Answers

Notes:
1. The suggested answers provide detailed guidance on the subject for use as a study aid to the question paper. Students were not expected to produce answers with this extensive detail, which would not be possible in a three hour exam.
2. All references to legislation shown in square brackets are for information only and do not form part of the answer expected from candidates.

			Marks
1	Star Pakistan Limited (SPL)		
(a)	**(i)**	The shares of SPL are not owned by any government and its shares are not listed on any Stock Exchange in Pakistan. So, it is not a public company for the purposes of the Income Tax Ordinance, 2001, despite the fact that it is a public company under the Companies Ordinance, 1984. [s.2(47)]	2·0
	(ii)	If a company is incorporated or formed by or under any law in force in Pakistan, it is treated as a 'resident company'. Such a company cannot be treated as non-resident merely on the basis that the control and management of the affairs of the company were situated abroad. [s.83] Therefore, SPL is a resident company.	1·0
(b)		For the accounting year ended 31 December 2010, the tax year is denoted by the calendar year 2011. [s.74(2)]	1·0
		The last date for filing a return of income for the tax year 2011 (relevant to the accounting year ended 31 December 2010) is 30 September 2011. [s.118(2)(b)]	1·0
			2·0

Marks

(c) Taxable income for the tax year 2011 (accounting year ended 31 December 2010)

	Note	Rs.	Rs.	
Income from business				
Profit before tax	(1)		4,940,000	0·5
Add:				
Accounting depreciation	(2)	5,400,000		0·5
Fee paid to increase SPL's share capital	(3)	245,000		1·0
Payment on account of infraction of Provincial government law	(4)	575,000		1·0
Annual subscription fee paid to Pharmaceutical Association of Pakistan in cash	(5)	150,000		1·0
Provision for bad debts	(6)	187,000		1·0
Payments to workers' welfare fund and workers' participation fund	(7)	285,000		0·5
Scientific research expenditure	(8)	900,000		1·0
Contingency provision for civil suit	(9)	1,000,000		1·0
Improvement of building structure	(10)	800,000		0·5
			9,542,000	
Less:				
Accounting profit on the sale of a motor car	(11)	255,000		0·5
Tax loss on sale of motor car	(11)	110,000		1·5
Unclaimed bonus relating to the tax year 2004	(12)	645,000		1·0
Initial allowance	(13)	2,185,000		1·5
Tax depreciation	(14)	3,582,250		4·5
			(6,777,250)	
Total income			7,704,750	
Less:				
Exempt income equal to the amount donated to the Prime Minister's Flood Relief Fund 2010 [Cl. (64C) of Pt. I of the 2nd sch.]			(700,000)	1·0
Total income for tax purposes			7,004,750	
Less:				
Contributions to workers' welfare fund and workers' participation fund	(7)		(285,000)	0·5
Taxable income			6,719,750	

Items not included in the computation of taxable income.

(i) Charges paid of Rs. 350,000 to the Government for late delivery of vaccines are in the normal course of business and not in the nature of a penalty or fine for infraction of any law, rules or regulation. Such expenses are admissible under the law. 1·0

(ii) An amount contributed to an approved gratuity fund is admissible expenditure and rightly claimed in the accounts. Payments to the employees are to be made from the fund as per the terms of the gratuity fund. If no payment has been made during a year, it does not render any contribution inadmissible. Hence, no adjustment is required. 1·0

(iii) An amount paid to a resident of USA on account of technical services is not taxable in Pakistan as per the tax treaty between the USA and Pakistan. The provisions of the tax treaty prevail over all other laws of the country. [s.107(2)] Since the amount was not taxable in Pakistan, no tax was required to be deducted. Therefore, the expenditure is admissible. 1·5

22·0

Notes

Note 1

Profit before tax is taken for tax calculation purposes as the income tax paid is not an admissible expenditure. [s.21(a)]

Note 2

Accounting depreciation is not a deductible charge. Tax depreciation and initial allowances are deductible at the rates prescribed in the Third Schedule and in the manner given in the relevant provisions [ss.22 & 23] of the Ordinance.

Note 3

The fee paid (Rs. 245,000) to increase in SPL's authorised capital is capital expenditure in nature, hence not allowable. The remaining expenditure being of revenue in nature is admissible.

Note 4

The amount paid for infraction of the Federal law is fine in its nature, hence not allowable. [s.21(g)]

Note 5

The subscription to the Pharmaceutical Association of Pakistan would have been an admissible expenditure if it were paid in the prescribed mode of banking instruments like a crossed cheque, crossed pay order, etc and tax was deducted thereon. But since it was paid in cash it is not allowable.

Note 6

A general provision has been made on the basis of the total trade debts. Tax law only allows a deduction where a bad debt is irrecoverable and has been written off in the books of account. [s.29(1)] The conditions having not been fulfilled in the given case, hence the amount must be added back.

Note 7

The amounts paid are not expenditure in computing income from the business. However, they can be deducted from the total income to arrive at taxable income. [ss.60A & 60B read with s.9]

Note 8

An expenditure on scientific research, if incurred outside Pakistan, is inadmissible. [s.26]

Note 9

Although the case has been filed in the period relating to the tax year 2011, the amount has still not been incurred and is contingent upon the decision of the court. Therefore, according to the principle of accrual based accounting defined in [s.34(3) of the] Income Tax Ordinance, 2001, the amount is not admissible in the tax year 2011.

Note 10

Improvement to the building structure is capital expenditure and tax depreciation is admissible on this expenditure. However, it cannot be allowed as straight deduction as revenue expenditure.

Note 11

The accounting profit or loss on the disposal of a depreciable asset is ignored for tax purposes. Therefore, the accounting profit of Rs. 255,000 on the sale of the motor car is not taxable income.

For tax purposes, the difference between the consideration received and the tax written down value (TWDV) of the asset is taken as profit where the consideration is higher than the TWDV, and a loss where the consideration is less than the TWDV. In the case of a motor car, where the cost is restricted for claiming tax depreciation, consideration received is also adjusted proportionately to calculate the profit or loss. Thus, the profit or loss for tax purposes on the disposal of the motor car is calculated as under:

	Rs.
Sale consideration received (A)	1,000,000
Restricted cost for depreciation purposes (B)	1,500,000
Actual cost (C)	2,500,000
Consideration restricted A x B/C 1,000,000 x (1,500,000/2,500,000)	600,000

Rs. 600,000 is to be treated as the consideration received for calculating the tax profit or loss on the disposal of the motor car.

Sale consideration	600,000
Less:	
Tax written down value	(710,000)
Tax loss on the disposal of the motor car	(110,000)

Note 12

Accounting income includes the bonus unpaid. The company had earlier charged this as expenditure in the tax year 2004, but the Commissioner had not allowed it. Its inclusion in income for the tax year 2011, would result in double taxation. Hence, it is to be excluded from total income. [s.73]

Marks

Note 13

Initial allowance is admissible in a tax year at 50% of the cost of the eligible assets which are first time used in Pakistan in the tax year. The assets added during the year were as below:

(i) New motor car for Rs. 5,000,000 – not an eligible asset [s.23(5)(a)]

(ii) Ten old computers for Rs. 375,000 previously used in Pakistan – not eligible

		Rs.
(iii)	Two old packing machines imported from abroad (eligible asset)	4,370,000
	Initial allowance at 50% [s.23(1)]	(2,185,000)
	Tax written down value (TWDV) for tax depreciation	2,185,000

Note 14

Asset	TWDV on 1 January 2010	Deletion during the year	Addition during the year	TWDV for depreciation	Rate of depreciation	Depreciation
(1)	(2)	(3)	(4)	5 = (2 – 3 + 4)	(6)	(7)
	Rs.	Rs.	Rs.	Rs.		Rs.
Plant and Machinery	6,500,000		2,185,000 (see (b))	8,685,000	15%	1,302,750
Building	5,270,000		800,000 (see (c))	6,070,000	10%	607,000
Motor cars	2,030,000	710,000 (see (a))	1,500,000 (see (d))	2,820,000	15%	423,000
Furniture and fixture	1,980,000			1,980,000	15%	297,000
Computers	2,800,000		375,000 (see (e))	3,175,000	30%	952,500
Total						3,582,250
						[s.22 read with 3rd Sch.]

Notes:

(a) The TWDV of the car disposed of during the year is deleted and not eligible for depreciation even though it was used until 14 November 2010. [s.22(8)]
(b) The TWDV of the addition in plant and machinery for tax depreciation is worked out after deducting the allowable initial allowance as per Note 13 above. [s.22(5)(a)]
(c) The cost on building structure improvement is not eligible for initial allowance but is eligible for tax depreciation after being capitalised. [s.23(1)]
(d) The cost of a motor vehicle is restricted to Rs. 1,500,000 for tax depreciation purposes. [s.22(13)(a)]
(e) The cost of the used computers bought and used for business purposes is eligible for tax depreciation. [s.22]

(d) Tax liability for the tax year 2011

	Rs.	Rs.	
Taxable income for the tax year 2011		6,719,750	
Less:			
Brought forward loss from the tax year 2010 [ss.56 & 57]		(3,500,000)	0·5
Taxable Income		3,219,750	
Tax at 35%		1,126,913	0·5
Tax on the basis of turnover			
Total turnover	80,000,000		
Minimum tax at 1%	800,000		
Minimum tax is not applicable as tax on the basis of taxable income is more than the minimum tax. [s.113(1)]			1·0
Less already paid			
(i) Tax paid in the tax year 2010 on the basis of turnover when there was assessed loss [s.113(2)(c)]	245,000		0·5
(ii) Tax paid during the tax year 2011	1,100,000		0·5
		(1,345,000)	
Tax refundable to SPL		(218,087)	3·0
			30·0

2 Mr Rameez

Taxable income for the tax year 2011 (accounting year ended 30 June 2011)

	Rs.	Rs.	*Marks*
Income from salary			
(1) From the Government of Punjab			
Basic salary [s.12]		165,000	0·5
Arrears of salary		250,000	2·0
(2) From the Medicare Institute			
Basic salary received for eight months at Rs. 100,000 per month		800,000	1·0
Utilities allowance (15% x 100,000 x 8)		120,000	0·5
Medical allowance (20% x 100,000 x 8)	160,000		
exempt up to 10% of basic salary			
(10% x 100,000 x 8) [Cl. (139) of Pt. I of 2nd Sch.]	(80,000)		
		80,000	1·0
Share in the fees of patients attended at odd hours		230,000	2·5
Income under the head 'salary'		1,645,000	
Income from other sources:			
(1) From lectures delivered in a medical college	500,000		0·5
(2) From writing articles	9,000		0·5
(3) Profit from Pensioner's Benefit Account	510,000		0·5
		1,019,000	
Total income		2,664,000	
Less:			
(1) Exemptions on account of:			
– Amount paid to Prime Minister's Special Fund for victims of terrorism [Cl. (64A), Pt. I of 2nd Sched.]	118,000		0·5
– Chief Minister's (Punjab) Relief Fund for internally displaced persons of Pakhtunkhwa [Cl. (64A), Pt. I of 2nd Sched.]	200,000		0·5
(2) Profit from Pensioner's Benefit Account (taxable separately)	510,000		0·5
		(828,000)	
Taxable income		1,836,000	
Tax on taxable income at 14%		257,040	0·5
Tax on Income covered under the final tax regime (FTR)			
(1) Tax on profit from PLS account maintained with bank at 10% ((45,000 + 5,000) x 10%) [s.169(1)(b)]	5,000		1·0
(2) Tax on income from property (working)	66,000		3·0
Tax on profit from Pensioner's Benefit Account taxable at 10% of Rs. 510,000	51,000		1·0
		122,000	
Total tax payable		379,040	
Tax already paid			
Tax deducted by the Punjab Government [ss.149 & 168]	6,000		0·5
Tax deducted by the Medicare Institute [s.168]	23,000		0·5
Tax collected by the motor registration authority [ss.168 & 231B]	16,875		0·5
Tax collected by the motor vehicle tax collecting authority [ss.168 & 234]	8,000		0·5
Tax deducted at the time of cash withdrawals [ss.168 & 231A]	5,350		0·5
Tax collected on PLS account	5,000		0·5
Total tax paid		(64,225)	
Tax payable with return/statement of FTR		314,815	

Explanation of items not included in the computation of taxable income and tax credit

(i) Encashment of leave preparatory to retirement (LPR) Rs. 456,000
The amount representing the encashment of LPR of an employee of the Federal or a Provincial Government is exempt from tax. [Cl. (19) of Pt. I of the 2nd Sch.] 1·0

(ii) Commutation of pension Rs. 4,250,000
This amount is exempt from tax being received from the Government. [Cl. (13) of Pt. I of the 2nd Sch.] 1·0

		Marks
(iii)	Travelling allowance (TA) and daily allowance (DA) Although the amount received at Rs. 150,000 on account of travelling allowance and daily allowance was more than the actual expense (Rs. 114,500) incurred by the employee, the whole amount is exempt from tax. [Cl. (39) of Pt. I of the 2nd Sch.]	1·0
(iv)	Estimated expenditure of Rs. 175,000 on medical treatment of the employee The perquisite, received by an employee in the form of free or subsidised medical treatment provided by a hospital or clinic of which he is an employee, is exempt from tax. For this purpose an ex-employee is included in the definition of an employee. [Cl. (53A) of Pt. I of the 2nd Sch.]	1·0
(v)	Income from agricultural land Rs. 1,000,000 The land is used for agricultural purposes. Any rent received by the owner of such land is treated as agricultural income and exempt from tax. To claim exemption, it is not essential that the land should be used for agricultural purposes by the owner himself. [s.41(1) and (2)(a)]	1·0
(vi)	Loan Rs. 300,000 utilised for renovation of house A loan which is utilised for the construction of a new house or the acquisition of a house is eligible, subject to other conditions and limitations, for tax credit. But since the amount was spent on the renovation of an existing residential house, it is not eligible for any tax credit. [s.64(1)]	1·0
		25·0

Working: Tax on income from property

	Rs.
Annual rent received at Rs. 90,000 per month	1,080,000
Adjustable advance received of Rs. 1,080,000 – no tax implications	
Unadjustable advance received of Rs. 100,000, out of which Rs. 50,000 was paid to the outgoing tenant.	
Therefore, the remaining amount of Rs. 50,000 is to be taxed over a period of ten tax years in equal proportion, including the tax year 2011.	
(1/10 x 50,000) [ss.15 & 16 (1), (2) and (3)]	5,000
	1,085,000
No deduction including property tax is admissible against income from property [s.17 omitted]	–
	1,085,000
Tax at Rs. 57,500 + 10% (1,085,000 – 1,000,000)	66,000

Tutorial notes:

1. *Arrears of salary*
   In respect of arrears of salary, an option is available to the employee either to have it taxed in the year of receipt or on an accrual basis in the year to which it related. In the given situation, the tax rate in the current tax year is lower than the rate (25%) of the tax year in which the amount had accrued, therefore the amount will be taxed in the tax year 2011.

2. *Share in the fee of patients attended at odd hours*
   The agreement to attend patients at odd hours is part of the employment agreement. Therefore, the amount received as a share in the fees is also treated salary income. The definition of salary is inclusive of any such commission. [s.12] Wrong treatment by a withholding agent does not change the character of the income. The tax collected is adjusted against the tax liability worked out on the basis of the taxable income derived by the taxpayer from all sources.

3. *Profit from Pensioner's Benefit Account*
   Tax on profit from a pensioner's benefit account is not deductible at source. Income is assessable under the head 'Income from other sources' [u/s 39(1)(c)] after allowing admissible expenses. However, tax computed on the basis of this assessment is not to exceed 10% of the amount of the profit. In the given situation, since there was no expenses incurred to earn this income, and the tax rate on total income, including this income, was higher than 10%, the profit is taxable at 10%. [Cl.(6) of Pt. III of 2nd Sched.]

Marks

3 Mrs Robina

Tax payable on gains for the tax year 2011 (accounting year ended 30 June 2011)

Taxable gains	Note	Rs.	
Sale of shares of PPL	(1)	75,000	1·0
Sale of platinum necklace	(2)	375,000	1·0
Gift of golden bangles to non-resident sister	(3)	200,000	2·0
Sale of gold	(4)	45,000	1·0
Settlement in respect of shares lost by broker	(5)	112,500	2·5
Sale of licence	(6)	2,400,000	1·5
Sale of shares of Goldmine (Pvt) Ltd	(7)	195,000	2·0
Total capital gain		3,402,500	
Less capital gain on sale of PPL to be treated separately		(75,000)	0·5
Total income		3,327,500	
Less: Zakat paid		(50,000)	1·0
Taxable income of the tax year 2011		3,277,500	
Less admissible brought forward losses	(8)	(122,000)	1·5
Taxable income		3,155,500	
Tax payable			
1. On taxable income at 25% (3,155,500 x 25%)		788,875	0·5
2. Tax on capital gain on sale of shares of PPL as separate block at 7·5% (75,000 x 7·5%)	(1)	5,625	0·5
3. Dividend in specie at 10% (200,000 x 10%) (final tax regime)	(7)	20,000	0·5
4. Tax credit on investment in shares of PPL added back	(1)	5,000	0·5
Total tax		819,500	
Tax already paid		Rs.	
(i) Advance tax paid along with mobile phone bills [ss.168 & 236]		15,000	0·5
(ii) Advance tax paid in four instalments [ss.147 &168]		400,000	0·5
		(415,000)	
Tax payable with return		404,500	

Items not included in the computation of taxable income

1. Gift of painting
   Mrs Robina's cousin, though an American citizen, is resident under the tax laws of Pakistan. No gain or loss is deemed to arise on the disposal of an asset by gift to a resident person in Pakistan. Citizenship is not relevant in the application of the non-recognition rule. [s.79(1)(c)] 1·0
2. Sale of furniture
   A moveable property held for personal use by a person or any member of the person's family is not a capital asset. [s.37(5)] Neither a gain on such assets is taxable nor a loss tax deductible. [There are certain exceptions but furniture does not fall in those exceptions.] 1·0
3. Sale of antique
   (i) The amount in advance was received in the form of a crossed cheque. Therefore, it is not taxable as deemed income under the head 'Income from Other Sources'.
   (ii) Although the advance amount has been received, according to the agreement to sell the antique, the asset has not yet been sold or transferred to the buyer. Therefore, there is no disposal [s.75(1)(a)] and no capital gain or loss. 1·0

20·0

Note 1

	Rs.
Sales proceeds	150,000
Cost at Rs. 75 per share including share premium	(75,000)
Taxable gain	75,000
Tax at 7·5% [s.37A]	5,625

The further tax credit availed in the tax year 2010 is to be added back in this tax year as the shares were sold within 12 months of the date of acquisition. [s.62(3)]

Marks

Note 2

	Rs.
Sale proceeds of platinum necklace	1,000,000
Fair market value at the time of receiving gift	(500,000)
[Cost incurred by the donor of gift is irrelevant]	
Gain	500,000

The taxable gain will be reduced to 75% [Rs. 375,000] as the asset was held for more than one year before its disposal. [s.37(3)]

Note 3

The gift of golden bangles to her sister is treated as a disposal [s.75]. Since her sister was non-resident under the tax laws of Pakistan, the non-recognition rule, under which no gain or loss is recognised on a gift of asset from a tax payer to a resident person, is not applicable [s.79 (1)(c) and (2)]. The fair market value of the asset on the date of its disposal is treated as the consideration received on the disposal of the asset. The capital gain is computed as under:

	Rs.
Deemed consideration received [s.77(1)]	800,000
Cost of the asset	(600,000)
Gain on disposal	200,000

Note 4

	Rs.
Consideration received on sale of 90 grams of gold (90 x 40,000/10)	360,000
Cost of 90 grams of gold (90 x 35,000/10)	(315,000)
Capital gain	45,000

The appreciation of Rs. 5,000 in the value of the ten grams of gold still held by the taxpayer is not taxable.

Note 5

Loss of a capital asset is also treated as a disposal. [s.75(1)(b)] The date on which an asset is lost, is considered as its date of disposal. The amount received in compensation, being equal to the fair market value, on the date of disposal [17 July 2010] is treated as the consideration received. [s.77(1) and (2)(b)] The fair market value on the date of settlement is not relevant. The gain is computed as under:

	Rs.	Rs.
Consideration received		500,000
Cost of acquisition		
Price paid for purchase of shares	315,000	
Brokerage charges paid	10,000	
Fee paid for arbitration	25,000	
		(350,000)
Capital gain		150,000

The taxable gain will be reduced to 75% [Rs. 112,500] as the shares were disposed of after one year.

Note 6

A licence to import and distribute LPG is a capital asset. The capital gain is computed as below:

	Rs.	Rs.
Consideration received		5,000,000
Cost of acquisition		
Non-refundable security*	2,500,000	
Processing fee*	100,000	
		(2,600,000)
Capital gain		2,400,000

* Payments to the government on account of a fee, duties or other statutory obligations, etc do not render the expenditure inadmissible even if paid in cash. [s.21(l)]

Marks

Note 7

A dividend *in specie* derived in the form of shares of a company registered under the Companies Ordinance, 1984, is taxed at the time of disposal of such shares and not at the time of their receipt. In the instant case although 12,000 shares were received as a dividend *in specie*, the fair market value on the date of acquisition of only the 10,000 shares, which were sold, will be taxed as dividend in the tax year 2011. Taxation of the remaining 2,000 shares shall be effected in the tax year in which they are disposed of even though they were received in the accounting year relevant to the tax year 2011.

The amount of dividend taxed is treated as the cost of the shares and taken into account for the purpose of calculation of any capital gain as under:

Dividend Income	**Rs.**
Dividend in the forms of 10,000 shares of Goldmine (Pvt) Ltd at Rs. 20 per share	200,000
Tax at 10%	20,000

Capital gain	**Rs.**
Consideration received	395,000
Cost of the dividend *in specie*	(200,000)
Capital gain	195,000

Note 8

(a) Brought forward capital loss (Rs. 122,000) on account of the disposal of shares of private limited companies can be brought forward from the tax year 2010 and set off against the capital gains of the tax year 2011. [s.59]
(b) The capital loss (Rs. 242,000) on the sale of listed shares [defined as securities in s.37A] cannot be brought forward from the preceding tax years to set off against any capital gain of the current tax year.
(c) The brought forward loss (Rs. 452,000) from speculation business can only be set off against speculation business profits. There being no income from speculation business in the tax year 2011, it cannot be adjusted in this year. [s.58]

4 (a) Tax implications of a loan by a company to its shareholder

If a company makes any payment as an advance or loan to one of its shareholders, the amount of the advance or loan, is deemed a dividend, paid by the company to the shareholder, to the extent of the available accumulated profits of the company provided that:

(i) the company is a private limited company as defined in the Companies Ordinance, 1984; and
(ii) the advance or loan has not been given in the ordinary course of its business of lending of money. [s.2(19)(e)]

In the given situation, in the case of a private limited company, Rs. 400,000 will be treated as a dividend paid to the shareholder, being the amount equivalent to the accumulated profits on the date of disbursement of loan.

The company will be required to deduct tax at the rate applicable to the payment of a dividend. The shareholder must declare the amount as dividend income and tax paid thereon will be treated as the final discharge of the tax liability. 3·0

In the case of an unlisted public limited company, the amount will not be treated as a dividend, as it is a public limited company under the Companies Ordinance, 1984. [Note: it is not treated as public limited company for various other provisions of the Income Tax Ordinance, 2001.] 1·0

4·0

(b) A small company

A company is treated as a 'small company' for the purposes of the Income Tax Ordinance, 2001, in a tax year, if it fulfils all the conditions given below:

(i) it was registered on or after the first day of July 2005, under the Companies Ordinance, 1984;
(ii) the sum total of its paid up capital and undistributed reserves does not exceed Rs. 25 million;
(iii) its number of employees does not exceed 250 at any time during the year;
(iv) its annual turnover does not exceed Rs. 250 million; and
(v) it was not formed by the splitting up or the reconstitution of an already existing company. 4·0

Marks

With effect from 1 July 2008, a small company is a prescribed person for the purposes of deducting tax when making payments on account of the supply of goods or rendering of services or on the execution of contracts. Hence, a small company, at the time of making payment of Rs. 50,000, to a supplier of goods is required to deduct tax. [s.153(9)(b)] 1·0

5·0

Tutorial note: *the tax deductible will be at the rate of 3·5%, i.e at Rs. 1,750.*

(c) Time limits

(i) An application for a refund of tax paid in excess of the amount due for a tax year should be made to the Commissioner Inland Revenue within two years of the later of:

– the date on which the assessment order creating the refund has been served upon the taxpayer by the Commissioner Inland Revenue or any other officer who has been delegated the power of making the assessment; or 1·0

– the date on which the tax was paid. 1·0

2·0

Tutorial note: *It has been held by the Superior Courts that a refund cannot be denied on the basis of limitation of time alone. However, the above time limit should be complied with by treating it as directory in nature.*

(ii) Once a prescribed application for a refund has been filed by a taxpayer, the Commissioner Inland Revenue must pass an order on such application within 60 days of the receipt of such application. 1·0

Tutorial note: *The Appellate Tribunal has held that the time limit of 60 days is directory in nature and not mandatory.*

(iii) If the taxpayer or the Commissioner Inland Revenue is not satisfied with an order passed by the Commissioner (Appeals) on an appeal of a taxpayer, the taxpayer or the Commissioner Inland Revenue, or both of them can file an appeal against such order of the Commissioner (Appeals) before the Appellate Tribunal within 60 days of the date of service of the order of the Commissioner (Appeals) on the taxpayer or the Commissioner Inland Revenue, as the case may be. 1·0

(d) Rectification of a mistake apparent from record

If a mistake apparent from record is to result in the enhancement of a tax liability, the Commissioner Inland Revenue can rectify such mistake by giving an opportunity of hearing to the taxpayer. Similarly, where a taxpayer finds a mistake apparent from record, the taxpayer can also request the Commissioner Inland Revenue to rectify such mistake.

However, rectification of an order cannot be made by the Commissioner, on his own or on the request of the taxpayer, after five years from the date of the order sought to be revised.

Since in this case the Commissioner intends to rectify the order after five years, the argument of limitation would be a successful defence against the proposed rectification. 2·0

15·0

5 (a) Cottage industry

A cottage industry means a manufacturer:

(i) whose annual taxable supplies made in any tax period during the last 12 months ending any tax period does not exceed Rs. 5 million; or 1·0

(ii) whose annual utility bills comprising of electricity, gas and telephone during the last 12 months ending any tax period do not exceed Rs. 700,000. [s.2(5AB) of the Sales Tax Act, 1990] 1·0

Local supplies of goods made by a cottage industry are exempt from sales tax. [Sr. No. 3 of Table 2 of the Sixth Schedule to the Sales Tax Act, 1990] 1·0

3·0

Marks

(b) Mr Waseem

Sales tax for the month of February 2011

	Rs.	
Output tax		
On sale of taxable goods to registered persons (6,900,000 x 17%)	1,173,000	0·5
On export of goods to UAE – zero rated	0	0·5
On sale of taxable goods to unregistered persons (8,600,000 x 17%)	1,462,000	0·5
	2,635,000	
Input tax		
On purchase of raw materials for manufacturing taxable supplies ((10,500,000 – 500,000) x 17/117) (Explanation 1)	1,452,991	0·5
On advertisement for exports and local taxable supplies (1,200,000 x 17/117)	174,359	0·5
On purchase of raw material for manufacturing both taxable and exempt supplies (see working)	480,923	1·5
Sales tax paid along with electricity bill (Explanation 2)	100,000	0·5
	2,208,273	
Sales tax payable/(refundable)		
Output tax	2,635,000	
Input tax (less than 90% of output tax)	(2,208,273)	0·5
Tax payable	426,727	

Working:

Input tax on the purchase of raw materials used for manufacturing both taxable supplies and exempt supplies (3,950,000 x 17/117) — Rs. 573,932

	Rs.		Rs.
Apportionment of Rs. 573,932 to taxable supplies			
– Value of taxable supplies			
– sale to registered persons	6,900,000		
– sale to unregistered persons	8,600,000		
– export to UAE	5,700,000		
		(A)	21,200,000
– Value of taxable supplies + exempt supplies (21,200,000 + 4,100,000)		(B)	25,300,000
– Input tax to be apportioned		(C)	573,932
A/B x C			
21,200,000/25,300,000 x 573,932			480,923

Explanations

1. Input tax relating to payment made in cash
   The buyer is not entitled to claim an input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under the Sales Tax Act, if payment for the amount is made in cash and not in the form of a crossed banking instrument like a crossed pay order, crossed cheque, a crossed bank draft in favour of the supplier from the business account of the buyer. [s.73]

   Since Mr Waseem did not make payment in the prescribed manner, he is not entitled to claim input tax relating to the payments so made. — 1·0

2. Sales tax paid along with electricity bill
   Sales tax paid along with an electricity bill is an admissible input tax when the electricity was used to produce taxable goods. Further, in the case of utility bills, payment in cash does not disentitle a claim of input tax paid thereon. — 1·0

7·0

10·0