

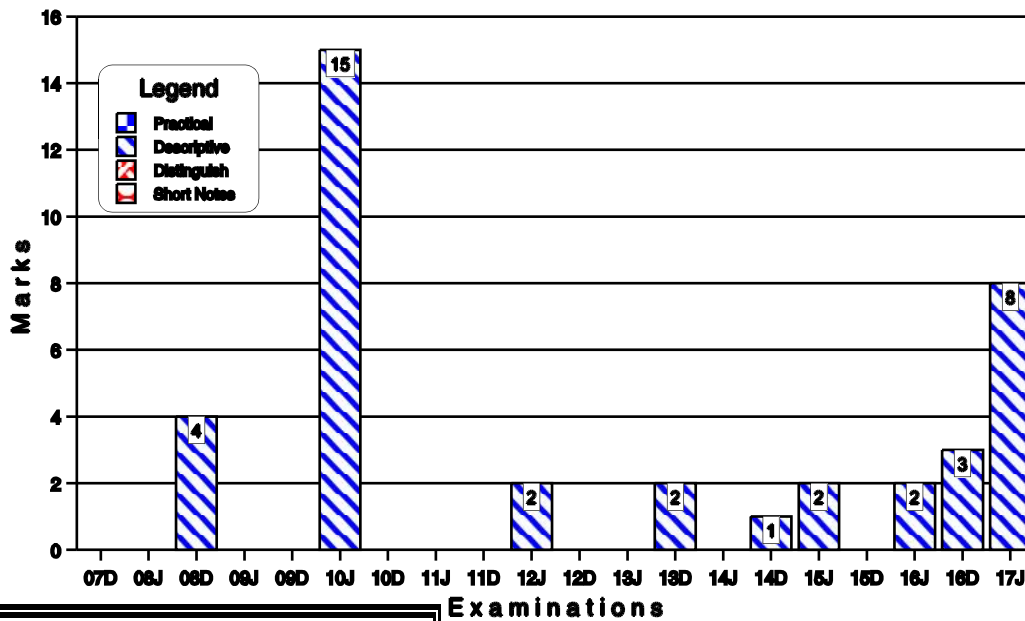
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CANONS OF TAXATION - INDIRECT TAX

THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none">• Basis for Taxation• Direct Taxes and Indirect Taxes• Features of Indirect Tax | <ul style="list-style-type: none">• Constitutional Validity• Administration and Relevant Procedures |
|---|--|

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



DESCRIPTIVE QUESTIONS

2008 - Dec [8] (c) Ability to pay is one of the most important canons of Taxation. **(4 marks)**

Answer:

Adam Smith who is regarded as the father of Political Economy was the first Economist who enunciated the canons of taxation. He rightly placed ability to pay as most important one. He stated that every body ought to contribute towards the support of the state as nearly possible. Ability to pay is a relative concept. It increases with increase in income and ability to save. No body can pay more than he earns less his sustenance. Hence it is reasonable and practical proposition to tax according to the paying capacity e.g. rich should contribute more.

2010 - June [2] (a) State the powers of Central Government in the area of taxation, as per the Constitution of India. **(7 marks)**

(b) Bopara & Co., which has heavy indirect taxes outlay, wishes to know the situations in which it can file a revision application with the Central Government. Please outline the various situations. **(8 marks)**

Answer:

(a) Powers of Central Government in the area of taxation under Constitution of India are as follows:

- (a) The Central Government gets tax revenue from Income-Tax (except on Agricultural income), Excise (except on alcoholic drinks) and Customs.
- (b) The State Government gets tax from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.
- (c) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and hence property tax.

According to Article 265 of Constitution of India, any taxation in India shall be only by way of legislation. No tax of any nature can be levied or collected by Central or State Government except by authority of Law. The authority to enact a law and levy taxes and duties is given by the Constitution vide Article 246. According to Article 246, law can be enacted by Parliament or the State Legislature, if such power are given by the Constitution of India.

As per seventh (VII) schedule of Constitution of India, such power is given under three lists:

List I: Union List

- Item No. 82 Tax on income other than agricultural income
- Item No. 83 Duties of customs including export duties.
- Item No. 84 Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotics but including medical and toilet preparation containing alcohol, opium or narcotics.
- Item No. 85 Corporation Tax
- Item No. 92A Taxes on the sale or purchase of goods other than newspapers, where such sale or purchases takes place in the course of interstate trade or commerce.
- Item No. 92B Taxes on consignment of goods, where such consignment takes place during interstate trade or commerce.
- Item No. 92C Taxation of Services
- Item No. 97 Any other matter not included in the List II, List III and any tax not mentioned in List II or List III.

List II i.e. the State List, in respect of which the State Government has exclusive powers to levy taxes, are as follows:

- Item No. 46 Taxes on agricultural income
- Item No. 51 Excise duty on alcoholic liquors, opium and narcotics
- Item No. 52 Tax on entry of goods into a local area of consumption, use or sale therein (usually called as Octroi)
- Item No. 54 Tax on sale and purchase of goods other than newspapers except tax on interstate sale or purchase.

List III besides the above two lists there is a third list which is known as concurrent list. The Parliament or the legislature of state has power to make laws with respect to any matter enumerated in list-III.

Answer:

- (b) The Finance Act, 1994 provides for appeal to Tribunal in most of the case against order to Commissioner (Appeals). However, in few matters, appeal does not lie with CESTAT. In such cases, a revision application has to be made with Central Government. [An officer of the rank of Joint Secretary hears the issue and passes orders on the behalf of Central Government].

Appeal against order of Commissioner or Commissioner (Appeals) lies with Tribunal against all orders, except:

- (a) loss of goods occurring in transit from factory to warehouse or to another factory;
- (b) rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported; and
- (c) goods exported without payment of duty [**Section 35EE of CEA**]. In the case of Bopara & Co., tribunal has no jurisdiction, but revision application can be filed with Central Government under **Section 35EE** of CEA [parallel **Section 129DD** of Customs Act] **within three months** from communication of order. The Central Government can annul or modify the order. In all other matters, appeal lies with tribunal. Revision application can be filled by assessee or the Commissioner of CE. There is no parallel provision in the service tax.
- (d) CENVAT credit which is utilised for payment of excise duty on final products.

In case of Customs - CESTAT has no jurisdiction in the matters of

- (a) Baggage
- (b) Payment of duty drawback and
- (c) Goods short landed in India. In these matters, revision application lies with Central Government [**Section 129DD of Customs Act**].

The revision application should be submitted personally to Under Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, or sent by registered post to him. The revision application will be deemed to have been submitted on the date on which it is received in the office of Under Secretary. [Rule 10(2) of Central Excise (Appeals) Rules *Rule 8B of Customs (Appeal) Rules, 1982]. Application should be accompanied by prescribed fees.

Time limit for filing application: Revision application must be filed in 3 months from communication of the order. The period can be further extended by three months on sufficient cause being shown. - **Section 35EE (2) of CEA – Section 129DD (2) of Customs Act.**

Bopara & Co. should be advised on the above lines.

2012 - June [4] (c) Does Civil Courts have jurisdiction to hear matters of Indirect Taxes? **(2 marks)**

Answer:

According to **Section 11B (3)** of Central Excise Act, any refund will be granted only as per provisions of **Section 11B (2)** of CEA. Thus, these provisions effectively bar the jurisdiction of Civil Court in excise matters, except in cases where the law is claimed or declared as invalid.

2013 - Dec [1] {C} Answer the following questions with suitable reasons:

- (i) Recovery from Buyer is an essential condition for levy of Indirect Taxes. Comment. **(2 marks)**

Answer:

It is not true. Generally Indirect Taxes are recovered from buyer. It can not be said to be essential condition as tax on goods and services will be levied even if it is not recovered from buyer.

2014 - Dec [1] Answer the following question with suitable reasons:

- (a) Normally, if tax is levied by law of Parliament, it is administered by Central Government. However, there is one tax which is levied by law of Parliament, but administered by State Government. Which is that Tax?

(1 mark)

Answer:

Central Sales Tax Act is passed by Parliament but administered by State Government.

2015 - June [2] (b) Why direct taxes are termed as 'progressive' and indirect taxes are termed as 'regressive'?

(2 marks)

Answer:

Indirect taxes do not depend in paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as "regressive". Direct taxes are "progressive", as they depend on paying capacity. Rich person is taxed more compared to poor person.

2016 - June [2] Answer the question:

- (a) State reason why indirect taxes are termed as 'regressive' and direct taxes as 'progressive'. **(2 marks)**

Answer:

Please refer 2015 - June [2] (b) on page no. 17.

2016 - Dec [4] (b) If a particular activity or transaction is not covered under any of three Lists in seventh schedule to Constitution, which authority is empowered to exercise the power in respect of such activity or transaction? Under which provision? Name a tax levied under authority of those provisions. **(1 + 1 + 1 = 3 marks)**

Answer:

All residual powers are with Central Government under Entry No. 97 of List I of Seventh Schedule to Constitution of India. The entry reads as follows - Any other matter not included in List II, List III and any tax not mentioned in list II or list III.

Service tax is presently imposed under authority of those provisions.

2017 - June [2] (a)(i) Why direct taxes are called progressive and indirect taxes are regressive?

(ii) Explain 'canon of certainty' and 'canon of economy'. **(4 + 4 = 8 Marks)**

Table Showing Marks of Compulsory Questions										
Year	12 D	13 J	13 D	14 J	14 D	15 J	15 D	16 J	16 D	17 J
Descriptive			2							
Total			2							