenses that are allowed to be deducted in the assessment of income are not required to be included in such expenses.

(2) The net expenses for any property or liability at any particular time shall be so computed as to consider the amounts to the extent of

excess of the sum of all expenses for that property or liability than the sum of all incomes for that property or liability at that time.

(3) The amount of expenses to be deducted in computing the income as referred to in Chapter-6 and 7 shall be deemed as if they were made in respect of the expenses for any property or liability, and shall be applicable in respect of the expenses referred to in Sub-section (1). Provided that, Section 26 shall not apply in respect of the above-mentioned provision.

39. **Income and net income for property and liability:** (1) The following amounts shall be included in the incomes for the property or liability of any person, subject to this Act:-

- (a) The amounts received, in respect of the liability, by that person in bearing the liability,
- (b) The amounts to be received by that person in acquiring the property or in respect of bearing the liability, including the amounts acquired by altering or lessening the value of the property or increasing the liability, and
- (c) The amounts received or to be received by that person in respect of the disposal of that property or liability.

Provided that, the amount exempted from tax, taxable amount subject to tax deduction finally or the amounts to be included in the income in assessing the income of that person shall not be included in such income.

(2) The net incomes for any property or liability at any time shall include the amounts to the extent of excess of the incomes for that

property or liability than the sum of all expenses for that property or liability at that time.

(3) The amount to be included in the income in computing the income as referred to in Chapter-6 and 7 shall be deemed as if they were made in respect of the incomes for any property or liability, and shall be dealt with pursuant to Sub-section (1).

Provided that, Section 26 shall not apply in respect of the above-mentioned provision.

40. **Disposal of property or liability:** (1) If the ownership of any person over any property ceases, he shall be deemed to have disposed that property. The disposal of property has to include acts such as distribution of the property by the owner of the property, amalgamation of the property in other property or liability, sale of the property in installments or lease out to any other person under a financial lease, cancellation, destroy, loss, expiration or surrender of the same.

(2) If the burden of liability of any person ceases, he shall be deemed to have disposed that liability. The disposal of liability has to include acts such as settlement, cancellation, release and completion of the liability or amalgamation of liability in other liability or property.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), any person shall be deemed to have disposed any property or liability in the following circumstances:-

- (a) In respect of a natural person, immediately before the death of that person,
- (b) In respect of any property, if the sum of the incomings for that property exceeds the sum of the outgoings for that property,

- (c) In respect of any property subject to debt claim,-
 - (1) If it has become a bad debt as per the standards as prescribed in respect of a debt claim of a bank or financial institution, and
 - (2) If, in any other circumstance, that person has reasonably believed the debt claim as non-recoverable.

Provided that, the person has to have already pursued all proper measures to recover that debt claim.

- (d) If any person has started using a business property, non-business taxable property, depreciable property or stock-in-trade in a manner to alter the type thereof, immediately before the use of the altered form of that property,
- (e) In the circumstances referred to in section 57 in respect of any entity, and
- (f) Immediately before that person has become a non-resident person, except the land or building situated in Nepal.

(4) If any person disposes any property by leasing it under a financial lease pursuant to Sub-section (1), the lessee of that property shall be deemed to have acquired the ownership of that property at the time of disposal.

(5) The following provisions shall apply for purposes of computing the profits derived by any person from the disposal of the property or liability:-

- (a) The amounts of net expenses for any property under ownership of any person at the time of commencement of this Act shall be deemed to be equal to the market value of the property prevailing at that time,
- (b) The amounts of net incomes for liability of any person at the time of commencement of this Act shall be deemed to be equal to the amount as per the market value of the liability prevailing at that time.

41. **Disposal along with retention of property or liability**: If any person disposes any property or liability in any manner referred to in clauses (c), (d), (e) and (f) of Sub-section (3) of Section 40, the following provisions shall apply:-

(a) In respect of property,-

- (1) That person shall be deemed to have received the amount equal to the market value of that property at the time of disposal for the disposal, and
- (2) The net outgoings made for that property until that time shall be deemed to be equal to the amount receivable.

(b) In respect of liability,-

- (1) That person shall be deemed to have spent the amount equal to the market value of that liability at the time of disposal for the disposal, and
- (2) The incomings derived for that liability pursuant to clause (1) until that time shall be deemed to be equal to the amount of expenses.

42. **Disposal through installment sale or financial lease:** If any person disposes any property by way of installment sale or lease under a financial lease to any other person, the following provisions shall apply:-

- (a) The person who has disposed the property shall be deemed to have received the amount equal to the market value of that property at the time of disposal for the disposal, and
- (b) The person who has acquired the property through disposal shall be deemed to have incurred cost in a sum equal to clause (a).

Provided that, this provision shall not be applicable where the provision of Section 45 applies.

43. **Transfer of property to husband, wife or former husband, wife:** If any natural person who is a divorcee or lives apart upon having partition share disposes a property by transferring it to her husband, his wife or former husband, wife, and that husband, wife or former husband, wife makes a choice in writing to have this Section enforced, the following provisions shall apply:

- (a) That person shall be deemed to have obtained, for disposal, the amount equal to the net expenses incurred immediately before the disposal, and
- (b) The person who has acquired the property through transfer shall be deemed to have incurred cost in a sum equal to clause (a).

44. **Transfer of property after death:** If the ownership of any property is disposed through transfer to any other person because of death of any natural person, the following provisions shall apply:

- (a) That person shall be deemed to have obtained, for disposal, the amount equal to the market value of that property prevailing at the time of disposal, and
- (b) The person who has acquired the property through transfer shall be deemed to have incurred cost in a sum equal to clause (a).

45. **Transfer between associated persons and other non-market transfers:** (1) If any person disposes any property by transferring it to an associated person or any other person for no consideration, the following provisions shall apply:-

- (a) The person who has disposed the property shall be deemed to have received the amount equal to the market value of that property at the time of disposal for the disposal, and
- (b) The person who has acquired the property through disposal shall be deemed to have incurred cost in a sum equal to clause (a).

Provided that, this provision shall not be applicable where the provision of Section 43 and 44 applies.

(2) Notwithstanding anything contained in Sub-section (1), if any person disposes any business property, non-business taxable property or property remaining as stock-in-trade by transferring ownership over such property to any associated person and the matters contained in Sub-section (6) are fulfilled, the following provisions shall apply:-

- (a) That person shall be deemed to have received the amount equal to the net loss suffered for that property immediately before the disposal, for the disposal, and

- (b) The person who has acquired the property through transfer shall be deemed to have incurred cost in a sum equal to that mentioned in clause (a).

(3) Notwithstanding anything contained in Sub-section (1), if any person disposes any depreciable property by transferring ownership over such property to any associated person by fulfilling the matters contained in Sub-section (6), the following provisions shall apply:-

- (a) That person shall be deemed to have received, for the disposal, the amount equal to the remaining value of the group of the descending system pursuant to Section 4 of Schedule-2 at the time of disposal, and
- (b) The person who has acquired the property through transfer shall be deemed to have incurred cost in a sum equal to that mentioned in clause (a).

(4) If any person disposes any liability by transferring it to an associated person pursuant to this Section or by transferring it to any other person without taking any value, the following provisions shall apply:-

- (a) The person shall be deemed to have incurred cost for the disposal in a sum equal to the market value or the net income earned for the liability immediately before the disposal, whichever is lower, and
- (b) The transferee of the liability shall be deemed to have received an amount equal to that liability in respect of assumption of the liability.

Provided that, this provision shall not be applicable where the provisions of Sections 43 and 44 apply.

(5) If any person disposes any liability assumed in earning income from any of his business by transferring it to an associated person, by fulfilling the matters mentioned in Sub-section (6), the following provisions shall apply:-

- (a) The person shall be deemed to have incurred cost for the disposal in a sum equal to the net income earned for the liability immediately before the disposal, and
- (b) The associated person shall be deemed to have received an amount equal to that amount in respect of assumption of the liability.

(6) For purposes of Sub-sections (2), (3) and (5), the following matters have to be fulfilled:-

- (a) The disposed business property, stock-in-trade or depreciable property of business shall be the business property, stock-in-trade or depreciable property of business of the associated person immediately after the transfer by the person making such disposal.
- (b) The disposed non-business taxable property, stock-in-trade or depreciable property of any investment shall be the business property, non-business taxable property stock-in-trade or depreciable property of the associated person immediately after the transfer by the person making such disposal.

- (c) In the case of any liability, the liability has to be transferred to the associated person for the earning of income from any business or investment of the associated person.
- (d) The transferor and the associated person shall have to be residents at the time of transfer, and the associated person has not to be a person enjoying tax exemption.
- (e) The ownership vested in that property or burden vested in that liability shall continue to exist Fifty percent as the case may be.
- (f) Both of that person and the associated person have to make request in writing in order to enforce an option under Sub-sections (2), (3) or (5), as the case may be.

46. **Involuntary disposal of property or liability with substitution:** (1) If any person, no later than one year of the involuntary disposal of any property in any mode out of the modes mentioned in Sub-section (1) of Section 40, acquires ownership over other property of similar type in lieu of that property and makes request in writing to have this Section applied, it shall be as follows:-

- (a) That person shall be deemed to have received, for the disposal, an amount equal to the sum of the following amounts:-
 - (1) Net expenses for that property immediately before the disposal, and
 - (2) If the amount derived from the disposal exceeds the expenses incurred in acquiring

the substituted property, the amount of such excess, and

(b) The person shall be deemed to have incurred expenses in a sum equal to the sum of the following amounts, in acquiring the substituted property.

(1) Net expenses for the disposed property immediately before the disposal, and

(2) If the expenses incurred in acquiring the substituted property exceed the amount derived from the disposal, the amount of such excess.

(2) If any person, no later than one year of the involuntary disposal of any liability in any mode out of the modes mentioned in Sub-section (2) of Section 40, bears other liability of similar type in lieu of that liability and makes request in writing to have this Section applied, it shall be as follows:-

(a) That person shall be deemed to have incurred expenses, for the disposal, in a sum to be set by subtracting the amount mentioned in clause (2) from the amount mentioned in clause (1):

(1) Amount for net incomes for that liability immediately before the disposal, and

(2) If the expenses incurred in making that disposal exceed the amount in assuming the substituted liability, the amount of such excess expenses, and

(c) The person shall be deemed to have received a sum equal to the sum of the following amounts, in acquiring the substituted liability:

- (1) Net incomes for the disposed liability immediately before the disposal, and
- (2) If the amount derived in assuming the substituted liability exceeds the expenses incurred in making the disposal, the amount of such excess.
- (3) The circumstances where involuntary disposal is created after substitution of one security of any entity for another security as a result of a change in the security of the interest in the entity or restructuring of the entity shall be as prescribed.

47. **Disposal upon amalgamation of property and liability:** (1) If, as a result of acquisition of any property or bearing of any liability by any person, any other property under ownership of, or any other liability borne by, that person ceases or is amalgamated and thus disposal takes places, then the following provisions shall apply:-

(a) Where net expenses were incurred for the amalgamated property or liability immediately before disposal, that person:

- (1) shall be deemed to have received an amount equal to the net expenses in respect of the disposal of the amalgamated property or liability,

Provided that, such amount shall not exceed the amount received by that person for the amalgamated liability.

- (2) Shall be deemed to have incurred expenses in a sum equal to that amount in holding ownership or bearing liability of the amalgamated property.

- (b) Where net incomes were earned for the amalgamated liability in respect of the amalgamated liability, immediately before the disposal of the liability, that person:

- (1) shall be deemed to have incurred expenses in a sum equal to net incomes for the disposal of the amalgamated liability,

Provided that, in the case of the amalgamated property, that amount shall not exceed the amount spent by that person in acquiring that property.

- (2) shall be deemed to have received an amount equal to that amount in holding ownership of or bearing liability of the amalgamated property.

(2) Without prejudice to the matters contained in Sub-section (1), that Sub-section shall also apply to the following circumstances:-

- (a) If that person carries out an act of acquisition or sale of any property,
- (b) If that person acquires the property leased, and

- (c) If the guaranteed liability is transferred by the transferee.

48. **Disposal of property and liability through division:** If the rights related with any property owned by or the burdens related with any liability borne by any person devolve on any other person also by way of lease of any property or any part thereof, the following provisions shall apply:-

- (a) Where the rights or burdens are permanent, that first person shall be deemed to have disposed any part of that property or liability but not to have acquired any new property or liability, and
- (b) Where the rights or burdens are temporary or contingent, that first person shall be deemed not to have disposed any part of that property or liability.

Provided that, such person shall be deemed to have acquired a new property or assumed a new liability, as the case may be.

49. **Disposal through allocation of incomes and expenses:** (1) Any person shall, in the following circumstances, allocate the expenses or incomes made in acquiring, bearing or disposing any property or liability between properties and liabilities, on the basis of the market value at the time of acquisition, bearing or disposal, as the case may be:-

- (a) Where one or more properties are acquired or one or more liabilities assumed at the same time,
- (b) Where one or more properties or liabilities are disposed at the same time.

(2) If any person who holds ownership of any property or bears any liability disposes any part of that property or liability, the net

expenses or net incomes of that property or liability immediately before the disposal have to be allocated in the portion of the disposed property or liability and in the remaining portion, as the case may be, on the basis of the market value thereof immediately after the disposal.

Chapter –9

Special Provisions on Natural Person

50. **Spouse**: (1) Both a resident natural person and his/her resident husband or wife may, by giving a notice in writing, choose to be treated as one natural person in any specific income year for tax purposes.

(2) The husband or wife out of the spouses who choose the provision contained in Sub-section (1) in respect of any income year shall be jointly and severally responsible between each other for the tax payable by them in that year.

51. **Tax adjustment for medical treatment**: (1) Any resident natural person may make a claim for adjustment of tax for medical treatment in any income year for the approved medical expenditure incurred by him/herself or through any other person for him/herself.

(2) The tax adjustment amount for medical treatment of a natural person in any income year shall be computed also by adding any amount, if any, referred to in Sub-section (4) to the amount to be set by Fifteen per cent of the approved medical treatment expenditure referred to in Sub-section (1).

(3) Notwithstanding anything contained in Sub-section (2), the amount of tax adjustment for medical treatment claimed by a natural person in any income year shall not exceed the prescribed limit.

(4) In the case of any natural person in any income year, the excess amounts as mentioned in clauses (a) and (b), up to the following

limit, may be carried forward and be included in the amount referred to in Sub-section (2) in the forthcoming years:-

- (a) Where the amount referred to in Sub-section (2) exceeds the limit referred to in Sub-section (3), the amount of such excess, and
- (b) The amount to the extent that the person referred to in clause (a) of Section 3 is not allowed to use tax adjustment for medical treatment because of being less the amount of tax payable by that person in that year.

Explanation: For purposes of this Section, "approved medical treatment expenditure" means the approved medical treatment expenditure as prescribed.

Chapter-10

Special Provisions For Entity

52. **Principles of taxation applicable in respect of entities:** (1) For purposes of payment of tax, any entity shall be responsible distinctly from its beneficiaries.

(2) Distributions to be made by an entity shall be as mentioned in Section 53, and in distribution to be so made, tax shall be imposed on its beneficiaries pursuant to Section 54.

(3) The amounts derived by and expenses borne by an entity shall be deemed to have been received or borne by the entity irrespective of whether or not the entity has derived the same or borne expenses for other person.

(4) A property under ownership of an entity and the liability borne by it shall be deemed to be under ownership or burden of the entity. Such property under ownership and liability borne shall not be deemed to be under the ownership or burden of any other person.

(5) Foreign income tax paid by the manager, beneficiary of an entity or the entity, whosoever, for the income of the entity shall be deemed to have been paid by the entity.

(6) Transactions between any entity and its managers and beneficiaries shall be recognized subject to Chapter-7 and Section 45.

53. **Distribution by entity**: (1) The following matters have to be included in the distribution to be made by an entity:-

- (a) Payment made by the entity to any of its beneficiaries in any capacity, or
- (b) Capitalization of profits.

(2) Notwithstanding anything contained in Sub-section (1), any payment referred to in clause (a) of that Sub-section shall be deemed to have been distributed only in the following circumstances:-

- (a) Where the payment exceed the amount paid by a beneficiary to the entity in exchange for a consideration likely to be obtained from the entity, and
- (b) Where the following amounts are not included in the payment:-
 - (1) The amounts included in computing the income of the beneficiary,

- (2) The payments from which tax has been deducted finally except for reason of distribution.

(3) Only if the distribution of any entity reduces the value of property or liability of that entity, such distribution shall be deemed to be a distribution of profits or return of capital.

(4) In any of the following circumstances, a distribution of any entity shall be deemed to be a distribution of profits, subject to Section 55:-

- (a) Where the distribution is of a type referred to in Sub-section (3) and the amount as per the market value of the property exceeds the total amount of capital contribution consisting of the market value of the liability of the entity at the time of distribution and of capitalized profits, as well,
- (b) Where profits are capitalized.

(5) The distribution referred to in Sub-section (3) shall be deemed to be a return of capital to the extent of non-distribution of profits.

(6) The distribution of any entity shall be deemed to be a dividend of that entity to the extent of non-return of capital.

Explanation: For purposes of this Section, "capitalization of profits" means and includes any capitalization made by issuing bonus share or similar other interest or increasing the paid up sum of the interest of that entity or crediting the profits to the premium and capital account of that entity.

54. **Tax in dividend:** (1) On the dividend distributed by a resident body, it shall be as follows:-

(a) Tax shall be imposed on a shareholder of any company as per the mode of final tax deduction, and

(b) No tax shall be imposed on other entities.

(2) The dividend distributed by any non-resident person to any resident beneficiary shall be included in the income of the beneficiary and tax imposed accordingly.

(3) Notwithstanding anything contained in Sub-section (1), in cases where in distributing a dividend by a resident company to another resident company, except for a dividend distributed by a resident company to an organization enjoying tax exemption, the resident company receiving the dividend controls twenty-five per cent or more voting right of the resident company distributing the dividend, directly or indirectly through itself or one or more associated entities, no tax shall be charged on the dividend distributed to such a resident entity.

(4) Notwithstanding anything contained in Sub-section (3), that Sub-section shall not be applicable in the following circumstances:-

(a) Dividend distributed to any company because of ownership of redeemable shares of the company distributing dividend.

(b) Dividend referred to in Section 58.

(5) The incomes referred to in Chapter-8 receivable for the interest of a beneficiary of an entity have to include the amount for capital return made by any entity for that interest.

Provided that, the dividend distributed by the entity need not to be included.

55. **Dissolution of entity**: (1) A distribution made in proportion to the portion of profit earned by and that of capital contributed by any beneficiary in disposing the interests in the course of dissolution of any entity shall be deemed to be the payment of partial dividend and partial capital of that entity, if all of the following conditions are fulfilled:-

- (a) Where any distribution has been made by such entity in respect of cancellation, release or acceptance of the interest in that entity because of, *inter alia*, purchase by the entity of its interest or dissolution of the entity by following the process of law in force,
- (b) Where, except in cases of full dissolution, the rights of the beneficiaries in the portion of profits of that entity have not been computed in proper portion or could not be computed reasonably, and
- (c) Where the beneficiary who gets that distribution is not an associated person with the entity after the disposal.

(2) Notwithstanding anything contained in Sub-section (1), that the provisions contained in that Sub-section and Section 53 shall not be applicable in cases where any entity purchases the interest of any beneficiary in the entity through the securities market recognized under the law in force and make distribution to that beneficiary.

56. **Transaction between entity and beneficiary**: (1) If a property is disposed through transfer of ownership over the property in any manner of distribution between an entity and its beneficiary or in any other manner subject to Section 45, it shall be as follows:-

- (a) The transferor of the property shall be deemed to have received, from the disposal, an amount equal to the market value of the property immediately before the disposal, and
- (b) The transferee of the property shall be deemed to have incurred cost in a sum equal to that mentioned in clause (a) in acquiring the property.

(2) If any liability is disposed through transfer of the liability between any entity and its beneficiary subject to Section 45, it shall be as follows:-

- (a) The transferor of the liability shall be deemed to have incurred cost, in disposing the liability, in a sum equal to the market value of the liability immediately before the disposal, and
- (c) The transferee of the liability shall be deemed to have received an amount equal to that mentioned in clause (a) in assuming the liability.

(3) If any entity distributes dividends except profits as dividends to any beneficiary, the amount of such dividends shall be included in computing the income of the entity.

Provided that, provisions may be made to exclude the matters contained in this Sub-section in any circumstance as prescribed.

57. **Change in control:** (1) If the ownership of any entity changes by Fifty per cent or more as compared to its ownership until before the last three years, the entity shall be deemed to have disposed the property under its ownership or the liability borne by it.

(2) If the ownership of an entity is changed as mentioned in Sub-section (1), the entity shall not be allowed to carry out the following acts after such change:-

- (a) To deduct interest incurred by that entity prior to the change in ownership and carried forward pursuant to Sub-section (3) of Section 14,
- (b) To deduct the loss suffered by that entity prior to the change in ownership, pursuant to Section 20,
- (c) To carry back a loss suffered after the change in ownership in any income year before such change, pursuant to Sub-section (4) of Section 20, Section 59 or 60,
- (d) To make adjustment pursuant to Sub-section (4) of Section 24, in cases where it has been calculated for any amount or expenses pursuant to clause (a) of Sub-section (4) of Section 24 prior to the change in ownership, and correction has been made on that amount or expenses pursuant to clause (b) of Sub-section (4) of Section 24 after the change in ownership,
- (e) To make adjustment pursuant to Sub-section (1) of Section 25, in cases where any amount has been calculated pursuant to clause (b) of Sub-section (1) of Section 25 prior to the change in ownership and the right to receive that amount has been relinquished or in the event of that being a debt claim, such person has written off such amount as a bad debt, after the change in ownership,

- (f) To subtract, pursuant to Section 36, the loss suffered in disposing any property or liability prior to the change in ownership from the income earned from the disposal of the property or liability after the change in ownership,
- (g) In cases where premium has been calculated pursuant to sub-clause (1) of clause (b) of Sub-section (4) of Section 60, prior to the change in ownership and such premium has been returned to the insured after the change in ownership, to claim for credit accordingly, or
- (h) To carry forward in the forthcoming year the tax paid in respect of a foreign income prior to the change in ownership, pursuant to Section 71.

(3) In cases where the ownership of any entity changes in any manner mentioned in Sub-section (1) in any income year, the parts before and after the change in ownership in that income year shall be treated as separate income years.

58. **Provision restricting reduction of dividend tax:** (1) If any entity distributes dividends as follows, it shall be deemed to have made an arrangement for reducing dividend tax:-

- (a) Where current or expected profits are reserved,
- (b) Where any person who acquires an interest of the entity and the recipient of the interest or his associated person makes any payment to the present or previous beneficiary of the entity or his associated person irrespective of whether or not it is

related to the acquisition of interest and whether or not it is made at the time of acquisition of interest,

- (c) Where the payment is fully or partly reflected in the profits of the entity, or
- (d) Where the entity distributes dividends to the recipient of interest after the recipient of interest has acquired interest from the entity and the profits covers the dividends fully or partly.

(2) In cases where dividends are distributed by any entity under an arrangement reducing dividend tax made pursuant to Sub-section (1), the arrangement shall be deemed to be as follows:-

- (a) The payment made by the recipient of interest or his/her associated person shall not be deemed as payment made by that person but as distribution by that entity of dividends to the previous or present beneficiary as referred to in clause (b).
- (b) The dividends distributed by that entity to the recipient of interest shall be deemed as equal to a sum to be set by subtracting the amount of payment said to have been made from the dividends as referred to in clause (a).

Chapter-11

Special Provisions on Banking and Insurance Business

59. **Banking business:** (1) In computing the income or loss made by any person carrying on a banking business from that business in any income year, it shall be separately computed as if the banking business were a business distinct from any other business carried on by that person.

(2) If any person suffers a loss from the banking business in any income year, that person may subtract, as prescribed, such loss from the incomes of the past five income years from that business.

(3) In subtracting the loss pursuant to Sub-section (2), the following provisions shall apply:-

- (a) It shall not exceed any income earned from that business in the past income year,
- (b) It shall not exceed the total sum of loss,
- (c) The amount of loss that could not be deducted for purposes of Section 20 shall be lessened.

Explanation: For purposes of this Section, "banking business" means banking transactions carried out by banks and financial institutions permitted to carry out banking transactions under the laws in force.

60. **General insurance business:** (1) In computing the income or loss made by any person carrying on a general insurance business from that business in any income year, it shall be separately computed as if the insurance business were a business distinct from any other business carried on by that person.

(2) While computing the income of any person carrying on the insurance business in any income year, it shall be done as follows:-

- (a) In income, in addition to any other amounts required to be included, the following amounts, as well, have to be included:-

- (1) Amounts for premium of insurance including premium for reinsurance received

by that person from that business in that year, and

- (2) Amounts received in that year from payments referred to in sub-clause (1) of clause (b) for any contract of reinsurance, security, guarantee or compensation.

- (b) In expenses, in addition to the amounts that can be deducted, the following amounts, as well, may be deducted:-

- (1) The payments made by that person as an insurer in operating that business in that year, and
- (2) The premiums included pursuant to sub-clause (1) of clause (a) in computing the income earned from that business in that year or last year and returned to the insured in that year.

(3) If any person suffers loss from the registered general insurance business in any income year, that person may subtract such loss, as prescribed, from the incomes of that business earned in last five income years.

(4) In subtracting the loss pursuant to Sub-section (3), the following provisions shall apply:-

- (a) It shall not exceed any income earned from that business in the past income year,
- (b) It shall not exceed the total sum of loss,

- (c) The amount of loss that could not be deducted for purposes of Section 20 shall be lessened.

Explanation: For purposes of this Section, "registered general insurance business" means an insurance business registered in Nepal pursuant to the law in force and carrying on general business transactions.

61. **Investment insurance business:** (1) In computing the income or loss made by any person carrying on an investment insurance business from that business in any income year, it shall be separately computed as if the investment insurance business were a business distinct from any other business carried on by that person.

(2) It shall be as follows In computing the income of any person carrying on the investment insurance business in any income year, it shall be as follows:-

- (a) Except the following amounts, other amounts that can be included pursuant to this Act have to be included:

- (1) Amounts reinsurance for premium of insurance including premium received by that person in operating that business in that income year, and
- (2) Amounts received in that year from payments referred to in sub-clause (1) of clause (b) for any contract of reinsurance, security, guarantee or compensation.

(b) Except the following amounts, other amounts that can be deducted pursuant to this Act have to be deducted:

(1) The payments made by any person as an insurer in operating that business, and

(2) The premiums returned to the insured referred to in sub-clause (1) of clause (a).

(3) The amounts referred to in sub-clauses (1) and (2) of clause (a) of Sub-section (2) and sub-clauses (1) and (2) of clause (b) have to be included in the incomes and expenses for the property or liability of that person.

(4) The investment insurance agreement of investment insurance business of any person shall not be deemed as the property and liability of that person.

62. **Amount received from insurance:** (1) For purposes of computing the income of any person, the provisions contained in section shall apply in respect of the amount received by that person from insurance.

(2) Notwithstanding anything contained in Sub-section (1), the following provisions shall apply in respect of the profits made from investment insurance:-

(a) In cases where a resident person makes payment of such amount, tax shall be imposed on the insured through final tax deduction, and

(b) In cases where a non-resident person makes payment of such amount, it shall be computed by including that amount in the income of the insured.

Explanation: For purposes of this Section, "profits made from investment insurance" means the excess sums of payment received by any person for investment insurance in respect of that insurance over the premiums paid by that person.

Chapter-12

Special Provisions on Retirement Saving

63. **Approval of retirement fund:** (1) If a resident person who desires to hold a retirement fund make an application to the Department for having the retirement fund, the Department shall give approval as prescribed.

(2) A natural person who is a beneficiary of the retirement fund may make a claim to have the retirement contribution made to the fund in any income year deducted from his taxable income.

(3) Notwithstanding anything contained in Sub-section (2), the amount claimed by any person for deduction in any income year pursuant to that Sub-section shall not exceed the prescribed limit of retirement contribution.

64. **Tax in retirement fund:** (1) For purposes of assessing the income of the retirement fund, the amounts to be included or deducted pursuant to this Act shall be included or deducted in computing the income.

Provided that, -

- (a) Contributions made to the fund shall not be the income of the fund and such contributions shall not be included in computation.
- (b) Retirement payments shall not be the expenses of the fund and such payments shall not be deducted in computing the income.

- (c) Interest of any beneficiary in the retirement fund shall not be a liability of the fund.

(2) No tax shall be levied in the income of the retirement fund.

(3) If any retirement fund ceases to remain in a form of such fund, such fund has to pay tax in a sum to be set, by the rate of tax applicable to companies, by subtracting the amount referred to in clause (b) from the amount referred to in clause (a).

- (a) All retirement contributions paid to the fund between the period from the date when the fund got approval as a retirement fund and the date when the recognition ceased to exist and all income amounts treated as taxable incomes in cases where Sub-section (2) is not applicable,
- (b) All retirement payments made by the fund between the period from the date when the fund got approval as a retirement fund and the date when the recognition ceased to exist.

65. **Retirement payments:** (1) For purposes of computing the income earned by any natural person from the interest in any approved retirement fund, the following provisions shall apply:-

- (a) Retirement payments made by the fund for the interest in the fund have to be included in the income, and
- (b) Notwithstanding anything contained in clause (a), in cases where such payment is made in lump sum, the payment to be set by subtracting Fifty percent of the paid amount or five hundred Thousand Rupees, whichever is higher, from the amount so

paid shall be deemed as the profit made by the person from the disposal of his non-business taxable property.

(2) For purposes of computing the profit made by any natural person from the interest in any retirement fund that has not obtained approval, the following provisions shall apply:-

- (a) Where a resident person has made payment, tax shall be imposed on the beneficiary in that amount as withholding of tax finally, and
- (b) Where a non-resident person has made payment, that amount has to be included in computing the income of the beneficiary.

Explanation: For purposes of this Section, "profit made from the interest in any retirement fund that has not obtained approval" means, in cases where retirement payments made from a retirement fund which has not obtained approval to a beneficiary natural person for his interest in the fund exceed the amounts of retirement contributions paid by that person to that fund for his interest in the fund, the amount to the extent of such excess.

66. **Expenses and incomes for interest in retirement fund:** (1) The expenses incurred for any property remaining as the interest of any natural person in any retirement fund have to include the followings amounts:-

- (a) All retirement contributions made by the natural person in respect of the interest, and

- (b) Where tax has been paid from the fund pursuant to Sub-section (3) of Section 64, the amounts included in the incomes for that property pursuant to Sub-section (2) during the period from the date when the fund got approval as a retirement fund to the date when the recognition ceased to exist.

Provided that, the above-mentioned amounts shall not be included in the expenses referred to in Section 38.

(2) The incomes for any property remaining as an interest of any person in any approved retirement fund have to include the exemptions claimed by that person pursuant to Sub-section (2) of Section 63 for the retirement contributions made in respect of that interest.

Chapter-13

International Tax

67. **Source of income, loss, profit and payment:** (1) In cases where, in the source of income earned from any employment, business or investment of any person, the amounts mentioned in clause in (a) exceed the amounts mentioned in clause (b), the amounts to the extent of such excess shall be deemed to have source in Nepal.

- (a) The amounts with source in Nepal included in computing the income,
- (b) The amounts with source in Nepal deducted in computing the income.

(2) In cases where in the loss suffered from any employment, business or investment of any person, the amounts mentioned in clause

(a) exceed the amounts mentioned in clause (b), the amounts to the extent of such excess shall be deemed to have source in Nepal.

(a) The amounts with source in Nepal to be deducted in computing the income of the business or investment,

(b) The amounts with source in Nepal included in computing the income.

(3) The amounts to be included in computing the income shall be deemed to have source in Nepal in the following circumstances:-

(a) The net profits referred to in clause (c) of Sub-section (2) of Section 7 or clause (b) of Sub-section (2) of Section 9 to be set by subtracting the loss suffered from the disposal of the property or liability with source in Nepal from the profit made from the disposal of the property or liability with source in Nepal,

(b) In cases where a property situated in Nepal or a liability to be borne in Nepal is included, the profits and amounts to be included in computing the income as mentioned in clause (d) of Sub-section (2) of Section 7 or clause (c) of Sub-section (2) of Section 9,

(c) Received payments with source in Nepal, subject to clauses (a) and (b).

(4) In cases where a property situated in Nepal or a liability to be borne in Nepal is included, the source of profit or loss made or suffered from the disposal of the property or liability shall be deemed to have source in Nepal.

(5) In cases where the following amounts are included in the amounts deducted in assessing the income, the source of such amounts shall be deemed to be in Nepal:-

- (a) The amount that can be deducted as cost expenditure mentioned in Sub-section (1) of Section 15 in respect of the properties situated in Nepal,
- (b) The expenses referred to in Sub-section (1) of Section 16 in respect of the properties situated in Nepal, and the expenses to the extent allowed to be deducted pursuant to Section 19, and
- (c) The payments with source in Nepal, subject to clauses (a) and (b).

(6) The following payments shall be deemed to have source in Nepal:-

- (a) Dividends paid by a resident entity,
- (b) Interest paid by a resident person,
- (c) Payment for natural resources made in respect of the natural resource derived from the land situated in Nepal or calculated with reference to such source,
- (d) Rent paid for the use of any property situated in Nepal,
- (e) Royalty received by any person for having allowed any one to use any property situated in Nepal or accepting the right to use the property or the restriction on the use of such property,

- (f) Amount for the general insurance paid by any person in respect of insurance against risks in Nepal and premium paid to that person for general insurance,
- (g) Payments received by any person as follows by operating inland, sea or air transport or charter service business in Nepal except as a result of transshipment:
 - (1) The carriage of departing passengers, or
 - (2) The shipment of mail, livestock or other direct movable property.
- (h) Payments received by a person who carries a business of dispatching information or news through means of communication such as wire, radio, optical fiber or satellite in respect of dispatch of news or information through networks established in Nepal, irrespective of whether or not such news or information is originated in Nepal,
- (i) Payments in the following circumstances inclusive of service charges of the kinds not mentioned in clauses (g) or (h) for doing employment or rendering service or accepting restriction in those acts:
 - (1) Where the acts are carried out in Nepal irrespective of the place of payment, or
 - (2) Where Government of Nepal is to make payment irrespective of the place of such acts.

- (j) Annuities, amount for investment insurance and retirement pension paid by a resident person, which does not fall under clause (i), and any premium or other payment paid to the resident person in order to ensure such amounts,
- (k) Gifts received in respect of a business or investment operated from the property situated in Nepal, and
- (l) The following payments except those mentioned in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k), above:-
 - (1) Payments made in respect of disposal of the property situated in Nepal or in respect of acquiring liability to be borne in Nepal, or
 - (2) Payments made in respect of activities carried out in Nepal.

(7) Any income, loss, amount, profit or payment except the one which is deemed to have source in Nepal as mentioned in the above-mentioned Sub-sections, and the references to Nepal given in this Act shall be applicable as if they were used in the case of any particular foreign country for purposes of ascertaining as to which country such income, loss, amount, profit or payment has source in.

Explanation: For purposes of this Section,-

- (a) "Property situated in Nepal" means the land or buildings situated in Nepal and the property other than land or building of a resident person situated in any foreign country or if the person is associated with a controlled

foreign entity pursuant to Section 69, inclusive his interest in that entity.

- (b) "Liability to be borne in Nepal" means the liability of a resident person.

68. **Foreign permanent establishments:** (1) Notwithstanding anything contained in Section 3, any foreign permanent establishment of a non-resident person situated in Nepal shall be liable to pay tax payable on the income of such establishment, subject to other provisions of this Act.

(2) The income of a person having ownership of a foreign permanent establishment shall be separated from the income of that establishment, pursuant to Section 69.

(3) Tax shall be imposed on the permanent establishment referred to in clause (b) of Section 3 in the income sent abroad by the foreign permanent establishment of a non-resident person situated in Nepal.

(4) The income sent abroad in any income year by the foreign permanent establishment of a non-resident person situated in Nepal shall be equal to the amount of dividends distributed by that foreign permanent establishment in that year.

69. **Controlled foreign entities:** (1) If any entity distributes dividends of the associated income earned in any income year as a controlled foreign entity at the end of the income year, it shall be deemed to have distributed dividends on proportion to its beneficiaries, as follows:-

- (a) As per the rights of the beneficiaries to the income in distributing dividends, or
- (b) If the rights are not certain in a reasonable manner, as per the method which the Department thinks appropriate according to the circumstance.

(2) Tax shall not be levied on the dividends distributed by an entity as a controlled foreign entity at the end of any income year except those distributed pursuant to Sub-section (1).

(3) The following shall be deemed to have occurred in respect of the dividends distributed by a controlled foreign entity pursuant to Sub-section (1) to the beneficiaries associated with that entity at the time of distribution of dividends:-

- (a) Having the characteristic equivalent to the type and source of the associate income of that entity, and
- (b) Having distributed proportionately out of each type and source the associate income of that entity.

(4) Any tax paid by any controlled foreign entity including that deemed to be paid pursuant to Sub-section (5) or Sub-section (5) of Section 52 in respect of the amounts deemed to be distributed pursuant to Sub-section (3) has to be set aside for the beneficiary associated with that entity.

(5) The tax set aside pursuant to Sub-section (4) at the time of allocation shall be deemed to have been paid by the beneficiary, and the beneficiary may get facility of tax adjustment for such tax, as provided for in Section 71.

(6) The amount to be deemed as distributed to the beneficiary pursuant to Sub-section (1) at the time of distribution has to be included in the expenses for any property or liability of the recipient beneficiary in the entity making such distribution.

(7) The dividends distributed to the beneficiary enjoying tax exemption pursuant to Sub-section (2) at the time of distribution has to be included in the income for any property or liability of the recipient beneficiary as an interest in the entity making such distribution.

(8) For purposes of this Act, the foreign income tax paid or foreign income tax deemed as paid by any controlled foreign entity pursuant to Sub-section (5) or Sub-section (5) of Section 52 shall be deemed as tax amount paid by that entity or deemed to be paid by that entity pursuant to this Act.

Explanation: For purposes of this Section,-

- (a) "Associated income" means, in computing taxable income of any controlled foreign entity in any income year, a taxable income computed as if that entity were a resident entity.
- (b) "Controlled foreign entity" means any non-resident entity in which any resident person has interest directly or indirectly through one or more interposed non-resident entities in any income year; and where that person is associated with that entity or where any person deemed to be associated with and any other resident persons not exceeding four persons are associated with that entity, it includes such entity, as well.

70. **Tax chargeable on non-resident person providing water traveling/rafting, air transport or telecommunications service in Nepal:** (1) The taxable income of any non-resident person who operates water traveling, charter service or air transport in any income year shall consist of the amounts derived from the following acts except the amounts derived from transshipment in that year:-

- (a) Carriage of passengers departing from Nepal, or
- (b) Carriage of the mail, animals or goods dispatched from Nepal.

(2) The taxable income of any non-resident person who carries on a business of cable, radio, optical fiber or satellite communication in any income year shall consist of the amounts derived from the dispatch of news or information through any device established in Nepal, whether originated in Nepal or not.

(3) Tax shall be levied on the amounts to be included in the taxable income of any non-resident person pursuant to Sub-section (1) or (2), at the rate specified in Sub-section (7) of Section 2 of Schedule-1.

Provided that, -

- (a) Those amounts need not to be computed in computing the tax payable in respect of any due taxable income of that person,
- (b) The expenses related with computation of those amounts shall not be allowed to be deducted in computing that due taxable income, and
- (c) That person shall not be entitled to any facility of tax adjustment from the amount of tax payable by that person.

Explanation: For purposes of this Section, "non-resident person" means a resident entity within the group of associated entities with head offices outside Nepal.

71. **Foreign tax adjustment:** (1) Any resident person may claim for adjustment of tax for the foreign income tax paid by that person in any income year to the extent of the tax paid for assessable foreign income of that person in that year.

(2) In computing the foreign tax adjustment claimed pursuant to Sub-section (1), it shall be done as follows:-

- (a) Separate computation has to be done for assessable foreign income having source in each country, and
- (b) Foreign tax adjustment claim shall not be made, in respect of the assessable foreign income, at the rate of tax higher than the average rate of tax of Nepal payable by that person in that year in respect of each computation.

(3) Any foreign income tax paid in respect of the assessable foreign income of any year who is not entitled to foreign tax adjustment facility pursuant to Sub-section (1) by virtue of the limit provided for in clause (b) of Sub-section (2) may be dealt with as follows:-

- (a) It may be carried forward in the coming year, and
- (b) It shall be deemed to be paid in respect of the assessable foreign income in the future income year of the person having source in the country where such foreign income has been earned.

(4) Notwithstanding anything contained in Sub-section (1), any person may give up a claim for foreign tax adjustment to which he is entitled in any income year and also claim for credit for foreign income tax for which such adjustment facility is available in that year.

Explanation: For purposes of this Section,-

- (a) "Assessable foreign income" means the following income to be included in the assessable income earned by any resident person in any income year from any employment, business or investment:-

- (1) Income earned from a foreign source, or
 - (2) Income of a non-resident person deemed as distributed to that resident person under Section 69 irrespective of the source.
- (b) "Average rate of tax of Nepal" means the rate of tax of Nepal payable by the person referred to in clause (a) of Section 3 in any income year of the taxable income of that person in that year prior to adjustment of any foreign tax of that person in that year.

Chapter –14

Tax Administration and Authentic Documents

72. **Department:** (1) The Department shall be responsible for the implementation and administration of this Act.

(2) Government of Nepal may, by a notification in the Nepal Gazette, establish Inland Revenue Offices under the Department and prescribe their working areas, in order to render assistance to the Department in fulfilling the responsibility of the Department mentioned in Sub-section (1). The offices of which working areas have been so specified shall be deemed as organs of the Department.

(3) The Department may have the officers and other employees as follows:-

- (a) Director General,
- (b) Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer, Tax Officer and other officer in the required number, and
- (c) Other employees.

(4) The Director General may carry out the following functions, subject to the direction given by Government of Nepal:-

- (a) To exercise any of the powers conferred on the Department pursuant to this Act,
- (b) To so delegate the powers referred to in clause (a) as to be exercisable by any other officer subject to Sub-section (5) and (6),

- (c) To so specify that all or any of the powers referred to in clause (a), except the power to issue public circular pursuant to Section 75, to specify the document referred to in Section 77, to hold pending any reviewable decision or otherwise affect it pursuant to Sub-section (5) of Section 115, to accept or reject, fully or partly, the matters contained in an application made by any person pursuant to Sub-section (7) of Section 115, to make addition by adding offence pursuant to Section 129 or to grant authority to any officer pursuant to Section 82, to be exercisable by any officer employee of the civil Service.

(5) Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer and Tax Officer who acts as the Chief of Office may carry out the following functions, subject to the direction given by Government of Nepal or the Director General:-

- (a) To exercise the powers conferred on the Department pursuant to this Act, other than the power to issue public circular pursuant to Section 75, to specify the document referred to in Section 77, to hold pending any reviewable decision or otherwise affect it pursuant to Sub-section (5) of Section 115, to accept or reject, fully or partly, the matters contained in an application made by any person pursuant to Sub-section (7) of Section 115, to make addition by adding offence pursuant to Section 129, and

- (b) To so delegate such powers as to be exercisable by any other officer of the Department subject to Sub-section (6).

(6) Any other officer of the department except the Director General, Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer or Tax Officer who acts as the Chief of Office may carry out the following functions:-

- (a) To exercise any powers delegated to that officer out of the powers conferred on the department, except the following powers:

- (1) To issue public circular pursuant to Section 75, to specify the document referred to in Section 77, to hold pending any reviewable decision or otherwise affect it pursuant to Sub-section (5) of Section 115, to accept or reject, fully or partly, the matters contained in an application made by any person pursuant to Sub-section (7) of Section 115, to make addition by adding offence pursuant to Section 129, or

- (2) To grant authorization to any officer pursuant to Section 82 or issue a notice pursuant to Section 109.

- (b) He/she shall not be entitled to re-delegate any power delegated to him/her.

73. **International agreements:** (1) In cases where any income of any person is taxable pursuant to this Act or the laws in force and the same income is also taxable in a foreign country, Government of Nepal may

conclude an international agreement with the foreign country for the avoidance of double taxation.

(2) This Sub-section shall be applicable in cases where, pursuant to any international agreement concluded with Nepal, the competent authority of the other country requests the Department to collect in Nepal the amount payable by any person who is in arrears of that amount, pursuant to the taxation law of that other country.

(3) In cases where Sub-section (2) is applicable, the Department may, for the purpose of sending that amount to that competent authority, send a notice in writing to the person who is in arrears of tax and require him to pay such amount to the Department within the date mentioned in that notice.

(4) This Sub-section shall be applicable in cases where any international agreement contains a provision under which Nepal has to exempt income or payment or has to apply the reduced tax rate to income or payment.

(5) In cases where Sub-section (4) is applicable, any of the following entity shall not be entitled to enjoy tax exemption or tax deduction facility:-

- (a) An entity who is considered as a resident of the other party of the agreement for purposes of the agreement, and
- (b) Where Fifty percent or more portion of the vested ownership of that entity is owned by natural persons or by the entities in which any natural person has no interest and, for purposes of the agreement, the persons or entities are residents of

both Nepal and of the other country party to the agreement.

Explanation: For purposes of this Section, "international agreement" means any treaty or agreement containing the following provisions, concluded with any foreign government and applicable to Nepal:

- (a) To avoid double taxation and prevent fiscal evasion, or
- (b) To render reciprocal administrative assistance in the implementation of tax liability.

74. **Taxpayer's rights:** (1) Any taxpayer shall not be entitled to exercise any of the rights mentioned in Sub-section (2) without fulfilling the duties required to be fulfilled pursuant to this Act.

(2) In the context of paying tax pursuant to this Act, a taxpayer shall have the following rights:-

- (a) The right to be treated with honour,
- (b) The right to receive information on tax related matters pursuant to the laws in force,
- (c) The right to have an opportunity to furnish proofs in defense on tax related matters,
- (d) The right to appoint a legal practitioner or auditor for defense, and

- (e) The right to have tax related secret matters inviolable except as otherwise mentioned in this Act.

Explanation: For purposes of this Section, "taxpayer" means a person on whom tax is imposed and collected as mentioned in Section 3.

75. **Public circular:** (1) In order to bring about uniformity in the implementation of this Act and simplify tax administration and give guidelines to the officers of the Department as well as the persons affected by this Act, the Department may issue written public circulars, accompanied by explanations, on the provisions made in this Act.

(2) The Department shall make available the circular issued pursuant to Sub-section (1) in the Department or in any other places as per necessity or through any other means.

(3) The Department shall be compelled to take action according to the circular issued pursuant to Sub-section (1) unless and until such circular is revoked.

76. **Advance ruling:** (1) If any person makes an application in writing to the Department for the removal of any confusion as to the application of this Act to any arrangement proposed or accepted by such person, the Department may issue its version by an advance ruling as prescribed, by notifying the person in writing.

(2) Notwithstanding anything contained in Sub-section (1), the Department shall not be entitled to issue an advance ruling referred to in Sub-section (1) on any matter of confusion occurred in the implementation of this Act in cases where such matter is *sub judice* in the court or has already been decided by the court.

(3) In cases where any person acts as follows prior to the issuance of an advance ruling pursuant to Sub-section (1), the Department shall be compelled to implement this Act as per that ruling until the ruling issued to that person remains valid:-

- (a) If the full and actual statements of the matter related to that ruling are presented to the Department, and
- (b) If the arrangement corresponds to the point mentioned in the application made by that person for the ruling.

(4) In cases where the public circular issued pursuant to Section 75 and the advance ruling issued pursuant to Sub-section (1) are mutually contradictory, priority shall be given to the matters mentioned in the advance ruling in the case of the person to whom such ruling has been issued.

(5) Prior to the issuance of the advance ruling pursuant to Sub-section (1), the Department may give an opportunity to the applicant to furnish further statements, if any, in person or through his representative.

77. **Format of documents:** (1) The Department may, from time to time, so specify the mode of submission and formats of necessary documents, statements including income returns, tax deduction statements and formats of records that are required under this Act and the rules framed under this Act, the notices, information and details required for the effective implementation of this Act are incorporated.

(2) The Department shall make available the formats referred to in Sub-section (1) in the Department and in any other places specified by the Department and through any other means.

78. **Permanent account number:** (1) The Department shall issue an identity number called as permanent account number to any person for purposes of identifying that person, subject to this Act.

(2) The Department may order any person to mention his/her permanent account number in any income return, statement, version or other document to be used for purposes of this Act.

(3) Government of Nepal may specify the circumstances where any person has to show or mention his/her permanent account number.

79. **Service of documents:** (1) Any document required to be given or delivered to any person pursuant to this Act shall be deemed to have been given or delivered to that person in the following circumstances:-

- (a) Where it is sent to the fax number or email address of that person,
- (b) Where it is delivered by hand to whom it has to be delivered or to the manager of an entity, in the case of the entity, or
- (c) Where it is sent by a registered post to his resident, office, business or other address to the extent known.

(2) Any document so signed, **encrypted** or encoded through computer technology or written in it as indicating the name and designation of the competent authority of the Department and issued, served or given pursuant to this Act shall be deemed to have met requirements.

80. **Defective documents:** (1) Any document issued under this Act shall not be deemed defective in the following circumstances:

- (a) Where it is consistent with this Act substantially, and
- (b) Where the person who is addressed in a document is normally indicated in the document.

(2) In cases where any documents issued by the Department pursuant to this Act contains any error and the error does not give rise to any dispute as to the interpretation of this Act or the fact of any specific person, the Department may make amendment in the document for purposes of rectifying such error.

Chapter-15

Records and Information collection

81. **To maintain records or documents.** (1) Each person who is liable to pay tax pursuant to this Act has to maintain in Nepal the following necessary documents, in addition to the documents required to be maintained in the format or type as prescribed by the Department or to be certified or authenticated by audit or in other manner:

- (a) Necessary information and documents supporting the income returns or any other documents required to be submitted to the Department pursuant to this Act,
- (b) Documents assisting to assess the tax payable by him,
- (c) Documents supporting the deduction of expenses.

(2) Except as otherwise specified by the Department by issuing a notice in writing, the documents referred to in this Section have to be safely retained for at least Five years from the date of expiration of the concerned income year.

(3) In cases where any document referred to in Sub-section (1) is not in the Nepali or English language, the Department may, by issuing a notice in writing, require the concerned person to submit the translated version of such document in the Nepali language done, at such person's own cost, by a recognized translator under the law in force.

82. **Powers of Department to obtain information:** (1) The officer of the Department may do the followings in order to implement this Act:

- (a) To have full or unhindered access to any premises, places, documents or properties situated in Nepal, subject to the laws in force,
- (b) To obtain any portion of or duplicate copy of the document including an electronic copy of the documents to which there is an access pursuant to clause (a),
- (c) In cases where the concerned officer thinks that the document to which there is an access pursuant to clause (a) is an evidence that could be necessary to assess tax liability of any person pursuant to this Act, to take such document in his custody, and
- (d) In cases where any person having access to any document who is requested to provide a duplicate copy of such document does not provide it, and the officer thinks that such document is kept in any property in any form, to take such property in own custody in order to have access to such document.

(2) No officer shall be entitled to exercise the powers referred to in Sub-section (1) without having authority in writing from the Department. In cases where, in entering to any premises or places in

exercise by any officer of the powers referred to in Sub-section (1), the possessor of such premises or places or the person having access to any concerned document or property requests to show the authority of the Department, such officer has to show such authority to them.

(3) In cases where any officer of the Department who enters to any premises or places in exercise of the powers referred to in Sub-section (1) so requests, the possessor of such premises or places or the person having access to any concerned document or property has to provide all proper facilities and assistance for the effective use of the powers.

(4) The Department may hold in its custody the document or property taken in its custody pursuant to clause (c) or (d) of Sub-section (1) until the following time:

- (a) In the case of any document taken in custody pursuant to clause (c) of Sub-section (1) until the time the document is required to assess tax liability of any person or for any other action pursuant to this Act, and
- (b) In the case of any property taken in custody pursuant to clause (d) of Sub-section (1), until the time when access to the document in question is gained and it is taken in custody.

(5) The person whose document is taken in custody pursuant to Sub-section (4) may inspect such document and may obtain a copy of or copy down a portion of such document at his/her own cost within office hours and under supervision as prescribed by the Department.

(6) Notwithstanding any provision made on privilege or public interest in respect of having access to the documents required for the

implementation of this Act, the provisions contained in this Section shall apply in that respect.

Explanation: For purposes of this Section, "possessor" means, in respect of any premise or place, a person having ownership of, manager of the premise or place or any other person remaining there.

83. **Power to obtain information by notice:** (1) The Department may, by giving a notice in writing, order any person with or without liability to pay tax pursuant to this Act to do as follows:-

- (a) To submit any information specified in the notice within the time specified in the notice, also by preparing any document,
- (b) To be present at the Department in the place and time specified in the notice before the officer of the Department for inspection on the tax related matters of that person or any other person,
- (c) To submit, for purposes of inspection, any document mentioned in the notice that is under his control at the time when that person is examined pursuant to clause (b).

(2) Any person who is to be examined pursuant to clause (b) of Sub-section (1) shall have the right to have legal or other representation during such examination.

(3) Notwithstanding any provision made on any privilege or on public interest in respect of having access to the documents required for the implementation of this Act, the provisions contained in this Section shall apply in that respect.

84. **Governmental secrecy:** (1) Any officer and other employee of the Department shall maintain secrecy of all documents and information that come to his custody or knowledge in the course of carrying out his duty pursuant to this Act.

(2) Notwithstanding anything contained in Sub-section (1), any officer of the Department may disclose, as follows, the document or information referred to in Sub-section (1) to the following persons:-

- (a) To the extent that it is necessary to carry out the duty of that officer pursuant to this Act,
- (b) In cases where is so ordered by any court or tribunal in respect of administrative review or action pursuant to this Act,
- (c) Before the Minister for Finance,
- (d) In cases where it is necessary to disclose for purposes of any other financial law,
- (e) In cases where it is necessary for any person in the service of Government of Nepal for any acts relating to revenue or statistics, before such a person,
- (f) In cases where it is necessary in the course of carrying out the duty, before the Auditor General or any person authorized by the Auditor General, or
- (g) Before the competent authority of the government of any country with which Government of Nepal has concluded an international agreement, to the extent as provided for in such agreement in that respect.

(3) Any person, court, tribunal, body or official who obtains any document or information pursuant to Sub-section (2) shall keep secret such document or information except to the minimum extent required.

Chapter-16

Payment of Tax

85. **Time, place and mode of payment of tax:** (1) Tax required to be paid under this Act has to be paid in the place and mode as prescribed.

(2) Tax required to be paid under this Act has to be paid in the following time, subject to Sub-section (1):-

(a) In the case of one who has to pay by withholding advance tax, in the time mentioned Sub-section (4) of Section 90,

(b) In the case of one who has to pay tax in installments, in the time mentioned in Sub-section (1) of Section 94,

(c) In the case of one who has to pay the assessed tax-

(1) On the date when the income return is to be submitted in respect of assessment of tax referred to in Section 99,

(2) Within the time limit as specified in the tax assessment notice delivered pursuant to Section 102 in respect of tax assessed pursuant to Sub-section (2) of Section 99,

(3) Within the time limit as specified in the tax assessment notice delivered pursuant to Section 102 in respect of amended tax

assessment made pursuant to Sub-section (2) of Section 99,

- (d) In respect of the amounts required to be paid to the Department as per any notice issued pursuant to Sub-section (8) of Section 104, Sub-section (1) of Section 109, or Sub-section (1) of Section 110, on the date mentioned in the notice,
- (e) In respect of a liability fixed upon failure of any entity to pay tax pursuant to Sub-section (2) of Section 107, at the same time when the entity has to pay tax,
- (f) In respect of the amounts required pursuant to Sub-section (3) or (4) of Section 108, within seven days of the date on which the amounts are adjusted by auction sale gradually or on which the amounts cannot be so adjusted, and
- (g) In respect of the fees and interest assessed pursuant to Section 122, on the date as mentioned in the assessment notice.

(3) The date on which tax has to be paid shall not be affected in the following circumstances:-

- (a) An action taken by the Department pursuant to Chapter-20 to recover tax, or
- (b) Other action has commenced, pursuant to this Act.

86. **Evidence of payable tax:** The certificate signed by the officer of the Department, indicating the name, address of any person and the amount of tax required to be paid by that person shall be an ample evidence for

the amount of tax required to be paid by that person, in the following actions:-

- (a) Any action taken by the Department pursuant to Chapter-20 to recover tax, or
- (b) Any action on any offense pursuant to Chapter-23.

Chapter-17

Withholding on Payment

87. **Withholding of tax by employer:** (1) In making payment which has source in Nepal and is to be included in computing the income derived by any employee or worker, each resident employer shall deduct (withhold) tax at the rate referred to in Schedule-1.

(2) The liability of an employer required to withhold tax pursuant to Sub-section (1) shall not decrease or end by virtue of the followings:-

- (a) In cases where the employer has the right or duty to deduct or hold up or subtract any other amount from the said payment, or
- (b) In cases where the income earned by the employee or worker from employment cannot be subtracted pursuant to other laws in force.

88. **Withholding of tax in making payment for investment return and service charge:** (1) In making payment by a resident person for interest, natural resource, rent, royalty, service charge having source in Nepal, and if the person is an approved retirement fund, in making payment of amount of any retirement payment, the person shall withhold tax at the rate of Fifteen percent of the total amount of payment.

Provided that, tax shall be withheld from provident fund and gratuity paid by the approved retirement fund, only at the rate of six percent.

(2) In making payment by a resident person for dividend, profit made from investment insurance having source in Nepal or profit made from unapproved retirement fund, the person shall withhold tax at the rate of ten percent of the total amount of payment.

(3) Notwithstanding anything contained in Sub-section (1), in making payment of interest or of an amount in the form of interest as follows to any natural person for the deposit, a bank or financial institution shall withhold tax at the rate of Six percent of the total amount of payment:-

- (a) Which has source in Nepal, and
- (b) Which is not related with the operation of business.

(4) Notwithstanding anything contained in Sub-sections (1), (2) and (3), this Section shall not apply to the following payment:-

- (a) Payment related to the operation of a business carried on by a natural person or any other payment except for the house rent,
- (b) Interest paid to a resident bank or other resident financial institution, or
- (c) Payment enjoying tax exemption or payment liable to tax withholding pursuant to Section 87.

89. **Tax withholding in making payment of contraction or contract:** (1)
In making payment of a sum exceeding Fifty Thousand Rupees for payment of general insurance premium or contraction or contract, a

resident person shall withhold tax at the rate of One and half percent of the total amount of payment.

(2) The amount referred to in Sub-section (1) shall be fixed also by adding any other payments, if any, made by such person or his/her associated person under the same contract to the person or his/her associated person entitled to payment under that contract in the past Ten days.

(3) Notwithstanding anything contained in Sub-section (1), tax shall be withheld as follows from payment made by any resident person to any non-resident person under any contraction or contract:-

- (a) Where the Department has given that resident person a notice in writing, at the rate specified in the notice, or
- (b) As referred to in Sub-section (1) in any other circumstances.

(4) Notwithstanding anything contained in Sub-section (1), this Section shall not apply to the following payments:-

- (a) Payment made by natural persons excepts the payments made in the course of operation of any business, or
- (b) Payments enjoying tax exemption or payments liable to tax withholding pursuant to Section 87 or 88.

90. **Statement and payment of tax withheld:** (1) Each person who has to withhold tax has to submit to the Department a statement setting out the following matters in such mode and format as specified by the Department within Fifteen days of expiration of each month:

- (a) Payment subject to tax withholding made by the person withholding tax to the person subject to tax withholding pursuant to Sections 87, 88 or 89 in that month,
- (b) Name, address of the person subject to tax withholding and the permanent account number in the case of one who has permanent account number,
- (c) Amount of tax withheld in making each payment except that mentioned in Sub-section (3), and
- (d) Any other information as specified by the Department.

(2) The person withholding tax shall pay to the Department the amount of tax withheld or deemed to be withheld pursuant to Sub-section (3), along with the statement referred to in Sub-section (1), within the time-limit referred to in Sub-section (1).

(3) Even though the person liable to withhold tax has not withheld tax pursuant to Section 87, 88 or 89, the tax shall be deemed to withheld at the time when it has to be withheld.

(4) The person withholding tax shall pay the amount of tax withheld pursuant to Section 87, 88 or 89 or deemed to be withheld pursuant to Sub-section (3); and in cases where Sub-section (5) is applicable, the person subject to tax withholding shall pay the tax within Fifteen days after the period referred to in Sub-section (1).

(5) In cases where the person withholding tax does not withhold or pay tax as follows, both the person subject to tax withholding and the person withholding tax shall be jointly and severally liable to pay the amount of tax to the Department:

- (a) In cases where the person withholding tax does not withhold tax from any payment pursuant to Sections 87, 88 or 89, and
- (b) In cases where the person withholding tax does not pay to the Department the amount of tax deemed to be withheld pursuant to Sub-section (3) within the date on which tax has to be paid pursuant to Sub-section (4).

(6) In cases where the person withholding tax withholds tax and pays it to the Department pursuant to Sections 87, 88 or 89 and the person subject to tax withholding makes any claim as to that payment subject to tax withholding, that amount shall be treated as if it were paid to the person subject to tax withholding.

(7) In cases where the person withholding tax pays to the Department the amount of tax not withheld pursuant to Sections 87, 88 or 89, he may recover the amount equal to the amount of tax so paid from the person subject to tax withholding.

91. **Tax withholding certificate:** (1) The person withholding tax shall provide the tax withholding certificate, as follows, to the person subject to tax withholding at the time as specified in Sub-section (2):

- (a) Having been certified in accordance with the manner, if any, as prescribed by the Department,
- (b) Setting out the amount of tax withheld pursuant to Sections 87, 88 or 89 and the paid amounts.

(2) The tax withholding certificate setting out the period of tax withholding has to be provided within Fifteen days from the date of expiration of the month in which tax is withheld.

(3) Notwithstanding anything contained in Sub-section (1), in cases where tax is withheld pursuant to Section 87, the tax withholding certificate has to be provided as follows:-

- (a) The certificate shall be valid only for the period when the employee continues to serve in that income year.
- (b) The certificate has to be provided within Thirty days from the expiration of that year or in cases where the employee leaves employment in the person withholding the tax in that year, it has to be provided within thirty days from the date of his leaving employment.

92. **Payment from which tax is withheld finally:** (1) The following payments shall be treated as payments from which tax is withheld finally:-

- (a) Dividend paid by a resident company,
- (b) Rent paid for the land or building and fixtures and equipment appurtenant thereto having source in Nepal to other natural person except one who is carrying on business,
- (c) Profit paid by a resident person for investment insurance,
- (d) Profit paid by a resident person for the interest of an unapproved retirement fund,
- (e) Interest paid by a bank or financial institution as mentioned in Sub-section (3) of Section 88, and

- (f) Payment subject to tax withholding made to a non-resident person pursuant to Sections 87, 88 or 89.

(2) In cases where the person withholding tax or the person subject to tax withholding pays to the Department the amount of tax withheld from the payment from which tax is withheld finally pursuant to Sections 87, 88 or 89 or the amount of tax deemed to have been withheld pursuant to Sub-section (3) of Section 90, the person referred to in clause (c) of Section 3 shall be deemed to have fulfilled the tax liability.

93. **Adjustment facility and inclusion of tax not to be withheld finally:**

(1) In cases where any tax is withheld from any payment for purposes of computing the amount of such payment, such tax-withheld amount shall be treated as a portion of that payment.

(2) In cases where any tax is withheld from any payment except the payment from which tax is withheld finally, the person subject to tax withholding shall be deemed to have paid the amount of tax as follows:-

- (a) The amount of tax withheld from payment pursuant to Sections 87, 88 or 89,

- (b) In cases where the person withholding tax or the person subject to tax withholding pays to the Department the amount of tax referred to in Sub-section (3) of Section 90 or the amount of tax deemed to have been withheld from payment, such amount.

(3) The person subject to tax withholding may make a claim for adjustment of the amount referred to in Sub-section (2) only to the amount of tax payable in the income year in which that payment is made.

<u>Date on which payment has to be made</u>	<u>Amount to be paid</u>
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By the end of <i>Poush</i> (mid January)	40% of the estimated tax which exceeds the already paid tax
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By the end of <i>Chaitra</i> (mid April)	70% of the estimated tax which exceeds the already paid tax
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By the end of <i>Ashad</i> (mid July)	100% of the estimated tax which exceeds the already paid tax
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Chapter-18

Installment

94. **Payment of tax in installment:** (1) A person who has or will have assessable income in any income year from any business or investment has to pay tax in three installments as follows:

Explanation: For purposes of this Sub-section,-

(a) "Estimated tax" means the estimated tax in installment computed by any person liable to pay tax in installment pursuant to Section 95 at the time when the installment tax is to be paid in any year.

(b) "Already paid tax" means the following total sum:-

- (1) The amount of tax paid in that income year by a prior installment before the date on which the installment in question is to be paid,
- (2) The amount of tax deducted from the payments to be included in computing the income of any person in any income year pursuant to Chapter-17 before

the date on which the installment in question is to be paid in that year,

- (3) In cases where the agent withholding tax or the person subject to tax withholding pays to the Department the amount of tax deemed to be withheld from the payment referred to in clause (2) pursuant to Sub-section (3) of Section 90 in that year before the date on which the installment is to be paid, such amount of tax, and
- (4) The amount of tax adjustment for medical treatment expenses which that person may claim pursuant to Section 51 in respect of the accepted medical treatment expenses incurred by that person before the date on which the installment is to be paid.

(2) Notwithstanding anything contained in Sub-section (1), in cases where the amount of installment to be paid pursuant to that Sub-section is less than Two Thousand Rupees, amount of such installment need not to be paid.

(3) The person paying installment shall be allowed to deduct the amount of tax paid by way of installment in any year pursuant to this Section for the tax chargeable in that year.

95. **Return of estimated tax to be paid:** (1) Every person who has to pay installment in any income year has to submit to the Department a return, in such format and manner as may be prescribed, setting out the estimates of the following amounts of that person for that year within the date on which the first installment of tax is to be paid in that year pursuant to Section 94:-

- (a) Assessable income that could be earned by that person from each source of employment, business and investment in that year and source of such income,
- (b) Taxable income of that person that could be earned in that year and the amount of tax to be paid by the person referred to in clause (a) of Section 3, which is computed pursuant to Section 4 without subtracting the amount of tax adjustment for medical treatment expenses,
- (c) In respect of a non-resident person's foreign permanent establishment situated in Nepal, the amount of income sent abroad by such foreign establishment in that year and the amount of tax to be paid by the person referred to in clause (b) of Section 3, which has been computed in that income pursuant to Sub-section (5) of Section 4, and
- (d) Any other details specified by the Department.

(2) The sum total of the amount of tax mentioned in clauses (b) and (c) shall be the estimated tax payable by the person referred to in Sub-section (1) in that income year.

(3) In computing the foreign tax adjustment amount to be claimed pursuant to Section 71 in order to make an estimation of the tax to be paid in any income year pursuant to clause (b) of Sub-section (1), only the foreign tax paid by any person in that year or the foreign income tax estimated by him as payable in that year has to be computed.

(4) Unless and until any person paying installment of tax submits to the department the amended estimate setting out the necessary

information and the reasons for amendment in the format referred to in Sub-section (1), the estimate made by him pursuant to that subsection shall remain valid throughout the income year.

(5) Notwithstanding anything contained in subsection (2), the amended estimate submitted by any person pursuant to Sub-section (4) shall be applicable only in computing the installment of tax to be paid pursuant to Section 94 in that income year after the date of its submission to the Department.

(6) Notwithstanding anything contained in Sub-sections (1) and (5), the Department may so specify that any person or class who has to pay installment of tax is not required to submit an estimate pursuant to Sub-section (1).

(7) Notwithstanding anything contained in Sub-section (2), in cases where any person who has to pay installment of tax does not submit an estimate in any income year pursuant to Sub-section (1) or where the Department is not satisfied with the submitted estimate or amended estimate or where it is so specified pursuant to Sub-section (6) that any person is not required to submit an estimate to pay installment of tax, the Department may do as follows:-

- (a) The person referred to in clause (a) or (b) of Section 3 may make an estimate of the estimated tax to be paid by him/her in that year on the basis of the tax required to be paid by him/her in the last income year, and
- (b) In cases where the Department is not satisfied with the estimate prepared pursuant to clause (a), the method used to prepare the estimate and the estimate submitted by the person, the Department

shall give a notice in writing setting out the reasons therefor to the person who has to pay installment.

(8) In cases where the Department gives a notice to the person who has to pay installment pursuant to Sub-section (7), the amount of estimated tax to be paid by that person in that year shall be the amount estimated by the Department.

Chapter-19

Income Return and Assessment of Tax

96. **Income return**: (1) Each person shall, within three months of expiration of an income year, and subject to Sections 97, 98 and 100, submit an income return of that year in the place as specified by the Department.

(2) The income return referred to in Sub-section (1) shall be as follows:

(a) It has to be prepared in the manner and format as specified by the Department, setting out the following matters:

- (1) Assessable income earned by that person from each employment, business or investment in that year and source of such income,
- (2) Taxable income of that person in that year and the tax to be imposed on the person referred to in clause (a) of Section 3 in respect of that income,
- (3) The income sent abroad in that income year by a non-resident person's foreign permanent

establishment situated in Nepal, and the tax imposable in that income,

- (4) Tax deduction, installment or amount of any assessed tax paid in that year by any person in a manner to have tax adjustment pursuant to Sections 93, 94 or 100,
 - (5) Amount of tax due and payable to be set by subtracting the tax paid by that person in that year pursuant to sub-clause (4) from the amount of tax mentioned in sub-clauses (2) and (3), and
 - (6) Any other information and details as specified by the Department.
- (b) The income return has to be signed by that person or manager, covenanting that it is true and complete, and
- (c) The income return has to be accompanied by the followings:
- (1) The certificate of withholding of tax pursuant to Section 91 for the payment received by any person in the year of submission of the income return,
 - (2) Any details made available to that person pursuant to Sub-section (4),
 - (3) Evidence of choice, if any, made pursuant to Sub-section (4) of Section 4, and

- (4) Any other information and details as specified by the Department.

(3) In cases where any person, except in capacity of an employee, prepares or assists in preparing the income return of any other person or the documents or details to be accompanied with the income return in lieu of any payment, such a person has to certify the following matters:-

- (a) Having examined the documents maintained by other person pursuant to Section 81, and
- (b) Having the circumstances in question been actually reflected from the details or information.

(4) If the person required to certify the return pursuant to Sub-section (3) refuses to certify, information, setting out the reasons for such refusal, has to be given to the person whose income return is to be certified.

(5) The Department may, in the following circumstances, require any person to submit the income return of an income year or any part of the income year within the time-limit mentioned in the written notice given by it to such person subject to Section 100 prior to the due time-limit for submission of the income return of the income year pursuant to Sub-section (1):-

- (a) In cases where that person becomes bankrupt, insolvent or is dissolved,
- (b) In cases where that person is to leave Nepal for an uncertain period of time,
- (c) In cases where that person is leaving the act being carried out by him/her in Nepal, or

- (d) In cases where the Department otherwise thinks it proper.

97. **Submission of income return not required:** Except where the Department issues a written order, the following person shall not be required to submit the income return for any income year pursuant to Section 96:

- (a) Out of the persons mentioned in clause (a) of Section 3, any person who is not required to pay tax in that income year,
- (b) The person mentioned in clause (c) of Section 3 in that income year, or
- (c) Any resident natural person in whose respect Sub-section (3) of Section 4 applies in that income year.

98. **Extension of time-limit for submission of income return:** (1) In cases where any person who has to submit an income return pursuant to Section 96 makes an application in writing, within the time limit for submission of such return, to the Department for the extension of time limit, the Department may extend the time-limit for submission of the income return if the reasons are reasonable. Information of the decision made by the Department on the application so made for the extension of time limit has to be given in writing to the applicant.

(2) The department may extend, at one time or several times, the time limit for a period not exceeding three months to submit the income return pursuant to Sub-section (1).

99. **Assessment of tax:** (1) In cases where any person has submitted the income return of any income year, setting out the following amounts, on the date of submission of the return, the tax of the income return shall be deemed as if it were assessed:-

- (a) The amount of tax mentioned in the income return and payable by the person mentioned in Clauses (a) and (b) of Section 3 in that income year, and
- (b) The amount of tax mentioned in the income rerun and due and payable in that year.

(2) In cases where any person does not submit the income return of any income year, tax shall be deemed to have been assessed as follows on the due date for submission of the tax return until the tax return is submitted:-

- (a) The amount of tax payable by that person in that year shall be equal to the sum of the amount of tax deducted from the amount received pursuant to Chapter-17 and the amount paid in installment for that year pursuant to Chapter-18, and
- (b) Tax shall not be deemed due and payable as per tax assessment.

100. **Self-assessment of tax:** (1) Section 99 shall be applicable in cases where the income return of any income year or any part of any income year has to be submitted pursuant to Sub-section (5) of Section 96.

(2) Notwithstanding anything contained in Sub-section (1), in the circumstances mentioned in Sub-section (5) of Section 96, the Department may, based on the following amounts, assess the tax of that person in a justifiable manner:-

- (a) The amounts mentioned in sub-clauses (1), (2), (3) and (4) of clause (a) of Sub-section (2) of Section 96, for any income year or any part of that year,

- (b) The amounts due and payable under sub-clause (5) of clause (a) of Sub-section (2) of Section 96, for any income year or any part of that year.

(3) The following provision shall be applicable in cases where tax is assessed pursuant to Sub-section (1) or (2):-

- (a) A person whose tax is assessed for the whole income year is not required to submit the income return referred to in Sub-section (1) of Section 96 for that income year, or
- (b) A person whose tax is assessed for a portion of any income year is required to submit the income return referred to in Sub-section (1) of Section 96 for that income year.

(4) The amount of tax paid as per the assessment of tax for a portion of any income year may be adjusted to the tax chargeable as per the assessment of tax for the whole year.

(5) In assessing the tax pursuant to this Section, the Department has to give a time limit of Seven days for the submission of proof and evidence for defense.

101. **Amended tax assessment:** (1) The Department may have amended tax assessment in order to adjust the tax liability of a person whose tax has been assessed pursuant to Section 99 or 100 on reasonable grounds.

(2) In cases where the Department thinks it proper to re-amend the amended tax assessment made pursuant to Sub-section (1), it may amend it, for as many times as it deems appropriate on reasonable grounds.

(3) The Department shall, in assessing the tax pursuant to Sub-section (1) or (2), complete assessment within Four months from the following date:-

- (a) In cases where tax is assessed pursuant to Section 99, the due date for the submission of income returns,
- (b) In cases where tax is assessed pursuant to Sub-section (2) of Section 100, the date on which the tax assessment notice is given to the person whose tax is assessed,
- (c) In cases where tax is assessed pursuant to Sub-section (1) or (2), the date mentioned in clause (a) or (b) related with the previous tax assessment that has been amended pursuant to Sub-section (1).

(4) Notwithstanding anything contained in Sub-section (3), in cases where the tax of any person has been assessed in a wrong manner due to fraud, the Department may amend such tax assessment at any time. Such amendment has to be made no later than one year of receipt of information that details have been given or tax assessed fraudulently.

(5) Notwithstanding anything contained in Sub-section (3), in cases where the tax assessment is amended or the assessed tax is lessened by the Revenue Tribunal or other competent courts, the Department shall not be able to amend such tax assessment to that extent.

Provided that, in cases where an order has been issued to reexamine it, it shall not be deemed to bar the making of amendment.

(6) In making amendment to tax assessment pursuant to this Section, the Department has to give that person a notice in writing

clearly setting out the grounds for such amendment and a time limit of Seven days for the submission of proof and evidence for defense on such assessment of tax.

102. **Tax assessment notice**: The Department has to give the person, whose tax is assessed, a written notice of tax assessment made pursuant to Sub-section (2) of Section 100 or Section 101 setting out the following matters:-

- (a) The assessed tax to be paid and due and payable by the person mentioned in clauses (a) and (b) of Section 3 for the income year or period related with assessment of tax,
- (b) The method of computation of tax in the tax assessment as mentioned in clause (a),
- (c) The reasons why the Department has to assess the tax,
- (d) The time for payment of the assessed tax due and payable, and
- (e) The time, place and mode for making a petition in cases where one is not satisfied with the assessment of tax.

Chapter-20

Collection, Remission and Refund of Tax

103. **Security for tax payable by withholding**: (1) The tax required to be withheld by a person who has to withhold tax pursuant to Chapter-17 has to be given preference to any payment to be made by the order of a court or as per any other law or in any other manner.

(2) The following provisions shall apply in respect of the tax withheld by a person who has to withhold tax pursuant to Chapter-17:-

- (a) The tax withheld by such a person as well as the property, if any, received for such tax shall be

deemed to have been withheld for Government of Nepal,

- (b) The amount of tax so withheld cannot be attached to the loan or liability of such a person, and
- (c) In cases where the person withholding such tax becomes bankrupt or is dissolved, the amount of tax so withheld shall not be treated as a part of the assets so become bankrupt or dissolved; and in making division upon such dissolution or bankruptcy, the Department shall have the first lien over the tax withheld or over the property.

104. **Lien over property**: (1) Notwithstanding anything contained in the laws in force, in cases where any person does pay tax on the due date for payment of tax, the lien of Government of Nepal shall be deemed to have been created over the property of the person who is in arrear of tax.

(2) In claiming the property over which the lien is created pursuant to Sub-section (1), the Department has to give that person a written notice setting out the following matters:-

- (a) Description of the property claimed,
- (b) Limit of the claim referred to in Sub-section (3),
- (c) Tax related to the claim, and
- (d) Other matters, if any.

(3) In making claim over the property pursuant to Sub-section (2), the claim shall be created only to the extent of the tax due and payable by such a person, interest and claim to be paid in respect of such tax pursuant to Section 119 and the expenses incurred in auction sale.

(4) The claim made pursuant to Sub-section (2) shall not lie unless and until the following matter takes place:-

- (a) Until the Department gives information to have the claim registered pursuant to Sub-section (6) in respect of the building and land,
- (b) Until the Department possesses such property pursuant to Sub-section (3) of Section 105 in respect of other direct/tangible property, and
- (c) Until the notice referred to in Sub-section (2) is given to the person who is in arrear of tax, in any other circumstances whatsoever.

(5) In cases where the person who is in arrear of tax pays to the Department all the amounts referred to in Sub-section (3) and covered by the claim made pursuant to Sub-section (2), which are due and payable by such a person.

(6) In cases where the Department makes a claim over any land or building pursuant to Sub-section (2), information has to be given to the concerned Land Revenue Office; and that Office has to so withhold such land or property that it cannot be sold and disposed of to or ownership to it cannot be transferred to any person.

(7) In cases where the claim over the land and building has to be released pursuant to Sub-section (5), the Department has to give information thereof to the Land Revenue Office. Upon receipt of such information, the Land Revenue Office has to release the land and building so withheld.

(8) The Department has to promptly give the person in arrear of tax a notice setting out the following matters, in respect of the expenses to be incurred pursuant to Sub-section (3):

- (a) The expenses incurred by the Department for the claim on the property of the person in arrear of tax and for the auction sale thereof, prior to giving such a notice, and
- (b) The date on which the person in arrear of tax has to pay such expenses to the Department.

Explanation: For purposes of this Section, "expenses incurred for claim and auction sale" means the following expenses incurred or to be incurred by the Department:

- (a) The expenses incurred or to be incurred by the Department in creating or releasing the claim over the property, or
- (b) The expenses incurred or to be incurred by the Department pursuant to Section 105 in possessing, holding and auctioning the claimed property.

105. **Auction sale of the claimed property:** (1) The department has to give the person in arrear of tax a notice on auctioning the claimed property held by the person in arrear of tax.

(2) The notice given pursuant to Sub-section (1) may be included in the notice given pursuant to Sub-section (2) of Section 104 or attached with such a notice. Such a notice has to clearly set out the following matters and be given to the person in arrear of tax:-

- (a) The property claimed and the mode and time of auction or sale of the property, and

- (b) In respect of a tangible property, mode and place of possessing the property by the Department.

(3) After the Department has given the notice referred to in Sub-section (1) or (2) to the person in arrear of tax, it may do as follows:-

- (a) To have possession of the tangible property mentioned in the notice at any time,
- (b) To enter into any premises mentioned in the notice referred to in Sub-section (1) for the purpose of having possession of the tangible property at any time,
- (c) In respect of the tangible property except the land or building, to keep such properties in such place as thought proper by the Department at the expense of the person in arrear of tax.

(4) In cases where the Department has given the notice referred to in Sub-section (1) to the person in arrear of tax, it may, in the following time, publicly auction such claimed property or sell and dispose of or use such property in such manner as thought proper:

- (a) If the claimed property is the land or building, after thirty days of the date of possession of such property pursuant to Sub-section (3),
- (b) If the claimed property is a perishable tangible property, after one day of the date of possession pursuant to Sub-section (3),
- (c) If the claimed property is a tangible property except those properties mentioned in clause (a) or (b), after

ten days of possession pursuant to Sub-section (3),
and

- (d) If the claimed property is any other kind of property, after ten days of possession of such property pursuant to Sub-section (3).

(5) The expenses incurred in having claim and auctioning the property auctioned shall first be deducted from the proceeds derived from the auction sale pursuant to Sub-section (4). After the expenses are so deducted, the payable tax and the interest payable on the tax pursuant to Section 119 shall be deducted; and then, if any amount remains balance, such amount shall be refunded to the person in arrear of tax.

(6) After the proceeds derived from the auction sale have been adjusted pursuant to Sub-section (5), the Department has to give a written notice setting out the process of the adjustment to the person in arrear of tax.

(7) In cases where, in adjusting the proceeds derived from the auction sale by following the process referred to in Sub-section (5), the proceeds are not sufficient to fully pay the amounts for the expenses mentioned in that Sub-section, tax and interest, the Department has to re-institute the action to recover the shortfall amount pursuant to Section 104, 111 or this Section.

Explanation: For purposes of this Section,

- (a) "Claimed property" means the property of the person withholding tax, who is in arrears of tax, mentioned in Sub-section (2) of Section 103 or Sub-section (2) of Section 104.

- (b) "Expenses incurred in making claim and auction sale" means the expenses incurred in making claim and auction sale pursuant to Section 104.
- (c) "Person in arrear of tax" includes the person withholding tax mentioned in Sections 103 and 104.

106. **To prevent departing from the Nepal:** (1) In cases where any person does not pay the tax within the time limit due for the payment of tax, the Tax Department may, by giving a written notice to the concerned office of Government of Nepal, issue an order to prevent such person from leaving the country for a period not exceeding 72 hours from the date of expiration of the time of issue of the notice to such person to pay tax.

(2) In cases where any additional act has to be done during the period of time mentioned in Sub-section (1), the Department has to obtain prior leave of the Court of Appeal.

(3) In cases where the person referred to in Sub-section (1) pays tax or the department thinks that such person has made satisfactory arrangement on payment of tax, it may withdraw such order by giving a notice to the concerned office pursuant to Sub-section (1).

107. **Officer employee of entity to be made responsible:** (1) In cases where any entity does not observe anything required to be observed under this Act, each person who acts as the officer of that entity at that time shall be responsible for that.

(2) In cases where any entity does not pay tax on the date due for payment of tax, all officers who are incumbent in that entity for the time being or incumbent until before six months shall be jointly and severally liable to pay that tax.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), these Sub-sections shall not be applicable in the following circumstances:-

- (a) Where the entity has committed such offense without knowledge and consent of such person, and
- (b) Where that person has, in order to avoid such offense, observed or exercised care, effort and skill which a reasonable man would observe or exercise in similar circumstances.

(4) In cases where any person pays the tax required to be paid pursuant to Sub-section (2), that person may do as follows:-

- (a) To recover the amount which he has so paid from that entity,
- (b) For purposes of clause (a), to so hold under own control the property including the moneys of that entity which is under his possession or which may come under his possession that it is not in excess of the amount so paid.

(5) In cases where any person holds any property under his control pursuant to clause (b) of Sub-section (4), the entity or any other person shall not be entitled to make any claim against such person.

Explanation: For purposes of this Section, "officer of any entity" means the manager of that entity or any person who acts in that capacity.

108. **Recovery of tax from recipient:** (1) Each recipient has to give a notice of the matter to the Department no later than Fifteen days of the date of appointment to the post of recipient or the date of having possession of the property situated in Nepal, whichever is earlier.

(2) The Department has to give a written notice to the person in arrear of tax on the amount to be paid.

(3) On receipt of the notice referred to in Sub-section (1), the recipient has to do as follows:-

- (a) To set aside the amount notified by the Department under Sub-section (2) after making payment of the loan, if any, which is preferential to the tax payable pursuant to Sub-section (2), subject to clause (c) of Sub-section (2) of Section 103, from the proceeds of the sale of the required portion of the property which have come under possession of the recipient, and
- (b) To pay to the Department the amount so set aside for his tax liability on behalf of the person in arrear of tax.

(4) It shall be the personal liability of the recipient to pay to the Department the amount equal to the tax liability payable by such person in arrear of tax to the extent that no amount has been set aside by the recipient pursuant to Sub-section (3).

(5) Provided that, the recipient may recover from the person in arrear of tax the amount of tax paid.

Explanation: For purposes of this Section,-

- (a) "Recipient" means any of the following persons:
 - (1) A liquidator,
 - (2) A person appointed from outside or by a court as a recipient in respect of any property or entity,

- (3) A person possessing a property by mortgage,
- (4) Heir apparent, administrator or manager of the property belonging to a deceased natural person, or
- (5) A person looking after the affairs of an incapacitated natural person.

(b) "Person in arrear of tax" means the person whose property has come under possession of the recipient.

109. **Recovery of tax from the person liable to pay tax:** (1) In cases where the person in arrear of tax does not pay tax within the due date for payment of tax, the Department may, by giving a notice in writing, order any of the following payers to pay to it the amount to the extent of the amount of tax payable on behalf of the person in arrear of tax, within the date mentioned in that notice:-

- (a) The person who has to pay amount to the person in arrear of tax,
- (b) The person who holds money for or on behalf of the person in arrear of tax,
- (c) The person who holds money on behalf of any third person in a manner to pay it to the person in arrear of tax, or
- (d) The person who has got authority from the third party to pay the amount to the person in arrear of tax.

(2) The Department has to give a copy of the notice given to the payer pursuant to Sub-section (1) to the person in arrear of tax.

(3) Notwithstanding anything contained in Sub-section (1), the date mentioned in the notice referred to in that Sub-section shall not be earlier than the date mentioned in clauses (a) and (b):-

- (a) The date on which the amount has to be paid to the person in arrear of tax or the date on which such amount has been held on his behalf, and
- (b) The date on which the notice has been given pursuant to Sub-section (2).

(4) The amount paid by the payer pursuant to Sub-section (1) shall be deemed as paid to the person in arrear of tax. The person in arrear of tax or any other person shall not be allowed to claim such amount against the payer.

110. **Recovery of tax from the agent of a non-resident person:** (1) In cases where a non-resident person in arrear of tax does not pay tax within the due date for payment of tax, the Department may, by giving a notice in writing, order any person who is in possession of any property owned by the person who is in arrear of tax to pay tax from the amount equivalent to the market value of that property, on behalf of the person in arrear of tax, in respect of the tax liability of the third person, in the sum not exceeding the amount of tax payable by such person in arrear of tax, within the date mentioned in the notice.

(2) In cases where any person pays the amount of tax as per the order referred to in Sub-section (1), he may do as follows:-

- (a) To recover the amount of such payment from the person in arrear of tax,
- (b) For purposes of clause (a), to take under his control any property whatsoever, including the money belonging to the person in arrear of tax, which is or

would come in his possession, in such a manner that it is not in excess of the amount so paid.

(3) In cases where any person takes possession of any property pursuant to clause (b) of Sub-section (2), the person in arrear of tax or any other person shall not be allowed to make any claim against such a person.

111. **Institution of case on failure to pay tax:** The Department may file a case in the concerned District Court for the recovery of tax from the person who does not pay tax on the due time-limit for payment of tax.

112. **Remission:** (1) In cases where the tax payable by any person cannot be recovered, Government of Nepal may remit such tax in full or in part.

(2) Notwithstanding anything contained in Sub-section (1), Government of Nepal may remit, in full or in part, the fee or interest imposed pursuant to Chapter-22.

113. **Tax refund and adjustment of amount:** (1) In cases where any person has paid tax exceeding the tax liability payable by him/her, the Department may give direction to subtract the excess amount of tax paid by him/her from the amount of tax payable by him pursuant to this Act. The Department has to refund the excess amount to be set by such subtraction to the concerned person.

(2) In cases where the tax in question is not to be paid along with the interest paid by any person pursuant to Section 119, the Department has to refund such interest to that person.

(3) Any person has to make an application to the Department, as prescribed, for the refund of the amount pursuant to Sub-section (1).

(4) The person who makes an application pursuant to Sub-section (3) has to make such application within two years from the latest date

out of the following dates. In cases where an application is not made within that time-limit, the amount referred to in Sub-section (1) shall not be refunded:-

- (a) The date of expiration of the income year existed by virtue of payment of the excess amount,
- (b) The date on which the excess amount is paid, or
- (c) The date on which the case is decided.

(5) The Department has to give a notice in writing of the decision made by it on the application made pursuant to Sub-section (3).

(6) In refunding any amount of tax by the Department to any person by virtue of the order of a court or any other reason, the Department has to pay to such a person the interest as per the normal rate for the following period:-

- (a) In cases where such tax refund is related to the excess tax adjustment available to any person in any income year pursuant to Sections 93, 94 or 100, the period between the due date for submission of the tax return pursuant to Section 96 and the date of tax refund, and
- (b) In any other cases, the period between the date of payment by such person of the refundable tax and the date of tax refund.

(7) Tax deduction that can be claimed pursuant to Section 51 or 71 shall not be adjusted in any year, and such tax deduction shall not be adjusted in amounts or refunded pursuant to this Sub-section.

Provided that, in that year the tax deduction adjustment may be made in accordance with the provisions contained in Sub-section (2) of

Section 4, Sub-section (4) of Section 51 and Sub-section (3) of Section 71.

NEPAL LAW COMMISSION

Chapter-21

Review and Appeal

114. **Decisions subject to administrative review, and procedures:** (1) For purposes of this Act, the following decisions may be subject to administrative review:-

- (a) Advance ruling issued by the Department pursuant to Section 76,
- (b) Estimate made by the Department on, or decision made by it to estimate, the estimated tax payable by any person, pursuant to Sub-section (7) of Section 95,
- (c) Decision made by the Department to order any person to submit the income return pursuant to Sub-section (5) of Section 96 or Section 97,
- (d) Decision made by the Department on any application made by any person for the extension of the time-limit for submission of the income return pursuant to Section 98,
- (e) Assessment of tax payable by any person for any income year pursuant to Section 100 or 101 or assessment of the fees and interest payable by any person pursuant to Section 122,
- (f) Notice given by the Department requiring to set aside the amounts as receivable by any person as a recipient, pursuant to Sub-section (2) of Section 108,

- (g) Decision made by the Department to order any person who holds moneys payable to the person in arrear of tax to pay the same to the Department pursuant to Sub-section (1) of Section 109,
- (h) Decision made by the Department to order any person to pay tax of any person due and payable on behalf of a non-resident person pursuant to Sub-section (1) of Section 110,
- (i) Decision made by the Department on any application made by any person for the refund of tax pursuant to Sub-section (5) of Section 113, and
- (j) Decision made by the Department on any application made by any person for the extension of the time-limit for filing a complaint pursuant to Sub-section (3) of Section 115.

(2) Notwithstanding that the Department makes any decision on the matters mentioned in clauses (d), (i) and (j) of Sub-section (1), in cases where the Department does not give a notice of the decision to the applicant within thirty days after the making of the application pursuant to Section 98, Sub-section (3) of Section 113 or Sub-section (3) of Section 115, the decision may be subject to administrative review as if it were a decision to reject the application.

(3) In cases where the applicant does receive a notice of decision within the time-limit referred to in Sub-section (2) and registers information thereof with the Department, the decision made by the Department to reject the application mentioned in that Sub-section and notice thereof shall be deemed to have been served on that person on that date.

115. **Application for administrative review:** (1) A person who is not satisfied with any decision subject to administrative review as referred to in Section 114 may make an application to the Department against the decision within Thirty days of the date of receipt of a notice of that decision.

(2) The application as referred to in Sub-section (1) has to clearly set out the reasons and grounds for such review.

(3) In cases where the time limit for making application pursuant to Sub-section (1) expires and any person makes an application for the extension of time limit within Seven days from the date of expiration of the time limit, the Department may do as follows:-

- (a) To extend the time limit for a period not exceeding Thirty days from the date of expiration of the time limit for making application pursuant to Sub-section (1), where there are reasonable reasons, and
- (b) To give the applicant a written notice of the decision made by the Department on the application.

(4) The implementation of the decision mentioned in Sub-section (1) of Section 114 shall not be deemed to be affected from the making of application pursuant to Sub-section (1).

(5) Notwithstanding anything contained in Sub-section (4), the Department may hold in pending or otherwise affect the decision made pursuant to Sub-section (1) of Section 114 pending the settlement of the application made by any person pursuant to Sub-section (1).

(6) Notwithstanding anything contained in Sub-section (5), the provision contained in that Sub-section shall not apply until Fifty percent of the amount of tax payable is paid.

(7) The Department may do as follows on the application made by any person pursuant to Sub-section (1):-

- (a) To accept or reject, fully or partly, the matters mentioned in the application, and
- (b) To give a written notice of the decision on the application.

(8) In cases where the Department does not give the applicant a notice of the application within Ninety days from the date on which the application was made pursuant to Sub-section (1), the applicant may register information thereof with the Department and consider the application rejected by the Department.

(9) The concerned applicant has to give written information to the Department that he has considered the application as rejected pursuant to Sub-section (8). The decision made by the Department to reject such application and notice thereof shall be deemed to have been served on that person on the date on which such information was registered.

116. **Appeal in the Revenue Tribunal:** (1) A person who is not satisfied with any decision made to the Department pursuant to Section 115 may file an appeal to the Revenue Tribunal under the Revenue Tribunal Act, 2031(1974).

(2) The person who files an appeal pursuant to Sub-section (1) has to register a copy of the appeal with the Department within Fifteen days of the date of filing appeal.

(3) The implementation of the decision mentioned in Sub-section (1) of Section 114 shall not be deemed to be affected from the filing of an appeal pursuant to Sub-section (1).

(4) Notwithstanding anything contained in Sub-section (1) of Section 114, in cases where the Director General has made a decision subject to administrative review as mentioned in that Sub-section, an appeal may be filed to the Revenue Tribunal.

Chapter-22

Fees and Interest

117. **Fees to be charged in cases where documents are not maintained or return or income return is not submitted:** (1) If any person does not do the followings, a fee in a sum to be set by One and a half percent per year of the assessable income drawn out without deducting any amount, if any, that can be deducted and by including any amount, if any, that has to be included in computing the income of any income year for each month and portion of the month or a sum set by One Thousand Rupees per month, whichever is higher, shall be imposed on such a person:-
- (a) In cases where the income return of any income year has not been submitted pursuant to Sub-section (1) of Section 95, or
 - (b) In cases where the income return of any income year is not submitted pursuant to Sub-section (1) of Section 96.
- (2) If any person does not maintain the documents required to be maintained in any income year pursuant to Section 81, a fee in a sum to be set by one and a half percent per year of the assessable income drawn out without deducting any amount, if any, that can be deducted and by including any amount, if any, that has to be included in computing the income of any income year for each month and portion of the month or a sum set by one Thousand Rupees per month, whichever is higher, shall be imposed on such a person.

(3) If any person withholding tax does not submit the return referred to in Sub-section (1) of Section 90, a fee in a sum to be set by one and a half percent per year of the amount of tax to be withheld for each month and portion of the month from the due date for submission of the return until the date on which such return is submitted shall be imposed on such a person.

118. **Fees to be charged in cases where the person making payment in installments makes lesser payment of estimated tax:** (1) In cases where the amount of installment tax paid by any person pursuant to clause (a) of this Sub-section is less than the amount of tax to be paid in installment pursuant to clause (b), interest shall be charged on such less amount pursuant to Sub-section (2):-

- (a) The estimated or amended amount of tax computed by the person required to pay tax in installment pursuant to Section 95 in respect of the installment tax to be paid in any year pursuant to section 94,
- (b) The amount of tax to be set by ninety percent of the amount of tax to be paid by the person referred to in clauses (a) and (b) of Section 3 in that year.

(2) A fee in a sum to be set by the normal rate of interest, for each month and portion of the month, from the due date for payment of the first installment in that year until the date on which the tax is assessed and becomes due and payable pursuant to Section 99 shall be imposed on the person referred to in Sub-section (1).

(3) In cases where the amount referred to in clause (a) is higher than the amount referred to in clause (b), interest shall be charged, pursuant to Sub-section (2), on such higher amount by the normal rate on the amount of each period.

- (a) In cases where the estimate or revised estimate of the total amount to be paid by any person in installment for each installment period in any income year is accurate, Ninety percent of the amount,
- (b) The amount of installments paid in that income year.

119. **Interest to be charged in cases where tax is not paid:** (1) In cases where any person does not pay tax on the prescribed due date for payment of tax, an interest by the normal rate of interest, for each month and portion of the month, in the amount due and payable shall be imposed on the person for the period during which tax is so due and payable.

(2) For purposes of computing the interest to be paid pursuant to Sub-section (1), interest shall not be exempted in the extended time-limit given pursuant to Section 98.

(3) The person withholding tax shall not be allowed to recover the interest payable by him because of his failure to observe Sub-section (4) of Section 90 from the person subject to tax withholding.

120. **Fee to be charged on the person who submits false or misleading statement:** In cases where any person submits to the Department a false or misleading statement on any matter or the information mentioned in the statement becomes misleading as result of concealing information of any matter or thing required to be submitted or removing such information from the statement, the following fee shall be imposed on such a person:-

- (a) In cases where it has become false or misleading not by knowingly or recklessly but by mistake, Fifty percent of the less amount resulted therefrom.
- (b) In cases where it has become false or misleading knowingly or recklessly, One Hundred percent of the less amount resulted therefrom.

Explanation: For purposes of this Section, "statement submitted to the Department" means any statement submitted in writing to the Department or to the officer authorized by the Department in the course of performing the duty pursuant to this Act and includes the statement submitted as follows:-

- (a) Application, notice, description, complaint, deposition, or other document submitted, prepared, given or furnished pursuant to this Act,
- (b) Document submitted to the Department or any officer of the department except under this Act,
- (c) Reply to any question asked by the Department or any officer to any person, or
- (d) Information given by any person who has reasonable knowledge of the matter to be informed to the Department or any officer through any other person.

121. **Fee to be imposed on accomplice:** A fee of cent percent amount of the tax less paid by an accomplice who knowingly or recklessly aids or abets or advises any offender referred to in Chapter-23 shall be charged on such accomplice.

122. **Assessment of fee and interest:** (1) The Department shall assess the fee and interest required to be paid by any person pursuant to this Chapter.

(2) In computing the liability for the fee and interest chargeable where any particular act has not been performed or chargeable in respect of any statement pursuant to this Chapter, it shall be computed separately in the case of each section of this Chapter.

(3) The fee and interest chargeable pursuant to this Section shall be added to any other tax, if any, payable pursuant to this Act; and mere payment of such fee and interest shall not be deemed as the release of any person from the liability related to criminal proceedings mentioned in Chapter-23.

(4) In cases where the fee and interest have been assessed pursuant to this Section, the Department shall give a written notice of the assessment, setting out the following matters, to that person. Such notice may be attached to and sent along with the notice to be issued pursuant to Section 102:

- (a) The reasons why the Department has to assess the fee and interest,
- (b) The amount for the fee and interest payable,
- (c) The method how the amount has been computed,
- (d) The time, place and mode for making a compliant against the assessment.

(5) It shall be as follows in assessing the fee and interest pursuant to this Section:-

- (a) The matters contained in Sub-section (1), Sub-section (2), clause (b) of Sub-section (3), Sub-

section (4) and (5) of Section 101 shall also be applicable in assessing the fee and interest pursuant to this Section, and

- (b) The matters contained in clauses (b) and (c) of Sub-section (3), Sub-sections (4) and (5) of Section 101 and Section 102 shall also be applicable in the case of Sub-section (4) of this Section.

Chapter-23

Offense and Punishment

123. **Penalty to one who does not pay tax:** A person who does not pay tax, without any reasonable ground, by the due date for payment of tax shall be punished with a fine of a sum from Five Thousand Rupees to Thirty Thousand Rupees or with imprisonment for a term from One month to Three months or with both penalties.
124. **Penalty to one who submits false or misleading statement:** In cases where any information or statement submitted by any person to the Department is false or misleading because of submission with intention or recklessness or that information becomes misleading since such person has not mentioned information of any particular matter or thing in the statement in respect of such subject, such person shall be punished with a fine of a sum from Forty Thousand Rupees to One Hundred Sixty Thousand Rupees or with imprisonment for a term from Six months to Two years or with both penalties.

Explanation: For purposes of this Section, "any information or statement submitted to the Department" means the statement/details mentioned in the explanation referred to in Section 120.

125. **Penalty to one who obstructs or unduly influences tax administration:** (1) A person who commits the following act shall be

punished with a fine of a sum from Five Thousand Rupees to Twenty Thousand Rupees or with imprisonment for a term from one month to Three months or with both penalties:-

- (a) To obstruct the officer of the Department in the course of carrying out his duty pursuant to this Act,
- (b) Not to act as per the notice referred to in Section 83, or
- (c) To obstruct in any other manner in the implementation of this Act.

(2) Any person who attempts to commit an act referred to in Sub-section (1) shall be punished with half a punishment mentioned in that Sub-section.

126. **Penalty in the event of commission of offence by the person with or without authority:** (1) Any authorized person who violates Section 84 shall be punished with a fine of a sum not exceeding eighty Thousand Rupees or with imprisonment for a term not exceeding one year or with both penalties.

(2) In cases where any person who is not authorized under this Act collects tax or any other amount in the name of tax or attempts to collect the same, such a person shall be punished with a fine of a sum from eighty Thousand Rupees to two hundred Thousand Rupees or with imprisonment for a term from one year to three years or with both penalties .

127. **Penalty to accomplice:** Any person who intentionally aids or abets or advises any other person to commit any offense under this Act shall be punished with half a punishment imposed on the offender.

Provided that, if such an accomplice is a governmental employee, he shall be liable to punishment equal to the punishment imposed on the offender.

128. **Penalty to one who does not observe the Act:** Except as otherwise provided for in this Act, any person who does not observe any provisions of this Act or the rules framed under this Act shall be punished with a fine of a sum from Five Thousand Rupees to Thirty Thousand Rupees.
129. **Power of Department to pay amount of fine:** (1) Notwithstanding anything contained elsewhere in this Chapter, in cases where any person admits in writing that he has committed any one or more offenses mentioned in this Chapter, except the offense mentioned in Section 126, before the commencement of the court proceedings, the Department may order such a person to pay the amount of fine not exceeding the amount of fine imposable for the commission of such one or more than one offense.
- (2) In making the order referred to in Sub-section (1), the Department has to set out in such an order such offense, the amount of fine to be paid and the date for payment of the amount of fine.
- (3) The order made by the Department pursuant to this Section shall be final and no appeal may be made against it.
130. **To be state cases:** The Government of Nepal shall be the plaintiff in the cases under this chapter.
131. **Investigation and filing of cases:** (1) The prescribed officer shall investigate the case on the offense punishable under this Chapter, and case shall be filed in the concerned District Court within thirty five days of the completion of such investigation.

(2) In conducting investigation pursuant to Sub-section (1), the investigating officer shall seek advice and opinion of the government attorney.

Chapter-24

Miscellaneous

132. **Power to have expert's service**: Government of Nepal may obtain the service of the concerned expert for the act related to tax auditing; and the provision on governmental secrecy mentioned in Section 84 shall also apply to such expert.
133. **Departmental action to be taken**: In cases where the liability of a taxpayer increases or decreases because of the assessment of tax made with recklessness, the Director General may institute departmental action to punish the concerned officer who has assessed such tax or has not assessed the revised tax within the time limit referred to in Sub-section (3) of Section 101.
134. **Identity card of officer**: Each officer has to hold the identity card as prescribed and show such identity card where any one requests him to show it.
135. **Powers of court of law to be vested**: For purposes of this Act, the Department shall have the powers vested in a court under the law in force in the matters of summoning the presence of the concerned person, recording of statements, examining evidence, and compelling production of documents.
136. **Not to be responsible for an act done in good faith**: Notwithstanding anything contained elsewhere in this Act, no officer shall be personally responsible for any act which he has done in good faith in carrying out his duties.

137. **Power of Government of Nepal to give order or direction:** Government of Nepal may give necessary order or direction to the Department in order to make tax administration effective.
138. **Power to frame Rules:** Government of Nepal may frame necessary rules in order to carry out the objects of this Act.
139. **Power to make and enforce manuals:** The Department may make and enforce necessary manuals, subject to this Act and the rules framed under this Act.
140. **Alteration in Schedules:** Government of Nepal may, by a Notification in the Nepal Gazette, may make necessary alterations in the Schedules other than Schedule-1.
141. **Police to render assistance:** It shall be the duty of the Police to render the assistance sought by the Department on the implementation of this Act and the rules framed under this Act.
142. **This Act to prevail on tax provision:** Notwithstanding anything contained in the law in force, except in cases where the Financial Act to be enforced in every year amends this Act and provides for the imposition, assessment, increase, decrease, exemption, or remission of tax, no other Act shall make other provisions on amendments to, alteration in, the tax provisions referred to in this Act or other tax related provisions.
143. **Repeal, amendment and saving:** (1) The Income Tax Act, 2031 (1974) and the House and Land Rent Tax Act, 2023 (1966) are hereby repealed.

(2) The following Acts are hereby amended as follows:-

- (a) Section 15 of the National Loans Act, 2017 (1960) is hereby repealed.

- (b) Amendment to the Employee Provident Fund Act, 2019 (1962): The words "no tax of any kind except income tax shall be levied" shall be substituted for the words "no tax of any kind shall be levied" contained at the end of clause (b) of Section 18 of the Employee Provident Fund Act 2019 (1962).
- (c) Amendment to the Nepal Petroleum Act, 2040 (1984): Clause (c) of Section 13 of the Nepal Petroleum Act, 2040 (1984) is hereby deleted.
- (d) Amendment to Section 29 of the Retirement Fund Act, 2042 (1986): The words "no tax of any kind except income tax shall be levied" shall be substituted for the words "no tax of similar other kind shall be levied" contained in Section 29 of the Retirement Fund Act, 2042 (1986).
- (e) Amendment to Section 51 of the Citizen Investment Fund Act, 2047 (1991): Section 51 of the Citizen Investment Fund Act, 2047 (1991) is hereby repealed.
- (f) Amendment to Section 30 of the Nepal Academy for Science and Technology Act, 2048 (1991): Section 30 of the Royal Nepal Academy for Science and Technology Act, 2048 (1991) is hereby repealed.
- (g) Amendment to Section 15 of the Industrial Enterprises Act, 2049 (1992):

- (1) Clauses (c), (d), (e), (j), (l), (p), (q), (r), (s), (t) of Section 15 of the Industrial Enterprises Act, 2049 (1992) are hereby deleted.
 - (2) The words " respectively Thirty, Twenty-Five and Twenty percent on the income tax until ten years of the date of operation and" are hereby deleted.
- (h) Amendment to the Foreign Investment and Technology Transfer Act, 2049 (1992): Sub-section (1a.) of Section 5 of the Foreign Investment and Technology Transfer Act, 2049 (1992) is hereby deleted.
- (i) Amendment to the B. P. Koirala Health Science Institute Act, 2049 (1992): The word "income-tax" contained in the second line of Section 21 of the B. P. Koirala Health Science Institute Act, 2049 (1992) is hereby deleted.
- (j) Amendment to the Tribhuvan University Act, 2049 (1992): Sub-section (2) of Section 33 of the Tribhuvan University Act, 2049 (1992) is hereby deleted.
- (k) Amendment to the Electricity Act, 2049 (1992):
- (1) The word "income-tax" contained in the heading of Section 12 of the Electricity Act, 2049 (1992) is hereby deleted.
 - (2) Sub-sections (1), (2), (3), (4), (5) and (6) are hereby deleted.

- (l) Amendment to the Pokhara University Act, 2053 (1996): Sub-section (2) of Section 36 of the Pokhara University Act, 2053(1996) is hereby deleted.
- (m) Amendment to Section 18 of the B. P. Koirala Memorial Cancer Hospital Act, 2053 (1996): The word "income-tax" contained in Sub-section (1) of Section 18 of the B. P. Koirala Memorial Cancer Hospital Act, 2053 (1996) is hereby deleted.
- (n) Amendment to the Town Development Fund Act, 2053 (1996): Section 24 of the Town Development Fund Act, 2053 (1996) is hereby repealed.
- (o) Sub-section (1) of Section 34 of the Telecommunications Act, 2053(1996) is hereby repealed.

(3) All acts and actions done or taken under the Acts or Sections of the Acts repealed or amended pursuant to Sub-section (1) or (2) shall be deemed to have been done or taken under this Act.

(4) The provisions of the Income Tax Act, 2031(1974) shall apply to the provisions relating to the assessment and collection of income tax for the income year prior to the commencement of this Act.

Schedule-1

(Relating to Section 4)

Rates of Tax

1. **In the case of natural person:** (1) Tax shall be levied by the following rate on the taxable income of any resident natural person in any income year, subject to Sub-sections (2) and (4) of this Schedule:-

- (a) No tax shall be levied on the taxable income not exceeding Fifty -five Thousand Rupees,
- (b) Where the taxable income is more than Fifty-five Thousand Rupees but less than One Hundred thirty Thousand Rupees, Fifteen percent on the taxable income of more than Fifty-five Thousand Rupees, and
- (c) Where the taxable income is more than One Hundred thirty Thousand Rupees, Rs.11, 250.00 on the taxable income up to One Hundred Thirty Thousand Rupees and Twenty-Five percent on the taxable income exceeding One Hundred Thirty Thousand Rupees.

(2) Tax shall be levied by the following rates on the taxable income of any spouse making a choice pursuant to Section 50 in any income year, subject to Sub-sections (4) of this Schedule:-

- (a) No tax shall be levied on the taxable income not exceeding Seventy-Five Thousand Rupees,
- (b) Where the taxable income is more than Seventy-Five Thousand Rupees but less than One Hundred

Fifty Thousand Rupees, Fifteen percent on the taxable income exceeding Seventy-Five Thousand Rupees, and

- (c) Where the taxable income is more than One Hundred Fifty Thousand Rupees, Rs.11,250.00 on the taxable income up to One Hundred Fifty Thousand Rupees and twenty-five percent on the taxable income exceeding One Hundred Fifty Thousand Rupees.

(3) The provision contained in Sub-section (4) of this Schedule shall apply in the following circumstances:-

- (a) In the case of a resident natural person, where the income is more than Fifty-five Thousand Rupees in any income year or in the case of a resident spouse who has not made a choice referred to in Section 50, where the income is more than Seventy-Five Thousand Rupees in any income year, and
- (b) Where the net profit derived from the disposal of non-business taxable property is included in the computation of the income and corresponding taxable income of that natural person or spouse.

(4) Tax shall be levied by the following rate on the following person, subject to Sub-section (3) of this Schedule:-

- (a) Tax shall be levied by the rate referred to in Sub-section (1) or (2) of this Schedule on the amount whichever is higher out of the following amounts, as if only it were the taxable income of that natural person or spouse:

- (1) The amount remaining balance after subtracting the amount of profit from the total taxable income of that natural person or spouse, or
 - (2) Fifty-five Thousand Rupees, in the case of a natural person, or Seventy-Five Thousand Rupees, in the case of a spouse.
- (b) Tax shall be levied by ten percent on the remaining amount of the taxable income.

Provided that, tax shall be deducted only by six percent on the provident fund or gratuity paid from an approved retirement fund.

(5) For the natural persons residing in the remote areas specified by Government of Nepal, a maximum sum of thirty Thousand Rupees may, for the remote allowance, be added, as prescribed, to the threshold of non-taxable amount of Fifty -five Thousand Rupees and Seventy-Five Thousand Rupees mentioned in Sub-sections (1), (2), (3) and (4) of this Schedule.

(6) The threshold as referred to in Sub-section (4) of Section 4 of this Act shall be an income of One Hundred Thousand Rupees and a turnover equivalent to one million rupees.

(7) The amount of tax pursuant to Sub-section (4) of Section 4 of this Act shall be as follows:-

- (a) In the case of a natural person carrying on a business in the municipal corporation or sub-municipal corporation area, two Thousand Rupees,

- (b) In the case of a natural person carrying on a business in the municipal area, one thousand five hundred rupees,
- (c) In the case of a natural person carrying on a business in any other place, one Thousand Rupees.

(8) Tax shall be levied by twenty-five percent on the taxable income of a non-resident natural person in any income year.

(9) Notwithstanding anything contained elsewhere in this Section, in cases where any resident natural person has a pension income, tax shall be computed pursuant to this Section only on the amount remaining balance after subtracting an additional twenty-five percent of the amount mentioned in clause (a) of Sub-section (1) for the natural person or in clause (a) of Sub-section (2) for the spouse from the taxable income.

2. **In the case of entity:** (1) Tax shall be levied by twenty-five percent on the taxable income of any entity in any income year, subject to Sub-sections (2), (3), (4), (5) and (7) of this Section.

(2) Tax shall be levied by thirty percent on the taxable income of any bank, financial institution, an entity carrying on general insurance business or petroleum works pursuant to the Nepal Petroleum Act, 2040(1983), in any income year.

Explanation: "Taxable income", in the case of petroleum works, means the taxable income assessed in accordance with the procedures mentioned in the petroleum agreement and this Act and the Rules framed under this Act.

(3) Tax shall be levied by twenty percent on the taxable income of any entity earned in any income year as follows from the source in Nepal:

(a) In cases where the entity is fully involved throughout any year in the operation of a special industry mentioned in Section 11 of this Act,

(b) In cases where the entity,-

(1) Builds and operates any road, bridge, tunnel, ropeway or sky-bridge, or

(2) Operates any trolley bus or tram.

(4) In cases where, in any income year, any entity carries on projects such as to build, operate any public infrastructure project and transfer it to Government of Nepal and building power-house, generation and transmission of electricity, tax shall be levied by twenty percent on the taxable income of that entity.

(5) In the case of the money of any deceased resident person or the taxable income of the trust of a disabled resident person, tax shall be levied on such money or taxable income pursuant to Sub-sections (1) and (4) of Section 1 of this Schedule as if the money or trust resident were a natural person.

(6) Tax shall be levied by ten percent on the income sent abroad by any non-resident person's foreign permanent establishment situated in Nepal in any income year.

(7) Tax shall be levied by five percent on the taxable income of any non-resident person in respect of the income mentioned in Section 70 in any income year.

Schedule-2

(Relating to Section 19)

Assessment of Depreciation Deduction

1. **Categorization and classification of depreciable property:** (1) The depreciable property shall be categorized as follows:-

<u>Category</u>	<u>Description of property</u>
"A"	Building, structure and similar other structures of permanent nature.
"B"	Computer, data processing equipment, furniture, fixture and office equipment.
"C"	Automobiles, buses and mini-buses.
"D"	Construction and excavation equipment, and the depreciable properties not included in elsewhere including Sub-section (3) of Section 17, Sub-section (3) of Section 18, and Sub-section (3) of this Schedule.
"E"	Intangible properties except the depreciable properties mentioned in category "D".

(2) Any depreciable property owned and used by any person in any income year in making income from a business or investment shall be placed in the category as follows at the time when it came under ownership or came in use for the first time, and the categories shall be deemed as the category of the depreciable property of that person in that year:

- (a) In respect of the similar properties under ownership or in use of that person, the depreciable properties

referred to in categories "A", "B", "C" or "D" in the same category of other properties of that category.

- (b) In respect of the depreciable property referred to in category "E", they have to be placed under different classes notwithstanding that the properties are of the same category.

(3) The cost incurred in the excavation of natural resources, extraction of minerals and its development in the course of earning income from a business shall be deemed as the cost incurred in purchasing the property for the business related with that income.

2. **Depreciation cost:** (1) Any person may, in any income year, deduct cost equivalent to the depreciation in that year of the property of each class computed pursuant to Sub-sections (2) and (6) of this Section, for the classes of the depreciable properties belonging to that person.

(2) A person has to compute the depreciation deduction of the properties of the class in his income year by using the following formula:

$$\frac{A \times B}{100}$$

"A" means the depreciation base amount in the class of the property at the end of that income year.

"B" means the rate of depreciation deduction mentioned in Section 3 of this Schedule, applicable to that class.

(3) The depreciation base amount of the depreciable properties in categories "A", "B", "C" or "D" at the end of any income year has to be set by subtracting the amount referred to in the following clause (c) from the total of the following clauses (a) and (b).

Provided that, the amount so subtracted shall not be less than zero.

- (a) The remaining amount after deducting depreciation cost of that class computed pursuant to Sub-section (2) and (6) from the depreciation deduction base amount of that class at the end of last year.
- (b) The expenses referred to in Section 5 of this Schedule or added to the class within that income year and incurred for the properties added to that class, on the depreciation deduction base amount of that class in that year.
- (c) Any amount derived from the disposal of any property of that class in that year.

(4) The depreciation deduction base amount of each depreciable property in category "D" at the end of any income year shall be a total sum of the following amounts:-

- (a) The depreciation deduction base amount of the depreciable properties remaining in the class at the end of last income year, and
- (b) The amount added pursuant to Sub-section (5) for the property within that class to the depreciation deduction base amount in that fiscal year.

(5) The cost incurred for any depreciable property included in any class of the depreciable property belonging to any person has to be added as follows to the depreciation base amount of the class concerned:-

- (a) That property has to be computed as per the following formula and added by considering the first value in the time whichever is later out of the time in which that property is included in the class pursuant to Section 1 and the time in which expenses are made to acquire that property:

$$A/3 \times B$$

For purposes of this Clause, "A" shall have the following value for the following period:-

- i. The end time of the period from the beginning of the income year to the last day of Poush (mid January) shall be three,
- ii. The period from Magha (January/February) to the last day of Chaitra (13 April) shall be two, and
- iii. The period from Baisakh (April/May) to the last day of the income year shall be one.

- (b) The remaining part of cost shall be added in the income year following the income year in which the first part was added. Provided that, the class was not dissolved pursuant to Sub-section (2) of Section 4 of this Schedule in the meantime of that period.

(6) In cases where, in deducting the depreciation cost to be computed pursuant to Sub-section (2) of this Section from the depreciation deduction base amount of the depreciable properties of categories "A", "B", "C" or "D", it be less than two Thousand Rupees, all the remaining amounts has to be computed for additional depreciation cost.

3. **Rate of depreciation:** (1) The rate of depreciation applicable in the case of each class mentioned in Sub-section (2) of Section 2 of this Schedule shall, subject to Sub-section (2), be as follows:-

Category	Rate
"A"	5 percent
"B"	25 percent
"C"	20 percent
"D"	15 percent
"E"	The rate, in percentage, to be set by adjusting in the nearest half year after dividing the cost of that property at the time of its purchase by the period of use of that property.

(2) The projects mentioned in Sub-section (2) of Section 19 of this Act and the entities mentioned in Sub-sections (3) and (4) of Section 2 of Schedule-1 shall get an addition of one thirds to the rate of depreciation applicable to the depreciable properties mentioned in categories "A", "B", "C" and "D" mentioned in Sub-section (1) of this Schedule.

4. **Disposal of depreciable property:** (1) In cases where clause (a) is more than clause (b) in computing the disposal of the depreciable property or properties used in the business or investment of any person, such excess amount has to be included in the income.

- (a) The incomings derived from the disposal of his depreciable property in any income year falling in categories "A", "B", "C" or "D" of the class of any person,

- (b) The depreciation deduction base amount remaining at the end of that year of the class pursuant to Sub-section (3) of Section 2 of this Schedule, without including the income derived from the disposal.

(2) In cases where any person disposes all the properties in the class of depreciable property of that person prior to the expiration of any income year, the class shall be deemed to be dissolved, and it shall be as follows:-

- (a) Where the depreciation deduction amount to be set in computing depreciation as per the following formula of the property in the class of depreciable property is more than the depreciation deduction base amount, that person shall be deemed to have received such excess amount for that year.

$A-B$

or

- (b) Where the depreciation deduction amount to be set in computing depreciation as per the following formula of the property in the class of depreciable property is more than the depreciation deduction base amount, that person shall get remission of such excess amount of expenses in that year.

$B-A$

Explanation: For purposes of this Section,-

(1) "A" means the incomings derived or to be derived by any person from the disposal of that property in that year,

(2) "B" means the total amount of clauses (i), (ii) and (iii) as follows:-

- (i) The remaining value of the descending system of the class in that year,
- (ii) The outgoings of that year added to the depreciation base amount of the class, and
- (iii) The outgoings to be added to the depreciation base amount of the class in the forthcoming year pursuant to Sub-section (5) of Section 2.

(3) For purposes of this Schedule, the remaining value of the descending system of the class of depreciable property in any income year means the following amount:-

- (a) In the case of categories "A", "B", "C" or "D" of the class, of any person, the amount to be set by subtracting depreciation, if any, of the class computed pursuant to Sub-sections (2) and (6) of Section 2 of this Schedule for that year from the depreciation base amount remaining at the end of the preceding income year of that class,
- (b) In the case of category "D" of the class, the amount to be set by subtracting all the expenses of the preceding income years which the person is allowed to deduct pursuant to Sub-section (1) of Section 2 of this Schedule 2 from the depreciation base amount remaining at the end of preceding income year.