

INCOME TAX ACT, 2000

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Bill enacted to amend and integrate the laws relating to Income Tax

Preamble:

Whereas it is expedient to enhance revenue mobilisation through effective revenue collection procedure for the economic development of the nation, and to amend and integrated the laws relating to Income Tax.

Now, therefore, be it enacted by the parliament on the twenty ninth year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

CHAPTER - 1

PRELIMINARY

1. Short Title, Extent, and Commencement

- (1) This Act may be called the Income Tax Act, 2058.
- (2) This Act is applicable throughout the Kingdom of Nepal. It is also applicable to the residents residing wherever out of the Kingdom.
- (3) This Act comes into force immediately.

2. Definitions

Unless the subject or the context otherwise requires, in this Act:

- (a) Withholding agent means a person required to withhold tax under Chapter 17 at the time of payment for employment, investment return, service fees or contract.
- (b) Officer means Director General, Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer, Tax Officer or other Officer of the Department as mentioned in section 72.
- (c) Final withholding payment means a payment of Dividend, Rent, Gains, Interest and payment made to a non-resident person to be made after withholding final tax as mentioned in section 92.
- (d) Retirement fund means any entity established and maintained solely for the purposes of accepting and investing retirement fund contributions in order to provide retirement fund payments to individuals who are beneficiaries of the entity or a dependant of such an individual.
- (e) Retirement payment means a payment to-
 - (i) an individual in the event of the individual's retirement; or
 - (ii) a dependant of an individual in the event of the individual's death.
- (f) Retirement contribution means a payment made to a retirement fund for the provision or future provision of retirement payments.

- (g) Incapacitated Individual means an individual who, by reason of mental or physical illness, is incapable of managing their affairs.
- (h) Income means a person's income from any employment, business, or investment and the total of that income as calculated in accordance with this Act.
- (i) Income-year means the period from the start of Shrawan of a year to the end of Ashad of the following year.
- (j) Gift means a payment that is without consideration or a payment with consideration to the extent the market value of the payment exceeds the market value of the consideration.
- (k) Debt obligation means the obligation corresponding to a debt claim.
- (l) Debt claim means a right of one person to receive a payment from another person and includes a right to repayment of an amount paid by one person to another person as well as deposits in banks and other financial institutions, accounts receivable, notes, bills of exchange, bonds, and rights under annuities, finance leases and installment sales.
- (m) Company means a company established under the company laws for the time being in force and the following institutions shall also be treated as company for tax purpose:
- (1) corporate body established under the laws for the time being in force;
 - (2) any unincorporated association, committee, institution, society, or group of persons other than a partnership or a proprietorship firm (whether or not registered) or a trust;
 - (3) a partnership firm (whether or not registered under the laws for the time being in force) that has 20 or more partners, a retirement fund, a co-operative, a unit trust, or a joint venture;
 - (4) foreign company; and
 - (5) any foreign institution prescribed by the Director-General.
- (n) Tax means income tax imposed under this act and includes following payments:-
- (1) expenses incurred in the process of creating charge and performing auction of the property of tax creditor by the department as mentioned in section 104 (8) (a);
 - (2) amount payable by a withholding agent Withholding agent or withholdee under section 90, or amount payable by an instalment payer under section 94, and on assessment under sections 99, 100, and 101;
 - (3) amount payable to the Department in respect of a tax liability of a third party under section 107(2), 108(3) or (4), 109(1), and 110(1);
 - (4) amount payable by way of interest and penalties under Chapter 22; and
 - (5) amount payable by way of fines in order of the department as per section 129.

- (o) Withholdee means a person receiving or entitled to receive a payment for employment, investment return, service fees and contract from which tax is required to be withheld under Chapter 17.
- (p) Assessment means an assessment of tax to be made under this Act and it includes an assessment of interest and penalty made under section 122 of this Act.

Provided that the term does not include an assessment that has been replaced with an amended assessment under section 101.

- (p1) Turnover means total amount of transaction for an income year equivalent to a sum of all amounts to be included in calculating income from business or investment for the year under Section 7 or 9.

- (q) Non-resident person means a person who is not a resident person.

- (r) Non-business chargeable asset means securities or an interest in an entity as well as land and buildings but excludes the following assets-

- (1) business assets, depreciable assets, or trading stock;
- (2) a private residence of an individual that has been-
 - (A) owned continuously for three years or more; and
 - (B) lived in by the individual continuously or intermittently for a total of three years or more;
- (2a) An interest of a beneficiary in a retirement fund,
- (3) Land and a private residence of an individual that is disposed of for less than Rs. 10,000,000/-; or
- (4) non-business assets of an individual that is disposed of by way of any type of transfer other than sales and purchase made within three generations.

- (s) Exempt organisation means the following entites: (1) Following entities registered with the Department as an exempt organization:

- (a) a social, religious, educational, or a charitable organisation of a public character established without having a profit motive,
- (b) an amateur sporting association formed for the purpose of promoting social or sporting facilities not involving the acquisition of gain,
- (2) a political party registered with the Election Commission,
- (3) a village development committee, municipality or district development committee,
- (4) Nepal Rastra Bank,
- (5) His Majesty's Government,

Provided that, any entity, giving benefit to any person from the

assets of, and amounts derived by the entity except in pursuit of the entity's function as per its objectives or as payment for assets or services rendered to the entity by the person, is not exempt from tax.

- (t) Trust means an arrangement under which a trustee holds assets, but does not include a partnership, a corporate body, or an entity of the type referred to in subparagraph (3) of paragraph (m).
- (u) Trustee means an individual or Goothi or corporate body holding assets in a fiduciary capacity, whether held alone or jointly with other individuals or corporate bodies, and includes the following persons-
 - (1) any executor or administrator of a deceased individual's estate;
 - (2) any liquidator, receiver, or trustee;
 - (3) any person having, either in a private or official capacity, the possession, direction, control, or management of the assets of an incapacitated person;
 - (4) any person who manages assets under a private foundation or other similar arrangement; and
 - (5) any person in a similar position to a person mentioned in subparagraphs (1), (2), (3) and (4).
- (v) Long-term contract means such contract, the term of which exceeds 12 months as mentioned in section 26.
- (w) Relative means a spouse, children (including adopted children) parent, grandparent, sibling, aunt, uncle, nephew, niece, grand son, grand daughter, brother in laws, sister in laws, father in laws and mother in laws of an individual.
- (x) Entity means the following institutions or organisations-
 - (1) a partnership, trust, or company;
 - (2) a village development committee, municipality or district development committee;
 - (3) His Majesty's Government;
 - (4) a foreign government or a political subdivision of the foreign government, or a public international organisation established under treaty; and
 - (5) a permanent establishment of an individual or an entity referred to in subparagraphs (1), (2), (3) and (4) that is not situated in the country in which the individual or entity is resident.
- (y) Interest in an entity means a right, including a contingent right, to participate in the income or capital of an entity.
- (z) Disposal means disposal of an asset or liability including sale or transfer as mentioned in section 40.

- (aa) Underlying ownership means following ownership:-
- (1) in relation to an entity, an ownership created on basis of an interest held in the entity directly or indirectly through one or more interposed entities by an individual or by an entity in which no individual has an interest; or
 - (2) in relation to an asset owned by an entity, an ownership of the asset that is determined on basis of proportion to the ownership held by the persons having underlying ownership of the entity.
- (ab) Lease means a temporary right of one person in respect of an asset of another person, other than money, and includes a licence, option, rental agreement, royalty agreement, or tenancy.
- (ac) Individual means a natural person and the term denotes, for the purpose of this Act, any proprietorship firm whether registered or unregistered owned by the person, if any, and a couple making an election as single natural person under section 50
- (ad) Natural resource payment means amounts of any of the following payments including house rent :-
- (1) payment for the right to take water, minerals, or other living or non-living resource from the land; or
 - (2)** amount as calculated on basis of the quantity or value of a living or non-living natural resource and minerals taken in whole or part from the land.
- (ae) Market value of an asset and services denotes the normal buying and selling price for the asset or services in the ordinary course of a business amongst unrelated parties.
- (af) Rent means all payments including premium made under a lease of a tangible asset including house rent.
provided that, the term does not include a natural resource payment.
- (ag) Payment means-
- (1) the transfer by one person of money or an asset to another person or the transfer by another person of a liability to the one person;
 - (2) the creation by one person of an asset that on creation is owned by another person or the decrease by one person of a liability owed by another person;
 - (3) the provision by one person of services to another person; and
 - (4) the use, or availability for use, of an asset owned by one person to another person.
- (ah) Distribution of Profits means distribution of profits including capitalisation of profit as mentioned in section 53.
- (ai) Unit trust means an arrangement under which a trustee holds assets for the benefit of at least 20 persons and the entitlement of the persons to

participate in the income or capital of the arrangement is divided into units such that the entitlements are determined by the number of units held.

- (aj) Employment includes a past, present, or prospective employment.
- (ak) Royalty means any payment made under a lease of an intangible asset and includes any payment made for the following purpose:-
- (1) the use of, or the right to use, a copyright, patent, design, model, plan, secret formula or process, or trademark;
 - (2) the supply of know-how;
 - (3) the use of, or right to use, a cinematography film, video tape, sound recording, or any other like medium and the supply of information concerning industrial, commercial, or scientific experience;
 - (4) the supply of assistance ancillary to a matter referred to in paragraphs (1), (2) or (3); or
 - (5) a total or partial forbearance with respect to a matter referred to in paragraphs (1), (2), (3) or (4).

provided that, the term does not include a natural resource payment.

- (al) Investment means an act of holding or investing one or more assets, but excludes the following :-
- (1) the act of holding assets for personal use by the person owning the asset, or
 - (2) employment or business.

Provided that, the act of holding non-business chargeable asset is treated as an investment.

- (am) Investment insurance means insurance of any of the following classes:
- (1) insurance where the event covered is the death of an individual who is the insured or an associate of the insured;
 - (2) insurance where the event covered is an individual who is the insured or an associate of the insured sustaining personal injury or becoming incapacitated in a particular manner;
 - (3) insurance where the insurance agreement is expressed to be in effect for at least five years or without limit of time and is not terminable by the insurer before the expiry of five years except in special circumstances specified in the contract;
 - (4) insurance under which an amount or series of amounts is to become payable to the insured in the future; and
 - (5) reinsurance of insurance referred to under subparagraphs (1), (2), or (3); and

- (6) reinsurance of reinsurance referred to under subparagraph (5).
- (an) Dividend means dividend of an entity as mentioned in section 53.
- (ao) Resident person with respect to an income-year means-
- (1) in the case of an individual, an individual-
 - (A) whose normal place of abode is in Nepal;
 - (B) who is present in Nepal for 183 days or more in the 365 consecutive days, or
 - (C) who is an employee or an official of His Majesty's Government posted abroad at any time during the income-year;
 - (2) any partnership;
 - (3) in the case of a trust, a trust that-
 - (A) is established in Nepal;
 - (B) has a trustee that is a resident person for the income-year; or
 - (C) is controlled directly or through one or more interposed entities by a person or persons one of whom is a resident person for the income-year;
 - (4) in the case of a company, a company that-
 - (A) is incorporated or formed under the laws of Nepal; or
 - (B) has its effective management in Nepal during the income-year;
 - (5) a village development committee, municipality or district development committee;
 - (6) in case of a foreign government or a political subdivision of the foreign government, such an entity-
 - (A) if it is established under the laws of Nepal; or
 - (B) has its effective management in Nepal during the income-year; and
 - (7) any institution or entity established under treaty; and
 - (8) a foreign permanent establishment of a non-resident person situated in Nepal.
- (ap) Person means an individual or an entity.

(aq) Manager in relation to an entity means any person who participates in making senior management decisions on behalf of the entity and includes a trustee of a trust and the owner of a foreign permanent establishment.

(ar) Business means an industry, a trade, a profession, or the like isolated transaction with a business character and includes a past, present, or prospective business.

provided that, the term does not include employment.

(as) Interest means the following payments or gains:-

- (1) a payment made or incurred under a debt obligation that is not a repayment of capital;
- (2) any gain realised by way of a discount, premium, swap payment, or similar payment under a debt obligation; and
- (3) the portion which is treated as interest in the payments made to a person under an annuity or by a person acquiring an asset under an instalment sale or the use of an asset under a finance lease under section 32.

(at) Trading stock means assets owned by a person that are sold or intended to be sold in the ordinary course of a business conducted by the person, work in progress on such assets, and inventories of materials to be incorporated into such assets.

provided that, the term does not include a foreign currency asset.

(au) Business asset means an asset to the extent to which it is used in a business.

provided that, the term does not include trading stock or a depreciable asset of a business.

(av) Distribution means distribution of an entity as mentioned in section 53.

(aw) Repatriated Income means repatriable income sent through bank to a foreign country by a foreign permanent establishment of non-resident person referred to in section 68 or an amount of payment made through any other means.

(ax) Foreign income tax, means income tax imposed by a foreign country as mentioned in section 69 (8) and includes a final withholding tax imposed by a foreign country.

(ay) Foreign permanent establishment means an entity of the type referred to in subparagraph (5) of paragraph (x).

(az) Department means the Inland Revenue Department .

(ba) Foreign currency asset means a debt claim that is denominated in a currency other than Rupees.

(bb) Permanent establishment means a place where a person wholly or partly carries on a business, and includes the following places:-

- (1) a place where a person wholly or partly carries on a business through an agent, other than a general agent of independent status acting in the ordinary course of business as such;
 - (2) a place where a person has, is using, or is installing substantial equipment or substantial machinery;
 - (3) one or more places within a country where a person furnishes (whether through employees or otherwise) related services (including technical, professional, or consultancy services) for a period or periods aggregating more than 90 days within any 12 month period; or
 - (4) a place where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project.
- (bc) Asset means a tangible or intangible asset and includes currency, goodwill, know-how, property, an owner's interest in a foreign branch, a right to income or future income, and a part of an asset.
- (bd) Associated Persons means two or more persons or group of such persons where one may reasonably be expected to act in accordance with the intentions of the other and includes-
- (1) an individual and a relative of the individual or an individual and a partner of the individual;
 - (2) a foreign permanent establishment and its owner; and
 - (3) an entity and a person who, either alone or together with an associate or associates controls or may benefit from 50 percent or more of the rights to income, capital, or voting power of the entity, as the case requires, either directly or through one or more interposed entities; or a person who is an associate of such person.
- provided that, the term does not include the following persons -
- (1) employee and
 - (2) persons prescribed by the department as not being associate persons.
- (bd1) Adjusted taxable income means an amount of taxable income of a person for an income year as calculated by ignoring reductions referred to in Section 12 and deductions referred to in Section 17 or 18.
- (be) Partnership means a firm (whether or not registered) that has fewer than 20 partners.
- provided that, the term does not include a proprietorship firm (whether or not registered) or a joint venture.
- (bf) General insurance means any insurance that is not investment insurance.
- (bg) Standard interest rate in relation to an income-year means 15 percent per annum.

- (bh) Approved retirement fund means a retirement fund that is approved by the Department under subsection (1) of section 63 of this Act.
- (bi) Service fee means any fee paid to a person based on market values, for services rendered by the person and includes a commission or a meeting, management, or technical service fee.
- (bj) Shareholder means a person who is a beneficiary of a company.
- (bk) Depreciable asset means an asset to the extent to which it is used in the production of income from a business or investment and that is likely to lose value because of wear and tear, obsolescence, or the passing of time.

provided that, the term does not include trading stock.
- (bl) Beneficiary means a person who has an interest as specified in Clause (x) in an entity.
- (bm) Prescribed or as prescribed means prescribed or as prescribed in the Rules made under this Act.

CHAPTER-2

BASIS OF TAX

3. Imposition of Tax

Income tax is hereby imposed on and realised from every person as follows for each income-year:-

- (a) a person, who has taxable income for the year;
- (b) a foreign permanent establishment of a non-resident person situated in Nepal and has repatriated income for the year as mentioned in subsection (3) and (4) of section 68; and
- (c) a person, who receives a final withholding payment during the year.

4. Calculation of Tax and Tax Rates

- (1) The amount of income tax payable by a person for an income-year under Section 3 is equal to the sum of the income tax payable by the person in capacity of one or more persons as specified in paragraph (a), (b) or (c) of Section 3.
- (2) The income tax payable by a person under section 3(a) is calculated by applying the relevant rates mentioned in Schedule-1 to the person's taxable income for the income-year and subtracting from the resulting amount any credit claimed by the person under sections 51 or 71 or both.
- (3) Notwithstanding subsection (2), the income tax payable by a(3) resident individual under section 3(a), who meets all of the following conditions, is equal to the sum of the amounts to be withheld under section 87 by the employer from payments made to the individual during the year:-
 - (a) whose income for the income-year consists exclusively of income from any employment having a source in Nepal;
 - (b) who has only one employer at a time during the year all of whom are resident employers; and
 - (c) who claims a credit with respect to medical costs paid by the employer, a reduction in taxable income with respect to retirement contributions paid by the employer, and does not claim a reduction in taxable income with respect to donations or gifts under Section 12.
- (4) Notwithstanding subsection (2), the income tax payable by a resident individual under section 3 (a) in any income year, who meets all of the following conditions, is equal to the amount provided in paragraph 1(7) of Schedule-1.
 - (a) a resident individual's income for an income-year consists exclusively of income from a business having a source in Nepal;
 - (b) if the income and turnover of the business does not exceed the threshold of Rs. 1,20,000 and 12,00,000 respectively, and
 - (c) the individual elects that this provision apply for the income-year.

- (5) The income tax payable under section 3(b) by a foreign permanent establishment of a non-resident person situated in Nepal is calculated by applying the relevant rate mentioned in paragraph 2(6) of Schedule-1 to the repatriated income of the establishment for the income-year.
- (6) The income tax payable by a person under section 3(c) is the sum of the amounts calculated by applying the relevant rates mentioned in section 87, 88 and 89 to the amount of each final withholding payment received by the person during the income-year.

5. Taxable Income and Classification of Income Heads

The taxable income of a person for an income-year is equal to the amount as calculated by subtracting reduction, if any, claimed for the year under section 12 or 63 or both from the total of the person's assessable income for the year from each of the following income heads-

- (a) business;
- (b) employment; and
- (c) investment,

6. Assessable Income

Subject to this Act, the following income of a person for an income-year from any employment, business, or investment shall be as the assessable income:-

- (a) income of a resident person from the employment, business, or investment of the year irrespective of the location of the source of the income; and
- (b) income of a non-resident person from the employment, business, or investment of the year but only to the extent the income has a source in Nepal,

provided that, the assessable income does not include any income exempt under sections 11 or 64 or both.

CHAPTER - 3

CALCULATION OF INCOME

7. Income from a Business

- (1) A person's income from a business for an income-year is the person's profits and gains from conducting the business for the year.
- (2) There shall be included in calculating a person's profits and gains from conducting a business for an income-year the following amounts derived by the person during the year:
 - (a) service fees;
 - (b) amounts derived from the disposal of trading stock;
 - (c) net gains from the disposal of the person's business assets or liabilities of the business as calculated under Chapter 8;
 - (d) amounts treated as derived under paragraph 4 (2) (a) of Schedule - 2 in respect of excess depreciation on the disposal of the person's depreciable assets of the business;
 - (e) gifts received by the person in respect of the business;
 - (f) amounts derived as consideration for accepting a restriction on the capacity to conduct the business;
 - (g) amounts derived that are effectively connected with the business and that would otherwise be included in calculating the person's income from an investment; and
 - (h) other amounts required to be included under Chapters 6 or 7 or sections 56 or 60.
- (3) Notwithstanding subsection (2), amounts exempt under sections 10, 54, and 69 and final withholding payments are excluded in calculating a person's profits and gains from conducting a business.

8. Income from an Employment

- (1) An individual's income from an employment for an income-year is the individual's remuneration from the employment of the individual for the year.
- (2) There shall be included in calculating an individual's remuneration from an employment of the individual for an income-year the following payments made to the individual by the employer during the year:
 - (a) payments of wages, salary, leave pay, overtime pay, fees, commissions, prizes, gifts, bonuses, and other facilities;
 - (b) payments of any personal allowance, including any cost of living, subsistence, rent, entertainment, and transportation allowance;
 - (c) payments providing any discharge or reimbursement of costs

- incurred by the individual or an associate of the individual;
- (d) payments for the individual's agreement to any conditions of the employment;
 - (e) payments for redundancy or loss or termination of the employment;
 - (f) retirement contributions, including those paid by the employer to a retirement fund in respect of the employee, and retirement payments;
 - (g) other payments made in respect of the employment; and
 - (h) other amounts required to be included under Chapters 6 or 7.
- (3) Notwithstanding subsection (2), the following are excluded in calculating an individual's remuneration from an employment:
- (a) amounts exempt under section 10 and final withholding payments;
 - (b) meals or refreshments provided in premises operated by or on behalf of an employer to the employer's employees that are available to all the employees on similar terms;
 - (c) any discharge or reimbursement of costs incurred by the individual-
 - (1) that serve the proper business purposes of the employer; or
 - (2) that are or would otherwise be deductible in calculating the individual's income from any business or investment; and
 - (d) payments of the prescribed small amounts which are so small and thus unreasonable or administratively impracticable to make accounting for them.

Clarification: For the purpose of this section, Payment means the following payments-

- (A) payments made by the employer;
- (B) payments made by an associate of the employer; and
- (C) payments made by a third person under an arrangement with the employer or an associate of the employer.

9. Income from an Investment

- (1) A person's income from an investment for an income-year is the person's profits and gains from conducting the investment for the year.
- (2) There shall be included in calculating a person's profits and gains from conducting an investment for an income-year the following amounts derived by the person during the year:
 - (a) any dividend, interest, natural resource payment, rent, royalty, gain from investment insurance, gain from an unapproved

- retirement fund interest, or retirement payment made by an approved retirement fund referred to in section 63 (1) derived in respect of the investment;
- (b) net gains from the disposal of the person's non-business chargeable assets of the investment as calculated under Chapter 8;
 - (c) the excess amount of incomings over the depreciation basis including outgoings on the disposal of depreciable assets of the investment of the person as per paragraph 4 (2) (a) of Schedule – 2
 - (d) gifts received by the person in respect of the investment;
 - (e) retirement contributions, including those paid to a retirement fund in respect of the person, and retirement payments in respect of the investment;
 - (f) amounts derived as consideration for accepting a restriction on the capacity to conduct the investment;
 - (g) other amounts required to be included under Chapters 6 or 7 or section 56.
- (3) Notwithstanding subsection (2), the following are excluded in calculating a person's profits and gains from conducting an investment:
- (a) amounts exempt under sections 10, 54, and 69 and final withholding payments; and
 - (b) amounts that are included in calculating the person's income from any employment or business.

CHAPTER - 4

EXEMPT AMOUNTS AND OTHER CONCESSIONS

10. Exempt Amounts

The following amounts are exempt from tax:

- (a) amounts derived by a person entitled to privileges under a bilateral or a multilateral treaty concluded between His Majesty's Government and a foreign country or an international organisation;
- (b) amounts derived by an individual from employment in the public service of the government of a foreign country.

provided that,-

- (1) the individual is a resident person solely by reason of performing the employment or is a non-resident person; and
- (2) the amounts are payable from the public funds of the country;
- (c) amounts derived from public fund of the foreign country by an individual who is not a citizen of Nepal as referred to in paragraph (b) or by a member of the immediate family of the individual.
- (d) amounts derived by an individual who is not a citizen of Nepal from employment by His Majesty's Government on terms of a tax exemption;
- (e) allowances paid by His Majesty's Government to widows, elder citizens, or disabled individuals;
- (f) amounts derived by way of gift, bequest, inheritance, or scholarship, except as required to be included in calculating income under sections 7, 8, or 9, and
- (g) amounts derived by an exempt organisation by way of-
 - (1) gift; or
 - (2) other contributions that directly relate to the organisation's function referred to in paragraph (s) (1) of the definition of exempt organisation in section 2, whether or not the contribution is made in return for consideration provided by the organisation.
- (h) pension received by a Nepali citizen retired from the army or police service of a foreign country provided the amounts are payable from the public fund of that country.

11. Business Exemptions and Concessions

- (1) An agricultural income derived from sources in Nepal during an income-year by a person, other than the income from an agriculture business derived by a registered firm, or company, or partnership, or a corporate body, or through the land above the holding ceiling as prescribed in the Land Act, 2021, is exempt from income tax.

- (2) Incomes derived by cooperative societies, registered under Cooperative Act, 2048 (1991), from business mainly based on agriculture and forest products such as sericulture and silk production, horticulture and fruit processing, animal husbandry, dairy industries, 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 and forestry related business such as lease-hold forestry, agro-forestry, cold storage established for the storage of vegetables and business of agricultural seeds, insecticide, fertilizer and agricultural tools (other than machine operated) and rural community based saving & credit cooperatives are exempt from tax. Dividends distributed by such societies are also exempt from tax.
- (3) Income derived from sources in Nepal during an income-year by a person from a special industry is taxed as follows:-
- (a) in case, the industry provides direct employment to six hundred or more Nepali citizens during each day of the year, at 90 percent of the rate otherwise applicable to that income; or
- (b) in case, the industry is operated in a remote, undeveloped, or underdeveloped area, at 70, 75, or 80 percent, respectively, of the rate otherwise applicable for the period of ten income-years commencing from and including the year in which the operation commences.
- (4) A person who is entitled to a concession under subsections (1), (2), (3) or section 11A. shall calculate the income referred to in those subsections as though the income was the only income derived by a separate person.
- (5) Where a person qualifies for more than one concession under subsections 2 (a) or 2 (b) with respect to the same income, the person shall only be entitled to one concession with respect to that income but shall be entitled to select which concession applies.
- (6) Notwithstanding subsection (3), where a person uses assets to conduct an activity of the type referred to in paragraph (b) of the subsection, then for the purposes of calculating the time limit under that subsection the time during which any other person previously conducted a similar activity using substantially the same assets shall be counted.

Clarification:- For the purpose of this section,-

- (a) Agriculture business means the business of producing crops from public or private land, or deriving rent from a tenant using land.
- (b) Remote area, undeveloped area, and underdeveloped area have the meanings in Annex - 3 of the Industrial Enterprises Act, 1992.
- (c) Special industry means a manufacturing industry as categorised in section 3 of the Industrial Enterprises Act, 1992, other than an industry producing cigarettes, bidi cigar, chewing tobacco, khaini, or other goods of a similar nature using tobacco as the basic raw material, or alcohol, beer, or other goods of a similar nature.

11.A Taxation of Infrastructure Building and Operation:

In case where an agreement is concluded between a person and His Majesty's Government for building and operating infrastructures, the person shall be entitled to consume all tax related concessions under this Act prevalent at the time of the agreement, for a period covered by the agreement.

12. Gifts to Exempt Organisations

- (1) A person may claim to have their taxable income for an income-year reduced by gifts made by the person during the year to an exempt organisation, that are approved for the purposes of this section by the Department.
- (2) Notwithstanding (1), reduction allowed to a person under Subsection (1) for an income-year shall not exceed Rs 100,000 or 5 percent of the person's adjusted taxable income for the year, whichever is lower.
- (3) Notwithstanding subsection (1) and (2), His Majesty's Government may prescribe, by a notification in the Nepal Gazette, as to allow full or partial deduction at the time of assessing a person's income of the expenses incurred for special purpose, or the expenses of gift given by the person.

CHAPTER - 5

DEDUCTIONS

13. General Deductions

Subject to this Act, for the purposes of calculating a person's income for an income-year from any business or investment, there shall be deducted all actual costs to the extent incurred-

- (a) during the year;
- (b) by the person; and
- (c) in the production of income from the business or investment.

14. Interest

(1) For the purposes of calculating the income of a person for an income-year from a business or investment, there shall be deducted all interest incurred during the year by the person under a debt obligation of the person to the extent that-

- (a) where the debt obligation was incurred in borrowing money, the money is used during the year or was used to purchase an asset that is used during the year; or
- (b) in any other case, the debt obligation was incurred.

Provided that, such debt obligation is required to be incurred in the production of income from the business or investment.

(2) Notwithstanding Subsection (1), in the case of interest paid by an exempt-controlled resident entity to the person or an associate of the persons having control over the entity, the deductible interest amount for an income year under the Subsection shall not exceed the sum of the following:

- (a) all interest derived by the entity during the year that is to be included in calculating the entity's taxable income for the year; plus
- (b) 50 percent of the entity's taxable income for the year calculated without including any interest derived by the entity or deducting any interest incurred by the entity.

(3) Any interest for which a deduction is denied as a result of subsection (2) may be carried forward and treated as incurred during the next income-year.

Clarification:- For the purpose of this section, an entity is an exempt-controlled resident entity for any income-year if it is a resident entity for the year and at any time during the year 25 percent or more of the underlying ownership or control of the entity is held by-

- (a) exempt organisations or associates of exempt organisations;

- (b) persons or associates of persons deriving during the year income for which a concession is available under section 11;
- (c) non-resident persons or associates of non-resident persons; or
- (d) any combination of persons referred to in paragraphs (a), (b) and (c).

15. Cost of Trading Stock

- (1) For the purposes of calculating a person's income for an income-year from any business no deduction is otherwise allowed for the cost of trading stock except the allowance determined under subsection (2) in respect of the disposal by the person of trading stock of the business during the year.
- (2) The allowance referred to in subsection (1) is calculated by subtracting the amount of paragraph (b) from the amount of paragraph (a) of the following-
 - (a) the opening value of trading stock of the business for the year plus the cost of trading stock of the business acquired by the person during the year; less
 - (b) the closing value of trading stock of the business for the year referred to in paragraph (a).
- (3) The opening value of trading stock of a business for an income-year is the closing value of trading stock of the business at the end of the previous income-year.
- (4) The closing value of trading stock of a business for an income-year is the lower of the following-
 - (a) the cost of trading stock of the business at the end of the year; or
 - (b) the market value of the trading stock of the business at the end of the year.
- (5) Subject to subsection (6) and section 45, the cost of trading stock of a business of a person is determined as follows-
 - (a) in the case of a person accounting for tax purposes on a cash basis in calculating income of the business, using the prime-cost or absorption-cost method; and
 - (b) in the case of a person accounting for tax purposes on an accrual basis in calculating income of the business, using the absorption-cost method.
- (6) Where trading stock of a person's business is not readily identifiable, the person may elect that the cost of the trading stock be determined according to the first-in-first-out method or the average-cost method.

Provided that, once chosen the method may only be changed with the written permission of the Department.

- (7) The cost of trading stock of a person as outlined in subsection (5) is determined by the following method-
- (a) in case where absorption-cost method is followed, the cost of trading stock is determined as per the generally accepted accounting principle under which the cost of trading stock is equal to the sum of direct material costs, direct labour costs, and variable factory overhead costs.
 - (b) in case where the prime-cost method is followed, the cost of trading stock is determined as per the generally accepted accounting principle under which the cost of trading stock is equal to the sum of direct material costs, direct labour costs, and variable factory overhead costs.
- (8) The cost of trading stock of a person as outlined in subsection (6) is determined by the following method-
- (a) in case where average-cost method is followed, the cost of trading stock is determined as per the generally accepted accounting principle under which the cost of a particular type of trading stock is determined as the weighted average cost of all trading stock of that type held by the business.
 - (b) in case where first-in-first-out method is followed, the cost of trading stock is determined as per the generally accepted accounting principle under which trading stock valuation is based on the assumption that trading stock is disposed of in the order of its acquisition.

Clarification:- For the purpose of this section-

- (a) Direct labour costs means labour costs directly related to the production of trading stock.
- (b) Direct material costs means the cost of materials that are or become an integral part of the trading stock.
- (c) Factory overhead costs means the total costs incurred by the person in manufacturing trading stock except direct labour and direct material costs.
Provided that, the factory overhead costs do not include any amount of repair and improvement costs and depreciation allowances.
- (d) Variable factory overhead costs means those factory overhead costs that vary directly with changes in volume of the trading stock manufactured.
Provided that, the variable factory overhead costs do not include any amount of repair and improvement costs and depreciation allowances.

16. Repair and Improvement Costs

- (1) For the purposes of calculating a person's income for an income-year from any business or investment, there shall be deducted all costs to the extent incurred during the year in respect of the repair or improvement of depreciable assets owned and used by the person during the year in the production of the person's income from the business or investment.

- (2) Notwithstanding subsection (1), the deduction allowed under subsection (1) with respect to all depreciable assets in a particular pool of depreciable assets of the person shall not exceed seven percent of the depreciation basis of the pool at the end of the income-year and the deduction shall be allowed with respect to costs in the order in which they are incurred.
- (3) Any excess cost of repair and improvement, or a part thereof, for which a deduction is not allowed as a result of the limitation in Subsection (2) can be added to the depreciation basis prevailing in the beginning of the subsequent income year, of the pool to which it relates.

17. Pollution Control Costs

- (1) For the purposes of calculating a person's income for an income-year from any business, there shall be deducted pollution control costs to the extent incurred by the person during the year in conducting the business.
- (2) Notwithstanding Subsection (1), the limitation of the deduction allowed under the Subsection to a person for an income-year shall not exceed 50 percent of the adjusted taxable income from all businesses conducted by the person.
- (3) Any excess cost, or a part thereof, for which a deduction is not allowed as a result of the limitation in Subsection (2) can be capitalised in the beginning of the subsequent income year and may be depreciated in accordance with Schedule-2.

Clarification:- For the purpose of this section, pollution control costs means costs incurred by a person with respect to a process or an asset that seeks to control pollution or otherwise protect or sustain the environment.

18. Research and Development Costs

- (1) For the purposes of calculating a person's income for an income-year from any business, there shall be deducted research and development costs to the extent incurred by the person during the year in conducting the business.
- (2) Notwithstanding Subsection (1), the limitation of the deduction allowed under the Subsection to a person for an income-year shall not exceed 50 percent of the adjusted taxable income from all businesses conducted by the person.
- (3) Any excess cost, or a part thereof, for which a deduction is not allowed as a result of the limitation in Subsection (2) can be capitalised in the beginning of the subsequent income year and may be depreciated in accordance with Schedule-2.

Clarification:- For the purpose of this section, research and development costs means costs incurred by a person for the purposes of developing the person's business and improving business products or process.

Provided that, the term does not include any cost incurred that is an outgoing for any asset including assets referred to in paragraph 1(3) of Schedule-2.

19. Depreciation Allowances

- (1) For the purposes of calculating a person's income for an income-year from any business or investment, there shall be deducted in respect of depreciation of depreciable assets owned and used by the person during the year in the production of the person's income from the business or investment the allowances granted to the person for the year under Schedule-2.
- (2) Notwithstanding subsection (1), the following provision shall be applied in respect of the depreciation of the machines, equipment and other machinery installed in the electricity projects that are involving in building power station, generating and transmitting electricity and in the projects conducted by any entity so as to build public infrastructure, own, operate and transfer to the His Majesty's Government.
 - (a) in case where the old machines, equipment and other machinery that are already installed require replacement in any income year as they are out of order due to being too old, the balancing value of the old machines, equipment and other machinery remained after subtracting the depreciation up to the year from their cost shall be allowed as expenses for the year.
 - (b) at the time of transfer of other assets to the His Majesty's Government except of the old assets replaced in accordance with paragraph (a), the balancing value, if remained, after subtracting the depreciation up to the year of the transfer from their cost shall be allowed as expenses.

20. Losses from a Business or Investment

- (1) For the purposes of calculating the income of a person for an income-year from a business or investment, there shall be deducted the following losses-
 - (a) any unrelieved loss of the year incurred by the person from any other business; and
 - (b) any unrelieved loss of the previous four income-years incurred by the person from any business.

Provided that, in case of electricity projects involving in building power station, generating and transmitting electricity and the projects conducted by any entity so as to build public infrastructure, own, operate and transfer to the His Majesty's Government, any unrelieved loss of the previous seven years shall be deducted.

- (2) For the purposes of calculating the income of a person for an income-year from an investment, there shall be deducted any unrelieved loss of the year incurred by the person from any other investment.
- (3) Notwithstanding subsection (1) and (2), a person may deduct an unrelieved loss with a foreign source only in calculating the person's foreign source income and an unrelieved loss incurred in deriving non-taxable income only in calculating the person's non-taxable income for the purposes of subsections (1) and (2).

- (4) Notwithstanding subsection (1) or (2), where a person incurs a loss, or has an unrelieved loss available for carry forward under subsection(1)(b) during the income-year in which a long-term contract of the person's business is completed or otherwise disposed of by the person, that is attributable to the long-term contract, the Department may, by notice in writing, allow the loss to be-
- (a) carried back to a preceding income-year or years; and
 - (b) treated as an unrelieved loss of that year or years in an amount not exceeding the amount by which inclusions in calculating the income from the business to which the long-term contract relates for that year or years exceed deductions relating to the contract.
- (5) The following loss incurred by a person during an income-year is attributable to a long-term contract or contracts of the person-
- (a) loss incurred from the long-term contract or contracts relate to a business; and
 - (b) loss for each such contract that is incurred due to the deductions in calculating the income from the business for the year that relate to the contract exceed inclusions that relate to the contract.
- (6) Where a person may deduct an unrelieved loss in calculating the person's income for an income-year from more than one business or investment, the person may prioritise in which calculations the loss or part of the loss is deducted.
- (7) Loss of an income-year incurred by a person from any business or investment is calculated as the excess of amounts deducted in calculating the person's income from the business or investment over amounts included in calculating such income ignoring the operation of this section.

Clarification:- For the purpose of this section, unrelieved loss means the extent to which a loss has not been deducted in calculating a person's income under subsection (1), (2), or (4).

21. Deductions Not Allowed

- (1) Notwithstanding anything contained in this Act, for the purposes of calculating a person's income for an income-year from any business, employment, or investment, no deduction is allowed for-
- (a) expenses to the extent to which they are of a domestic or personal nature;
 - (b) tax payable under this Act and fines and similar penalties paid to a government or a political subdivision of a government of any country for breach of any law or regulations or bylaws framed thereunder;
 - (c) expenses to the extent to which they are incurred by a person in deriving amounts exempt under section 10 or final withholding payments;

- (d) expenses for payment referred to in subsection (2);
 - (e) distributions of profits by an entity; or
 - (f) any other amount, to the extent to which a deduction is not denied by paragraphs (a), (b), (c), (d), or (e), except as provided for by this Chapter or Chapter 6, 7, 10, 11, 12, or 13.
- (2) A person whose annual turnover for an income-year exceeds Rs 2,000,000 is not allowed a deduction for a cash payment in excess of Rs 50,000 incurred other than in the following conditions by the person during the year-
- (a) payment is made to His Majesty's Government, a constitutional body, a corporation owned by His Majesty's Government, or a bank or financial institution;
 - (b) payment is made to a farmer or a producer producing primary agricultural products even in the case where the product is primarily processed by the farmer himself;
 - (c) payment is a retirement contribution or retirement payment;
 - (d) payment is made in an area where banking services are not available;
 - (e) payment is and must necessarily be made in cash or on a day when banking services are closed; or
 - (f) payment is made into a bank account of the payee.
- (3) Subject to sections 14, 15, 16, 17, 18, 19, 20 and 71, no deduction is allowed for expenses of a capital nature or foreign income tax.

Clarification:- For the purpose of this section,-

- (a) Expenses of a domestic or personal nature means the following expenses-
 - (1) Personal expenses incurred for an individual and the following expenses, including interest incurred with respect to money borrowed to the extent to which it is used for personal purpose-
 - (A) expenses incurred in maintaining the individual, including in providing shelter as well as meals, refreshment, entertainment, or other leisure activities;
 - (B) expenses incurred with respect to the individual commuting, other than commuting in the course of conducting a business or investment that does not involve commuting between the individual's home and a place at which the business or investment is conducted;
 - (C) expenses incurred in acquiring clothing for the

individual, other than clothing that is not suitable for wearing outside of work; and

(D) expenses incurred in education and training.

provided that the deduction of the expenses incurred for education that is directly relevant to a business or investment conducted by the individual and which does not lead to a degree or diploma is allowed.

(2) where a person makes a payment to an individual, expenses incurred in making the payment, including expenses incurred in favour of a third person, except in and to the extent of the following conditions-

(A) the payment is included in calculating the income of the individual;

(B) the individual makes a return payment of an equal market value to the person as consideration for the first-mentioned payment; or

(C) the payments of the prescribed small amounts which are so small and thus unreasonable or administratively impracticable to make accounting for them.

(b) An area having banking services means the area where there are no banking facilities within the surrounding of ten kilometres.

(c) Cash payment means a payment other than made through a bank or financial institution by way of letter of credit, check, draft, money order, telegraphic transfer, money transfer (hundi), and any other form of transfer made between two banks or financial institutions.

(d) Expenses of a capital nature means the following expenses:-

(1) expenses incurred in respect of natural resource prospecting, exploration, and development;

(2) expenses incurred in the acquisition of an asset with a useful life exceeding 12 months; or

(3) expenses incurred on the disposal of a liability.

CHAPTER - 6

TAX ACCOUNTING AND TIMING

22. Method of Tax Accounting

- (1) Subject to this Act, the determination of when a person derives an amount or incurs an expense is made according to generally accepted accounting principles.
- (2) An individual shall account for tax purposes on a cash basis in calculating the individual's income from an employment or investment.
- (3) A company shall account for tax purposes on an accrual basis.
- (4) Subject to subsections (1), (2), and (3) and unless the Department prescribes otherwise by notice in writing, a person may account for tax purposes on a cash or accrual basis.
- (5) Subject to subsections (2) and (3), a person may apply in writing for a change in the person's basis of accounting for tax purposes and the Department may, by notice in writing and if satisfied that the change is necessary to clearly reflect the person's income, approve the application.
- (6) If a person's method of accounting for tax purposes is changed in accordance with subsection (5), adjustments shall be made in the income-year of the change and that following the change so that no amount included, deducted, or to be included or deducted in calculating the person's income is omitted or repeated.

23. Cash Basis Accounting

Subject to this Act, a person who accounts for tax purposes on a cash basis in calculating the person's income from an employment, business, or investment shall-

- (a) treat an amount as is derived and include in that calculation only when payment is received or made available to the person; and
- (b) incur an expense to be deducted in that calculation only when payment is made.

24. Accrual Basis Accounting

- (1) Subject to this Act, a person who accounts for tax purposes on an accrual basis in calculating the person's income from a business or investment shall treat an amount as is derived and include in that calculation when the person becomes entitled to the payment.
- (2) For the purpose of deduction in calculating a person's income as mentioned in subsection (1), the following expenses shall be treated as incurred-
 - (a) in the case where the payment constituting the expense is to be made in return for a payment or payments received from another

person, the expense shall be treated as incurred in the following conditions-

- (1) when the person is obliged to make the payment;
 - (2) the value of the obligation can be determined with reasonable accuracy; and
 - (3) the other payment has been received; or
- (b) in any other case, except as provided in paragraph (a), expense shall be treated as incurred when the payment is made.
- (3)
- (3A) Notwithstanding Subsection (1) the "Department" may recognize the mode of accounting prescribed by Nepal Rastra Bank for banking businesses subject to the Nepal Rastra Bank Act-2058 and other current banking laws.
- (4) In case where a person includes a payment to which the person is entitled or deducts a payment that the person is obliged to make in calculating the person's income from a business or investment on an accrual basis, and the actual payment received or made by the person comes to be different including by reason of a change in currency valuations that took place afterwards, an appropriate adjustment should be made at the time the payment is received or made so as to account for the inaccuracy.

25. Reverse of Amounts Including Bad Debts

- (1) Where a person has accounted for an amount derived or expense incurred in calculating the person's income from an employment, business, or investment the person shall make an appropriate adjustment in the following case, at the time the refund, recovery, disclaimer, write-off, or forgiveness occurs.
 - (a) the person later refunds the amount or recovers the expense, as the case requires; or
 - (b) in the case where the accounting was of an amount derived on an accrual basis, the person later disclaims an entitlement to receive the amount or, in the case where the amount constitutes a debt claim of the person, the person writes-off the debt as bad; or
 - (c) in the case where the accounting was of a cost incurred on an accrual basis, the person later disclaims an obligation to incur the expense or, in the case where the cost is a debt obligation, the person to whom the debt is owed forgives the debt,
- (2) A person may only in the following case, disclaim the entitlement to an amount or write-off as bad a debt claim of the person-
 - (a) a debt claim of a bank or financial institution, after the debt claim has become a bad debt as determined in accordance with the prescribed standards; and
 - (b) in any other case, except as referred to in paragraph (a), after the person has taken all reasonable steps in pursuing payment and the

person reasonably believes that the entitlement or debt claim will not be satisfied.

26. Averaging Inclusions and Deductions under Long-term Contracts

- (1) For the purposes of calculating a person's income for an income-year from an employment, business, or investment, estimated cumulative inclusions and deductions under a long-term contract of the person shall be treated as derived or incurred according to the percentage of the contract completed during the year.

Clarification: - For the purpose of this section, a long-term contract of a person means a contract of the following conditions-

- (a) the term of the contract exceeds 12 months; and
 - (b) the contract is either a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services; or a contract with a deferred return that is not an excluded contract.
- (3) contract with a deferred return, cumulative deductions, cumulative inclusions, excluded contract, and percentage of contract completed shall be as prescribed by the Rules.

CHAPTER - 7

QUANTIFICATION, ALLOCATION, AND CHARACTERISATION OF AMOUNTS

27. Quantification of Amounts

A payment is quantified in equal to the following amount-

- (a) for payments consisting of the transfer by one person of an asset to another person, the amount equivalent to the market value of the asset transferred;
 - (b) for payments consisting of the following facilities the amount determined in accordance with the Rules or, where the Rules do not determine the amount, the amount determined in accordance with paragraph (e);
 - (i)(1) the use, or availability for use, of a motor vehicle wholly or partly for the private purposes of the payee; or
 - (ii) the amount determined in accordance with the Rules or, where the Rules do not determine the amount, the amount determined in accordance with paragraph (e);
 - (2) the provision of a house to the payee,
 - (c) for payments consisting of the provision of the following facilities, the amount of the expenses incurred by the payer in making the provision as reduced by any contribution made by the payee towards the provision;
 - (1) the services of a housekeeper, chauffeur, gardener, or other domestic assistant;
 - (2) any meal, refreshment, or entertainment; or
 - (3) drinking water, electricity, telephone and the like utilities in respect of the payee's place of residence.
 - (d) in case where the interest paid by the payee during the year under the loan is lower than the interest to be paid as per the standard interest rate, the amount to the extent it is lower;
 - (e) for the payments other than mentioned in paragraphs (a), (b), (c) and (d), the value of the benefit of the payment to a reasonable person in the position of the payee,
- (2) in the case of paragraphs (a) and (e) of subsection (1), the time the payment is derived, incurred, made, received, or otherwise taken into account for tax purposes shall be treated as the time of quantification of the amount.

28. Quantification in Rupees

- (1) For the purposes of this Act, a person's income as well as amounts to be included and deducted in calculating that income shall be quantified in Nepali Rupees if they are quantified in currency other than the Rupees.
- (2) Where an amount to be included or deducted in calculating a person's

income for an income-year is quantified in a currency other than Rupees, the amount shall be converted at the standard exchange rate applying between the currency and the Rupee at the time the amount is derived, incurred, made, received, or otherwise taken into account for tax purposes.

- (3) Notwithstanding subsection (2), for the purposes of the subsection(2) and where the Department permits by notice in writing, a person may use the average exchange rate applying during the income-year as determined by the Department.

29. Indirect Payments

When a person takes indirect benefits from the payers or an associate of the payer or directs the payee of a payment, the Department may, by notice in writing, treat the person as the payee of the payment-

30. Jointly Owned Investment

For the purposes of calculating a person's income from an investment that is jointly owned with another person, amounts to be included and deducted in that calculation shall be apportioned among the joint owners in proportion to their respective interests in the investment.

31. Characterisation of Compensation Payments

Where a person or an associate of a person derives a compensation amount, including a payment under insurance, that compensates for the following things, then, at the time the compensation amount is derived, it shall be included in calculating the income from the employment, business, or investment, as the case requires.

- (a) compensation for income from or an amount to be included in calculating the person's income from a business, employment, or investment, which the person expects or expected to derive, or
- (b) then, at the time the compensation amount is derived, it shall be included in calculating the income from the employment, business, or investment, as the case requires.

32. Characterisation of Payments Under Annuities, Instalment Sales, and Finance Leases

- (1) Payments made to a person under an annuity or by a person acquiring an asset under an instalment sale or the use of an asset under a finance lease shall be treated as interest and a repayment of capital under a debt claim in accordance with this section.
- (2) All payments referred to in subsection (1) shall be aggregated and the total divided into two portions calculated as follows:

- (a) a capital portion, being equal to all payments made for the annuity or the market value of the asset at the time it is sold or leased, as the case requires; and
 - (b) an interest portion, being the total of all payments referred to in subsection (1) less the capital portion.
- (3) While determining instalments of an annuity, instalment sale, or finance lease referred to in Subsection (2), the portions of interest and capital should be segregated at the time of settlement and provide with a list of total payments. Those who cannot provide with the list, shall be required to treat the interest and capital portion of annuity, instalment sale, or finance lease as a blended loan with the interest compounded six monthly and divide them according to payments referred to in Subsection (1).
- (4) A borrower under a blended loan referred to in subsection (1) shall be required to make in part a payment of interest and in part a repayment of capital where the interest part is calculated on capital outstanding at the time of each payment so as to be the uniform rate of interest over the term of the loan.
- (5) The following conditions shall be required to be satisfied while conducting finance lease under this section:
 - (a) arrangement is made in the lease agreement provides for transfer of ownership following the end of the lease term, or the lessee has an option to purchase the asset after expiry of the lease term for a fixed or presupposed price;
 - (b) the lease term exceeds 75 percent of the useful life of the asset;
 - (c) the estimated market value of the asset after expiry of the lease term is less than 20 percent of its market value at the commencement of the lease;
 - (d) in the case of a lease that commences before the last 25 percent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds 90 percent of the market value of the asset at the commencement of the lease term; or
 - (e) the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to anyone other than the lessee.
- (6) Each payment referred to in subsection (1) shall be divided into two portions in accordance with subsection (3), the interest portion treated as interest paid or to be paid and the capital portion treated as a repayment of capital under a debt claim.
- (7) The lessee shall be treated as the owner of property leased to the lessee under a finance lease and the lessor shall be treated as the holder of a debt claim against the lessee.
- (8) Present value of lease payments is calculated using a discount rate equal to the standard interest rate.

- (c) Lease Clarification:- Lease term includes an additional period for which the lessee has an option to renew a lease.

33. Transfer Pricing and Other Arrangements Between Associates

- (1) In any arrangement between persons who are associates, the Department may, by notice in writing, distribute, apportion, or allocate amounts to be included or deducted in calculating income between the persons as is necessary to reflect the taxable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length.
- (2) In making any adjustment under subsection (1), the Department may-
 - (a) re-characterise the source and type of any income, loss, amount, or payment; or
 - (b) allocate costs, including head office expenses, incurred by one person in conducting a business that benefit an associate or associates in conducting a business to the associates based on the comparative turnovers of the businesses.

34. Income Splitting

- (1) Where a person attempts to split income with another person that is likely to cause a reduction in tax, the Department may, by notice in writing, adjust amounts to be included or deducted in calculating the income of each person to prevent any reduction in tax payable as a result of the splitting of income.
- (2) A reference in subsection (1) to a person having attempted to split income includes, but is not limited to, a reference to a transfer of the following amounts so as to lower the total tax payable by the person or an associate, either directly or indirectly through one or more interposed entities, between the person and the associate:
 - (a) amounts to be derived or costs to be incurred; or
 - (b) an amount received or enjoyed by the transferee of an asset that is derived from the asset; or an amount paid or expenses incurred in owning the asset.
- (3) In determining under subsection (2) whether a person is seeking to split income, the Department shall consider the market value of any payment made for the transfer.

35. General Anti-Avoidance Rule

- (1) For the purposes of determining liability to tax under this Act, the Department may-
- (a) re-characterise an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme;
 - (b) disregard an arrangement or part of an arrangement that does not have substantial economic effect; or
 - (c) re-characterise an arrangement or part of an arrangement the form of which does not reflect its substance.

Clarification: - For the purpose of this section, tax avoidance scheme means any arrangement, one of the main purposes of which is the avoidance or reduction of liability to tax.

CHAPTER - 8

CALCULATION OF NET GAINS FROM ASSETS AND LIABILITIES

36. Net Gains from Assets and Liabilities

- (1) Net gains from the disposal of business assets or liabilities of a business of a person for an income-year are calculated as the total of all gains from the disposal of business assets or liabilities of the business during the year reduced by the following losses-
 - (a) the total of all losses suffered from the disposal of business assets or liabilities of the business during the year;
 - (b) any unrelieved net loss out of any other business losses of the person for the year; and
 - (c) any unrelieved net loss for a previous income-year out of the losses of the business or any other business of the person.
- (2) Net gains from the disposal of non-business chargeable assets of an investment of a person for an income-year are calculated as the total of all gains from the disposal of non-business chargeable assets of the investment during the year reduced by the following losses-
 - (a) the total of all losses suffered from the disposal of non-business chargeable assets of the investment during the year;
 - (b) any unrelieved net loss out of any losses of business or investment of the person for the year; and
 - (c) any unrelieved net loss for a previous income-year out of the losses of investment, any business, or other investment of the person.
- (3) A person may claim a reduction under subsection (1) or (2) with respect to a loss on the disposal of an asset or liability with a foreign source only to the extent that the amount which the loss is to reduce includes gains on the disposal of an asset or liability with a foreign source.
- (4) Where a person may use an unrelieved net loss of a business or investment in more than one calculation under subsection (1) or (2), the person may prioritise in which calculations the loss or part of the loss is used.

Clarification:- For the purpose of this section,-

- (1) Net loss means-
 - (a) the amount of loss of a business for an income-year by which losses from the disposal of business assets or liabilities of the business during the year exceed gains from the disposal of business assets or liabilities of the business during the year; and
 - (b) the amount of loss of an investment for an income-year by which losses from the disposal of non-business chargeable

assets of the investment during the year exceed gains from the disposal of non-business chargeable assets of the investment during the year.

- (2) Unrelieved net loss of a business or investment for an income-year means-
- (a) any net loss of the business or investment for the year to the extent to which it has not been taken into account under subsection (1)(b) or (c) or (2)(b) or (c); and
 - (b) any unrelieved loss, within the meaning of section 20(7), of the business or investment incurred during the year that may no longer be deducted by reason of the time limit in section 20(1) or (2).

37. Gains and Losses from Assets and Liabilities

- (1) The gain of a person from the disposal of an asset or liability shall be calculated as the amount by which the sum of the incomings for the asset or liability exceeds the sum of the outgoings for the asset or liability at the time of disposal.
- (2) The loss of a person from the disposal of an asset or liability shall be calculated as the amount by which the sum of the outgoings for the asset or liability exceeds the sum of the incomings for the asset or liability at the time of disposal.

38. Outgoings and Net Outgoings for Assets and Liabilities

- (1) Subject to this Act, the following expenses shall be included into the outgoings for an asset or liability of a person-
 - (a) in the case of an asset, expenses incurred by the person in acquiring the asset including the amounts mentioned below-
 - (1) where relevant, the cost of construction or production of the asset; and
 - (2) any amount required to be included in calculating the person's income by reason of the acquisition of the asset;
 - (b) expenses incurred by the person in owning the asset or owing the liability including expenses of altering, improving, and maintaining the asset or liability and, in the case of an asset, repairing the asset;
 - (c) expenses incurred by the person for the disposal of the asset or liability; and
 - (d) incidental expenses incurred by the person in the acquisition of the asset or incurring of the liability and in disposing of the asset or liability,

Provided that, the expenses referred to in section 21(1)(a), (b), (c), (d) and (e) and expenses to the extent to which they may be deducted in calculating the person's income shall not be required to include in such the expenses.

- (2) The net outgoings for an asset or liability to a particular time shall be calculated as the amount by which cumulative outgoings for the asset or liability exceed cumulative incomings for the asset or liability at that time.
- (3) Chapters 6 and 7 shall apply to expenses referred to in subsection (1) as though a reference in those Chapters to an amount to be deducted in calculating income were a reference to an amount being an outgoing for an asset or liability.

Provided that, it shall not apply to the provision made under section 26.

39. Incomings and Net Incomings for Assets and Liabilities

- (1) Subject to this Act, incomings for an asset or liability of a person shall include the following amounts-
 - (a) amounts derived by the person in respect of incurring the liability;
 - (b) amounts to be derived by the person in respect of owning the asset or owing the liability including amounts derived from altering or decreasing the value of the asset or increasing the liability; and
 - (c) amounts derived or to be derived by the person in respect of the disposal of the asset or liability;

Provided that, the incoming excludes any amount to the extent that it is an exempt amount, final withholding payment, or an amount to be included in calculating the person's income.

- (2) The net incomings for an asset or liability to a particular time shall be the amount by which cumulative incomings for the asset or liability exceed cumulative outgoings for the asset or liability at that time.
- (3) Chapters 6 and 7 shall apply to amounts referred to in subsection (1) as though a reference in those Chapters to an amount to be included in calculating income were a reference to an amount being an incoming for an asset or liability.

Provided that, it shall not apply to the provision made under section 26.

40. Disposal of an Asset or Liability

- (1) A person disposes of an asset when the person parts with ownership of the asset including when the asset is distributed by the owner of the asset, merged with another asset or a liability, leased to another person under a finance lease, cancelled, redeemed, destroyed, lost, expired, or surrendered.

- (2) A person disposes of a liability when the person parts with the obligations constituting the liability including when the liability is satisfied, cancelled, released, expired, or merged with another liability or an asset.
- (3) Notwithstanding subsection (1) and (2), a person disposes of an asset or liability in the following cases:
- (a) in the case of an individual, immediately before the death of the individual;
 - (b) in the case of an asset, when the sum of the incomings for the asset exceed the sum of the outgoings for the asset;
 - (c) in the case of an asset that is a debt claim, when-
 - (1) in the case of a debt claim of a bank or financial institution, the debt claim becomes a bad debt as determined in accordance with the prescribed standards; and
 - (2) in any other case, the person reasonably believes the debt claim will not be satisfied.

Provided that, the person has to take all reasonable steps in pursuing the debt claim;
 - (d) in the case of an asset that is a business asset, non-business chargeable asset, depreciable asset, or trading stock, immediately before the person begins to use the asset in such a way that it ceases to be an asset of the type it was immediately prior to that use;
 - (e) in the case of an entity, in the circumstances referred to in section 57; and
 - (f) other than in the case of land or buildings situated in Nepal, immediately before the person becomes a non-resident person.
- (4) Where under subsection (1) a person shall be as disposing of an asset by leasing the asset under a finance lease, the person to whom the asset is leased shall be as acquiring ownership of the asset at the time of the disposal.
- (5) For the purpose of calculating gains derived from the disposal of an asset and liability by a person, the following provisions shall apply:
- (a) the amounts of net outgoings for an asset owned by the person at the time of commencement of this Act shall be treated as equal to the market value of the asset at that time;
 - (b) net incomings for a liability owed by the person at the time of commencement of this Act shall be treated as equal to the market value of the liability at that time;

41. Disposal with Retention of Asset or Liability

In the case where a person disposes of an asset or liability in any of the manners described in section 40(3)(c), (d), (e) and (f), the following provisions shall be applied:-

- (a) in the case of an asset-
 - (1) the person shall be treated as deriving an amount in respect of the disposal equal to the market value of the asset at the time of the disposal; and
 - (2) for the purpose of subsequent disposal of the asset, the net outgoings for the asset to the time of the disposal under this Section shall be treated as equal to the amounts derived.
- (b) in the case of a liability-
 - (1) the person shall be treated as incurring expenses for the disposal in an amount equal to the market value of the liability at the time of disposal; and
 - (2) for the purpose of subsequent disposal of the liability, the net incomings for the liability to the time as per Subclause (1) shall be treated as equal to the amount of outgoings.

42. Disposal by way of Instalment Sale or Finance Lease

Where a person disposes of an asset by way of instalment sale or leasing the asset to another person under a finance lease under section 45, the following provisions shall apply:-

- (a) the person shall be as deriving an amount in respect of the disposal equal to the market value of the asset at the time of disposal; and
- (b) the person who acquires the asset shall be as incurring in acquiring the asset costs of an equal amount as mentioned in paragraph (a).

43. Transfer of Asset to Spouse or Former Spouse

Where as part of a divorce settlement or bona fide separation agreement an individual disposes of an asset by way of transfer to a spouse or former spouse and an election for this section to apply is made by the spouse or former spouse in writing, then the following provisions shall apply:-

- (a) the person shall be as deriving an amount in respect of the disposal equal to the net outgoings for the asset immediately before the disposal; and
- (b) the spouse or former spouse shall be as incurring in acquiring the asset by way of transfer costs of an amount equal to as mentioned in paragraph (a).

44. Transfer of Asset on Death

Where an individual disposes of an asset on death by way of transfer of ownership of the asset to another person, the following provisions shall apply:-

- (a) the individual shall be as deriving in respect of the disposal an amount equal to the market value of the asset at the time of disposal; and
- (b) the person who acquires ownership of the asset by way of transfer shall be treated as incurring in the acquisition costs of an amount equal to as mentioned in paragraph (a).

45. Transfers Between Associates and Other Non-Market Transfers

- (1) Where a person disposes of an asset by way of transfer as per sections 43 and 44 to an associate of the person or by way of transfer to any other person for no consideration, the following provisions shall apply:-
 - (a) the person shall be treated as deriving in respect of the disposal an amount equal to the greater of the market value of the asset or the net outgoings for the asset immediately before the disposal; and
 - (b) the person who acquires ownership of the asset shall be treated as incurring in the acquisition costs of an amount equal to as mentioned in paragraph (a).
- (2) Notwithstanding subsection (1), where a person disposes of an asset, being a business asset, a non-business chargeable asset, or trading stock, by way of transfer of ownership of the asset to an associate of the person and the requirements of subsection (6) are met, the following provisions shall apply:-
 - (a) the person shall be treated as deriving in respect of the disposal an amount equal to the net outgoings for the asset immediately before the disposal; and
 - (b) the associate shall be treated as incurring in acquiring the asset costs of an amount equal to as mentioned in paragraph (a).
- (3) Notwithstanding subsection (1), where a person disposes of a depreciable asset by way of transfer of ownership of the asset to an associate of the person, the asset constitute all of the assets of a pool of the person's depreciable assets, and the requirements of subsection (6) are met, the following provisions shall apply:-
 - (a) the person shall be treated as deriving in respect of the disposal an amount equal to the written down value of the pool pursuant to paragraph 4(3) of Schedule-2 at the time of disposal; and
 - (b) the associate shall be treated as incurring in acquiring the asset or assets costs of an amount equal to as mentioned in paragraph (a).
- (4) where a person disposes of a liability as per sections 43 and 44 by way of transfer of the liability to an associate of the person or by way of transfer to any other person for no cost, the following provisions shall apply:-
 - (a) the person shall be treated as incurring costs for the disposal in an amount equal to the lesser of market value or the net incomings for the liability immediately before the disposal; and

- (b) the person to whom the liability is transferred shall be treated as deriving in respect of incurring the liability an amount equal to the liability.
- (5) Where a person disposes of a liability that was incurred in the production of income from a business of the person by way of transfer of the liability to an associate of the person and the requirements of subsection (6) are met, the following provisions shall apply:-
- (a) the person shall be treated as incurring costs for the disposal in an amount equal to the net incomings for the liability immediately before the disposal; and
 - (b) the associate shall be treated as deriving in respect of incurring the liability an equal amount.
- (6) For the purpose of subsections (2), (3) and (5), the following requirements shall be required to be met:-
- (a) in the case of business assets, trading stock, or depreciable assets of a business, the asset or assets are business assets, trading stock, or depreciable assets of a business of the associate immediately after transfer by the person;
 - (b) in the case of non-business chargeable assets or depreciable assets of an investment, the asset or assets are business assets, non-business chargeable assets, depreciable assets, or trading stock of the associate immediately after transfer by the person;
 - (c) in the case of a liability, the liability is transferred to the associate in the production of income from a business of the associate;
 - (d) at the time of the transfer-transfer, the person and the associate are not residents and are not exempt from tax;
 - (e) there is continuity of underlying ownership in the asset or underlying obligation of the liability, as the case requires, of at least 50 percent; and
 - (f) an election for subsection (2), (3) or (5), as the case requires, to apply is made by both the person and the associate in writing.

46. Involuntary Disposal of Asset or Liability with Replacement

- (1) Where a person involuntarily disposes of an asset in any of the manners described in section 40(1), the person acquires ownership of a replacement asset of the same type within one year of the disposal, and the person elects in writing for this subsection to apply-
- (a) the person shall be treated as deriving in respect of the disposal an amount equal to the sum of the following-
 - (1) the net outgoings for the asset immediately before disposal; plus

- (2) the amount, if any, by which amounts derived in respect of the disposal exceed expenses incurred in acquiring the replacement asset; and
 - (b) the person shall be treated as incurring in acquiring the replacement asset expenses in an amount equal to the sum of the following-
 - (1) the net outgoings for the asset disposed of immediately before disposal; plus
 - (2) the amount, if any, by which costs incurred in acquiring the replacement asset exceed the amounts derived in respect of the disposal.
- (2) Where a person involuntarily disposes of a liability in any of the manners described in section 40(2), the person incurs a replacement liability of the same type within one year of the disposal, and the person elects for this subsection to apply-
- (a) the person shall be treated as incurring expenses for the disposal in an amount equal to the difference remained after subtracting the amount of subparagraph (2) from subparagraph (1) of the following-
 - (1) the net incomings for the liability immediately before disposal; less
 - (2) the amount, if any, by which the costs incurred for the disposal exceed the amounts derived in respect of incurring the replacement liability; and
 - (b) the person shall be treated as deriving in respect of incurring the replacement liability an amount equal to the sum of the following-
 - (1) the net incomings for the liability disposed of immediately before disposal; plus
 - (2) the amount, if any, by which the amounts derived in respect of incurring the replacement liability exceed the expenses incurred for the disposal.
- (3) The circumstances shall be as prescribed in which the replacement of one security in an entity with another security in an entity as a result of conversion of the security or reconstruction of the entity constitutes an involuntary disposal.

47. Disposal of Assets and Liabilities by Merger

- (1) Where a person acquires an asset or incurs a liability and as a result another asset owned or liability owed by the person is disposed of by way of expiry or merger, the following provisions shall be applied:-
 - (a) where there are net outgoings for the merging asset or merging liability immediately before its disposal, the person shall be treated as-

- (1) deriving an amount in respect of the disposal of the merging asset or merging liability equal to the net outgoings.

provided that, the amount shall not exceed amounts derived by the person with respect to incurring the merged liability; and
 - (2) incurring expenses in owning or owing the merged asset or merged liability in an equal amount; and
- (b) in the case of a merging liability, where there are net incomings for the merging liability immediately before its disposal, the person shall be treated as-
- (1) incurring expenses for the disposal of the merging liability in an amount equal to the net incomings.

provided that, the amount shall not exceed expenses incurred by the person in acquiring the liability; and
 - (2) deriving an amount in owning or owing the merged liability in an equal amount.
- (2) Subsection (1) shall also be applied in the following circumstances without adversely affecting the generality provisions made under the subsection:
- (a) the exercise of an option by the person to acquire or sell an asset;
 - (b) the acquisition of an asset that is leased by the person; and
 - (c) the transfer of a liability that is guaranteed by the transferee.

48. Disposal of Assets and Liabilities by Splitting

In the case where rights or obligations with respect to an asset owned or liability owed by one person are created in another person, including by way of lease of an asset or part thereof, the following provisions shall be applied:-

- (a) where the rights or obligations are permanent, the one person is treated as disposing of part of the asset or liability but is not treated as acquiring any new asset or liability; and
- (b) where the rights or obligations are temporary or contingent, the one person is not treated as disposing of part of the asset or liability but as acquiring a new asset or incurring a new liability, as the case requires.

49. Apportionment of Outgoings and Incomings

- (1) In the following circumstances, a person shall be required to apportion the costs incurred or the amounts derived by the person in acquiring, incurring, or disposing of each asset or liability between the assets and liabilities according to their market values at the time of acquisition, incursion, or disposal, as the case requires:
 - (a) in case the person acquires one or more assets or incurs one or more liabilities at the same time; or

- (b) in case the person disposes of one or more assets or liabilities at the same time,
- (2) Where a person who owns an asset or liability disposes of part of the asset or the liability, then the net outgoings or net incomings of the asset or liability immediately before the disposal shall be apportioned between the part of the asset or liability disposed of and the part retained according to their market values immediately after the disposal.

CHAPTER - 9

SPECIAL PROVISIONS FOR INDIVIDUALS

50. Couples

- (1) A resident natural person and a resident spouse of the person may, by notice in writing, elect to be treated as a single individual for a particular income-year.
- (2) Each spouse of a couple making an election under subsection (1) with respect to an income-year is jointly and severally liable with the other spouse for any tax payable by the couple for the year.

51. Medical Tax Credit

- (1) A resident individual may claim a medical tax credit for an income-year for any approved medical costs paid by the individual him/herself or through others during the year in respect of the individual.
- (2) The medical tax credit of an individual for an income-year shall be required to be calculated by applying the rate of 15 percent to the amount of approved medical costs referred to in subsection (1) for the year and adding to the result any amount referred to in subsection (4).
- (3) Notwithstanding subsection (1), the medical tax credit claimed by an individual for any income-year shall not exceed the limit prescribed.
- (4) In case of any individual for any income-year, the sum of any excess under paragraphs (a) and (b) may be carried forward and added to the amount referred to in subsection (2) for the next income-year to the following extent:-
 - (a) in case the amount referred to in subsection (2) is greater than the limit referred to in subsection (3); or
 - (b) in case the individual cannot use the medical tax credit by reason of lack of tax payable under section 3(a) for the year,

Clarification:- For the purpose of this section, approved medical costs means medical costs approved as prescribed.

CHAPTER - 10

SPECIAL PROVISIONS FOR ENTITIES

52. Principles of Taxation in Respect of Entities

- (1) An entity shall be liable to tax separately from its beneficiaries.
- (2) Distributions of entities shall be as defined in section 53 and beneficiaries of the entities shall be taxed in respect of such distribution in accordance with section 54.
- (3) Amounts derived and expenses incurred by an entity, whether or not derived or incurred on behalf of another person, shall be treated as derived or incurred by the entity.
- (4) Assets owned and liabilities owed by an entity shall be treated as owned or owed by the entity and not any other person.
- (5) Foreign income tax paid with respect to the income of an entity, whether paid by a manager, beneficiary, or the entity, shall be treated as paid by the entity.
- (6) Subject to Chapter 7 and section 45, transactions between an entity and its managers and beneficiaries shall be recognised.

53. Distributions by Entities

- (1) A distribution of an entity shall include the following:-
 - (a) a payment made by the entity to any of its beneficiaries, in any capacity; or
 - (b) any capitalisation of profits.
- (2) Notwithstanding subsection (1), a payment referred to in subsection (1)(a) shall be treated as a distribution only to the following extent:-
 - (a) in case the amount of the payment exceeds the amount of any payment made by the beneficiary to the entity in return for the entity's payment; and
 - (b) in case the payment does not include the following amounts-
 - (1) the amounts included in calculating the beneficiary's income, or
 - (2) a final withholding payment, other than by reason of being a distribution.
- (3) A distribution of an entity shall be treated as a distribution of profits or a repayment of capital only if it reduces the net value of the entity's assets and liabilities.

- (4) Subject to section 55, a distribution of an entity shall be treated as a distribution of profits to the extent that-
 - (a) it is of the type mentioned in subsection (3) and at the time of the distribution, the market value of the entity's assets exceeds the market value of the entity's liabilities plus capital contributions to the entity including by way of capitalisation of profits; or
 - (b) it is a capitalisation of profits.
- (5) A distribution of the type that is mentioned in subsection (3) shall be treated as a repayment of capital to the extent that it is not a distribution of profits.
- (6) To the extent that a distribution of an entity is not a repayment of capital, it shall be treated as dividend of the entity.

Clarification:- For the purpose of this section, capitalisation of profits by an entity includes a capitalisation by way of issuing bonus interests or increasing the amount paid up on interests in the entity or otherwise crediting profits to a capital or premium account of the entity.

54. Taxation of Dividends

- (1) Dividends distributed by a resident entity shall be as follows:-
 - (a) distributed by a company to its shareholder shall be taxed in the form of a final withholding tax; and
 - (b) distributed by other entities shall be exempt from tax.
- (2) Dividends of a non-resident entity distributed to a resident beneficiary shall be taxed by inclusion in calculating the income of the beneficiary.
- (3) Notwithstanding Subsection (1), distribution of a dividend that is derived after withholding tax as per Subsection (1) shall be exempt from tax.
- (4)
- (5) Repayments of capital paid by an entity with respect to interest shall be included in the incomings of a beneficiary's interest in the entity as referred to in chapter - 8.

provided that, the dividend paid by the entity shall not be included.

55. Liquidation of an Entity

- (1) In case where all of the following requirements are satisfied, the distribution shall be treated as partly a dividend and partly as a repayment of capital of the entity in the proportion that the beneficiary would be entitled to share in the profits and contributed capital of the entity if the interest were disposed of in the course of liquidating the entity at that time:-
 - (a) where there is a distribution by an entity in respect of the cancellation, redemption, or surrender of an interest in the entity, including as a result of liquidation of the entity, or, where allowed by law, as a result of the entity purchasing an interest in itself;
 - (b) the distribution is not and may not be reasonably calculated, in any respect, as approximately referable to the rights of beneficiaries to share in the profits of the entity other than on a complete liquidation; and
 - (c) after the disposal the beneficiary to whom the distribution is made is not an associate of the entity,
- (2) Notwithstanding subsection (1), the subsection and section 53 do not apply to a distribution made by an entity to one of its beneficiaries in the course of purchasing an interest held by the beneficiary in the entity in the ordinary course of business on a recognised stock exchange.

56. Dealings Between an Entity and a Beneficiary

- (1) Subject to section 45, where an asset is disposed of by way of transfer of ownership of the asset by an entity to one of its beneficiaries, including by way of distribution, or vice versa-
 - (a) the transferor shall be treated as deriving in respect of the disposal an amount equal to the market value of the asset immediately before the disposal; and
 - (b) the transferee shall be treated as incurring in the acquisition of the asset costs of an amount equal to as referred to in paragraph (a).
- (2) Subject to section 45, where a liability is disposed of by way of transfer of the liability by an entity to one of its beneficiaries or vice versa-
 - (a) the transferor shall be treated as incurring costs for the disposal in an amount equal to the market value of the liability immediately before the disposal; and
 - (b) the transferee is treated as deriving in respect of incurring the liability an amount equal to as referred to in paragraph (a).
- (3) Where an entity distributes a dividend to a beneficiary that is not a distribution of profits, the amount of the dividend shall be included in calculating the income of the entity.

Provided that, the provision made under this subsection may be made as not to apply in any prescribed circumstances.

57. Change in Control

- (1) Where there is a change of 50 percent or more in the underlying ownership of an entity as compared with its ownership 3 years previously, the entity shall be treated as disposing of any assets owned by it and any liabilities owed by it.
- (1A) for the purpose of calculating the change of 50 percent or more in the ownership of the entity as specified in Subsection (1) the following ownership shall be included: -
 - (a) the ownership occupied by the shareholder holding one percent or more of the total ownership, and
 - (b) the ownership occupied by any of the shareholders holding less than one percent of the total ownership but associated with the shareholder holding one percent or more ownership.
- (2) Where there is a change in ownership of the type referred to in subsection (1), after the change the entity is not permitted to-
 - (a) deduct interest carried forward under section 14(3) that was incurred by the entity prior to the change;
 - (b) deduct a loss under section 20 that was incurred by the entity prior to the change;
 - (c) carry back a loss under section 20(4), 59, or 60 that is incurred after the change to an income-year occurring before the change;
 - (d) in a case where the entity accounted for an amount or expense in terms of section 24(4)(a) prior to the change and after that change the amount or expense is corrected in terms of section 24(4)(b), make the adjustments referred to in section 24(3);
 - (e) in a case where the entity accounted for an amount in terms of section 25(1)(b) prior to the change and after that change the entity disclaims an entitlement to receive the amount or, in the case where the amount constitutes a debt claim of the person, the person writes-off the debt as bad, make the adjustments referred to in section 25(1);
 - (f) reduce under section 36 gains from the disposal of assets or liabilities after the change by losses incurred on the disposal of assets or liabilities before the change;
 - (g) in a case where the entity accounted for a premium in terms of section 60(2)(b)(1) prior to the change and the entity after that change returns the premium to the insured, claim a deduction under that provision; or
 - (h) carry forward foreign income tax under section 71(3) that is paid with respect to foreign income prior to the change.
- (3) Where there is a change in ownership of the type referred to in subsection (1) during the income-year of an entity, the parts of the income-year before and after the change in ownership are treated as separate income-years.

58. Dividend Stripping

- (1) Where a dividend is distributed by an entity in the following manner, it shall be treated as distributed in the course of a dividend stripping arrangement:-
 - (a) if the entity has accumulated, current or expected profits;
 - (b) a person, the acquirer acquires an interest in the entity and the acquirer or an associate of the acquirer makes a payment, whether or not in respect of the acquisition and whether or not the payment is at the time of acquisition, to another person who is or was a beneficiary in the entity or an associate of such another person;
 - (c) the payment is reflected, in whole or in part, in the profits of the entity; and
 - (d) after the acquirer acquires the interest in the entity, the entity distributes a dividend to the acquirer that represents, in whole or in part, the profits.

- (2) In the case where the dividend is distributed under the dividend stripping arrangement as referred to in subsection (1) by an entity, the arrangement shall be treated as the following:-
 - (a) the payment is not made by the acquirer or an associate of the acquirer but is a dividend distributed as referred to in paragraph (b) by the entity to the original or current beneficiary; and
 - (b) the dividend distributed by the entity to the acquirer is in an amount equal to the dividend referred to in paragraph (a) less the amount of the payment.

CHAPTER - 11

SPECIAL PROVISIONS FOR INSURANCE AND BANKING

59. Banking Business

- (1) A person's activities in conducting a banking business shall be treated as a business separate from any other activity of the person and the person's income or loss from the business for any income-year shall be calculated separately.
- (1a) Provision made by a person running banking business to cover the risk for outstanding loan will be deductible upto a limit of 5 percent of total outstanding loan under the norms and standards prescribed by the Nepal Rastra Bank. A deduction from the profit as expenses for bad debt while in the existence of the risk-bearing fund shall not be allowed, and if any amount of such the fund is capitalized or distributed as profit or dividend, the amount shall be included in calculating income of the year when it is so capitalized or distributed.
- (2) Where a person incurs a loss for an income-year from any banking business, the person may carry back the loss and deduct it in calculating the income from the business for any of the five preceding income-years.

Provided that, if the amount referred to in Subsection (1a) is deducted as expenses, the loss shall not be carried back.
- (3) The deduction under subsection (2)-
 - (a) shall not exceed any income derived from the business for the particular preceding income-year;
 - (b) shall not in total exceed the amount of the loss; and
 - (c) shall reduce the amount of the loss that is considered an unrelieved loss for the purposes of section 20.

Clarification:- For the purpose of this section, banking business means a business of a bank or financial institution to the extent it involves banking activities approved as per the prevailing laws for the bank or financial institution.

60. General Insurance Business

- (1) A person's activities in conducting a general insurance business shall be treated as a business separate from any other activity of the person and the person's income or loss from the business for any income-year shall be calculated separately.
- (2) For the purposes of calculating the income of a person for an income-year from a general insurance business-
 - (a) there shall be included, together with any other amounts required to be included under other provisions of this Act, the following amounts-

- (1) the amount of premiums in respect of insurance, including premiums on re-insurance, derived by the person during the year from conducting the business; and
- (2) amounts derived during the year under any contract of re-insurance, guarantee, security, or indemnity in respect of payments referred to in paragraph (b)(i); and
- (b) there shall be deducted the following amounts together with any other amounts deductible under other provisions of this Act-
 - (1) payments made during the year by the person as insurer in conducting the business; and
 - (2) premiums returned to an insured during the year that were included under paragraph (a)(1) in calculating income from the business of the year or a previous year.
- (3) Where a person incurs a loss for an income-year from any registered general insurance business, the person may carry back the loss and deduct it in calculating the income from the business for any of the five preceding income-years.
- (4) The deduction under subsection (3)-
 - (a) shall not exceed any income derived from the business for the particular preceding income-year;
 - (b) shall not in total exceed the amount of the loss; and
 - (c) shall reduce the amount of the loss that is considered an unrelieved loss for the purposes of section 20.

Clarification:- For the purpose of this section, registered general insurance business means a general insurance business registered by the Insurance Board.

61. Investment Insurance Business

- (1) A person's activities in conducting an investment insurance business are treated as a business separate from any other activity of the person and the person's income or loss from the business for any income-year shall be calculated separately.
- (2) For the purposes of calculating the income of a person from an investment insurance business-
 - (a) there shall be included amounts required to be included under other provisions of this Act but the following amounts shall not be included:
 - (1) the amount of premiums in respect of insurance, including premiums on re-insurance, derived by the person from conducting the business; or

- (2) amounts derived under any contract of re-insurance, guarantee, security, or indemnity in respect of payments referred to in paragraph (b)(1); and
- (b) there shall be deducted amounts deductible under other provisions of this Act but the following amounts shall not be deducted:
 - (1) payments made by the person as insurer in conducting the business; or
 - (2) premiums referred to in paragraph (a)(1) that are returned to an insured.
- (3) Amounts referred to in subsection (2)(a)(1) and (2) and (b)(1) and (2) shall not be included in an incoming or outgoing for an asset or liability of the person.
- (4) A contract of investment insurance of a person's investment insurance business shall not be treated as an asset or liability of the person.

62. Proceeds from Insurance

- (1) For the purposes of calculating the income of a person, the treatment of proceeds received by the person from insurance shall be determined in accordance with section 31.
- (2) Notwithstanding subsection (1), gains from investment insurance shall be dealt with as follows:-
 - (a) in the case where a resident person pays the proceeds, it shall be taxed in the hands of the insured in the form of a final withholding tax; and
 - (b) in the case where a non-resident person pays the proceeds, it shall be included in calculating the income of the insured.

Clarification:- For the purpose of this section, gain from investment insurance means the extent to which proceeds from investment insurance paid by a person exceed premiums paid to the person with respect to the insurance.

CHAPTER - 12

SPECIAL PROVISIONS FOR RETIREMENT SAVINGS

63. Retirement Contributions

- (1) In case where a resident person files an application with the Department intending to get approval for establishing a retirement fund, the Department shall pronounce the approval as prescribed.
Provided that, no approval shall be required for a retirement fund established by Citizen Investment Fund established under Citizen Investment Fund Act, 1990 and by Provident Fund established under Provident Fund Act, 1962.
- (2) An individual who is a beneficiary of an approved retirement fund may claim to have their taxable income for an income-year reduced by retirement contributions made by the individual during the year to the fund.
- (3) Notwithstanding subsection (2), the reduction claimed by an individual under the subsection(1) for any income-year shall not exceed the prescribed retirement limit.

64. Taxation of Retirement Funds

- (1) For the purposes of calculating the income of a retirement fund, there shall be included and deducted amounts required to be included and deducted under other provisions of this Act but-
 - (a) retirement contributions received by the fund shall not be included in the calculation and shall not be an incoming of the fund;
 - (b) retirement payments shall not be deductible in the calculation and shall not be an outgoing of the fund; and
 - (c) the interest of a beneficiary in a retirement fund shall not be a liability of the fund.
- (2) The income of an approved retirement fund shall be exempt from tax.
- (3) Where an approved retirement fund ceases to be an approved retirement fund, it shall pay income tax in an amount equal to the company tax rate applied to the amount remained after subtracting the amount of paragraph (b) from the amount of paragraph (a) as follows:-
 - (a) all retirement contributions and income that would be taxable income but for subsection (2) derived by the fund during the period from its most recent approval as an approved retirement fund to when it ceases to be so approved, less
 - (b) all retirement payments made by the fund from its most recent approval as an approved retirement fund to when it ceases to be so approved.

65. Retirement Payments

- (1) For the purposes of calculating the income of an individual from an interest in an approved retirement fund or retirement payment made by His Majesty's Government, the following provisions shall apply:-
 - (a) there shall be included any retirement payment made by the fund in respect of the interest; and
 - (b) Notwithstanding paragraph (a), where the payment takes the form of a lump sum payment, it shall be treated as a gain from the disposal of a non-business chargeable asset of an investment of the individual.

- (2) For the purposes of calculating the gain of an individual from an interest in an unapproved retirement fund, the following provisions shall apply:-
 - (a) in the case where the proceeds are paid by a resident person, it shall be taxed in the hands of the individual beneficiary in the form of a final withholding tax; and
 - (b) in the case where a non-resident person pays the proceeds, it shall be included in calculating the income of the individual beneficiary.

Clarification:- For the purpose of this section, gain from an unapproved retirement interest means the extent to which retirement payments made by an unapproved retirement fund in respect of an interest in the fund held by an individual beneficiary exceed retirement contributions in respect of the interest.

66.

CHAPTER - 13

INTERNATIONAL TAXATION

67. Source of Income, Losses, Gains, and Payments

- (1) A person's income from any employment, business, or investment shall be treated as having a source in Nepal to the extent to which the amounts referred to in paragraph (a) exceed the amount referred to in paragraph (b) below;
 - (a) the amounts included in calculating that income that have a source in Nepal,
 - (b) the amounts deducted in calculating that income that have a source in Nepal.
- (2) A person's loss from any business or investment shall be treated as having a source in Nepal to the extent to which the amounts referred to in paragraph (a) exceed the amounts referred to in paragraph (b) below:
 - (a) the amounts deducted in calculating income from that business or investment that have a source in Nepal,
 - (b) the amounts included in calculating that income that have a source in Nepal.
- (3) Amounts included in calculating income shall be treated as having a source in Nepal where they consist of -
 - (a) net gains referred to in section 7(2)(c) or 9(2)(b) to the extent that the net gains consist of gains from the disposal of assets or liabilities with a source in Nepal as reduced by losses from the disposal of assets or liabilities with a source in Nepal;
 - (b) gains and amounts included in calculating income referred to in section 7(2)(d) or section 9(2)(c) where a domestic asset or domestic liability is involved; and
 - (c) subject to paragraphs (a) and (b), payments that have a source in Nepal.
- (4) A gain or loss from the disposal of an asset or liability shall be treated as having a source in Nepal where a domestic asset or domestic liability is involved.
- (5) Amounts deducted in calculating income shall be treated as having a source in Nepal where they consist of-
 - (a) allowances referred to in section 15(1)(a) to the extent to which they relate to assets situated in Nepal;
 - (b) expenses referred to in section 16(1) and allowances referred to in section 19 to the extent to which they are incurred with respect to or relate to assets situated in Nepal; and

- (c) subject to paragraphs (a) and (b), payments that have a source in Nepal.
- (6) The following payments shall be treated as having a source in Nepal:
- (a) dividends paid by a resident entity;
 - (b) interest paid by a resident person;
 - (c) natural resource payments made in respect of or calculated by reference to natural resources taken from land situated in Nepal;
 - (d) rent paid for the use of an asset situated in Nepal;
 - (e) royalties arising from the use of, right to use, or forbearance from using an asset situated in Nepal;
 - (f) premiums for general insurance paid to and proceeds from general insurance paid by a person in respect of the insurance of any risk in Nepal;
 - (g) payments received in Nepal, other than as a result of transshipment by a person who conducts a business of land, sea, or air transport operator or charterer from-
 - (1) the carriage of passengers who embark; or
 - (2) mail, livestock, or other moveable tangible assets that are embarked,
 - (h) payments received by a person who conducts a business of transmitting messages by cable, radio, optical fibre, or satellite communication in respect of the transmission of messages by apparatus established in Nepal, whether or not such messages originate in Nepal;
 - (i) payments, including service fees, of a type not mentioned in paragraphs (g) or (h) for or attributable to employment exercised, service rendered, or a forbearance from exercising employment or rendering service-
 - (1) in Nepal, regardless of the place of payment; or
 - (2) where the payer is His Majesty's Government, irrespective of the place of employment;
 - (j) amounts of annuities, proceeds of investment insurance, and retirement payments not falling within paragraph (i) paid by a resident person and any premium or other payment to a resident person to secure such amounts;
 - (k) gifts to the extent received in respect of business or investment conducted with domestic assets; and

- (l) the following payments other than referred in paragraph (a) to (k)-
 - (1) in respect of the disposal of a domestic asset or the incurring of a domestic liability; or
 - (2) made in respect of activity conducted in Nepal.
- (7) Any income, loss, amount, gain, or payment that is not treated by the above subsections as having a source in Nepal shall be treated as having a foreign source and, for the purposes of determining in which foreign country the income, loss, amount, or payment is sourced, the rules in the above subsections shall apply as though references in this Act to Nepal were a reference to a particular foreign country.

Clarification:- For the purpose of this section:

- (a) Domestic asset means land or buildings situated in Nepal as well as an asset of a resident person other than land or a building situated in a foreign country or an interest in an entity that is a controlled foreign entity within the meaning in section 69 where the person is an associate of the entity.
- (b) Domestic liability means a liability of a resident person.

68. Foreign Permanent Establishments

- (1) Notwithstanding section 3 but subject to the rest of this Act, a foreign permanent establishment of a non-resident person situated in Nepal shall be liable to tax with respect to its income.
- (2) The income of a foreign permanent establishment shall be allocated to its owner in accordance with section 69.
- (3) The repatriated income of a foreign permanent establishment of a non-resident person situated in Nepal shall be taxed in the hands of the permanent establishment in accordance with section 3(b).
- (4) The repatriated income for an income-year of a foreign permanent establishment of a non-resident person situated in Nepal shall be equal to dividends distributed by the foreign permanent establishment during the year.

69. Controlled Foreign Entities

- (1) Where at the end of an income-year an entity distributes dividend being a controlled foreign year-entity out of the attributable income derived during the year, the entity shall be treated as proportionately distributing a dividend as follows to its beneficiaries:-
 - (a) in accordance with the beneficiaries' rights to that income upon distribution, or
 - (b) where those rights are not reasonably certain, in such manner as the Department thinks appropriate in the circumstances.

- (2) Dividends distributed during an income-year, other than by reason of subsection (1), by an entity that is a controlled foreign entity at the end of the year are exempt from tax.
- (3) Dividends treated by subsection (1) as distributed by a controlled foreign entity to beneficiaries who are associated with the entity at the time of distribution shall be treated as-
 - (a) having the same character as to type and source as the entity's attributable income; and
 - (b) made proportionately out of each type and source of the entity's attributable income.
- (4) A beneficiary of a controlled foreign entity that is associated with the entity shall be required to be, at the time of distribution, allocated any tax paid by the entity, including treated as paid under subsection (5) or section 52(5), with respect to an amount treated as distributed by subsection (3).
- (5) A beneficiary shall be treated as having paid the tax allocated to the beneficiary by subsection (4) at the time of allocation and a credit may be available to the shareholder for such tax as provided by section 71.
- (6) At the time of distribution, an amount treated as distributed to the beneficiary under subsection (1) shall be required to be included in the outgoings for an asset or liability being the recipient beneficiary's interest in the distributing entity.
- (7) At the time of distribution, a dividend distributed to the beneficiary that is exempt from tax under subsection (2) shall be required to be included in the incomings for an asset or liability being the recipient beneficiary's interest in the distributing entity.
- (8) For the purposes of this Act, foreign income tax paid, including treated as paid by a controlled foreign entity under subsection (5) or section 52(5), shall be treated as income tax paid or treated as paid by the entity under this Act.

Clarification:- For the purpose of this section:

- (a) Attributable income of a controlled foreign entity for an income-year is its taxable income for the year calculated as if the entity were a resident entity.
- (b) Controlled foreign entity for an income-year means a non-resident entity in which a resident person holds an interest, directly or indirectly through one or more interposed non-resident entities, and the person is associated with the entity or would be if the person and not more than four other resident persons were associated.

70. Taxation of Non-residents Providing Shipping, Air Transport or Telecommunications Services in Nepal

- (1) The taxable income for an income-year of a non-resident person who carries on a business of ship operator, charterer, or air transport operator shall include the following amounts derived during other than as a result of transshipment during the year:-
 - (a) the carriage of passengers who embark in Nepal; or
 - (b) mail, livestock or goods that are embarked in Nepal.
- (2) The taxable income for an income-year of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication shall include amounts derived during the year from the transmission of messages by apparatus established in Nepal, whether or not such messages originate in Nepal.
- (3) The amounts included in a non-resident person's taxable income under subsection (1) or (2) shall be taxed at the rate prescribed in paragraph 2(7) of Schedule-1.
provided that,-
 - (a) the amounts shall not require to be included in calculating tax payable with respect to any remaining taxable income of the person;
 - (b) no deduction shall be allowed with respect to calculating that remaining taxable income to the extent to which the deduction relates to the calculation of the amounts; and
 - (c) no tax credits shall be allowed to the person to reduce the tax payable by the person under this section with respect to the amounts.

Clarification:- For the purpose of this section, non-resident person includes a resident entity that is part of a group of associated entities the main headquarters of which is situated outside Nepal.

71. Foreign Tax Credits

- (1) A resident person may claim a foreign tax credit for an income-year for any foreign income tax paid by the person to the extent to which it is paid with respect to the person's assessable foreign income for the year.
- (2) Foreign tax credits claimed under subsection (a) are(1) shall be calculated as follows:-
 - (a) calculated separately for assessable foreign income sourced in each country; and
 - (b) with respect to each calculation, shall not exceed the average rate of Nepal income tax of the person for the year applied to the person's assessable foreign income.

- (3) Any foreign income tax paid with respect to a person's assessable foreign income for which a foreign tax credit is not granted under subsection (1) as a result of the limitation provided for in subsection (2)(b), shall be as follows:-
- (a) may be carried forward; and
 - (b) shall be treated as paid with respect to assessable foreign income of the person for a future income-year that is sourced in the same country.
- (4) Notwithstanding subsection (1), with respect to any income-year, a person may elect to relinquish a foreign tax credit for the year and claim a deduction for foreign income tax for which the credit is available.

Clarification:- For the purpose of this section:

- (a) Assessable foreign income of a resident person for an income-year means the following income that is included in the person's assessable income from any employment, business, or investment for the year.
 - (1) foreign source income; and
 - (2) income of a non-resident person, from whatever source, treated as distributed to the resident person under section 69,
- (b) "Average rate of Nepal's income tax" means the rate that appears after dividing the tax amount by taxable income that is applicable to the income tax payable by a person for an income year under Section 3(a) before any foreign tax credit adjustment is made and multiplying the resulting amount by hundred.

CHAPTER - 14

TAX ADMINISTRATION AND OFFICIAL DOCUMENTATION

72. The Department

- (1) The Department is responsible for the implementation and administration of this Act.
- (2) His Majesty's Government may establish tax offices of the Department and prescribe their jurisdiction by notification in the Nepal Gazette to facilitate the Department in fulfilling its responsibilities as referred to in subsection (1), and such offices are considered part of the Department.
- (3) The following officers and other staff may be deputed in the Department-
 - (a) a Director General;
 - (b) Deputy Director Generals in the numbers as may be required, Chief Tax Administrators, Directors, Chief Tax Officers, Tax Officers and other Officers; and
 - (c) other staff.
- (4) Subject to direction by His Majesty's Government, the Director General may-
 - (a) exercise any power granted to the Department under this Act;
 - (b) subject to subsections (5) and (6), delegate the exercise of any of the power referred to in paragraph (a) to another officer.
 - (c) where there is no tax offices, assign any of the officers in the civil service to exercise all or any of the powers referred to in paragraph (a) other than the power to issue public circulars under section 75, prescribe documents under section 77, stay or otherwise affect a reviewable decision under section 115(5), allow or disallow the objection by any person in whole or part under section 115(7), compound an offence under section 129; and authorise any officer under section 82.
- (5) Subject to direction by His Majesty's Government or the Director General, a Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer, or Officer appointed as the Chief of a tax office may-
 - (a) exercise any power granted to the Department under this Act other than the power to issue public circulars under section 75, prescribe documents under section 77, stay or otherwise affect a reviewable decision under section 115(5), allow or disallow the objection by any person in whole or part under section 115(7), or compound an offence under section 129; and
 - (b) subject to subsection (6), delegate the exercise of any such power to another tax officer.

- (6) An officer of the Department other than the Director General, a Deputy Director General, Chief Tax Administrator, Director, Chief Tax Officer, or Tax Officer appointed as the Chief of a tax office -
 - (a) may exercise any power granted to the Department that has been delegated to the officer other than-
 - (1) the power to appoint issue public circulars under section 75, prescribe documents under section 77, stay or otherwise affect a reviewable decision under section 115(5), allow or disallow the objection by any person in whole or part under section 115(7), or compound an offence under section 129; or
 - (2) the power to authorise an officer under section 82 or issue a notice under section 109; and
 - (b) may not delegate any power delegated to the officer.

73. International Agreements

- (1) In case any individual is liable to pay tax under this act or current Nepal Law on any income earned by him, if any tax is payable on the same income in a foreign country, His Majesty's Government may conclude an international agreement with the concerned foreign government to avoid such double taxation.
- (2) This subsection shall apply where the Department receives a request from the competent authority of another country pursuant to an international agreement with Nepal for the collection in Nepal of an amount payable by a person, the tax debtor under the tax laws of the other country.
- (3) Where subsection (2) applies, the Department may, by serving a notice in writing, require the tax debtor to pay the amount to the Department by the date specified in the notice for transmission to the competent authority.
- (4) This subsection shall apply where an international agreement provides that Nepal will exempt income or a payment or subject income or a payment to reduced tax.
- (5) Where subsection (4) applies, the exemption or reduction shall not be available to any entity-
 - (a) who, for the purposes of the agreement, is a resident of the other contracting state; and
 - (b) 50 percent or more of whose underlying ownership is held by individuals or entities in which no individual has an interest and who, for the purposes of the agreement, are not residents of that other contracting state or Nepal.

Clarification:- For the purpose of this section, international agreement means a treaty or other agreement with a foreign government that has entered into force in Nepal and providing for the following:-

- (a) relief of double taxation and the prevention of fiscal evasion;
or
- (b) reciprocal administrative assistance in the enforcement of tax liabilities,

74. Taxpayers' Rights

- (1) Tax payer shall abide by the duties in accordance with this Act.
- (2) A taxpayer with respect of paying tax under this Act shall have the following rights:-
 - (a) right to get respectful behaviour;
 - (b) right to receive tax related information as per the prevailing laws;
 - (c) right to get the opportunity of submitting proof in own favour in respect of tax matters;
 - (d) right to appoint lawyers or auditors for defence; and
 - (e) right to secrecy in respect of tax matters and keep it inviolable.

Clarification:- For the purpose of this section, taxpayers means a person whom the tax is imposed on and realised from as referred to in section 3.

75. Public Circulars

- (1) To achieve consistency in the implementation of this Act and to make the tax administration simple and provide guidance to persons affected by this Act, including officers of the Department, the Department may issue in writing public circulars setting out the Department's interpretation of this Act.
- (2) The Department shall make public circulars issued under subsection (1) available to the public at offices of the Department and at such other locations or by such other medium as the Department may determine.
- (3) A public circular issued under subsection (1) shall be binding on the Department.

76. Personal Rulings

- (1) The Department may, upon application in writing by a person, issue to the person by notice in writing a personal ruling setting out the Department's position regarding the application of this Act to the person with respect to an arrangement proposed or entered into by the person.
- (2) Notwithstanding subsection (1), the Department may not issue a ruling under subsection (1) with respect to an issue involving the application of this Act that is presently before a court or that has been decided by a court.

- (3) Where the person makes the following prior to the issue of a ruling under subsection (1), the ruling is binding on the Department with respect to the application of this Act (as in force at the time of the ruling) to the person with respect to the arrangement-
 - (a) a full and true disclosure to the Department of all aspects of the arrangement relevant to the ruling; and
 - (b) the arrangement proceeds in all material respects as described in the person's application for the ruling,
- (4) Where a personal ruling issued under subsection (1) and a public circular issued under section 75 contradict each other, priority shall be given to the terms of the personal ruling in respect of the person to whom the ruling is issued.

77. Form of Documentation

- (1) The Department may from time to time specify the form of documents required under this Act, which shall contain such information as is required by this Act, by the Rules, and for the efficient administration of this Act.
- (2) The Department shall make the forms referred to in subsection (1) available to the public at offices of the Department and at such other locations or by such other medium as the Department may determine.

78. Permanent Account Number

- (1) Subject to this Act, the Department shall issue a person with a number to be known as a Permanent Account Number for the purposes of identifying the person.
- (2) The Department may require a person to show their Permanent Account Number in any return, statement, or other document used for the purposes of this Act.
- (3) His Majesty's Government may prescribe situations in which a person is required to show or quote their Permanent Account Number.

79. Service of Documents

- (1) A document to be served on a person under this Act shall be considered as sufficiently served in the following circumstances:-
 - (a) sent to the electronic mail address or transmitted on a fax of a person;
 - (b) handed to the person or, in the case of an entity, a manager of the entity; or
 - (c) left at or sent by post to the usual or last known place of abode, business, office, or other address of the person.

- (2) A document issued, served, or given by the Department under this Act shall be treated as sufficiently authenticated if the name or title of an authorised officer of the Department is signed, encrypted or encoded by means of computer technology, stamped, or written on the document.

80. Defective Documents

- (1) A document issued as follows under this Act shall not be treated as defective-
 - (a) if it is in substance and effect in conformity with the Act; and
 - (b) if the person to whom the document is addressed is designated in it according to common understanding.
- (2) Where a document issued by the Department under this Act contains a defect that does not involve a dispute as to the interpretation of this Act or facts involving a particular person, the Department may, for the purposes of rectifying the defect, amend the document.

CHAPTER- 15

RECORD KEEPING AND INFORMATION COLLECTION

81. Maintenance of Documents

- (1) Every person liable to tax under this Act shall maintain in Nepal documents of the type, form, and certification prescribed by the Department including the following documents -
 - (a) documents that are necessary to explain information to be provided in a return or in any other document to be filed with the Department under this Act;
 - (b) documents that enable an accurate determination of the tax payable by the person; and
 - (c) documents that substantiate deductions and outgoings.
- (2) The documents referred to in this section must be retained for a period of five years from the end of the income-year or years to which they are relevant unless the Department otherwise specifies by notice in writing.
- (3) Where any document referred to in subsection (1) is not in Nepali, the Department may, by notice in writing, require the person to provide, at the person's expense, a translation into Nepali by a translator approved by the Department in the notice.

82. Department's Access to Information

- (1) For the purposes of implementing this Act, every officer of the Department-
 - (a) shall have without any prior notice full and free access to any premises, place, document, or other asset situated in Nepal;
 - (b) may make an extract or copy, including an electronic copy, of any document to which access is obtained under paragraph (a);
 - (c) may seize any document to which access is obtained under paragraph (a) that, in the opinion of the officer, affords evidence that may be material in determining the tax liability of any person under this Act; and
 - (d) may, where a copy of a document is not provided on request by a person having access to a document, seize an asset to which access is obtained under paragraph (a) that the officer reasonably suspects contains or stores the document in any form.
- (2) An officer shall not exercise powers under subsection (1) without authorisation in writing from the Department and the officer shall, on request, produce the authorisation to an occupier of the premises or place or a person having access to the document or asset to which the exercise of powers under subsection (1) relates.

- (3) On request by an officer of the Department, an occupier of the premises or place or a person having access to the document or asset to which an exercise of powers under subsection (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the powers.
- (4) The Department may retain any documents or asset seized under subsection (1)(c) or (d) up to the time mentioned below:
 - (a) any document seized under subsection (1)(c) for as long as is required to determine a person's tax liability or for any proceeding under this Act; and
 - (b) any asset seized under subsection (1)(d) for as long as is necessary to obtain access to and retain the document in question.
- (5) A person whose documents or assets are retained under subsection (4) may examine them and, in the case of documents, make copies or extracts from them, at the person's expense, during regular office hours under such supervision as the Department may determine.
- (6) This section shall apply notwithstanding any rule of law relating to privilege or the public interest with respect to the access to documents which is required for the purpose of implementing this Act.

Clarification:- For the purpose of this section, occupier in relation to premises or a place means the owner, manager, or any other person on the premises or place.

83. Notice to Obtain Information

- (1) The Department may by service of a notice in writing require a person, whether or not liable for tax under this Act-
 - (a) to produce, including by way of creation of a document, within the time specified in the notice, any information that is described in the notice;
 - (b) to attend at the time and place designated in the notice for the purposes of being examined by an officer of the Department, concerning the tax affairs of that person or any other person; or
 - (c) to produce at an examination of the person under paragraph (b) and for the purposes of that examination any document in the control of the person that is described in the notice.
- (2) Any person to be examined on oath under subsection (1)(b) shall be entitled to legal or other representation throughout the examination.
- (3) This section has effect notwithstanding any rule of law relating to privilege or the public interest with respect to the production of or access to documents.

84. Official Secrecy

- (1) Every officer of the Department shall keep secret all documents and information coming to the officer's possession or knowledge in connection with the performance of duties under this Act.
- (2) Notwithstanding subsection (1) an officer of the Department may disclose a document or information referred to in subsection (1) before the following persons in the following manner:-
 - (a) to the extent required in order to perform the officer's duties under this Act;
 - (b) where required by a court or tribunal in relation to administrative review or proceedings with respect to a matter under this Act;
 - (c) to the Finance Minister;
 - (d) to any person where the disclosure is necessary for the purposes of any other fiscal law;
 - (e) to any person in the service of His Majesty's Government where who may require such disclosure for the performance of revenue or statistic related works;
 - (f) to the Auditor-General or any person authorised by the Auditor-General where such disclosure is necessary for the performance of official duties; or
 - (g) to the competent authority of the government of another country with which Nepal has entered into an international agreement, to the extent permitted under that agreement.
- (3) Any person, court, tribunal, or authority receiving documents and information under subsection (2) is required to keep them secret except to the minimum extent to which the disclosure is necessary.

CHAPTER - 16
PAYMENT OF TAX

85. Form, Place, and Time for Payment

- (1) Tax payable under this Act shall be required to pay in the form and at the place prescribed.
- (2) Tax payable under this Act shall be required to pay at the following times:
 - (a) with respect to income tax payable by withholding, at the time provided for in section 90(4);
 - (b) with respect to income tax payable by instalment, at the time provided for in section 94(1);
 - (c) In case of income tax payable on assessment-
 - (1) with respect to assessment made under section 99, on the date by which the return of income must be filed;
 - (2) with respect to assessment made under section 100(2), within the time limit specified in the notice of assessment served under section 102; and
 - (3) with respect to amended assessment made under section 101, within the time limit specified in the notice of assessment served under section 102.
 - (d) with respect to amounts required to be paid to the Department on notification under section 104(8), 109(1), or 110(1), on the date set out in the notice;
 - (e) with respect to a liability under section 107(2) on failure to pay tax by the entity, at the same time as the tax is payable by the entity;
 - (f) with respect to amounts required to be paid to the Department on notification under section 108(3) or (4), seven days after the sale from which the amount is set aside or the failure to set aside, respectively; and
 - (g) with respect to interest and penalties assessed under section 122, on the date specified in the notice of assessment.
- (3) The date on which tax is payable shall not be affected in the following cases-
 - (a) action is taken by the Department to recover tax under Chapter 20; or
 - (b) the initiation of proceedings is started with respect to a matter under this Act.

86. Proof of Tax Payable

Production of a certificate signed by the Department stating the name and address of a person and the amount of tax payable by the person shall be the sufficient evidence of the amount of tax payable by the person for the purpose of the following:-

- (a) actions of the Department to recover tax under Chapter 20; or
- (b) proceedings with respect to an offence under Chapter 23.

CHAPTER - 17

WITHHOLDING

87. Withholding by Employers

- (1) Every resident employer shall be required to withhold tax at the rate as specified in schedule -1 from a payment with a source in Nepal that is to be included in calculating income of an employee from the employment.
- (2) The obligation of an employer to withhold tax under subsection (1) shall not be reduced or extinguished because of the following-
 - (a) right or an obligation of the employer to deduct and withhold any other amount from the payment; or
 - (b) any other law that provides that an employee's income from employment shall not be reduced.

88. Withholding from Investment Returns and Service Fees

- (1) Where a resident person pays interest, a natural resource payment, rent, royalty, service fee, or, retirement payment and the payment has a source in Nepal, the person shall withhold tax on the gross amount of the payment at the rate of 15 percent.

Provided that, the tax shall be withheld at the rate of 6% on the gain as calculated under Subsection (1) (b) of Section 65 if the retirement payment is made by His Majesty's Government or an approved retirement fund.

- (2) Where a resident person makes the following payments, which has source in Nepal, the person shall withheld tax at the rates specified below:
 - (a) if the person pays a dividend, at the rate of 5 percent on gross amount of payment,
 - (b) if the person pays a gain from investment insurance, at the rate of 5 percent on amount of payment of gain, or
 - (c) if the person pays a gain from unapproved retirement fund, at the rate of 10 percent on amount of payment of gain.
- (3) Notwithstanding Subsection (1), where a resident bank, financial institution or any other institution issuing debentures or company listed under prevailing laws pays the following interest, or any amounts having the nature of an interest to an individual with respect to a deposit, security, debenture or government bond, the bank or the institution or the company shall withhold tax on the gross amount of the payment at the rate of 6 percent.
 - (a) payment which has a source in Nepal; and
 - (b) payment which is not received by the individual in the course of conducting a business,

- (4) Notwithstanding subsections (1), (2) and (3), this section does not apply to the following payments-
 - (a) payments made by an individual other than in conducting a business, or payment of rent for the lease of a building;
 - (b) payment of interest to a resident bank or other resident financial institution; or
 - (c) payments that are exempt from tax or subject to withholding under section 87.

89. Withholding from Contract Payments

- (1) A resident person who makes a payment under a contract, including insurance premiums paid for general insurance, that exceeds Rs 50,000 shall withhold tax on the gross amount of the payment at the rate of 1.5 percent.
- (2) The amount referred to in subsection (1) shall be determined by aggregating a payment made by a person under a contract with any other payment made by the person or an associate of the person during the previous ten days under the same contract to the same payee or an associate of the payee.
- (3) Notwithstanding subsection (1), a resident person shall be required to withhold tax from a payment to a non resident person under a contract as follows:-
 - (a) in the case where the Tax Department has served the resident person with a written notice at the rate specified in the notice; or
 - (b) in any other case, in accordance with subsection (1).
- (4) Notwithstanding subsection (1), this section does not apply to the payments made in the following cases-
 - (a) payments made by individuals other than in conducting a business; or
 - (b) payments that are exempt from tax or subject to withholding under section 87 or 88.

90. Statements and Payments of Tax Withheld

- (1) Every withholding agent shall be required to file with the Department within 15 days after the end of each month a statement in the manner and form prescribed specifying the following-
 - (a) the amount of payments made by the agent during the month to a withholder that are subject to withholding under sections 87, 88 or 89;
 - (b) the name and address of the withholder, and permanent account number in case of a withholder holding such number;

- (c) the amount of tax withheld from each payment, ignoring subsection (3); and
 - (d) any other information that the Department may prescribe.
- (2) Together with the statement referred to in subsection (1), a withholding agent shall be required to pay within the time limit specified in subsection (1) to the Department any tax that has been withheld or that is treated by subsection (3) as withheld.
 - (3) A withholding agent who fails to withhold tax in accordance with sections 87, 88 or 89 shall be treated as though the tax had been withheld at the time required.
 - (4) Any tax withheld under sections 87, 88 or 89 or treated as withheld by subsection (3) shall be payable by the withholding agent and, where subsection (5) applies, the withholdee shall be required to pay within a period of 15 days after the expiry of the time limit referred to in subsection (1).
 - (5) In the following conditions, both the withholding agent and withholdee shall jointly and separately be liable, for the payment of the tax, to the Department:-
 - (a) fails to withhold tax from a payment as required by sections 87, 88 or 89; and
 - (b) does not pay the tax treated as deducted under subsection (3) to the Department by the date the tax is payable under subsection (4),
 - (6) A withholding agent who withholds tax under sections 87, 88 and 89 and pays the tax to the Department shall be treated as having paid the amount withheld to the withholdee for the purposes of any claim by the withholdee for payment of the amount withheld.
 - (7) A withholding agent who fails to withhold tax under sections 87, 88 or 89 but pays the tax that should have been withheld to the Department shall be entitled to recover an amount equal to the tax paid from the withholdee.

91. Withholding Certificates

- (1) A withholding agent shall be required to prepare and serve on a withholdee a withholding certificate in the following form at the time specified in subsection (2);
 - (a) certified in a manner, if any prescribed by the Department; and
 - (b) set out the amount of payments made and tax withheld under sections 87, 88 or 89.
- (2) A withholding certificate shall be delivered within 15 days after the end of the month specifying the period for which tax is withheld.
- (3) Notwithstanding subsection (2), in the case of tax withheld under section 87, a withholding certificate shall be provided as follows:-

- (a) the certificate shall be for the part of the income-year during which the employee is employed; and
- (b) the certificate shall be required to serve within 30 days after the end of the year or, where the employee has ceased employment with the withholding agent during the year, no more than 30 days from the date on which the employment ceased.

92. Final Withholding Payments

- (1) The following payments shall be treated as final withholding payments:
 - (a) dividends paid by a resident company;
 - (b) rent for the lease of land or a building and associated fittings and fixtures, having a source in Nepal, and that is received by an individual other than in conducting a business;
 - (c) payment made by resident person for gains from investment insurance;
 - (d) payment made by an resident unapproved retirement fund for the interest on that fund .
 - (e) interest paid by the bank, financial institution, or any other institution issuing debentures, or company listed under prevailing laws referred to in Subsection (3) of Section 88 and having following conditions:
 - (1) payment which has a source in Nepal and which is not received by the individual in the course of conducting a business,
 - (2)** payment made to an exempt organization referred to in Section 2(s),
 - (f) payments made to non-resident persons that are subject to withholding tax under section 87, 88 or 89.
 - (g) retirement payments made by His Majesty's Government or an approved retirement fund,
 - (h) meeting fee, payments made for occasional teaching, payment made for preparation of question papers and examining answer papers.
- (2) Tax withheld under sections 87, 88 or 89 or treated as withheld by section 90(3) from a final withholding payment that is paid to the Department by the withholding agent or the withholder shall be treated as satisfied the withholder's tax liability under section 3(c).

93. Inclusion and Credit for Non-Final Withholding Tax

- (1) In determining the amount of a payment, the amount of tax withheld, if any, shall be treated as part of the payment.
- (2) The withholder of a payment that is not a final withholding payment shall be treated as having paid the following tax:-

- (a) tax withheld under sections 87, 88 or 89 from the payment, and
 - (b) tax treated by section 90(3) as withheld from the payment that is paid to the Department by the withholding agent or the withholder,
- (3) The withholder shall be entitled to a tax credit only in an amount equal to the tax treated as paid for the income-year in which the payment is derived.

CHAPTER - 18

INSTALMENTS

94. Payment of Income Tax by Instalments

- (1) a person who derives or expects to derive any assessable income during an income-year from a business or investment shall required to pay tax for the year by three instalments as follows:

<u>Date Payable</u>	<u>Amount Payable</u>
By the end of Poush	due tax amount out of 40% of the estimated tax.
By the end of Chaitra	due tax amount out of 70% of the estimated tax.
By the end of Ashad	due tax amount out of 100% of the estimated tax.

Clarification:- For the purpose of this Section-

- (a) estimated tax means an estimated amount of tax payable by an instalment payer for an income year, as calculated under Section 95, at the time of the instalment payment;
- (b) due tax amount means a residual amount remained after subtracting the sum of the following amount from the amount of estimated tax calculated by applying the percentage specified in this Subsection for the instalment payment:-
- (1) the tax paid during the year but prior to the date for payment of the instalment by the person by prior instalment under this Section;
 - (2) the tax withheld, under Chapter 17 during the year but prior to the date for payment of the instalment, on payments derived by the person that are included in calculating the person's income for the year;
 - (3) the tax treated by Section 90(3) as withheld from a payment of the kind referred to in Subclause (2) that is paid to the Department by the withholding agent or the withholdee during the year but prior to the date for payment of the instalment; and
 - (4) medical tax credit that may be claimed under Section 51 with respect to approved medical costs paid by the person prior to the due date for payment of the instalment.
- (2) Notwithstanding Subsection (1), where the amount of total instalments calculated under Subsection (1) is less than Rs 2,000, the amount of the instalment shall not be required to pay.

- (3) An instalment payer shall be entitled to a tax credit for an income-year in an amount equal to the tax paid by way of instalment for the year under this section.

95. Statement of Estimated Tax Payable

- (1) Every person who is an instalment payer for an income-year shall file with the Department by the date for payment of the first tax instalment for the year under section 94 a statement in the manner and form prescribed by the Department specifying the person's estimate of the following amounts:-
 - (a) the person's assessable income to be derived for the year from each employment, business, and investment and the source of that income;
 - (b) the person's taxable income to be derived for the year and the tax to become payable with respect to that income under section 3(a) calculated under section 4 without reduction for any medical tax credit;
 - (c) in the case of a foreign permanent establishment of a non-resident person situated in Nepal, the foreign permanent establishment's repatriated income for the year and the tax to become payable with respect to that income under section 3(b) calculated under section 4(5); and
 - (d) any other information that the Department prescribes.
- (2) The sum of the amounts of tax referred to in subsection (1)(b) and (c) shall be the estimated tax payable by the person referred to in subsection (1) for the income-year.
- (3) In estimating tax payable for an income-year under subsection section(1)(b), a person may only take account of foreign income tax that the person has paid or the person reasonably estimates will be paid during the year while calculating any foreign tax credit to be claimed under section 71.
- (4) An instalment payer's estimate under subsection (1) shall remain in force for the whole of the income-year unless the person files a revised estimate, in the form and specifying the information referred to in subsection (1), to the Department together with a statement of reasons for the revision.
- (5) Notwithstanding subsection (2), a revised estimate filed by a person under subsection (4) shall be used only in calculating instalments payable under section 94 for the income-year after the date the revised estimate is filed with the Department.
- (6) Notwithstanding subsection (1) and (5), the Department may specify that an instalment payer or class of instalment payers are not required to submit an estimate under subsection (1).
- (7) Notwithstanding subsection (2), where an instalment payer fails to file an estimate for an income-year as required by subsection (1), the

Department is not satisfied with the estimate or revised estimate filed, the Department shall-

- (a) make an estimate of the person's estimated tax payable for the year, which may be based on tax payable under section 3(a) and (b) for the previous income-year; and
 - (b) serve on the instalment payer a written notice stating the Department's estimated tax payable, the manner in which it is calculated, and, where the person has filed an estimate, the reasons why the Department is not satisfied with the person's estimate.
- (8) Where the Department serves an instalment payer with a notice under subsection (7), then the estimated tax payable by the person for the year shall be the amount estimated by the Department.

CHAPTER - 19

RETURNS OF INCOME AND ASSESSMENTS

96. Returns of Income

- (1) Subject to sections 97, 98 and 100, every person shall file at the place prescribed by the Department not later than three months after the end of each income-year a return of income for the year.
- (2) A return of income shall be as follows:-
 - (a) be in the manner and form prescribed specifying the following:-
 - (1) the person's assessable income for the year from each employment, business, and investment and the source of that income;
 - (2) the person's taxable income for the year and the tax payable with respect to that income under section 3(a) for the year;
 - (3) in the case of a foreign permanent establishment of a non-resident person situated in Nepal, the foreign permanent establishment's repatriated income for the year and the tax payable with respect to that income; and
 - (4)
 - (5)
 - (6) any other information that the Department prescribes;
 - (b) be signed by the person or the manager and include a declaration that the return is complete, true, and accurate; and
 - (c) have attached the following to the return of income:-
 - (1)
 - (2) any statement provided to the person under subsection (4);
 - (3) any election under section 4(4); and
 - (4) any other information that the Department prescribes.
- (3) A person who, in return for a payment, prepares or assists in the preparation of a return of income or attachment to a return of income of another person (other than as employee of the other person), shall be required to certify the following:-
 - (a) the first-mentioned person has examined the relevant documents of the other person maintained under section 81, and
 - (b) the return or information correctly reflects the circumstances to which it relates.

- (4) Where a person refuses to sign a return as required by subsection (3), the person shall furnish the other person with a statement in writing of the reasons for the refusal.
- (5) Subject to sections 100, where prior to the date for filing a return of income for an income-year under subsection (1), the Department may, by notice in writing served on the person, require the person to file, by the date specified in the notice, a return of income for the year or part of the year.
 - (a) the person becomes bankrupt, is wound-up, or goes into liquidation;
 - (b) the person is about to leave Nepal indefinitely;
 - (c) the person is otherwise about to cease activity in Nepal; or
 - (d) the Department otherwise considers it appropriate,

97. Return of Income Not Required

Unless requested by the Department by notice in writing served on the person or by public notification, no return of income for an income-year shall be required under section 96 from following persons:-

- (a) a person who has no tax payable for the year under section 3(a);
- (b) a person referred to in section 3(c) for the year; or
- (c) a resident individual to whom section 4(3) applies for the year.
- (d) an individual who is an owner of vehicle and is liable to pay tax under Section 1 (11) of schedule 1

98. Extension of Time to File Return of Income

- (1) Where a person who is required to file a return of income under section 96 makes a written request to the Department by the due date for filing the return, the Department may, on such terms and conditions as prescribed by the Department (including as to payment of security) and where reasonable cause is shown, extend the date by which the return is to be filed; and shall serve the person with written notice of the Department's decision on the application.
- (2) The Department may grant multiple extensions under subsection (1) with respect to the filing of a return of income but the extensions shall not in total exceed three months.

99. Assessments

- (1) Where a person files a return of income for an income-year, an assessment is treated as made on the due date for filing the return of-

- (a) the tax payable by the person for the year under section 3(a) and (b) in the amount shown in the return; and
 - (b) the amount of that tax still to be paid for the year being the amount shown in the return.
- (2) Where a person fails to file a return of income for an income-year then, until such time as the return is filed, an assessment is treated as made on the due date for filing the return that-
- (a) the amount of tax payable by the person for the year is equal to the sum of any tax withheld from payments derived by the person during the year under Chapter 17 and any tax paid by the person by instalment for the year under Chapter 18; and
 - (b) there is no tax payable on the assessment.

100. Jeopardy Assessments

- (1) Where a person is required to file a return of income under section 96(5) for part of an income-year, section 99 shall apply.
- (2) Notwithstanding subsection (1), in the circumstances specified in section 96(5), the Department may, according to the Department's best judgement, make an assessment of-
- (a) the amounts referred to in section 96(2)(a)(1), (2), (3) and (5) for the income-year or part of the year; and
 - (b) in accordance with section 96(2)(a)(5), the amount of tax still to be paid for the year or part of the year.
- (3) Where an assessment is made under subsection (1) or (2), the following provisions shall apply:-
- (a) with respect to a full income-year, the assessed person shall not file a return of income for the year under section 96(1); or
 - (b) with respect to part of an income-year, the assessed person is still required to file a return of income for the year under section 96(1).
- (4) Any tax paid on a assessment of the part of an income year shall be credited against the tax payable on an assessment made for the full income-year.
- (5) The Department shall be required to grant an opportunity to produce proof, if any, in own favour while making an assessment under this section.

101. Amended Assessments

- (1) The Department may amend an assessment made under section 99, 100, or this section so as to adjust the assessed person's liability to tax in such manner as, according to the Department's best judgement, is consistent with the intention of this Act.

- (2) The Department may amend an assessment under subsection (1) according to the Department's best judgement for as many times as it thinks appropriate.
- (3) The Department shall be required to make an assessment under subsection (1) or (2) within a period of four years after the following dates:-
 - (a) in the case of an assessment under section 99, the due date for filing the return;
 - (b) in the case of an assessment under section 100(2), the date on which the notice of assessment is served on the person assessed as required by section 102; and
 - (c) in the case of an amended assessment under subsection (1) or (2), the date referred to in paragraph (a) or (b) with respect to the original assessment that is amended under subsection (1).
- (4) Notwithstanding subsection (3), the Department may amend an assessment under subsection (1) at any time where the assessment is inaccurate by reason of fraud. Such amendment shall be required to make within a period of one year after the information of filling out the return and making an assessment by fraud is received.

Provided that, there shall be no obstruction to amend in the case where an order for re-investigation is issued.

- (5) The Department may not amend an assessment if the assessment has been amended or reduced pursuant to an order of the Revenue Tribunal or a court of competent jurisdiction except where the order is reopened.
- (6) While amending an assessment under this section, the Department shall be required to grant an opportunity in writing to produce proof, if any, in own favour with respect of the assessment, specifying the basis that led to the amendment and giving a time limit of 15 days.

102. Notice of Assessment

Where the Department makes an assessment under section 100(2), or 101, the Department shall be required to serve a written notice of the assessment on the person stating the following:-

- (a) a tax payable by the person under section 3(a) and (b), and the tax still to be paid on the assessment for the income-year or period to which the assessment relates;
- (b) the manner in which the assessment referred to in paragraph (a) is calculated;
- (c) the reasons why the Department has made the assessment;
- (d) the date on which the tax still to be paid on the assessment is payable; and
- (e) the time, place, and manner of objecting to the assessment.

CHAPTER - 20

COLLECTION OF TAX, REMISSION, AND REFUND

103. Security for Tax Payable by Withholding

- (1) Tax that a withholding agent is required to withhold from a payment under Chapter 17 shall be given a preference prior to any other payments that the withholding agent may be required to make by virtue of an order of any court or any other law.
- (2) Tax withheld by a withholding agent under Chapter 17 shall be as follows:-
 - (a) tax withheld and any asset acquired by the agent for the purpose of tax shall be treated as held in trust for His Majesty's Government;
 - (b) the amount of tax withheld may be not subject to attachment in respect of a debt or liability of the agent; and
 - (c) in the event of the liquidation or bankruptcy of the agent, the tax withheld does not form a part of the estate in liquidation or bankruptcy and the Department acting for His Majesty's Government has a first claim over the tax or assets before any distribution in liquidation or bankruptcy is made.

104. Charge Over Assets

- (1) Notwithstanding the prevailing laws, the Department may cause a charge to be created in favour of His Majesty's Government over the assets of a person as provided by this section where the person fails to pay tax on or before the date the tax is payable.
- (2) The Department may create a charge over the assets of a tax debtor by serving the person with a notice in writing specifying the following:-
 - (a) the details of the assets charged;
 - (b) the extent of the charge as provided for in subsection (3);
 - (c) the tax to which the charge relates; and
 - (d) other details, if any.
- (3) The assets of a tax debtor charged under subsection (2) are charged to the extent of the tax payable, interest accruing with respect to that tax under section 119 and any costs of charge and auction.
- (4) A charge created under subsection (2) does not have effect until-
 - (a) in the case of land or buildings, the Department informs to register the charge under subsection (6);
 - (b) in the case of other tangible assets, the Department takes possession of the assets under section 105(3); and

- (c) in any other case, the notice is served on the tax debtor under subsection (2).
- (5) A charge created under subsection (2) is released when the tax debtor pays to the Department in full the amounts referred to in subsection (3) that are secured by the charge.
- (6) Where the Department creates a charge over land or buildings under subsection (2), the Department shall inform the Land Revenue Office who shall to the Land Revenue Office register the charge on the title of the land or buildings and shall suspend the sale or transfer thereof.
- (7) Where a charge over land or buildings is released under subsection (5), the Department shall inform to the Land Revenue Office of the release who shall remove the entry of the charge from the title of the land or buildings.
- (8) The Department may at any time serve on a tax debtor a notice in writing-
 - (a) specifying any costs of charge and auction with respect to assets of the debtor incurred by the Department prior to the date of service; and
 - (b) requiring the debtor to pay those costs to the Department by the date specified in the notice.

Clarification:- For the purpose of this section, costs of charge and auction with respect to assets means any costs incurred or to be incurred by the Department-

- (a) under this section with respect to creating or releasing a charge over the assets, or
- (b) under section 105 with respect to taking possession of, holding, and selling the charged assets at auction.

105. Auction of Charged Assets

- (1) The Department may notify a tax debtor of the Department's intention to sell charged assets at auction held by the debtor.
- (2) A notice served as referred to in subsection (1) may be incorporated into or accompany a notice referred to in section 104(2) and shall be in writing, served on the tax debtor, and specify-
 - (a) the charged assets, the Department's intention to sell those assets, and the proposed method and timing of sale; and
 - (b) in the case of tangible assets, the manner and place at which the Department intends to take possession of the assets.
- (3) Where the Department serves a tax debtor with a notice referred to in subsection (1) and (2), the Department may-
 - (a) take possession of tangible assets referred to in the notice at any time;

- (b) for the purposes of taking possession of tangible assets, enter at any time any premises described in the notice referred to in subsection (1); and
 - (c) where the assets are tangible assets other than land or buildings, store the assets, at the cost of the tax debtor, at any place that the Department considers appropriate.
- (4) Where the Department serves a tax debtor with a notice referred to in subsection (1), the Department may, at the following time, sell the charged assets by public auction or deal with the assets in such manner as the Department considers appropriate:-
- (a) where the charged assets are land or buildings, 30 days after taking possession under subsection (3);
 - (b) where the charged assets are perishable tangible assets, one day after taking possession under subsection (3);
 - (c) where the charged assets are tangible assets other than those referred to in paragraph (a) or (b), 10 days after taking possession under subsection (3); and
 - (d) in any other case, 10 days after taking possession under subsection (3).
- (5) The proceeds of an auction under subsection (4) shall be used to pay the costs of charge and auction of the assets sold, then to pay the tax payable and interest accrued with respect to that tax under section 119, and any remainder shall be paid to the tax debtor.
- (6) After applying the proceeds of an auction in accordance with subsection (5), the Department shall serve the tax debtor with a written notice detailing the manner in which the proceeds have been applied.
- (7) If the proceeds of an auction applied in accordance with subsection (5) are insufficient to pay in full the costs, tax, and interest referred to in that subsection, the Department may proceed to collect any outstanding amount with fresh actions under section 104, 111, or this section.

Clarification:- For the purpose of this section,-

- (a) Charged assets means assets held by a withholding agent on trust under section 103(2) or assets of a tax debtor referred to in section 104(2);
- (b) Costs of charge and auction means costs incurred with respect to charge and auction under section 104.
- (c) Tax debtor includes a withholding agent referred to in section 103 and 104.

106. Departure Prohibition Order

- (1) Where a person fails to pay tax on or before the date the tax is payable, the Department may, by notice in writing served on the concerned office

of His Majesty's Government, order the office to prevent the person from leaving Nepal for a period of 72 hours after the expiry of time limit specified in a notice served for the purpose of paying tax.

- (2) Where an extension to the period referred to in subsection (1) is required, the Department shall be required to get pre-approval from the concerned appellate court for the purpose.
- (3) Where the person referred to in subsection (1) pays the tax or makes an arrangement for payment satisfactory to the Department, the Department may by notice in writing served on the office referred to in subsection (1), withdraw the order.

107. Liability of the Officers of Entities

- (1) Where an entity does not comply with the laws, every person who is an officer of the entity at that time shall be liable for that.
- (2) Where an entity fails to pay tax on or before the date on which the tax is payable, every person who is an officer of the entity at that time or was such an officer within the previous six months shall be jointly and severally liable every other such others such for payment of the tax.
- (3) Notwithstanding subsections (1) and (2), those subsections shall not apply in the following cases-
 - (a) where the offence is committed by the entity without that person's knowledge or consent; and
 - (b) where the person has exercised the degree of care, diligence, and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the commission of the offence.
- (4) Where a person pays tax under subsection (2)-
 - (a) the person may recover the payment from the entity;
 - (b) for the purposes of paragraph (a), the person may retain out of any assets including money of the entity in or coming into the possession of the person an amount not exceeding the payment; and
- (5) No claim may be made against the person by the entity or any other person with respect to the retention referred to in subsection (4)(b).

Clarification:- For the purpose of this section, officer of an entity means a manager of the entity or a person purporting to act in that capacity.

108. Recovery of Tax from Receiver

- (1) A receiver shall be required to notify the Department in writing within 15 days of being appointed to the position of receiver or of taking possession of an asset situated in Nepal, whichever occurs first.

- (2) The Department shall be required to serve on a receiver a notice in writing of the amount that is payable by the tax debtor.
- (3) After receiving a notice under subsection (2), a receiver shall be required to do as follows:-
 - (a) sell sufficient of the assets that come into the receiver's possession and set aside, subject to section 103(2)(c), after payment of any debts having priority over the tax referred to in subsection (2), the amount notified by the Department under that subsection; and
 - (b) be liable to pay to the Department on account of the tax debtor's tax liability the amount set aside.
- (4) To the extent that a receiver fails to set aside an amount as required by subsection (3), the receiver shall personally be liable to pay an equal amount to the Department on account of the tax debtor's tax liability.

Provided that the receiver may recover any amount paid from the tax debtor.

Clarification:- For the purpose of this section,-

- (a) Receiver means any of the following persons:-
 - (1) a liquidator;
 - (2) a receiver appointed out of court or by a court in respect of an asset or entity;
 - (3) a mortgagee in possession;
 - (4) an executor, administrator, or direct heir of a deceased individual's estate; or
 - (5) any person conducting the affairs of an incapacitated individual.
- (b) Tax debtor means the person whose assets come into the possession of a receiver.

109. Recovery of Tax from Person Owing Money to Tax Debtor

- (1) Where a person (the tax debtor) fails to pay tax on or before the date it is payable, the Department may by notice in writing require any of the following person (the payer)- payer) to pay, on account of and to the extent of the tax payable by the tax debtor, the money to the Department on or before the date set out in the notice.
 - (a) person owing money to the tax debtor;
 - (b) person holding money for, or on account of, the tax debtor;
 - (c) person holding money on account of a third person for payment to the tax debtor; or

- (d) person having authority from a third person to pay money to the tax debtor,
- (2) The Department shall be required to serve the tax debtor with a copy of the notice that is served on the payer referred to in subsection (1).
- (3) Notwithstanding subsection (1), the date specified in the notice under that subsection cannot be a date before the dates referred to in paragraphs (a) and (b):-
 - (a) date on which the money becomes payable to the tax debtor or the money is held on behalf of the tax debtor, and
 - (b) date on which the notice under subsection (2) is served with.
- (4) A person making a payment pursuant to a notice under subsection (1) shall be treated as making the payment to the tax debtor. The tax debtor or any other person may not make a claim against the payer with respect to such amount.

110. Recovery of Tax from Agent of Non-resident

- (1) Where a non-resident person (the tax debtor) fails to pay tax on or before the date it is payable, the Department may by service of a notice in writing require a person who is in possession of an asset owned by the tax debtor to pay tax on behalf of the tax debtor up to the market value of the asset but not exceeding the amount of tax payable by the tax debtor.
- (2) Where a person makes a payment to the Department pursuant to a notice under subsection (1)-
 - (a) the person may recover the payment from the tax debtor;
 - (b) for the purposes of paragraph (a), the person may retain out of any assets including money of the tax debtor in or coming into the possession of the person an amount not exceeding the payment; and
- (3) the tax debtor or any other person may not make a claim against the person referred to in subsection (1) (b) with respect to the retention.

111. Suit for Unpaid Tax

The Department may file suit against the person who has not paid tax by the time it becomes payable with the concerned District Court for recovery of the tax.

112. Remission

- (1) His Majesty's Government may remit in whole or in part any tax that is payable by a person where the tax cannot be collected.
- (2) Notwithstanding subsection (1), His Majesty's Government may remit in whole or in part any interest or penalty chargeable under Chapter 22.

113. Refunds and Set-off

- (1) Where the Department is satisfied that a person has paid tax in excess of the person's tax liability, the Department shall apply the excess in reduction of any tax payable but unpaid by the person under this Act and refund the remainder, if any, to the person.
- (2) Interest paid by a person under section 119 shall be refunded to the person to the extent that the tax to which the interest relates is found not to have been payable.
- (3) A person may apply to the Department in writing for a refund under subsection (1).
- (4) A person may make an application under subsection (3) and the Department is obliged to make a refund under subsection (1) only where such an application is made within two years of the later of-
 - (a) the end of the income-year during which the events occurred that gave rise to the payment of the excess; or
 - (b) the date on which the excess was paid.
 - (c) the date on which the litigation is settled.
- (5) The Department shall be required to serve the person with written notice of the Department's decision on an application under subsection (3).
- (6) Where the Department refunds an amount of tax to a person, whether by reason of court order or otherwise, the Department is liable to pay the person interest at the standard interest rate for the following period-
 - (a) where the refund relates to excess credits available to a person under sections 93, 94, or 100 for an income-year, commencing on the date for filing a return of income for the year under section 96 and ending on the day the refund is made; and
 - (b) in any other case, commencing on the date the person paid the refunded tax and ending on the day the refund is made.
- (7) Tax credits that may be claimed under section 51 or 71 for an income-year may not be set-off or refunded under section 4(2).

Provided that such tax credit for the year may be dealt with as provided for in sections 51(4) and 71(3).

CHAPTER - 21

ADMINISTRATIVE REVIEW AND APPEAL

114. Reviewable Decisions and Procedures

- (1) For the purposes of this Act, the administrative review may be conducted on the following are decisions:
 - (a) a personal ruling issued by the Department under section 76;
 - (b) an estimate by the Department, or the decision to make an estimate, of a person's estimated tax payable under section 95(7);
 - (c) a decision by the Department to require a person to file a return of income under section 96(5) or 97;
 - (d) a decision by the Department(on an application by a person to extend the due date by which the person must file a return under section 98;
 - (e) an assessment of income tax payable by a person under section 100, or 101, or an assessment of costs of charge and auction under Subsection (5) of Section 105 or interest and penalties payable by a person under section 122;
 - (f) notification by the Department of an amount to be set aside by a person as a receiver under section 108(2);
 - (g) a decision by the Department to require a person to pay monies owing to a tax debtor to the Department under section 109(1);
 - (h) a decision by the Department to require a person to pay tax on behalf of a non-resident person under section 110(1);
 - (i) a decision by the Department on an application by a person for a refund of tax under section 113(5); and
 - (j) a decision by the Department on an application by a person for an extension of time within which to file an objection under section 115(3).
- (2) Where the Department takes decision with respect to the matters referred to in paragraphs (d), (i) and (j) of subsection (1) but fails to serve a person making an application under section 98, 113(3), or 115(3) with the required notice of the decision within 30 days of the application being made, the Department shall be treated as having decided to refuse the application and the administrative review on such decision may be conducted.
- (3) Where a person making an application does not receive the notice of the decision within the time limit referred to in subsection (2) and the matter is reported to the Department, the Department shall be treated as having provided the decision that refused the application and served the required notice with the person to that effect on the day.

115. Objection to Reviewable Decision

- (1) A person who is aggrieved by a reviewable decision may file an objection to the decision with the Department within 30 days after the decision is made.
- (2) An objection referred to in subsection (1) must be in writing and specify in detail the grounds upon which it is made.
- (3) Where a person makes an application for extension of time limit referred to in subsection (1) as a result of its expiry within a period of 7 days from the expiry, the Department-
 - (a) may, where reasonable cause is shown, extend for a period not exceeding 30 days the date by which an objection must be filed under subsection (1); and
 - (b) shall serve the person with written notice of the Department's decision on the application.
- (4) The enforcement of a decision referred to in section 114 (1) shall not be treated as stayed or otherwise affected by the filing of an objection under subsection (1).
- (5) Notwithstanding subsection (4), the Department may stay or otherwise affect the enforcement of a decision referred to in section 114(1) until an objection filed by a person under subsection (1) is settled.
- (6) A deposit of 50 percent of due tax at the time of filing the objection against the decision made under Clause (1)(e) of Section 114 shall be required.
- (7) After consideration of a person's objection filed under subsection (1), the Department-
 - (a) may allow or disallow the objection in whole or part; and
 - (b) shall serve the person with written notice of the decision on an objection.
- (8) Where the Department fails to serve a person with notice of the decision on an objection within 90 days of an objection being filed, the person may, by notice in writing filed with the Department, treat the Department as having made a decision to disallow the objection.
- (9) A person shall be required to notify the Department in writing of the matter of having treated the objection as disallowed under subsection (8). The Department shall be treated as having disallowed the objection and served the person with notice to that effect on the day that the notification is filed with the Department.

116. Appeal to the Revenue Tribunal

- (1) A person (the appellant) who is aggrieved by a decision on an objection may appeal to the Revenue Tribunal in accordance with the Revenue Tribunal Act, 1974.
- (2) A person who appeals under subsection (1) shall, within 15 days of doing so, file a copy of the notice of appeal with the Department.
- (3) The enforcement of a decision on an objection referred to in section 114 (1) shall not be treated as stayed or otherwise affected by an appeal under subsection (1).
- (4) Notwithstanding section 114 (1), where a reviewable decision under that section is made by the Director General, an appeal may be filed with the Revenue Tribunal against the decision.

CHAPTER - 22

INTEREST AND PENALTIES

117. Penalty for Failure to Maintain Documentation or File Statements or Return of Income

- (1) A person who fails to do the following shall be liable to pay a penalty for each month and part of a month calculated as the higher amount of .1 percent per annum of the person's assessable income with a gross of any deductions and all amounts required to be included in calculating the person's income for the year, or Rs. 1000 per annum:-
 - (a) file a statement for an income-year as required by section 95(1); or
 - (b) file a return for an income-year as required by section 96(1).
- (2) A person who fails to maintain proper documentation for an income year as required by section 81 shall be liable to pay a penalty for the year during which the documentation is not maintained calculated as the higher amount of .1 percent per annum of the person's assessable income with a gross of any deductions and all amounts required to be included in calculating the person's income for the year, or Rs. 1000 per annum:-
- (3) A withholding agent who fails to file a statement as required by section 90(1) is liable to pay a penalty for each month and part of a month during which the failure continues calculated as 1.5 percent per annum applied to the amount of tax required to be withheld from payments made by the agent during the month to which the failure relates.

118. Interest for Understating Estimated Tax Payable by Instalment

- (1) Where the amount of Clause (b) is greater than the amount of Clause (a), in respect to the instalment of tax payable by a person under Section 94 **for an income year, the person** shall be liable to pay an interest referred to in Subsection (2) on the excess amount.
 - (a) the amount of each instalment paid by the person for an income year,
 - (b) 80 percent of the estimate or revised estimate, if it is correct, of total amount payable as the instalment of tax for each instalment period for the year, and in the case where the estimate or the revised estimate is not correct, of the amount payable by the person referred to in Section 3(a) and (b) as the instalment of tax for each instalment period.
- (2) A person referred to in Subsection (1) shall be liable to pay interest at standard interest rate for each month and part of a month of a period from the date the instalment for the year is payable to the date the excess amount of tax is unpaid.
- (3) Notwithstanding Subsection (2), the person under the Subsection who fails to pay the excess amount of tax on or before the date on which the tax assessed under Section 99 is payable, shall be liable to pay interest at standard interest rate for each month and part of a month of the period

from the date the instalment for the year is payable to the date on which the tax assessed under the Section is payable

119. Interest for Failure to Pay Tax

- (1) A person who fails to pay tax on or before the date on which the tax is payable is liable to pay interest for each month and part of a month for which any of the tax is outstanding calculated as the standard interest rate applied to the amount outstanding.
- (2) For the purposes of calculating interest payable under subsection (1), any extension granted under section 98 is ignored.
- (3) A withholding agent may not recover from a withholderee interest payable by the agent in respect of a failure to comply with section 90(4).

120. Penalty for Making False or Misleading Statements

A person who makes a statement to the Department that is false or misleading in a material particular; or omits from a statement made to the Department any matter or thing without which the statement is misleading in a material particular, shall be liable for a penalty as follows:-

- (a) where the statement is happened to be false or misleading without knowingly or recklessly, 50 percent of the underpayment of tax; or
- (b) where the statement is made false or misleading knowingly or recklessly, 100 percent of the underpayment of tax.

Clarification:- For the purpose of this section, a statement made to the Department means a statement made in writing to the Department or an authorised officer of the Department acting in the performance of duties under this Act, and includes the following:-

- (a) a statement made in an application, notification, return, objection, statement, or other document made, prepared, given, or filed under this Act;
- (b) a statement made in a document furnished to the Department or such an officer otherwise than pursuant to this Act;
- (c) a statement made in answer to a question asked of a person by the Department or such an officer; or
- (d) a statement made by any person with the knowledge to the Department or such an officer through the other person.

121. Penalty for Aiding and Abetting

A person who knowingly or recklessly aids or abets another person to commit an offence of a type referred to in Chapter 23, or counsels or induces another person to commit such an offence shall be liable for a penalty equal to 100 percent of the underpayment of tax that.

122. Assessment of Interest and Penalties

- (1) The Department shall make an assessment of the interest and penalties for which a person is liable under this Chapter.
- (2) Liability for interest and penalties under this Chapter with respect to a particular failure or statement is calculated separately for each section of this Chapter.
- (3) The imposition of interest and penalties under this Chapter is in addition to any other tax imposed by this Act and does not relieve any person from liability to criminal proceedings under Chapter 23.
- (4) Where an assessment has been made under this section, the Department shall serve on the person a written notice of assessment stating the following, which may be incorporated into or accompany a notice under section 102:-
 - (a) the reasons why the Department has made the assessment of interests and penalty;
 - (b) the amount of interest or penalties payable;
 - (c) how the amount is calculated; and
 - (d) the time, place, and manner of objecting to the assessment.
- (5) An assessment of interests and penalty under this section shall be made as follows:-
 - (a) provisions made under section 101(1), (2), (3)(b), (4) and (5) shall also be applied in making an assessment of interests and penalty under this section; and
 - (b) provisions made under section 101(3)(b), (4), (5) and section 102 shall also be applied in case of subsection (4) of this section.

CHAPTER - 23

OFFENCES

123. Offence of Failure to Pay Tax

Any person who without reasonable excuse fails to pay any tax on or before the date on which the tax is payable shall be liable on conviction to a fine of not less than Rs 5,000 and not more than Rs 30,000, or an imprisonment for a term of not less than one month and not more than three months, or both.

124. Offence of Making False or Misleading Statements

A person who makes a statement to the Department that is false or misleading in a material particular, or omits from a statement made to the Department any matter or thing without which the statement is misleading in a material particular, shall be liable to a fine of not less than Rs 40,000 and not more than Rs 1,60,000, or an imprisonment for a term of not less than six months and not more than two years, or both.

Clarification:- For the purpose of this section, a statement made to the Department means the statement as mentioned under the clarification of section 120.

125. Offence of Impeding and Coercing Tax Administration

- (1) A person who committing the following offences shall be liable to a fine of not less than Rs 5,000 and not more than Rs 20,000, or an imprisonment for a term of not less than one month and not more than three months, or both.
 - (a) obstructs an officer of the Department acting in the performance of duties under this Act;
 - (b) fails to comply with a notice under section 83; or
 - (c) otherwise impedes the enforcement of the Act,
- (2) Any person who attempts to commit the offences referred to in subsection (1) shall be liable to a half of the penalty mentioned in that subsection.

126. Offences by Authorised and Unauthorised Persons

- (1) Any authorised person violating section 84 shall be liable to a fine of not more than Rs 80,000, or an imprisonment for a term of not more than one year, or both.
- (2) Any person who not being an authorised under this Act, collects or attempts to collect an amount of tax payable under this Act shall be liable to a fine of not less than Rs 80,000 and not more than Rs 2,40,000 or an imprisonment for a term of not less than one year and not more than three years, or both.

127. Offence of Aiding or Abetting

Any person who knowingly aids or abets another person to commit an offence under this Act or counsels or induces another person to commit such an offence, shall be liable to a half of the penalty that is imposed on the main offender.

But, government officials to commit such an offence, shall be liable to the full penalty that is imposed on the main offender.

128. Offence of Failure to Comply with Act

Except as otherwise provided in this Act, any person who fails to comply with any provision of this Act and the Rules under this Act shall be liable to a fine of not less than Rs 1,000 and not more than Rs 30,000.

129. Department may Order for Payment of Penalty Amount

- (1) Notwithstanding this chapter, where any person accepts in writing as having committed one or more offences under this Chapter, other than of a kind referred to in section 126, the Department may, at any time prior to the commencement of court proceedings, order the person to pay a sum of money specified by the Department but not exceeding the amount of the fine that is likely to be imposed for committing one or more offences.
- (2) In issuing the order referred to in subsection (1), the Department shall be required to specify the offence committed, the sum of money to be paid, and the date for payment in such order.
- (3) An order issued by the Department under this section shall be final and shall not be subject to any appeal.

130. His Majesty's Government shall be a Plaintiff

His Majesty's Government shall be a plaintiff in all lawsuits under this chapter.

131. Investigation and Filing of Lawsuit

- (1) An Investigation of the lawsuit in respect of the offences that would be imposed on the penalty under this chapter shall be conducted by the prescribed officer and lawsuit shall be required to be filed with the concerned District Court within 35 days after completion of the investigation.
- (2) The officer conducting investigation under subsection (1) shall acquire an opinion of Government advocate

CHAPTER - 24

MISCELLANEOUS

132. Service of Expert may be Taken

His Majesty's Government may take a service of expert with respect to the tax audit and the provisions pertaining to official secrecy as referred to in section 84 shall be applied also to such experts.

133. Departmental Action

Where an officer makes an assessment with a recklessness that causes a reduction or an increment in the liability of taxpayer and even does not make amended assessment within the time limit referred to in section 101 (3), the Department may take a departmental action against such officer for further punishment that is to be imposed on the officer in accordance with the laws pertaining to the terms and conditions of service.

134. Identity Card of Officers

Each officer shall be required to keep with a prescribed identity card and produce before anyone demanding the card in course of performing duties.

135. Department may Exercise the Powers of a Court

For the purpose of this Act, the Department may exercise all such powers as are vested in a court under current Nepal law in respect to issuing summons to the concerned person, recording statements, examining evidences and directing the submission of the documents from the person.

136. No Responsibility for Actions Taken with a Good Motive

Notwithstanding the other provisions made under this Act, an officer who takes any actions with a good motive in course of performing duties shall not be personally liable to that action.

137. His Majesty's Government may issue an Order or Direction

For the purpose of making tax administration effective, His Majesty's Government may issue an order or direction as required.

138. Power to Enact Rules

His Majesty's Government may enact Rules as required for fulfilling the objectives of this Act.

139. Directives may be Developed and Issued

Subject to this Act or Rules made under this Act, the Department may develop directives and issue it as required.

140. Changes in Schedules

His Majesty's Government may, by notifying in the Nepal Gazette, bring the changes as required in schedules other than schedule - 1.

141. Police to Co-operate

It shall be the duty of Police to co-operate with the Department at the time the co-operation is sought for by the Department for the implementation of this Act and the Rules made under this Act.

142. This Act shall Prevail in Tax matters.

Notwithstanding the provisions made under the current law, no other Acts except this Act shall be made capable to make changes, amendment and other tax related provisions other than the provisions relating to imposition, assessment, reduction, increment, exemption, or remission of tax to be made by amending this Act itself by annual Finance Acts.

143. Repeal, Amendment and Savings

- (1) The Income Tax Act, 2031 and the House & Land Rent Tax Act, 2023 have been repealed.
- (2) The following Acts have been amended as follows:-
 - (a) Amendment in Nepal Rastra Bank Act, 2012 :- the words "income tax and" in section 38(d) has been removed.
 - (b) National Debt Act, 2017 :- Section 15 has been repealed.
 - (c) Provident Fund Act, 2019 :- the word "no other tax shall be levied" in section 18 (b) has been replaced with the term "no other tax except income tax".
 - (d) Nepal Petroleum Act, 2040 :- Section 15 has been removed.
 - (e) Pension Fund Act, 2019 :- the term " the like other tax shall not be levied" in section 29 has been replaced with the term " the like any other taxes except income tax shall not be levied".
 - (f) Citizen Investment Trust Act, 2047 :- Section 51 has been repealed.
 - (g) Royal Nepal Academy For Science and Technology Act, 2048 :- Section 30 has been repealed.
 - (h) Industrial Enterprise Act, 2049, Section- 15 :-
 - (1) paragraphs (c), (d), (e), (j), (l), (p), (q), (r) and (s) of section 15 have been removed.
 - (2) the clause " income tax for a period of ten years from the date of operation, 30%, 25% and 20% respectively, and" of paragraph (f) have been removed.

- (i) Foreign Investment and Technology Transfer Act, 2049 :- Section 5 (1.A) has been removed.
 - (j) B P Koirala Academy for Health Science Act, 2049 :- The word "income tax" in section 21, second line has been removed.
 - (k) Tribhuvan University Act, 2049 :- Section 33(2) has been removed.
 - (l) Electricity Act, 2049, Section -12 :-
 - (1) the word "income tax" in the title of section 12 has been removed.
 - (2) subsections (1), (2), (3), (4), (5) and (6) have been removed.
 - (m) Pokhara University Act, 2053, Section - 36 :- section 36(2) has been removed.
 - (n) B P Koirala Memorial Cancer Hospital Act, 2053, Section - 18 :- The word "income tax" in section -18(1) has been removed.
 - (o) Municipality Development Fund Act, 2053:- Section 24 has been repealed.
 - (p) Telecommunication Act, 2053:- Section 34(1) has been repealed.
- (3) All the works done under the Act or particular sections of Acts repealed or amended as per subsection (1) or (2) shall be treated as having done under this Act.
- (4) The provisions made under Income Tax Act, 2031 shall be applied to the matters relating to assessment and collection of tax prior to the commencement of this Act.

SCHEDULE-1
(Related to Section 4)

TAX RATES

1. Individuals

- (1) Subject to subparagraphs (2) and (4), the taxable income of a resident individual for an income-year is taxed at the following rates:
 - (a) taxable income not exceeding Rs. 80,000 - nil;
 - (b) taxable income in excess of Rs. 80,000 but not exceeding Rs 155,000 - 15 percent of taxable income in excess of Rs. 80,000; and
 - (c) taxable income in excess of Rs 155,000 - Rs 11,250 plus 25 percent of taxable income in excess of Rs 155,000.
- (2) Subject to subparagraph (4), the taxable income of a couple making an election under section 50 for an income-year shall be taxed at the following rates:
 - (a) taxable income not exceeding Rs 100,000 - nil;
 - (b) taxable income in excess of Rs 100,000 but not exceeding Rs 175,000 - 15 percent of taxable income in excess of Rs 100,000; and
 - (c) taxable income in excess of Rs 175,000 - Rs 11,250 plus 25 percent of taxable income in excess of Rs 175,000.
- (3) The provisions made under subparagraph (4) of this schedule shall apply in the following cases:-
 - (a) where, the taxable income of a resident individual for an income-year exceeds Rs. 80,000, or a resident couple making an election under section 50 for an income-year exceeds Rs 100,000; and
 - (b) net gains from the disposal of non-business chargeable assets (the gains) are included in calculating the individual or couple's income and thereby that taxable income.
- (4) Subject to subparagraph (3) the following individual shall be taxed as follows:-
 - (a) the greater of the following amounts shall be taxed at the rates specified in subparagraphs (1) or (2) as though it were the only taxable income of the individual or couple, as the case requires; and
 - (1) the total of individual or couple's taxable income less the gains;
or
 - (2) Rs. 80,000, in the case of an individual, or Rs 100,000, in the case of a couple,

percent. (b) the balance of the taxable income is taxed at the rate of 10

.....

(5) Tax shall be calculated only on residual taxable income remained after subtracting the amount of prescribed remote area allowance not exceeding Rs. 30,000, of an individual residing in a remote area prescribed by His Majesty's Government.

(6)

(7) The amount of tax referred to in section 4(4) shall be-

(a) for individuals conducting business in the Metropolitan or Sub-Metropolitan Cities - Rs 2,000;

(b) for individuals conducting business in Municipalities - Rs 1,500; and

(c) for individuals conducting business anywhere else in Nepal - Rs 1,000.

(8) The taxable income of a non-resident individual for an income-year is taxed at the rate of 25 percent.

(9) Notwithstanding this section, if any individual has pension income, the tax amount shall be calculated after deducting 25% amount of exemption limit under subsection 1(a) and 2(a) from taxable income as case requires.

(10) Notwithstanding this Section, the tax payable by a resident individual who pays premium under an investment insurance policy, shall be calculated under this Section only on residual amount of taxable income remained after subtracting 7 percent of the insurance amount or Rs. 10,000 per annum whichever is less.

(11) Notwithstanding this Section, an annual tax shall be levied on the owners of vehicles on hire. If the owner of the vehicle is individual, the tax so paid shall be final.

<i>Types of Vehicle</i>	<i>Annual Income Tax per Vehicle</i>
(a) Mini-bus, Mini-truck, Truck and Bus	Rs 1,500.00
(b) Car, Jeep, Van, Micro-bus	Rs. 1200.00
(c) Three-wheeler, Auto-rickshaw, Tempo	Rs. 850.00
(d) Tractor, Power Tiller	Rs. 750.00

(12) Notwithstanding this Section, tax shall be calculated at the rate of 20 percent on the taxable income in the following conditions even if the 25 percent is applicable under this Section:

(a) if an individual wholly engaged in operating a special industry referred to in Section 11 for an income year,

(b) If an individual derives income from export for an income year.

2. **Entities**

- (1) Subject to subparagraphs (2), (3), (4), (5) and (7), the taxable income of an entity for an income-year is taxed at the rate of 25 percent.
- (2) The taxable income of a bank, or financial institution, or general insurance business or of an entity dealing with petroleum business as per Nepal Petroleum Act, 2040 for an income-year is taxed at the rate of 30 percent.

Clarification : Taxable income of petroleum business means the taxable income calculated as per the procedure mentioned in the petroleum contract and this act and the rules prescribed by this act.

- (3) Income having a source in Nepal derived as follows during an income-year by an entity shall be taxed at the rate of 20 percent.
 - (a) an entity wholly engaged in operating a special industry as referred to in section 11 for the year; or
 - (b) the entity has-
 - (1) operated any road, bridge, tunnel, rope-way, or flying bridge constructed by the entity; or
 - (1) operated any trolley bus, or tram, or
 - (2)** derived income from export for an income year.
- (4) The taxable income of an entity wholly engaged in the projects conducted by any entity so as to build public infrastructure, own, operate and transfer it to the His Majesty's Government and in power generation, transmission, or distribution for an income-year shall be taxed at the rate of 20 percent.
- (5) The taxable income of an estate of a deceased resident individual or trust of an incapacitated resident individual for an income-year shall be taxed at the rates mentioned in paragraphs 1(1) and (4) as though the estate or trust was a resident individual.
- (6) The repatriated income of a foreign permanent establishment of a non-resident person situated in Nepal for an income-year shall be taxed at the rate of 10 percent.
- (7) The taxable income of a non-resident person with respect to income referred to in section 70 for an income-year is taxed at the rate of 5 percent.

SCHEDULE-2
(Related to Section 19)

CALCULATION OF DEPRECIATION

1. Classification and Pooling of Depreciable Assets

(1) Depreciable assets are classified as follows:

Class	Assets Included
"A"	Buildings, structures, and similar works of a permanent nature
"B"	Computers, data handling equipment, fixtures, office furniture, and office equipment
"C"	Automobiles, buses, and minibuses;
"D"	Construction and earth-moving equipment and any depreciable asset not included in another class including those referred to in sections 17(3) and 18(3) and subparagraph (3).
"E"	Intangible assets other than depreciable assets included in Class "D"

(2) Each depreciable asset owned and used by a person during an income-year in the production of the person's income from a particular business or investment shall be, at the time the asset is first owned and so used, placed in a pool and those pools are referred to as the person's pools of depreciable assets for the year.

(a) in the case of a Class A, B, C, or D, depreciable asset with all other assets of the same class so owned and used by the person in that business or investment; and

(a) in the case of a Class E depreciable asset, separate pool of each assets even if of the same class.

(3) To the extent to which costs in respect of natural resource prospecting, exploration, and development are incurred by a person in the production of the person's income from a business, the costs shall be treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.

2. Depreciation Allowance

(1) An allowance shall be granted to a person for an income-year for each of the person's pools of depreciable assets equal to the depreciation for the year of each pool calculated in accordance with subparagraphs (2) and (6).

(2) Depreciation for an income-year for each of a person's pools of depreciable assets is calculated according to the following formula:

A x B

where-

A is the depreciation basis of the pool at the end of the income-year;
and

B is the depreciation rate provided in paragraph 3 applicable to the pool.

- (3) The amount of depreciation basis of depreciable assets in Class A, B, C or D at the end of an income-year shall be ascertained by reducing the amount of (c) from the total of (a) and (b) below.

Provided that the amount reduced shall be below zero.

- (a) the depreciation basis of the pool at the end of the preceding income-year, if any, after deducting depreciation for that pool calculated under subparagraphs (2) and (6) for that year.
- (b) amounts added to the depreciation basis of the pool during the income-year under subparagraph (5) in respect of outgoings for assets in or added to the pool.
- (c) any amounts derived from the disposal of any assets of the pool during that year.

- (4) The amount of depreciation basis of each of the depreciable assets in class E at the end of an income-year shall be the total of-

- (a) the depreciation basis of the pool at the end of the preceding income-year, if any; and
- (b) amounts added to the depreciation basis of the pool during the income-year under subparagraph (5) of this schedule in respect of outgoings for the asset in the pool as referred to in section 5.

- (5) Costs that are an outgoing for a depreciable asset included in a person's pools of depreciable assets are added to the depreciation basis of the person's relevant pool as follows:

- (a) the first portion is added at the time the asset is added to the pool in accordance with paragraph 1 or the cost is incurred, whichever is later, and calculated in accordance with the following formula:

$$A/3 \times B$$

where-

A is-

- (i) 3 if the portion is to be added between the start of the income-year and the end of Poush;
- (ii) 2 if the portion is to be added between the end of Poush and the end of Chaitra; and

- (iii) 1 if the portion is to be added between the end of Chaitra and the end of the income-year; and
- B is the amount of the cost; and
- (b) the remaining portion of the cost is added during the income-year following that in which the first portion is added, but not if the pool has been dissolved under paragraph 4(2) in the meantime.
- (6) If the depreciation basis of the pool of depreciable assets in Class A, B, C, or D at the end of an income-year reduced by depreciation calculated under subparagraph (2) produces an amount that is less than Rs 2,000, additional depreciation of the pool is calculated as equal to that amount.

3. Rates of Depreciation

- (1) Subject to subparagraph (2), the depreciation rates applicable to each pool referred to in paragraph 2(2) shall be as follows:

Class	Rate
"A"	5%
"B"	25%
"C"	20%
"D"	15%
"E"	rate in percent calculated as divided by the useful life of the asset in the pool at the time the asset is most recently acquired by the person and rounded down to the nearest half year

- (2) Entities referred to in section 19 (2) and paragraph 2(3) and (4) of Schedule-1 shall be entitled to an additional depreciation rate added by 1/3 in the depreciation rates referred to in subparagraph (1) applicable to pools of depreciable assets in Class A, B, C, and D.

4. Disposal of Depreciable Assets

- (1) Where an amount of (a) exceed the amount of (b) of the following, the excess shall be included in calculating the person's income for that year from the business or investment in which the asset or assets are used.
 - (a) a person's incomings derived during an income-year from disposal of depreciable assets that are or have been in the person's pools of assets in Class A, B, C, or D during the year; exceed
 - (b) the depreciation basis of the pool at the end of the year calculated under paragraph 2(3) but disregarding those incomings,
- (2) Where before the end of an income-year a person disposes of all the assets in a pool of depreciable assets of the person, the pool shall be

treated as dissolved and-

- (a) an amount shall be treated as derived by the person for the year in respect of excess depreciation of the depreciable assets that have been in the pool calculated in accordance with the following formula:

A – B

or

- (b) an allowance shall be granted to the person for the year in respect of depreciation of the depreciable assets that have been in the pool calculated in accordance with the following formula:

B – A

Clarification:- For the purpose of this paragraph,

- (1) "A" means the person's incomings derived during the year, or to be derived, from the disposal of the assets; and
- (2) "B" means the sum of the following:-
- (i) the written down value of the pool during the year;
 - (ii) outgoings added to the depreciation basis of the pool during the year; and
 - (iii) outgoings to be added to the depreciation basis of the pool during the following income-year under paragraph 2(5).
- (3) In this paragraph, written down value of a pool of depreciable assets during an income-year means-
- (a) in the case of a Class A, B, C, or D pool, the depreciation basis of the pool at the end of the previous income-year, if any, after deducting depreciation for that pool calculated under paragraph 2(2) and (6) for that year; or
 - (b) in the case of a Class E pool, the depreciation basis of the pool at the end of the previous income-year reduced by all allowances granted to the person under paragraph 2(1) in prior income-years in respect of the pool.
