

INCOME TAX RULES, 2059

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INCOME TAX RULES, 2058

His Majesty's Government has formed the following rules pursuant to the power granted by Section 138 of the Income Tax Act, 2058.

CHAPTER-1

PRELIMINARY

1. Short Title and Commencement

- (1) These Rules shall be called the Income Tax Rules, 2059.
- (2) These Rules shall come into force immediately.

2. Definitions:

Unless otherwise implied by the subject or the context, in these Rules,-

- (1) "the Act" means the Income Tax Act, 2058.
- (2) "Permanent Account Number" means the account number allocated by the Department to a person so as to identify the person for tax purposes.

CHAPTER-2

EXEMPTION

3. Application for Exemption:

- (1) An entity deserving the status as an exempt organisation under section 2(s) of the Act shall require to furnish an application with the Department attaching the following details therewith-
 - (a) In case of the organizations required to be registered by the prevailing laws, a copy of the certificate of registration,
 - (b) A copy of its charter of establishment, and
 - (c) A copy of the certificate of permanent account number (PAN) if acquired.

4. Entity Exempt by Advance Ruling

The Department may prescribe any entity, other than the entities formed without a profit motive as referred to in Section 2 (s) (1) of the Act, as entitled to enjoy tax exemption by advance ruling under Section 76 of the Act.

5. Financial Statement to be Submitted

The entity registered under Rule - 3 (2) and the entity entitled to enjoy tax exemption under Rule - 4 shall compulsorily file with the Department a copy of its audited financial statements for an income-year not later than three months after the end of the year. In case where an exempt organisation fails to file such the statement, the entity shall not be entitled to enjoy tax exemption until the statement is filed with the Department.

CHAPTER-3

CALCULATION OF INCOME

6. Payments of Small Amounts

A payer may make a payment of an amount not exceeding Rs. 500 at a time as the payment of small amount referred to in Section 8(3)(d) and paragraph (a)(2)(C) of the Clarification of section 21 of the Act for a provision of tea, stationery, awards, emergency medical treatment, or a similar provision approved by the Department.

7. Not to be Included in Depreciation Basis

Any excess cost or a part of the excess cost referred to in Section 16 (3) of the Act shall not be included in calculating depreciation basis of a group of assets at the end of the income-year for the purpose of calculating the limitation under Section 16 (2) of the Act.

8. Method of Accounting

- (1) For the purposes of tax accounting under Section 22 of the Act, the accounting standard prescribed by the prevailing laws, if any, shall be followed.
- (2) If there are no accounting standard as referred to in sub-rule (1), tax accounting shall be done as per the standard prescribed by the Department on ground of any prevalent international principles and practices.

9. Standards for Determining Bad Debts

For the purposes of paragraph (a) of Section 25(2) and paragraph (c) (1) of Section 40(3) of the Act, the determination of whether a debt claim of a bank or financial institution is a bad debt shall be made in accordance with the standards as issued by the Nepal Rastra Bank.

10. Contracts with a Deferred Return

Any contract of a person shall be a contract with a deferred return if the person does not show the details prescribed by the Department regarding estimated gain and estimated loss during every six-month period from the commencement of the contract.

11. Excluded Contract:

The following contracts shall be termed as excluded contract:

- (1) Any contract created by reason of an interest in an entity or by obtaining a membership in a retirement fund; or
- (2) Any contract of investment insurance.

12. Other Provisions Regarding Long-Term Contract:

- (1) Cumulative inclusions under a contract of a person at a particular time means amounts under the contract required to be included at the time or a previous time in calculating the person's income from an employment, business, or investment, disregarding the calculations as for a normal income year.
- (2) Cumulative deductions under a contract of a person at a particular time means amounts under the contract that may be deducted at the time or a previous time in calculating the person's income from a business or investment, disregarding the calculations as for a normal income year.
- (3) Percentage of contract completed as referred to in Section 26 (2) of the Act shall be determined at a particular time (the time) as follows-
 - (a) In the case of a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, is determined by comparing cumulative deductions under the contract at the time with estimated cumulative deductions under the contract at the time the contract is to end;
 - (b) To the extent to which a contract is not covered by paragraph (a), is determined in the manner prescribed by the Department subject to the paragraph (a).
- (4) Provisions regarding long-term contract under Section 26 of the Act shall not apply to a person for an income-year unless the person is required to file an estimate of tax payable for the year under Section 95.
- (5) Provisions regarding long-term contract under Section 26 of the Act shall apply to-
 - (a) A contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, at the time the Act comes into effect; and

- (b) A contract occurred as to satisfy the time and conditions prescribed by the Department to the extent to which the contract is not covered by paragraph (a).

13. Provision of House or Motor Vehicle for Private Purposes

- (1) For the purposes of paragraph (b) (1) of Section 27 (1) of the Act, payments, made by a person, consisting of the use, or availability for use, of a motor vehicle, to a beneficiary including an employee or a worker wholly or partly for private purposes shall be quantified as following for an income year:
 - (a) Where the person is an employee or worker or a person who is remunerated by the payer on a monthly basis, 0.5 percent of the remuneration of the person; and
 - (b) In any other case which is not covered by paragraph (a), 1 percent of the prevailing market value of the motor vehicle per annum.
- (2) For the purposes of paragraph (b) (2) of Section 27 (1) of the Act, payments, made by a person, consisting of the use, or availability for use, of a house, to a beneficiary including an employee or a worker wholly or partly for private purposes shall be quantified as following for an income year:
 - (a) Where the person is an employee or worker or a person who is remunerated by the payer on a monthly basis, 2 percent of the remuneration of the person; and
 - (b) Where the payer rents the house and makes available to a person who is not covered by paragraph (a), 25 percent of the rent paid;
 - (c) Where the payer does not pay house rent directly but makes the house available to the person who is not covered by paragraph (a), 25 percent of the prevailing market value of the house rent per annum.

14. Small Money (Paisas) Ignored in Quantifying Amounts

Small money (Paisas) shall be rounded down to the nearest whole Nepali Rupee in quantifying amounts under Section 27 or in converting into Nepali Rupee from other currencies under Section 28 of the Act.

15. Advance Pricing

- (1) The Department may issue a notice in writing of the following character to a person upon a request in writing of one or more persons for clarity in distribution, apportionment, or allocation to be done by the Department on basis of arm's length price with respect to particular amounts to be included or deducted in calculating the person's income under Section 33 (1) of the Act.
 - (a) The notice shall be for a period not exceeding five income-years at a time,
 - (b) Notwithstanding paragraph (a), the notice may be renewed.
- (2) The notice under subrule (1) shall bind the applicants and shall bind the Department.

Provided that the notice may be withdrawn if the Department agrees with the request for withdrawal made by the applicant.

16. Conditions arising Involuntary Disposal with Replacement

- (1) The conditions, where a person replaces a security in an entity with another security in the entity or with a security in another entity under a merger or reconstruction of the entity, shall be treated as an event of an involuntary disposal with replacement.
- (2) Where the event of the involuntary disposal takes place under subrule- (1), the person or the entity shall file an application with the Department for an approval.
- (3) The Department may give an approval to the application filed with under subrule- (2).

CHAPTER – 3

SPECIAL PROVISIONS FOR INDIVIDUALS AND ENTITIES

17. Approved Medical Costs and its Limit.

- (1) For the purposes of calculating the medical tax credit of an individual under section 51 of the Act, the following costs are treated as approved medical costs:
 - (a) insurance premiums paid for health insurance by the individual;
 - (b) costs incurred in filling prescriptions of diagnosis issued to the individual by recognised hospitals, nursing homes, health centres; and
 - (c) payment of bills issued to the individual by recognised hospitals, nursing homes, health centres, medical practitioners, or pharmacists including cost of medicines consumed in course of medical treatment.
- (2) Notwithstanding sub-Rule (1), the following costs are not treated as approved medical costs:
 - (a) Costs incurred for cosmetic surgery; and
 - (b) Costs referred to in sub-Rule (1)(b) that are reimbursed under insurance referred to in sub-Rule (1)(a).
- (3) The limit for claim of medical tax credit under section 51(3) of the Act is Rs. 750.

18. Amount of Dividend Not to be Included in the Income of Entity

- (1) For the purposes of *proviso* of Section 56 (3) of the Act where an entity distributes a dividend to a beneficiary that is not a distribution of profits, and that consists of the following provisions, which is not made in conducting a business of the entity, the amount of the dividend shall not be included in calculating the income of the entity.
 - (a) The provision of services by the entity to the beneficiary; or
 - (b) The availability for use, by the beneficiary of an asset owned by the entity.
- (2) In the circumstances mentioned in sub-Rule (1), the entity is not allowed any deduction under the Act, including by way of depreciation,

to the extent to which the deduction relates to the provision of the services or the holding of the asset.

19. Carry back of Losses of Banking and General Insurance Businesses

- (1) Banking and general insurance businesses shall follow the steps described below in carrying their losses back to the previous five income years -
 - (a) Where any banking or general insurance business incurs a loss in an income-year; and the business has an outstanding risk-bearing fund (reserve fund) accepted as deductible expenses for previous income-years, the loss shall first be reduced by the amount of the risk-bearing fund and only the unrelieved loss shall be carried back to the previous income years.
 - (b) The unrelieved loss under paragraph (a) shall be carried back by way of deduction first in calculating the income for the earliest income-year available and then gradually from the income of later years.
- (2) The tax payable for an income-year, to which a loss has been carried back under paragraph (a) and (b) of subrule (1), shall be recalculated at the tax rate of that income year and overpaid tax shall be refunded in accordance with section 113 of the Act after adjusting due amount, if any, to the business.

CHAPTER – 5

SPECIAL PROVISIONS FOR RETIREMENT SAVINGS

20. Approval of Retirement Funds

- (1) Subject to subrule (2), the Department may give an approval if an application for the approval of a retirement fund under Section 63 of the Act is filed with the Department.
- (2) The Department may give the approval under subrule (1) to the retirement fund by setting the following conditions to be satisfied by the fund:
 - (a) Amounts deposited with or accruing to the fund may only be invested in approved investments;
 - (b) Where the fund accepts retirement contributions from an employer on behalf of employees or workers, the fund is managed independently of the employer;
Provided that this paragraph does not apply in case of the employees or workers of the fund itself.
 - (c) retirement contributions made to the fund must be deposited, where the contribution is made during the month of Ashad, within one month of the date of contribution; and in any other case, within 15 days of the date of contribution;
 - (d) retirement payments may only be made by the fund with respect to a beneficiary-
 - (1) upon the retirement of beneficiary from the service;
 - (2) upon the beneficiary reaching the age of 58; or
 - (2) upon the death or permanent disability of the beneficiary;
 - (e) the fund shall be audited annually by an auditor registered with the Auditor General.

Clarification: For the purposes of this Rule, approved investment means-

- (a) investment in the Citizen's Investment Fund established under current laws in force;
- (b) investment in bonds issued by His Majesty's Government;

- (c) investment in banks that are regulated under current banking laws in force;
 - (d) investment on basis of co-financing with the banks; and
 - (e) investment to beneficiaries other than the shareholders of the fund
- (3) The Department may withdraw an approval granted to a retirement fund, where the fund no longer complies with sub-Rule (2).
- (4) Notwithstanding subrule (1), (2) and (3), the provident fund, gratuity fund, or citizen investment trust that are being operated under the laws prevalent on the date of the commencement of the Act shall be treated as approved retirement fund for a period up to the end of Ashadh, 2060 (16 July 2003).
- (5) The fund referred to in subrule (4) shall get the approval from the Department within the period mentioned in the subrule. The fund shall be converted in to an unapproved retirement fund after the period, if it fails to get approval within the period.
- (6) Notwithstanding anything contained above in this rule, the following amounts shall be treated as follows for the tax purpose:
- (a) amounts, contributed to a provident fund or a citizen investment trust, of employees or workers, including interest earned by the amount, in the income years prior to the commencement of the Act and the amount for gratuity or accumulated leave shall be exempt from tax.
 - (b) amounts of medical expenses paid not exceeding Rs. 1,80,000 to those employees or workers, under the rules regarding the terms and conditions of service, upon their retirement who were in the service or work on the date of the commencement of the Act, shall not be included in calculating income of the employees or workers.

21. Limit of Retirement Contribution

An individual who is a beneficiary of an approved retirement fund may reduce, as retirement contribution made to the fund, the lower of Rs. 300000 or one third of his/her assessable income from his/her taxable income.

CHAPTER: 5

TAX ADMINISTRATION AND OFFICIAL DOCUMENTATION

22. Procedure for Personal Ruling

- (1) Any person seeking a personal ruling under section 76 of the Act shall apply in the format prescribed by the Department.
- (2) The Department shall issue a personal ruling within 45 days after the application is received under subrule (1).
- (3) Where the Department has not issued a personal ruling to a person within the period referred to in subrule (2), the person may apply for administrative review to the Department under section 115 of the Act, or may file an appeal against the ruling with the Revenue Tribunal under section 116 (4) of the Act.
- (4) In making a decision on an application for a personal ruling, the Department may pronounce for an investigation, if necessary, by Officers or other experts.

23. Permanent Account Number (PAN)

- (1) Any person who is not the current holder of a Permanent Account Number at the commencement of this Rules; and intends to derive assessable income or make a payment from which the person will be required to withhold tax under Chapter 17 of the Act, shall apply to the Department for a Permanent Account Number before deriving the income or making the payment, as the case requires.
- (2) Any person who is not required to apply for a Permanent Account Number under sub-Rule (1); and is not the current holder of a Permanent Account Number, may also apply to the Department for a Permanent Account Number.
- (3) After receipt of an application under sub-Rule (1) or (2), the Department shall provide the person with a PAN Certificate.

24. Modification of Details in PAN Certificate

- (1) A person issued with a PAN Certificate shall notify the Department of any changes in the details recorded in the Certificate within 15 days of the change.
- (2) Upon receipt of a notification under sub-Rule (1), the Department shall make any necessary amendment in the Permanent Account Number.

25. Changes in the Business Place of a Person

Where any changes occur in the business place of any person, the person shall inform the Department of the changes.

26. Tax Clearance Certificate

- (1) A person may apply with the Department for a certificate stating that the person has paid all taxes due under the Act as at a specified date.
- (2) Upon receipt of an application under sub-Rule (1), the Department shall issue a tax clearance certificate to the person on basis of evidences of tax payment.

27. Certificate of Exemption of Tax

- (1) A person may apply with the Department for a certificate stating that the person is exempt from tax under the Act.
- (2) Upon receipt of an application under sub-Rule (1), the Department shall issue a tax exemption certificate to the extent to which the person is exempt from tax under the Act.

28. Identity Card of Officers

An identity card of Officers shall be in the format as prescribed in Schedule-1 of the Rules.

CHAPTER-7

PAYMENT OF TAX

29. Method and Place of Paying Tax

- (1) Any person who is required to pay tax under the Act shall pay in the following place or method:
 - (a) where the person has received a notice from the Department, at the place prescribed by the notice;
 - (b) in any other case, at any bank empowered to conduct Government transactions or at the Department.
- (2) Where a person pays tax to a bank empowered to conduct Government transactions in accordance with sub-Rule (1) the person shall notify the Department as to the payment.
- (3) A person shall pay tax in accordance with sub-Rule (1) in the following forms:
 - (a) if the payment is made to the Department where the payment does not exceed the limits for cash payment prescribed by the Department, in cash; or where the payment exceeds the limits, by bank cheque or bank draft; or
 - (b) if the payment is made to a bank empowered to conduct Government transactions, in cash, bank cheque or bank draft.
- (4) Where a person pays tax by bank cheque in accordance with sub-Rule (3) but payment is not made against the cheque by any reason, the person shall pay the prescribed amount for expenses incurred by the Department till the date of payment. In prescribing such the amount for expenses, the Department shall include interest, charges and penalty imposable till the date.

30. Order of Payment of Tax

Where a person has more than one amount of tax, interest and penalty due of different income years and different sources, and offers to the Department payment which is less than the total amount outstanding, the Department may in its discretion decide which amount due to the person is to be reduced by the amount paid by the person.

31. Method of Withholding by Employers

Any employer shall withheld tax from a payment to an employee under section 87(1) in the following method:

- (a) the employer may take into account any reduction available in calculating the employee's tax payable under section 51 of the Act;
- (b) the employer shall withheld tax on monthly proportion of calculated annual tax liability from payments to be made to the employee for an income-year.

32. Evidence Required Prior to Reduction in Instalment

An instalment of tax of a person calculated under section 94(1) of the Act may be reduced by the amounts to the extent to which it is proved by the following evidences:

- (a) where a tax is withheld under Chapter 17 of the Act, the withholding certificate issued under section 91(1) of the Act;
- (b) where a medical tax credit is claimed, the bills or receipts for the approved medical costs.

33. Return of Estimated Tax Not Required

For the purposes of section 95(6) of the Act, the Department may specify the following persons as not required to submit a return of estimated tax under section 95(1) for an income-year:

- (a) a person who is not required to file a return under section 96 for the year;
- (b) a person whose assessable income consists exclusively of income from an employment having a source in Nepal; and
- (c) a person as referred to in section 4 (4) of the Act.

34. Return of Estimated Tax

Any person who is required to pay instalment tax for an income year shall file a return of estimated tax with the Department under section 95 of the Act.

CHAPTER-8

SALE BY AUCTION AND REFUND OF TAX

35. Procedure for Sale by Auction

- (1) The Department shall ascertain the place for sale of the assets, possessed by the Department under section 105(3) of the Act, by auction in a locality that is reasonable considering the type of assets to be sold
- (2) Subject to section 105(4) of the Act, the Department shall conduct the sale by auction of the assets possessed by the Department following the procedures described below:
 - (a) to the extent it is reasonably possible, publish a notice of 15 days about the auction in at least one newspaper circulated in the locality referred to in sub-Rule (1).

Provided that this paragraph shall not apply in the case of perishable assets.
 - (b) fix a market price for the assets to be sold in the witness of a representative from the local administration and a representative of the office of His Majesty's Government nearest to the locality referred to in sub-Rule (1).
- (3) The sale by auction shall be conducted in the witness of a representative from the local administration nearest to the locality referred to in sub-Rule (1) and the assets shall not be sold unless at least the price referred to in sub-Rule (2) (b) is offered by a bidder.
- (4) If the assets at the auction referred to in sub-Rule (3) are offered a price less than the fixed market price referred to in sub-Rule (2) (b), a second auction may be conducted after publishing a 7 days' notice as referred to in sub-Rule (2) (a).
- (5) If the assets even at the auction referred to in sub-Rule (4) are offered a price less than the fixed market price referred to in sub-Rule (2)(b), a third auction may be conducted after publishing 3 days' notice as referred to in sub-Rule (2)(a) and the assets may be sold at the third auction even for less than the fixed market price.
- (6) The Department shall provide a person who purchases an asset at an auction with a letter stating that the person has good title to the asset.

36. Procedure for Refund of Tax

Any person, who claims a refund under section 113(3) of the Act, shall apply with the Department in the prescribed format attaching the documents that justify the case of overpayment and the other documents that are prescribed by the Department.

CHAPTER-9

MISCELLANEOUS

37. Officer for conducting Investigation of Lawsuit

The specified Officer shall conduct an Investigation of the lawsuit in respect of the offences under chapter-23 of the Act.

38. Limitation of Remote Area Allowance

In accordance with paragraph 1(5) of Schedule-1 of the Act, the following amounts for following remote areas shall be increased in the basic exemption limit of the taxable income for individuals:

- (a) for Class A remote areas, Rs. 30000;
- (b) for Class B remote areas, Rs. 24000;
- (c) for Class C remote areas, Rs. 18000;
- (d) for Class D remote areas, Rs. 12000; and
- (e) for Class E remote areas, Rs. 6000.

39. Pension Income

A reduction under section 1 (9) of schedule-1 of the Act shall not exceed the amount of pension receipts.

40. Repeal and Consequences

- (1) The Income Tax Rules 2039 are repealed.
- (2) All the works done under the Income Tax Rules, 2039 shall be treated as having been done under these Rules.

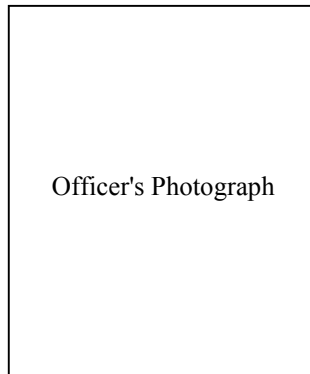
SCHEDULE-1:
IDENTITY CARD OF OFFICERS
(related to Rule 28)

His Majesty's Government
Department of Inland Revenue
Officer's Identity Card

Name:

Designation:

Identity Card Number:



.....
Signature of Attesting Authority

Designation: -

SCHEDULE-2: RETURN OF ESTIMATED TAX

This format is not translated since it is not in use but is replaced with a new format compatible with the IT collection module.