The Institute of Chartered Accountants of Bangladesh (ICAB)

TAX PLANNING & COMPLIANCE

STUDY MANUAL
(COVERING THE NEW INCOME TAX ACT, 2023 & FINANCE ACT, 2023)

CA Professional Level

(Direct Tax - Portion)

CA BANGLADESH | THE INSTITUTE OF CHARTERED ACCOUNTANTS OF BANGLADESH

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PARTNER IN LEARNING

Tax Planning & Compliance
Professional Level
The Institute of Chartered Accountants of Bangladesh (ICAB)

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FOREWORD

I am delighted to know that ICAB is going to publish a **Study Manual on Tax Planning & Compliance** for our **Professional Level students.** This Study Manual contains updated **Income Tax, Value Added Tax and Customs** law with required examples/ illustrations necessary for better understanding of the amendments made in the laws since publication of the last manual. Students will get this updated manual with changes of relevant laws/rules readily available to enhance their knowledge to sit for the examinations.

It also gives me immense pleasure that this updated manual incorporating the changes in tax laws **covering the new Income Tax Act, 2023, Finance Act, 2023, Value Added Tax and Supplementary Duty Act, 2012, Customs Act and related SROs will help the students a lot.**

I would like to thank the Chairman and the Committee Members of the Board of Studies (BoS) of ICAB for their tireless support and co-operation for this publication. I express my special thanks and gratitude to **Mr. Muhammad Abu Hanif Meah FCA, Mr. Rakesh Saha FCA, Partner, Ernest & Young Advisory Services Bangladesh Limited & Mr. Mohammad Fakhrul Alam, Director General, Customs Intelligence & Investigation Directorate, NBR, GoB.** for applying their professional skill and expertise in preparing and reviewing this Manual.

ICAB, the regulator of the accountancy profession in Bangladesh, acknowledges the need, and supports the move for such updating of various Study Manuals from time to time. Being a member of the International Federation of Accountants (IFAC) and having twinning arrangements with the Institute of Chartered Accountants in England and Wales, ICAB is obliged to standardize its students' training lines. In this regard, ICAB has updated the Study Manuals to cater to the continuous needs of CA Students. The publication of this Manual will provide necessary guidance to the CA Examinees to prepare themselves with updated knowledge in taxation for their examinations as well as of their technical and professional expertise.

I would like to thank the members of the Institute, Vice Presidents, Chief Executive Officer, Employees of Education and Students' Affairs Division and also those who were involved in publication of the Manual.

Md Moniruzzaman FCA
President, ICAB

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF BANGLADESH (ICAB)

SYLLABUS

TAX PLANNING AND COMPLIANCE

PROFESSIONAL LEVEL

Tax Planning and Compliance- 100 Marks

MODULE AIM

To develop students' understanding of the critical aspects of Bangladesh Taxation; application of the knowledge gained at the Certificate Level study in the areas of tax compliances, tax principles, management, administration, computation, collections, payments, return preparation, filing, dispute issues and Value Added Tax (VAT) rules.

On completion of this module, students will be able to:

- recognize the ethical issues arising while performing tax work and identify the obligations the Bangladesh system of taxation imposes on taxpayers and the implications for taxpayers of noncompliance;
- deal with tax research, tax compliances, tax planning, and decision making in complex tax scenario and calculate tax payable by individuals, and businesses
- deal with provisions of double taxation relief, transfer pricing and other important areas of international taxation.
- calculate the amount of VAT and other indirect taxes payable by businesses;

METHOD OF ASSESSMENT

The Tax Planning and Compliance module is assessed by a 3-hour written exam. The questions cover the areas of the syllabus in accordance with the weightings set out in the specification grid. **Students will be assessed through computations, advice, planning and problem solving in case-based scenario.**

Students will be assessed based on latest tax legislation, rules, regulations, etc. in a way that exams in November-December session may cover changes up to August and exams in May-June session may cover changes up to February of the respective year.

SPECIFICATION GRID

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. The marks available in the assessment will equate to the weighting ranges below.

Syllabus area	Weighting Range*
A. Income Tax	
A1. Critical aspects of income tax, administrative functioning, dispute resolution, gift tax including ethical aspects in income tax practice.	10-15
A2. Tax planning for individual, business or profession	25-30
A3. International taxation: Treaties and transfer pricing	10-15
B. Value Added Tax	30-35
C. Customs	15-20

*Total marks in examination will be 100.

Following learning outcomes should be read with in conjunction with the relevant sections of the technical knowledge grids.

A. Income Tax

A1. Critical aspects of income tax, administrative functioning, dispute resolution, gift tax including ethical aspects in income tax practice.

Students will be able to identify critical aspects of Bangladesh income tax system, structure of tax administration, different aspects of tax compliance and dispute resolution process in Bangladesh Income Tax Regulations. In the examination, students may be assessed through problem solving in complex scenario in following areas:

a) Sources and structure of Bangladesh income tax law

Objective and importance of income tax; Role of income tax in economic development of Bangladesh; Bangladesh tax structure; Scope of Bangladesh income tax; Sources of tax law and practice; Legislation; Case Law; NBR Publications; Structure of Income Tax Act, 2023; The concept of income; Capital or revenue; Tax residence; Tax and income tax; Tax liability on income; Different rates of tax; Changes in Finance Act; Changes through SROs and other notifications.

b) Administration and Tribunal

Various income tax authorities; Appointment of income tax authorities; Subordination and control of income tax authorities; Jurisdiction of income tax authorities; Exercise of jurisdiction by successor; Officers to follow instruction of the board; Guidance to the deputy commissioner of taxes; Exercise of assessment functions; System of Tax Zone and Circles; Powers of income tax authorities; Establishment of Appellate Tribunal; Exercise of power of the tribunal by Benches; Decision of Bench; Exercise of Power by one member; Taxes Appellate Tribunal's procedures; Organization structure of income tax authorities.

c) Return, statement, and furnishing certain information

Return of income; Form of submission of return; Signature and verification of return; Tax day; Delay interest for filing return after tax day; Documents to be submitted along with the return of income; Return of withholding tax; Obligation to furnish annual information return; Concurrent jurisdiction; Notice; Filing of revised return; Production of accounts and documents; Statement of assets, liabilities, and expenditure and life style statement; Production of other information; Requirement of furnishing certain information regarding payment of salary, dividend, interest and etc. Any other requirements of return, statement, furnishing information under income tax Act.

d) Assessment

Provisional assessment; Assessment on the basis of correct return; Universal self-assessment; Minimum tax; Spot assessment; Assessment on the basis of hearing; Assessment on the basis of report of the chartered accountant; Best judgment assessment; Income escaping assessment; Any other types of assessment as per income tax Act; Limitation for assessment.

e) Tax appeal and references

Appeal against order of DCT and IJCT; Tax payment before appeal; Fees for appeal; Time limits for appeal; Appeal before the Appellate Joint Commissioner Or The Commissioner [Appeals]; Appeal against order of TRO; Appeal to Tax Appellate Tribunal; Reference to high court division of the Supreme Court; Appeal to appellate division; Certified Copy.

f) Alternative Dispute Resolution

Alternative Dispute Resolution (ADR); Eligibility for application; Application procedure for ADR; Procedures of disposal by the ADR; Eligibility for appointment as Facilitator; Decision of the ADR; Effect of agreement; Limitation of appeal where agreement is not concluded; Fees to be paid to facilitator.

g) Power of tax authorities

Power to call for information; Power to inspect registers of companies; Power of survey; Additional powers of enquiry and production of documents; Power of search and seizer; Power to verify deduction or collection of tax; Retention of seized assets; Application of retained assets; Power of IJCT to revise orders of DCT; Revisional power of commissioners; Power to take evidence on oath.

h) Gift Tax

Imposition of Gift Tax, Exempted Gifts, Methods of determining value of the Gifts, Submission of return, payment of tax, any other important provisions related to Gift Tax.

i) Ethics and law

- The five fundamental principles and guidance given in the ICAB Code of Ethics for Professional Accountants.
- Legal and ethical issues arising from tax work undertaken and explain the significance of these issues.
- Fundamental principles, threat and safeguards.
- Ethical conflict resolution.
- Confidentiality and disclosure of information.
- Conflict of interest.
- Basic principles of taxation work.
- Anti-money laundering.
- Tax planning, tax avoidance, and tax evasion.

A2. Income tax of individuals, business or profession

Students will be able to deal with computations, professional advice, tax planning and problem solving in complex case-based scenario in various areas of individual and corporate tax including but not limited to taxation of companies having both manufacturing and trading activities, 163 and non-163, reduced rate and full rate, export income and local income, carry forward and losses, discontinued operations, amalgamation or merger and acquisition, business restructuring, and etc.

In the examination, students may be assessed through problem solving, tax planning, tax research and writing professional advice in following areas:

a) Charge of tax

Charge of income tax; Charge of surcharge; Charge of additional tax; Charge of minimum tax; Scope of the total income; Income deemed to accrue or arise in Bangladesh; Special tax treatment in respect of some expenditure, investments etc.

b) Heads of income:

- **Income from employment**
  Concept of salary and perquisites; Valuation of perquisites, allowances, and benefits to be included in income from salary; Contribution to different types of provident funds, and other funds; Non assessable income under the head salaries.

- **Income from financial assets**
  Scope of interest on securities; Nature of securities; Types of securities; Cum-interest vs. ex-interest; Bond washing transaction through sale and buy back of securities; Expenses admissible; Tax free securities.

- **Income from rent**
  Scope of House Property; Computation of annual value; Impact of self-occupancy; Allowable deductions; Non assessable income; Formalities to be followed by landlord; Tax to be deducted at source from house property.

- **Income from agriculture**
  Basics of agricultural income; Characteristics of agricultural income; Categories of agricultural income; Non-agricultural income; Income from agricultural house property; Allowable deductions; Non-assessable agricultural income.

- **Income from business**
  Scope of income from business and profession; Allowable deduction in computing income from business and profession; Expenses not admissible income from business and profession; Capital and revenue expenditure; Test for determining an expenditure as either capital or revenue nature; Balancing charge; Compensation received from insurance company; Fractional income in certain cases; Entertainment expense; Foreign travel allowance of employees; Free sample distribution; Perquisites; Expenses allowed up to a certain percentage; Expenses which are capital expenditure as per IFRSs but allowable as revenue expenses as per ITA; Minimum Tax.

- **Capital gains**
  Determination of fair market value; Offer to buy the capital assets by the Government; Transfer of capital assets used in the business; Tax exempted capital gains; No exemption on certain assets if investment allowance is received; Tax rate in respect of capital gain; Special tax rates on capital gain from sale of shares of listed companies; Apportionment of sale proceeds between original cost and subsequent improvements.

- **Income from other sources**
  Identify income from other sources; Royalty; Fees for technical services; Income from letting of factory building along with machinery; Deemed income; Allowable deductions; Inadmissible deductions.

c) Depreciation allowances

Basics of depreciation allowances; Depreciation allowance for different heads of income; Depreciation allowance on assets used for agricultural purpose; Depreciation allowance on assets used in business or profession; Types of depreciation allowances; Normal depreciation allowance; Initial depreciation allowance; Other depreciation allowance; Written down value of assets for depreciation purpose; Disposal of assets and treatment of gain or loss; Amortization of license fees; Limitation in respect of depreciation allowance; Assignment of unabsorbed depreciation; Computation of depreciation allowance.

d) Set-off and carry-forward of losses

Set off of losses; Procedure to set off; Carry forward of business losses; Set off and carry forward of loss in speculation business; Set off and carry forward of loss under the head 'capital gains'; Set off and carry forward of loss from agriculture; Carry forward of loss of firm and partner; Carry forward of loss of succeeded business or profession; Carry forward of unabsorbed depreciation; Carry forward of loss of tax holiday undertaking; Procedures of carry forward.

e) Exemptions and tax holiday

Tax holiday schemes; Exemption under section 44; Types of business eligible for tax holiday; Categories of industries within the meaning of industrial undertaking; Categories of infrastructure within the meaning of physical infrastructure facilities; Conditions for eligibility; Application procedure and its disposal by the NBR; Withdrawal and cancellation of tax holiday; Period of tax holiday for industrial undertaking; Period of tax holiday for physical infrastructure facilities; Conditions to be fulfilled after getting tax holiday; Documents to be submitted with tax holiday application; Tax exemption of industry set up at EPZ; Special tax exemptions/reduced rates/ concessions in respect of certain industries.

f) Payment of tax before assessment

Deduction or collection at source; Advance payment of tax; Person responsible for tax deduction at source; Time limit for payment of tax deducted at source; Manner of payment of tax deducted at source; Issuance of certificates for tax deducted at source; Rates of TDS; TDS treated as minimum tax under section 82C; Other important areas related to TDS; Consequence of failure to deduct; Requirement to pay advance tax; Computation of advance tax; Installments of advance tax; Estimate of advance tax; Advance payment of tax by different types of assessee; Failure to pay installments; Levy of simple interest for failure to pay advance tax; Credit of advance tax; Interest payable by Government on excess payment of advance tax; Interest payable by assessee on deficiency in payment of advance tax; Payment of tax on the basis of return.

g) Income tax of individuals

Definitions; Scope of income of individual assessee; Residential Status; Non assessable and tax credit income; Tax rate of individuals; Investment allowances; Minimum Tax; Computation of total income and tax liability of individuals; Preparation and filing return of income of individuals; Assessment procedures.

h) Income tax of companies

Definitions; Residential status of companies; Tax rates; Exemptions and allowances; Computation of taxable income and tax liability of companies; Set-off and carry forward of losses; Minimum Tax; Tax credit; Corporate Social Responsibilities; Preparation and filing return of income; Assessment procedures.

i) Income tax of partnership firms

Assessment of partnership firms; Special provisions regarding assessment of partnership firms; Rate of tax applicable to firm; Set-off and carry forward of firm's losses; Computation of partners share in the firm's profit or loss; Liability of a firm for unrecoverable tax due from partners.

j) Assessment of non-residents and liabilities in special cases

Liability of representative in certain cases; Persons to be treated as agent; Right of representative to recover tax paid; Liability of firm for unrecoverable tax due from partners; Liability of partners for discontinued business of a firm; Liability of directors for unrecoverable tax of private companies; Liability of liquidator for tax of private companies under liquidation; Liability of tax in case of shipping business of non-residents; Liability of tax in case of air transport business of non-residents; Taxation of discontinued operation, merger and acquisition and etc.

k) Special provisions relating to avoidance of tax

Avoidance of tax through transactions with non-residents; Avoidance of tax through transfer of assets; Avoidance of tax by transactions in securities; Tax clearance certificates required for persons leaving Bangladesh; Form of tax clearance and exemption certificates.

l) Recovery of tax

Tax to include Penalty, Interest, Etc.; Notice of demand; Penalty for default in payment of tax; Certificate for recovery of tax; Method of recovery by Tax Recovery Officer; Power of withdrawal of certificate and stay of proceeding; Validity of certificate for recovery; Recovery of tax through collector of district; Recovery of tax through special magistrates; Other methods of recovery.

m) Refunds

Requirement to issue refund voucher; Entitlement to refund; Claim of refund; Correctness of assessment, Etc., not to be questioned; Refund on the basis of appeal order; Form of claim and limitation; Interest on delayed refund; Adjustment of refund against tax.

n) Appeal and references

Appeal against order of DCT and IJCT; Tax payment before appeal; Fees for appeal; Time limits for appeal; Appeal before the Appellate Joint Commissioner Or The Commissioner [Appeals]; Appeal against order of TRO; Appeal to Tax Appellate Tribunal; Reference to high court division of the Supreme Court; Appeal to appellate division.

o) Penalty, offences and prosecutions

Penalty for not maintaining accounts in the prescribed manner; Penalty for failure to file return, certificate, statement, accounts of information; Penalty for using fake TIN; Penalty for failure to pay advance tax; Penalty for non-compliance with notice; Penalty for failure to pay tax on the basis of return; Penalty for concealment of income; Bar to impose penalty without hearing; Previous approval

of IJCT for imposing penalty; Penalty to be prejudice to other liability; any other penalty as per income tax Act.

Punishment for non-compliance of certain obligations; Punishment for false statement; Punishment for improper use of TIN; Punishment for using fake audit report; Punishment for obstructing income tax authority; Punishment for unauthorized employment; Punishment for concealment of income; Punishment for disposal of property to prevent attachment; Punishment for disclosure of protected information; Sanction for prosecution; Power to compound offenses; Trial by special judge.

p) Accounting

Methods of accounting; Change of accounting method; Requirement of a company to furnish audited accounts.

A3. International taxation: Treaties and transfer pricing

Students will be able to understand implications of key provisions in treaties and transfer pricing regulations in Bangladesh, undertake strategic planning, identify transfer pricing compliance requirements and deal with compliance process including identification of international transactions, selecting most appropriate method, using transfer pricing databases to determine arm's length price and etc.

In the examination, students may be assessed through problem solving, strategic planning and writing professional advice in following areas:

a) Double Taxation Relief and Treaties.

- Meaning of Double taxation.
- Agreement of avoidance of double taxation.
- Relief in respect of income arising outside Bangladesh.
- Methods of avoiding double taxation.
- Tax treaty and OECD Model Tax Convention.
- Enforceability of the treaties.
- Interpretations of the important concepts used in treaties.
- Important areas addressed in treaties between Bangladesh and other countries.
- Understanding difference in the definition of 'Permanent Establishment' in ITA, 2023, traditional treaties, and OECD model tax convention.
- Attribution of profits to a Permanent Establishment.
- How is business profit of a foreign company carrying out activities in Bangladesh through a Permanent Establishment to be taxed in Bangladesh?
- How are capital gains, dividend etc. taxed using treaties?
- Provision for obtaining certificate from NBR to avail treaty benefit.
- Other commonly used provisions of treaties.

b) Transfer Pricing

- Concept of transfer pricing.
- Overview of OECD guidelines related to transfer pricing.
- Transfer pricing regulations in Bangladesh.
- Understanding 'International Transaction' in ITA, 2023.
- Who are required to comply with transfer pricing regulations in Bangladesh?
- What are the compliance requirements under transfer pricing regulations in Bangladesh?
- Arm's length price.
- Methods of determining arm's length price.
- Application of different methods of determining arm's length price.
- Selection of most appropriate method for different nature of transactions.

- Benchmarking and use of databases.
- Comparability Adjustments.
- Transfer Pricing Adjustment.
- Submission of statement of international transactions.
- Maintenance of transfer pricing documentations.
- Key contents of a transfer pricing documentation report.
- Certificate from an accountant.
- Assessment of transfer pricing cases.
- Penalties in transfer pricing regulation.
- Recent developments in transfer pricing global best practice.
- Strategic planning in different areas of international taxation.

B. Value Added Tax

Students will be able to identify various compliance requirements under Value Added Tax (VAT) system in Bangladesh, compute VAT payable, and deal with compliance process in relation to VAT. They will be able to design industry specific Standard Operating Procedure (SOP) for major industries in Bangladesh. In the examination, students may be assessed through complex scenario in following areas:

A) Concept of Value Added Tax

Similarities and dissimilarities between VAT and Income Tax; Advantages of VAT over Sales Tax and Excise Duty; Impact of VAT on national development; Role of VAT chain in establishing financial integrity; Tax expenditure; distortions in Bangladesh VAT system; introduction of online VAT systems.

B) VAT Planning

Planning for the components of VAT SOP for major 5-6 industries considering rates, place of imposition, registration, threshold, exemptions, zero rating, VAT administration, cross-border transaction, accounting, return filing, central or branch registration, compliance checklist and Complex areas for each industry.

C) VAT Compliance Issues

(i) Registration:

Central and branch registration; Conditions for branch registration; preparation of registration application; Submission of application; Registration suspension and cancellation; Transferring Commissionerate; Updating registration information, Shifting Enlistment to Registration and vice versa; VAT Agent, VAT Consultant, Registration and enlistment related forms; DOs & DON'Ts checklist for registration.

(ii) VAT Assessment:

Valuation: Preparation of value Declaration for major industries; Use of Fair market price for value determination, Valuation for services; Value declaration form preparation for manufacturer, commercial trader and service renderer. Review process for value declaration; Preparation a review application in case of increase value by commissioner; Art of presenting arguments before commissioner during personal hearing; Price determination in various special case, Costing and Valuation; Declared value versus transaction value complexity in ledger adjustment, DOs & DON'Ts checklist for valuation

Output Tax: Determining adjustment process for real-time price and declared value in case of differences; Case studies; DOs & DON'Ts checklist for output tax calculation

Input Tax Credit: Critical situations for credit: payment through banking channel, in case of bank guarantees, bartered transaction, partial credit for different situations; credit mechanism for real estate sector, construction sector, etc., DOs & DON'Ts checklist for credit

Adjustments: Debit note and credit note; defining different scenarios of adjustment and developing checklist of legal & procedural requirements for each adjustment; DOs & DON'Ts checklist for adjustments

Net Tax Calculation & Payment: Determination of net tax using different set of business transaction for different industries.

(iii) VAT Accounting

Invoices: Issuance of different types of invoice in different situations; Designing invoices for different industries and technologies like POS, ECR/EFD; Use of software and integration with NBR system;, Use of Electronic Fiscal Device (EFD), Electronic Fiscal Printer (EFP), and Point of Sale (POS) software, List of NBR enlisted software, Special provisions for invoice: Utility services, telco services, banking services, ride sharing services, C&F service, Insurance service, etc., DOs & DON'Ts checklist for invoicing system

Inventory: Case study and practical exercise on the filling up of the inventory register (Purchase Register & and Sales Register) with different data set of different industries from both Goods and service sectors. Maintaining different forms, filing process, adjustment for input-output coefficient mismatch, DOs & DON'Ts checklist for inventory management

Account Current: Ways of reducing account current balance to reasonable amount; Migration from 1991 VAT act-based account current to new system under 2012 act-based system; Prepaid Vs Postpaid system in VAT system; **Process** of maintaining account current, DOs & DON'Ts checklist for cash flow management

Other books of records Debit Note: Develop SOP for use of debit note, credit note, commercial books of records.

(iv) Return Filing

Preparation for backward excel based calculations for each component of return; Data extraction from General Ledger for preparing return; Synchronizing existing software with return; Relation for return with Price declaration form, Invoice, Inventory registers, Account current and other VAT and commercial documents.

D) Zero rates

(i) **Process:** Develop SOP for Exports (Deemed and Direct exports) including bonded warehouse.
(ii) **Duty Drawback:** DOs & DON'Ts checklist for drawback; Parallel Cash incentive and drawback.

E) Refund

Develop SOP for Refund process covering critical situations.

F) Litigation:

(i) Quasi-judicial proceeding

Case Management: Techniques of reviewing case, Seizure report and SCN and preparing review check list; Art of writing a good reply for SCN; Presenting in Hearing; Techniques of giving good arguments and counter logic in hearing; code of conduct in quasi-judicial courts.

Appeal: Reviewing Adjudication order, preparing a good petition; Presenting in Hearing; Techniques of giving good arguments and counter logic in hearing; code of conduct in quasi-judicial courts

G) VAT Audit

Dealing audITArs;

H) Miscellaneous

Different relevant issues.

VAT on Cross-border Transactions

- Place of taxation rules
- Modes of cross-border transactions
- Electronic transactions
- Taxation in different situations and design the solutions
- Future threats of VAT

Skills	How skills are assessed?
Assimilating and using information: ***Understand the situation and the requirements*** ***Identify and use facts, figures and relevant information*** ***Identify and priorities key issues***	Candidates may be required to identify tax implication of proposed transactions, calculate taxable income and tax liability in case type scenarios, explain tax treatment based on given unstructured information, identify alternative tax treatments, and identify ethical issues in given scenarios.
Structuring problems and solutions ***Structure data in accordance with the requirements*** ***Apply technical knowledge and skills to develop evidence-based solution***	Candidates may be required to identify tax implication, and compute tax liability in given scenario; demonstrate technical skills, use accurate calculations to illustrate a solution; and decision making in complex tax scenarios.
Applying Judgment ***Apply professional skepticism*** ***Demonstrate critical thinking***	Candidates may be required to critically evaluate fact, figures and tax implication in given tax scenarios, assess alternative options and consequences of various courses of action.
Concluding, recommending and communicating ***Apply technical knowledge to support conclusion*** ***Present analysis and recommendations in accordance with the requirements*** ***Present solution in a clear and concise style***	Candidates may be required to analyze given circumstances, determine tax implications, develop solution and reach a reasoned conclusion.

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Chapter 1

Sources and structure of Bangladesh income tax law

Contents

Introduction

Examination context

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1.8	Some definitions & important concepts relating to tax
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1.10	Capital or revenue
1.11	Tax and income tax
1.12	Different rates of tax
1.13	Liability to pay tax
1.14	Tax liability on income
1.15	Some significant issues of income tax

Introduction

Learning objectives

- Identify the objectives of tax in terms of economic, social justice and environmental issues
- Recognize which taxes apply to different taxpayers e.g., individual, partners and companies
- Identify the sources of tax law
- Get the idea about the income and income tax
- Know the history of income tax
- Recognize different rates of income tax applicable to individual, corporate and others
- Understand the concept of capital and revenue expenditure
- Identify the residential status of an assessee

Practical significance

Every person in Bangladesh is affected by our tax system in some ways, often on a daily basis and without even realizing it. We pay tax on the money we earn and, on the things, we buy and this tax is of course used by the government to pay for our development purpose such as schools, hospitals, roads and so on.

In Bangladesh we have an annual budget cycle which begins with the pre-budget report in late May/early June and ends with the enactment of a Finance Act in June every year. This is supplemented by a huge body of case laws and practical interpretation.

The Income Tax Act, 2023 ("ITA, 2023"), Value Added Tax and Supplementary Duty Act, 2012, Customs Act, 1969 are the main sources of tax law. The National Board of Revenue (NBR), a statutory body is the highest authority for the purpose of these Acts.

Income of different types are taxed at different rates. Before calculating income tax liability, one should have the concept of income, tax, tax rate and other relevant issues. Residential status has significance for determining tax liability.

One way of helping people to deal with complexity in the tax system is to use technology. Presently people can use computerized system to calculate tax on his/her taxable income. NBR is actively incorporating automated processes to streamline and enhance tax compliance procedures.

Stop and think

It is likely that you have been paying tax personally on your various sources of income/gains for some time. Have you stopped to think about how this affects the actions that you take?

Working context

The impact of taxation on the overall economy and the society is increasing day by day. Tax is charged on different types of assesses like individual, companies and others. The volume and complexity of tax law is now such that many business houses have to spend considerable amounts of money and time just on tax administration and planning. Many business decisions will have tax consequences. Most large corporate houses operate their business on a global basis.

Without advice from an accountant, a business can easily find itself paying too much tax and missing deadlines. It is important to have a good overall feel for the tax system early in your studies so that you know where to look for the detailed rules when you actually need them later on.

Syllabus links

The topics covered in this chapter are essential background knowledge which will underpin the whole of your Taxation studies.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the social justice principles being applied for taxation purposes.
- Understand which taxes apply to different taxpayers.
- Identify the sources of tax law in Bangladesh.
- Define some terminologies relating to income tax.
- Determine the residential status of an assessee based on given information.
- Identify the five-tier tax rate for individual and other tax rates for other assesses.

Question practice

For question practice on these topics, go to the suggested questions and answers covering the basic idea about taxation.

Objectives

Section overview

- ➔ Taxation system of Bangladesh has developed gradually and has been changed by successive governments in accordance with their political philosophy.
- ➔ Governments use taxation to encourage or discourage certain types of economic activity.
- ➔ Taxation may be used to promote social justice but there is no political consensus on what is meant by this term.
- ➔ Environmental concerns have led to changes in taxation policy.
- ➔ Income tax is tax on income.
- ➔ The Act got its root from the then British India in 1860.
- ➔ Different tax rates are applicable for different types of assessee and classes of income.
- ➔ Income tax is levied on income and not on capital receipts.
- ➔ The distinction between capital and revenue receipts is much more difficult than between capital and revenue expenditure.
- ➔ Residential status is very vital for determining tax liability.

1.1 Introduction

Among direct taxes, income tax is one of the main sources of revenue of Bangladesh Government to generate funds for running its administration and also funding development expenditure. Income tax is broadly classified in two categories namely **"personal income tax"** and **"'corporate income tax"**. "Personal income tax" is tax on income of individuals, partnership firms etc. It has a progressive rate i.e. rate of tax increases as income increases. While "corporate income tax'' is tax on income of companies. It has a flat rate i.e.; rate of tax is same irrespective of level of income. Income tax is basically imposed on the principle of ability to pay. "The more a taxpayer earns the more he should pay"- is the basic principle of charging income tax. It aims at ensuring equity and social justice.

Bangladesh taxation system has developed over centuries from the then British India in 1860 to the present condition on a piecemeal basis. The system, however, developed on the basis of generally accepted canons and there had been efforts towards rationalizing the tax administration for optimizing revenue collection, reducing tax evasion and preventing revenue leakage through system loss.

In the fiscal scheme of our country, at present, income tax is levied along with other direct and indirect taxes like VAT, Excise duty, Customs duty, Gift tax etc.

Direct tax and Indirect tax

Direct taxes are those taxes incidence of which cannot be shifted on others. The person paying the tax shoulders the entire burden of tax. This is basically tax on person (both physical & legal person).

Whereas indirect taxes are those taxes incidence of this is shifted by the person paying the tax to others like his customers. These are basically tax on goods or services.

1.2 Bangladesh tax structure

The tax structure of Bangladesh consists of both direct taxes (income tax, gift tax, foreign travel tax, land development tax, non-judicial stamp, registration, immovable property tax, etc.) and indirect taxes (customs duty, excise duty, motor vehicle tax, narcotics and liquor duty, VAT, Turnover tax, SD, etc.). Analysis of revenue collection activities in Bangladesh reveals that tax revenue accounts for 85% of government revenue.

In the national budget, tax revenue is classified in two categories (on the basis of tax enforcing agency). They are NBR tax and non-NBR tax. The nomenclatures of NBR tax are income tax; value added tax, excise duty, turnover tax, export duty, import duty, regulatory duty, supplementary duty, foreign travel tax, gift tax etc. The share of NBR tax to total tax revenue is around 96%.

The nomenclatures of non-NBR tax are land revenue, non-judicial stamp, motor vehicles tax, registration fees, narcotics and liquor duty etc.

As per the National Budget 2023, the tax revenue target for the fiscal year 2023-24 has been set by the government to Tk. 4,30,000 crore which was Tk. 3,70,000 crore in the revised budget of fiscal year 2022-23.

From the analysis of the National Budget 2023-24, it can be revealed that in the fiscal year 2023-24 revenue collections from Value Added Tax (VAT) have been estimated at around Tk. 1,63,837 crore (38.10% of total tax), from income tax at Tk. 1,53,260 crore (35.64%), from import & other duty at Tk. 52,200 crore (12.14%) and from supplementary duty at Tk. 60,703 crore (14.12%).

The significant features of Bangladesh tax system are as follows:

A) **Multiple tax system**: The tax system of Bangladesh consists of various types of taxes which are as follows:

I. **Taxes on income and profit**

1. Income tax - Company
2. Income tax – Persons other than company

II. **Taxes on property & capital transfer**

1. Gift tax
2. Narcotics Duty

3. Land Revenue
4. Stamp Duty - non judicial

III. **Taxes on goods and services**

1. Customs Duties (Both on import and export)
2. Excise Duties
3. Value Added Tax (VAT)
4. Turnover tax
5. Supplementary Duty (usually on luxurious and socially undesirable items)
6. Road tax
7. Electricity Duty
8. Other taxes and duties (Foreign travel tax)

B) **Tax administration in Bangladesh:**

National Board of Revenue (NBR) is the supreme authority for tax administration in Bangladesh and collects around 85% of total revenue for the country. Various reform measures have been taken and still in consideration to make the tax system of the country more effective and efficient.

C) **Tax avoidance behavior of the taxpayers:**

The culture of tax compliance is low. Due to weakness of enforcement the level of tax evasion & avoidance remains high. The reliance on indirect taxation has been treated as one of the main obstacles in attaining economic progress in Bangladesh since only a few tax payers share the burden of taxes. Despite NBR's untiring effort, the progress is not still satisfactory. People especially corporate entities use various measures to evade tax using loopholes of the current tax system.

D) **Narrow tax base:**

Our tax base is too narrow and the tax law is full of exemptions and allowances. Agricultural sector provides employment for around 60 percent of the population contributes only 20 percent of GDP and virtually pays little in the form of income tax. Narrow tax base remains a big obstacle in augmenting tax revenue.

From the above discussion, it is clear that attaining an optimal tax structure is one of the most important issues for the government of Bangladesh to increase the revenue generation from taxes for accelerating growth and to improve the quality of life of the citizens. A long-term sustainable solution to enhance transparency, promote growth, improve tax compliance and thus to increase tax to GDP ratio is a much desirable issue in the context of Bangladesh.

Furthermore, the tax collection in Bangladesh is more skewed towards collection on indirect tax. In OECD countries the trend is normally opposite where direct tax contributes more than 60% of the total tax collection of the country. These also somewhat indicate inefficient tax structure of the country.

1.3 Sources of tax law and practice of income tax

A. Legislation

The legislations behind income tax regulation are as follows:

1. Income Tax Act, 2023
2. Income Tax Rules,1984
3. Finance Act of the respective year and its clarification given by the NBR
4. Double Taxation Avoidance Agreements (DTAA)
5. Statutory Rules and Orders (SRO).

B. Case laws

Over the years, many hundreds of tax cases have been brought before the courts where the interpretation of the tax law is not clear.

Decisions made by the honorable judges to resolve these cases form case laws. Many judgments are precedent for future cases which means that they must be followed unless superseded by legislation or the decision of higher court.

C. NBR publications

The National Board of Revenue (NBR) is a statutory body having the highest executive authority and empowered to make necessary rules relating to income tax matters. NBR makes available some forms, notifications, brochures, and guidelines of income tax, VAT and customs duty through its websites and other forms of communication for public at large. NBR also issues instructions & guidance to subordinate tax office which is a binding on them. There are many SROs and circulars on income tax and VAT published by NBR providing guideline for tax purpose.

1.4 Scope of Bangladesh income tax

Some provisions, rules and regulations have to be kept in mind in order to determine income tax. These are as follows:

I. **The Income Tax Act, 2023***:* The Income Tax Act, 2023 came into force on 22nd June 2023. It is divided into 25 parts with numerous sections, sub-sections, clause, sub-clause, proviso and eight schedules.

II. **Income Tax Rules, 1984**: The procedural matter required to implement the tax regulations is incorporated in Income Tax Rules. NBR is empowered to make or amend rules. Additionally, Rules for Tax Deducted at Source, 2023 and Rules for Income Tax Preparer, 2023 have already been issued by NBR.

III. **Finance Act:** To give effect to the various proposals in the annual budget covering the areas of direct and indirect taxes. It contains:
   - tax rates.
   - amendments of the clause/sub-section/section/schedule in laws relating to government tax or non-tax revenue.
   - insertion of new clause/sub-section/section/schedule in the existing laws relating to government tax or non-tax revenue.
   - deletion of old clause/sub-section/section/schedule in the existing laws relating to government tax or non-tax revenue.
   - introduction of new laws relating to government tax or non-tax revenue.

- Refinement of existing law.

IV. **SRO (Statutory Rules and Order):** SROs are subordinate law. Section 343 of the Income Tax Act, 2023 empowers NBR to issue Rules whereas section 76(1) of the Income Tax Act, 2023 empowers to issue notification via government gazette to exempt tax of a person or a class of persons.

V. **Income tax case law:** During assessment proceedings, dispute may arise between the NBR and the assessee over the interpretation of some of the provisions of the act and rules. The assessee can go the court objecting the NBR's interpretation, and the judgments given by the courts act as guidance to the assessing officers and the assessee in similar nature in the future.

1.5 Structure of Income Tax Act, 2023

The Income Tax Act, 2023 came into force on 22nd June 2023. A brief description regarding the manual is enumerated below:

I. The Income Tax Act, 2023 - Chapters and sections

Part	***Title***	***Sections***
1	Preliminary	1-3
2	Tax administration	4-12
3	Taxes Appellate Tribunal	13-17
4	Charge of income tax	18-28
5	Computation of income	29-75
6	Exemptions, deletion, and tax holiday	76-85
7	Payment of tax	86-162
8	Minimum tax	163-164
9	Return, statements, and documents	165-179
10	Assessment of tax and audit	180-196
11	Limitation of time	197
12	Collection of information	198-211
13	Recovery of evaded tax	212-213
14	Collection, refund and adjustment	214-229
15	Prevention of tax avoidance	230-243
16	International treaty management	244-251
17	Agency, representative and related issues	252-260
18	Registration of taxpayers	261-265
19	Penalty	266-284
20	Revision, appeal and reference	285-308
21	Protection of information	309
22	Criminal offences and prosecution	310-326
23	Authorized representative	327
24	Electronic tax management	328
25	Miscellaneous	329-345

II. The Income Tax Act, 2023 - Schedules

SL #	*Schedule*	*Title*
1	***First Schedule***	*Special rate of investment*
2	***Second Schedule***	Approved funds
3	***Third Schedule***	Depreciation, depletion, and amortization
4	***Fourth Schedule***	Computation of the profits and gains of insurance business
5	***Fifth Schedule***	Computation of profits and gains from mineral deposits in certain cases
6	***Sixth Schedule***	Tax exemption, rebate, and credit
7	***Seventh Schedule***	Special tax rate
8	***Eight Schedule***	Special provisions

III. The Income Tax Rules, 1984

The IT Rules, 1984, comprises *rules* to supplement various sections and provisions of the Income Tax Act, 2023. National Board of Revenue (NBR) enjoys flexibility to amend or change any rules through the notification in the official gazette.

IV. Rules of Tax Deducted at Source, 2023

The TDS rules have been published to align with the new tax law, which has essentially replaced certain provisions in the IT Rules, 1984 concerning tax deduction, source collection, and related statements.

V. Rules of Income Tax Return Preparer, 2023

This is in line with the appointment, terms of activities, and related provisions for Income Tax Return Preparers, which constitute a new addition in the tax legislation.

1.6 Objectives and importance of income tax

Taxation is one of the major sources of revenue to Government. The main objectives of taxation are *(a) to meet the country's development expenditure* (b) to accomplishing some economic and social objectives, such as redistribution of income, encouraging savings, price stabilization and discouraging consumption of harmful and socially undesirable goods. Importance of income tax is as follows:

(a) Revenue collection: Income tax is a major source of revenue for the government. In Bangladesh, income tax revenue accounts for nearly 35% of total tax revenue. Therefore, the first and foremost aim of income tax is to raise public revenue to meet the ever-increasing public expenditure.

(b) Re-distribution of income: An effective, efficient and fair taxation system can reduce inequalities in income and wealth. This is possible by taxing rich people heavily and to confer benefit to the poorer section through progressive income tax.

(c) Increase in savings: An effective and efficient tax system encourages people to save through providing tax credit facilities on investment allowance.

(d) Increase in capital investment: An effective and efficient tax system encourages local and foreign investors to invest in the country through providing various facilities like tax credit facilities on investment allowance, tax holiday scheme, depreciation allowance, tax incentives etc.

(e) Economic development: The income tax revenue can be used by the government to ensure the economic development of the country. It can be used to build the infrastructure, to invest in social security programs, in various poverty elevation programs. The incentive to investment also encouraging production & there by growth of GDP.

So, from the above discussion it is clear that, income tax plays a very significant role in the economic development of a country. For this reason, various reform strategies have been taken to modernize NBR.

1.7 Role of income tax in economic development of Bangladesh

As it has been discussed before, taxation is one of the major sources of public revenue to meet a country's revenue and development expenditures with a view to accomplishing some fundamental economic and social objectives, such as redistribution of income, price stabilization and discouraging harmful consumption. The contribution of income tax is playing a pivotal role in the economic development of Bangladesh. The government of Bangladesh has taken various measures to modernize the tax system and imposed various provisions in the Income Tax Act, 2023. Some of the provisions are as following:

(a) Tax holiday scheme: As per Section 81, read in conjunction with Part 4 of Schedule Six of the Income Tax Act, 2023, an industrial undertaking and a physical infrastructural facility established for the production of specific goods and operation of designated facilities shall be eligible for tax exemption for a duration of up to 10 years, subject to varying rates. This arrangement is commonly referred to as the Tax Holiday Scheme. The primary aim of implementing this scheme is to foster economic growth via industrialization, thereby attracting investments in targeted sectors.

(b) Income tax exemptions to exporters' income: From July 1, 2023, to June 30, 2028, a 50% exemption will be granted for income derived from export conducted by individuals, partnership firms, and Hindu Undivided Families (HUFs). For other taxpayers, the applicable tax rate will be 12%, with a reduced rate of 10% applicable to income from export derived from Leadership in Energy and Environmental Design (LEED) certified factories. This arrangement is outlined in SRO No. 210, dated June 26, 2023.

(c) Certain IT-enabled services are eligible for tax exemption: In accordance with Paragraph 21 of Part One of Schedule Six, specific information technology-based services are granted tax exemption from July 1, 2020, to June 30, 2024, with the aim of fostering growth within the IT sector.

(d) Accelerated depreciation allowance: Accelerated Depreciation allowance is allowed on the new machineries used in various industries at a specified rate (50% of the cost in the first year, 30% in the 2nd year and remaining 20% in the 3rd year).

(e) Tax incentives for small & medium industries: As per Paragraph 24 of Part One of Schedule Six, tax incentives are granted on the income and profits of small and medium enterprises, aimed at promoting investments in industries that hold the potential to make substantial contributions to the economy.

(f) Tax incentives for encouraging savings: The government also encourages savings providing tax rebate and investment tax credit facilities on certain types of investment and expenses such as, purchase of shares and debentures, savings certificate, DPS, insurance premium, provident fund etc.

(g) Tax exemptions in certain expenditures: Certain expenditures to enhance social welfare like contribution to president's/prime minister's relief fund; Government Zakat fund, Ahsania Mission Cancer Hospital etc. are exempted from tax payment. These provisions also encourage people to spend in certain social development program.

(h) Tax incentives for foreign investors: For· attracting foreign investors various concessions like tax holiday, tax exemptions for interest, royalty, technical assistance and fees, remittance to own country have been allowed.

(i) Allowance for scientific research: For developing new products, technologies in the industrial sectors certain allowance is allowed. Tax rebate is given on the cost of relevant scientific research.

(j) Tax incentives for remittance to Bangladesh: A significant number of Bangladeshi people work abroad and to encourage them remittances through banking channel has been declared tax exempted.

So, it can be said that to ensure the economic development of the country certain provisions have been introduced in the ITA, 2023. These provisions encourage not only foreign investors but also the local entrepreneurs.

1.8 Some definitions & important concepts relating to tax

1. **Assessee [u/s 2(22)]:** "assessee", means any taxable income earner and include following person, namely –

   (a) a person by whom any tax or other sum of money is payable under this Act,
   (b) every person whose income, or income of any other person with whose income is assessable;
   (c) person for whom proceedings under this Act have been take to determine the amount due to him or another person.
   (d) person by whom a minimum tax is payable;
   (e) person liable to file or furnish any return, document or statement;
   (f) person desires to be assessed and file return.
   (g) person deemed to be an assessee or assessee in default under this Act;
   (h) person against whom any proceeding under this Act have been taken.

2. **Assessment year [u/s 2(24)]:** "assessment year" means the period of twelve months commencing on the first day of July every year; and includes any such period which is deemed, under the provisions of this Act, to be assessment year in respect of any income for any period;

3. **Business [u/s 2(14)]:** "business" includes
   (a) Any trade, commerce or goods manufacture
   (b) Any trade, commerce or production of goods related risk undertaken or endeavor
   (c) Exchange of goods or services of any for profit or not for profit entity;
   (d) Any profession or occupation

4. **Capital asset [u/s 2(15)]:** "capital asset" means
   (a) Property of any kind held by an assessee,
   (b) Any business or undertaking entirely or unit wise;
   (c) Any share or stock

   However, following mantter shall not include –

(a) any stock-in-trade, consumable stores or raw materials held for the purposes of his business;

(b) personal effects, that is to say, movable property (including wearing apparel, jewellery, furniture, fixture, equipment and vehicles), which are held exclusively for personal use by, and are not used for purposes of the business or profession of the assessee or any member of his family dependent on him;

5. **Charitable purpose [u/s 2(43)]:** "charitable purpose" means –
   (a) Relief for the poor, education relief, medical relief; and
   (b) The improvement and extension of any purpose of general public utility

   Provided that the improvement or extension of any general purpose utility shall not be deemed to be a charitable purpose –

   (i) Unless it is approved by the NBR;

   (ii) If it is involves in any of the following activities -

   - Any activities in the nature of trade, commerce or business whatever its natute or type
   - If any services rendered in exchange of consideration and the total value of consideration exceeds Tk 20 lakhs in any income year.

6. **Child [u/s 2(84)]:** "child", in relation to any individual, includes a step-child and an adopted child of that individual;

7. **Company [u/s 2(31)]:** "company" means a company as defined in the Companies Act, 1994 (VIII of 1994)] and includes-
   (a) The liaison office, representative office or branch office of a foreign establishment;
   (b) Any permanent establishment of any foreign entity or person;
   (c) Any association or body registered under or by the laws of any country outside Bangladesh;
   (d) Any bank, insurance or financial institution;
   (e) Any industrial and commercial organization, foundation, society, co-operative society and any educational institution;
   (f) Any organization registered with NGO Affairs Bureau or Microcredit Regulatory Authrity;
   (g) Any firm, Association of Person, joint venture, called wherever name if any member of is company undre the Companies Act, 1994 or a foreign entity.
   (h) Statutory Government Authority, Local Authority, Autonomous Body;
   (i) Any entity established or constituted by or under any law for the time being in force;
   (j) All entities other than individual person, firms, AOP, Trusts, HUF and Funds
   (k) Any such foreign association or body not incorporated by or under any Act, which may be declared as a company by the Board by general or special Order for the purpose of this Act.

8. **Deputy Commissioner of Taxes [u/s 2(17)]:** "Deputy Commissioner of Taxes" means a person appointed to be a Deputy Commissioner of Taxes u/s 4, and includes a person appointed to be a Transfer Pricing Officer, Assistant Commissioner of Taxes, an Extra Assistant Commissioner of Taxes and a Tax Recovery Officer;

9. **Dividend [u/s 2(81)]:** "Dividend" includes--
   (a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its shareholders of all or any part of its assets or reserves;
   (b) any distribution by a company, to the extent to which the company possesses accumulated profits, whether capitalized or not, to its shareholders of debentures, debenture-stock or deposit certificates in any form, whether with or without interest;

(c) any distribution made to the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not;
(d) any distribution by a company to its shareholders on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated- profits have been capitalized or not;
(e) any profit remitted outside Bangladesh by a company not incorporated in Bangladesh under the Companies Act, 1994 (VIII of 1994);
(f) any distribution of profit of a mutual fund or an alternative investment fund
(g) any payment by a private company of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company, in either case, possesses accumulated profit;

But does not include--

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share including preference share for full cash consideration, or redemption of debentures or debenture-stock, where the holder of the share or debenture is not entitled in the event of liquidation to participate in the surplus assets;

(ii) any advance or loan made to a shareholder in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(iii) Any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as dividend within the meaning of sub-clause (e) to the extent to which it is so set off.

(iv) any bonus share issued by a company.

10. **Employer [u/s 2(47)]:** "employer" includes a former employer;

11. **Employee [u/s 2(25)]:** "employee", in relation to a company, includes the managing director, or any other director or other person, who irrespective of his designation, performs, any duties or functions in connection with the management of the affairs of the company;

12. **Fair market value [u/s 2(48)]:** "fair market value" means, value determined by the Board.

13. **Fees for technical services [u/s 2(30)]:** "fees for technical services" means any consideration including any lump sum consideration for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include:

(a) Consideration for any construction, assembly, mining or like project undertaken by the recipient, or
(b) Consideration which would be income of the recipient classifiable under the head "Income from Employment' ;

14. **Income [u/s 2(13)]:** "income" includes--

(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Act;
(b) any amount which is subject to collection or deduction of tax at source under any provision of this Act;
(c) any loss related to income, profits or gains mentioned under a above;
(d) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;
(e) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Act.

(f) any such money, payment or transaction on which a tax is imposed;

15. **Income year [u/s 2(15)]:** "income year", means financial year immediately preceding the assessment year and includes:
    (a) the period beginning with the date of setting up of a business and ending with the thirtieth day of June following the date of setting up of such business;
    (b) the period beginning with the date on which a source of income newly comes into existence and ending with the thirtieth day of June following the date on which such new source comes into existence;
    (c) the period beginning with the first day of July and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be,
    (d) the period beginning with the first day of July and ending with the date of retirement or death of a participant of the unincorporated body;
    (e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the thirtieth day of June following the date of the retirement, or death, as the case may be;
    (f) in the case of bank, insurance financial institution or any financial institution the period of 12 months commencing from the first day of January of the relevant year; or

Provided that the DCT may allow a different financial year for a company which is a subsidiary, including a subsidiary thereof, or holding company of a parent company incorporated outside Bangladesh or a branch or liaison office thereof if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company;

16. **Person [u/s 2(69)]:** "person" includes an individual, a firm, an AOP, a HUF, a trust, a fund, a company;

17. **Recognized Provident Fund [u/s 2(90)]:** "recognized provident fund" means a provident fund which has been, and continues to be, recognized by the Commissioner in accordance with the provisions of Part 3 of the Second Schedule;

18. **Resident [u/s 2(55)]:** "resident", in respect of any income year, means
    (a) an individual who has been in Bangladesh-
        (i) for a period amounting in all to, 183 days or more in that year; or
        (ii) for a period of, or periods amounting in all to, 90 days or more in that year having previously been in Bangladesh for a period of, or periods amounting in all to 365 days or more during 4 years preceding that year;
    (b) a HUF, firm· or other association of persons, the control and management of whose affairs is situated wholly in Bangladesh in that year; and
    (c) a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year;
    (d) a trust, a fund or an entity, the control and management whose affairs is situated wholly in Bangladesh in that year;

19. **Royalty [u/s 2(79)]:** "royalty" means consideration (including any lump sum consideration but excluding any consideration which is classifiable as income of the recipient under the head "capital gains") for --
    (a) transfer of all or any rights, including the granting of a license in respect of a patent, invention, model, design, secret process or formula, or trade mark or similar property;
    (b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret process or formula, or trade mark or similar property;

(c) the use of any patent, invention, model, design, secret process or formula, or trade mark or similar property;
(d) the imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill;
(e) any tranfer of rights, including copyritht or licensing of the film, other than sale, distribution or exhibition of the cinematograph flim;
(f) the rendering of any services in connection with any of the aforesaid activities;

20. **Tax [u/s 2(21)]:** "tax" means the tax payable on income and includes any additional tax, excess profit tax, penalty, penalty tax, super tax, interest, fee or other charges leviable or payable under this Act;

21. **Tax Day [u/s 2(23)]:** Tax Day means
    (a) In case of an assessee other than company 30th day of November
    (b) In case of company 15th day of the 7th month following the end of the income year or the 15th day of September following the end of the income year where the said 15th day falls before the 15th day of September.
    (c) 30 June following the end of the income year in case of individual assessee who has never filed a return before;
    (d) In case of individual assessee residing abroad, the 90th day from the date of his return to Bangladesh, if such person –
        I. Stays outside Bangladesh on leave for higher education or on deputation or lien for employment; or
        II. Stay outside Bangladesh with valid visa and permitted for the purpose of earnings.
    (e) If the Tax Day is holiday, then automatically it would be the next working day.

22. **Total income [u/s 2(78)]:** "total income" means the total amount of income referred to in section 26 computed in the manner laid down in this Act, and includes any income which, under any provision of this Act, is to be included in the total income of an assessee;

23. **Transfer [u/s 2(93)]:** "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset, or the extinguishment of any right therein, but does not include-
    (a) any transfer of the capital asset under a gift, bequest, will or an irrevocable trust;
    (b) any distribution of the assets of a company to its shareholders on its liquidation; and
    (c) any distribution of capital assets on the dissolution of a firm or other association of persons or on the partition of a Hindu undivided family;

24. **Year [u/s 2(59)]:** "year" means a financial year.

1.9 The concept of income

Concept of income in the Income Tax Act, 2023 is an inclusive definition but not exhaustive. It describes sources of income, but it refrains from saying what is income. It is also important to note that the word ‘income’ used in ITA, 2023 is not limited only to ‘profit or gains’ and hence in order to consider as income it is not necessary that it should constitute or provide a profit or gain to the assessee.

The illegality of income does not exempt it from tax, the revenue shall not be concerned with the tainting of illegality of income or its source.

There is no exhaustive definition of “income” in the Income Tax Act, 2023. The term income is easy to understand but difficult to define. What is taxed, as so often has been pointed out under the income tax law, is nothing that is real; it is the statutory income measured in a way.

The object of the Act is to tax “income”. The term is expanded in many sections into income, profits and gains; but the expansion is more a matter of words than of substance. The word “income” is an expression

of elastic ambit and the courts when describing income have almost always qualified their description by saying that it is not exhaustive.

From various judicial decisions, the following are held to be characteristics of income:

(a) Income should be received in the form of money or money's worth.
(b) Income should be in the form of revenue nature.
(c) It should arise from some definite source or a source with some sort of regularity.
(d) It should be derived from a person other than the recipient.
(e) Income tainted with illegality is also classified as taxable income under tax law.

Income is a more general term than profits or gains. The words "income, profits and gains" are used in a distinctive sense, and the word "income" is not limited by the words "profits" and "gains". A receipt may be taxable as income, although it may contain no element of profits or gain. Profits or gains mean something which is interest or fruit, as opposed to principal or tree. "Gains" is really equivalent to "profits". The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning these receipts.

Section 2(13) of the Income Tax Act, 2023 gives a definition of income as under:

'Income' includes-

(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Act;
(b) any amount which is subject to collection or deduction of tax at source under any provision of this Act;
(c) any loss of such income, profits or gains under sub-clause (a);
(d) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;
(e) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Act.
(f) any amount, payment, or transaction on which a tax is imposed.

To understand the true nature of income, the following two case decisions can be referred to:

(a) Shaw Wallace & Co case:

"Income in the Act connotes a periodical monetary return coming in with some sort of regularity or expected regularity from a definite source. The source need not be continuously productive, but it must be one where object is the production of a definite return, excluding anything a mere windfall. Income is essentially the product of something which is often loosely spoken as 'capital'. It is not correct to say that every receipt which is not a capital is assessable. On the other hand, it is only receipts that are of the nature of income receipts that are assessable……."

(b) Rani Amrit Kunwar case:

"Income, in order to be taxable, need not arise from any business activity, investment of enforceable obligation to pay, but may arise from voluntary or customary payments. Nor is it necessary that it should be the result of some outlay on the part of the assessee……"

Therefore, for the purposes of the Income Tax Act, 2023, income is a periodical monetary return coming in with some sort of regularity or expected regularity from a definite source, not excluded by the Act.

Total income: section 2(78)

Section 2(78) defines the term “total Income” as follows: “total income” means the total amount of income referred to in section 26 computed in the manner laid down in the Act, and includes any income which, under any provision of the Act is to be included in the total income of an assessee.

1.10 Capital or revenue

Difference between capital and revenue is of vital importance. **Income tax is levied on income and not on capital receipts.** While ascertaining the profits of a business or profession, the revenue expenditure is deductible from the trading receipts, not the capital expenditure. Courts have often observed that it may conclusively be judged that a receipt is a capital or a revenue receipt. Decided cases merely illustrate and not all are perfect guides.

The distinction between capital and revenue receipts is much more difficult than between capital and revenue expenditure. There are no hard and fast rules which may help in determining whether a receipt is a capital or a revenue receipt.

Whether expenditure is incurred solely to earn profit or whether it is a capital expenditure depends in each case on the nature of business, commercial practice, the nature of the expenditure and other relative circumstances. No rigid rules can be laid down in this connection.

Debt versus equity

Debt and equity classification is also very important for tax purposes because servicing of debt through interest payment is an allowable tax deduction but servicing of equity through dividend is not allowable tax deduction. In order to maximize tax benefit at times corporates structure their balance sheet gearing or debt-equity mix in such way that it can achieve highest tax benefit.

1.11 Tax and income tax

Income tax is tax on income. Section 2(21) of the Income Tax Act, 2023 defines tax as follows: "tax" means tax payable on income and includes any additional tax, excess profit tax, penal tax, super tax, penalty, interest, fees, or other charges leviable or payable under the Act".

1.12 Different rates of tax

The different tax rates for different types of assessee for the assessment year 2023-24 are as follows:

(1) Tax rates for individual, partnership firm and Hindu Undivided Family:

The threshold limit of total Income not liable to Income tax for the assessment year 2023-24 stands at Tk. 3,50,000.

Tax exempted ceiling of income for female assessee, and senior citizens ageing 65 or above is Tk. 4,00,000 and that for 3rd gender assessee, handicapped/disabled persons is Tk. 4,75,000 and for gazated war wounded freedom fighter is Tk. 5,00,000 for the assessment year 2023-24. The threshold limit in case of parents or legal guardian of any person with disability will be Tk. 50,000 more. If both father and mother of the disabled person is assessee then any one will avail this benefit.

The 6 tier tax rates for the assessment year 2023-24 are given below:

Tier	Income slab	Tax rate
1	First Tk. 350,000	0%
2	Next Tk. 100,000	5%
3	Next Tk. 300,000	10%
4	Next Tk. 400,000	15%
5	Next Tk. 500,000	20%
6	On rest of income	25%

If the assessee is an owner of any small and cottage industry or engaged in such kind of activities at less developed / least developed area as specified by the NBR, he/she will be eligible to have a tax rebate on such income at following rates:

(a) If production / turnover increase by more than 15% but less than 25% comparing to previous year, then 5% tax rebate will be allowed;
(b) If production / turnover increase by more than 25% comparing to previous year, rate of rebate will be 10%.

(2) Tax rates for companies

Applicable tax rates for companies for the Assessment year 2023-24 are as follows:

Nature of company		**Tax rates**
Publicly traded company*	Transferred over 10% of share capital by IPO	20.0%
	Transferred up to 10% of share by IPO	22.5%
Non-publicly traded company*		27.5%
One person company (OPC)*		22.5%
Bank, insurance, financial institutions	Listed	37.5%
	Non-listed	40.0%
Marchant bank		37.5%
Cigarette/tobacco manufacturer		45.0%
Mobile operators	Non-listed	45.0%
	Listed (by offering at least 10% of share capital and pre-initial public placement shall not exceed 5%)	40.0%

*Company tax rate shall be 2.5% higher if all income is not received, and every single transaction for above Tk. 500,000 and annual expense & investment over Tk. 3,600,000 are not made through bank transfer.

(3) Tax rates for Trust, Fund, Association of Persons (AoP) and other taxable entity, other than company, shall be 27.5% subject to above conditions.

(4) Tax rate on dividend income for assessment year 2023-24:

(a) For company receiving dividend -
(i) If dividend received from a company registered under Company Act 1994 or any profit emitted outside Bangladesh by a foreign company, the tax rate on dividend income will be 20%.

(ii) 10% to 15% on profit remitted outside Bangladesh by a foreign company with whom there is Double Taxation Avoidance Agreement with Bangladesh.

(b) For assessee other than companies -

(i) Resident and non-resident Bangladeshi individual, firm etc. –Normal slab rate.

(ii) Non-resident foreigner individual- @ 30%.

(5) Tax rate for non-resident foreigner is straight 30%.

(6) Tax rate on income from capital gain (Paragraph 1 of the Seventh Schedule):

(1) Companies at 15%.

(2) Other assesses: In the event of the sale of capital assets within 5 years of acquisition, the tax will be levied at the regular slab rate. If the sale of capital assets occurs after 5 years of acquisition, a tax rate of 15% will be applicable on the capital gains.

(7)Tax rate on winning from lotteries, puzzles, card, online games, or similar games is 25%.

1.13 Liability to pay tax

A. Individuals

- Income tax: An individual may be liable to pay tax on the following income:
  - income from employment
  - income from rent
  - income from agriculture
  - agricultural income
  - income from business
  - capital gain
  - income from financial property, and
  - income from other sources

An individual used to be taxed annually on his total income at the rate prescribed at the Finance Act enacted every year.

B. Partnership

A partnership is a group of persons carrying on a business together with a view to making profit.

Partnership firm is taxable. Tax is to be calculated at normal slab rate. Share income from the partnership firm is to be added with each partner's personal income. After tax computation of the partner a portion of tax to be deducted at average rate based on taxed share income as per Sixth Schedule, Part-1, and Paragraph-15.

C. Companies

A company is a legal person who is legally separated from its owners (shareholders) and its managers (directors). For the purpose of income tax, the meaning of company is defined under section 2(31) of the Income Tax Act, 2023.

A company is liable to pay income tax, the rate being determined with reference to the Finance Act enacted in every financial year.

1.14 Tax liability on income

The tax is payable in the following year i.e., assessment year on income earned during an income year. However, there are provisions for payment of taxes in advance during the income year, such as deduction of taxes at source and advance payment of taxes under Part -7 of the ITA, 2023.

Under section 2 (15) "income year", means financial year immediately preceding the assessment year and includes:

(a) the period beginning with the date of setting up of a business and ending with the thirtieth day of June following the date of setting up of such business;

(b) the period beginning with the date on which a source of income newly comes into existence and ending with the thirtieth day of June following the date on which such new source comes into existence;

(c) the period beginning with the first day of July and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be,

(d) the period beginning with the first day of July and ending with the date of retirement or death of a participant of the unincorporated body;

(e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the thirtieth day of June following the date of the retirement, or death, as the case may be;

(f) in the case of bank, insurance, financial institution or its affiliates, the period of 12 months commencing from the first day of January of the relevant year; or

Provided that the DCT may allow a different financial year for a company which is a subsidiary, including a subsidiary thereof, or holding company of a parent company incorporated outside Bangladesh or a branch or liaison office thereof if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company.

1.15 Some significant issues of income tax

Assessment year:

Assessment year means the year following the financial year, i.e., income year. Thus, the assessment year always begins on 1st July and ends on 30th June every year. This period is also known as the financial year. Accordingly, it is the current financial year in which income of the immediately preceding financial year (known as income year) is assessed.

As per section 2(24) of the ITA, 2023; the term "assessment year" means the period of twelve months commencing on the first day of July every year and includes any deemed assessment year as per provision of the Act.

From the following example, we can see how to find out the assessment year:

Accounting year ended on	Income year	Assessment year
30.06.2021 (other than bank, insurance, and financial institution)	2020-21	2021-22
31.12.2020 (For bank, insurance and financial institution)	2020-21	2021-22

Exceptions to the rule of assessment year:

Generally, income is taxed in the subsequent year to the income year. But, in certain cases, to protect the interests of revenue, the income is taxed in the year of earning itself. Thus, in those cases the assessment year and the income year are the same. The exceptions to the normal rule of assessment year are discussed as under:

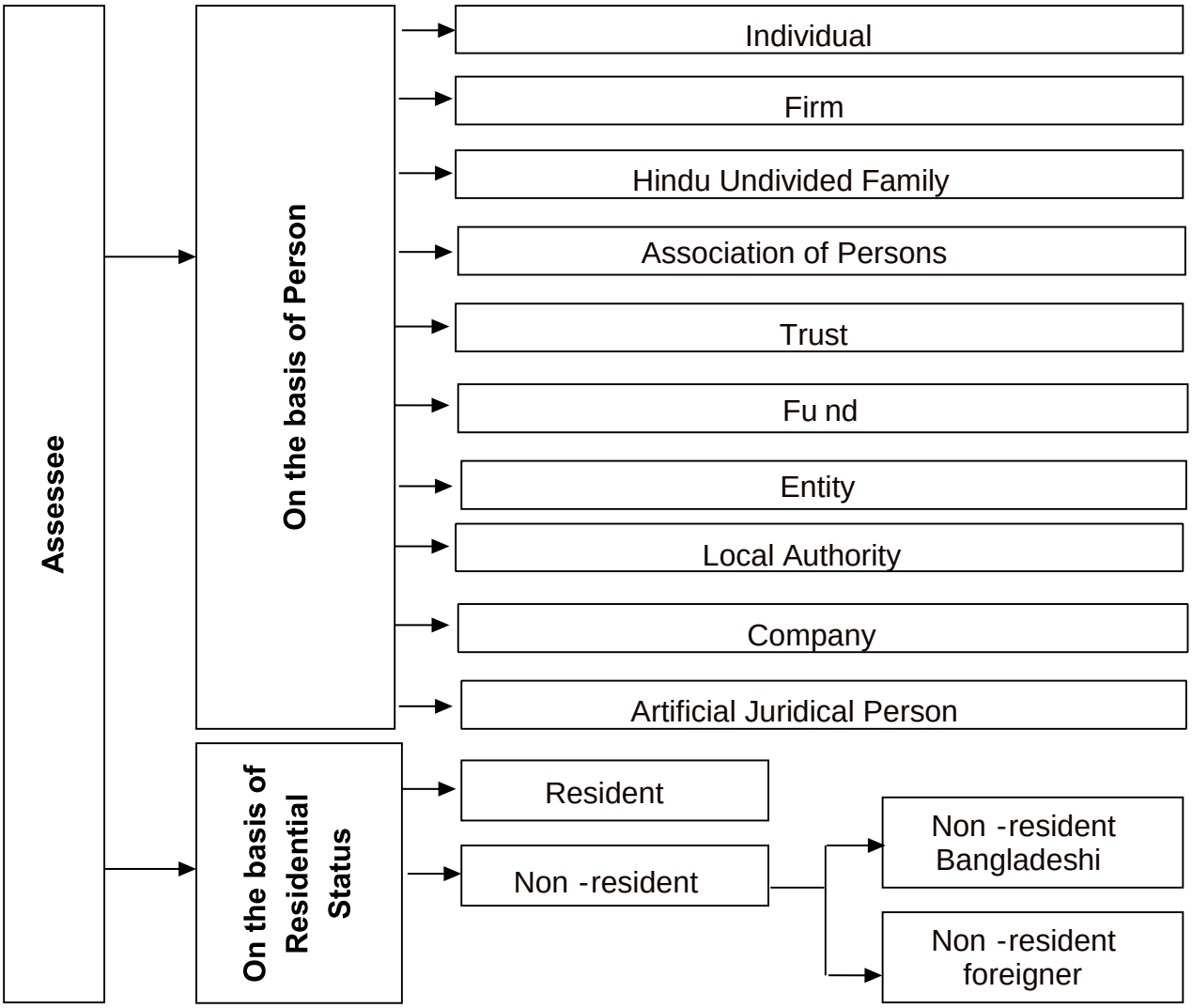
(a) Income of discontinued business [section 191]: Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the last income year up to the date of such discontinuance may be charged to tax in that assessment year.

(b) Persons leaving Bangladesh [section 193]: When it appears to the Assessing Officer that an individual may leave Bangladesh and has no intention to return, the total income of such individual for the period from the expiry of the income year in relation to the current assessment year up to the probable date of his departure from Bangladesh is chargeable to tax in current assessment year itself.

(c) Income of non-resident shipping companies and airlines [section 259 and 260]: Section 259 and 260 of the ITA, 2023, provides for the taxation of income of non-resident shipping companies and airlines in the year in which they earn their income in Bangladesh, provided that such companies do not have any representative here.

Different classes of assessee:

As per ITA, 2023, assessee is a person who is liable to pay any sum under the Income Tax Act, 2023 or in respect of whom the proceedings have been under this Act. The below diagram depicts the different classes of assessee:



Residential status of an assessee:

Section 2(45) defines the term 'resident'" as follows: - 'Resident', in respect of any income year, means-

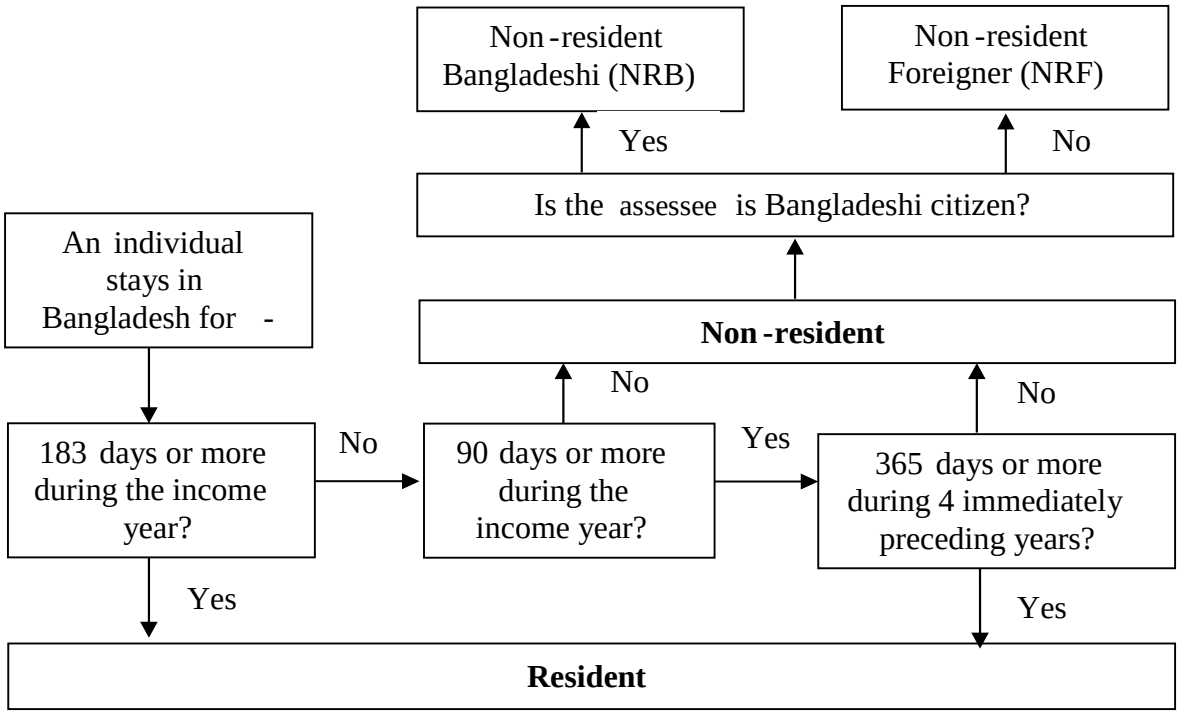
(a) An individual who has been in Bangladesh-
   (i) for a period of, or for periods amounting in all to, 183 days or more in that year; or
   (ii) for a period of, or for periods amounting in all to 90 days or more in that year having previously been in Bangladesh for a period of, or for periods amounting in all to 365 days or more during 4 years preceding that year;

(b) a Hindu un-dividend family, firm or other association of persons, the control and management of whose affairs is situated wholly or partly in Bangladesh in that year; and

(c) a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year; and, under section 2(4), 'non-resident' means a person who is not a resident.

It is important to note here that the concept of resident as defined in the Income Tax Act has nothing to do with the nationality of a particular individual. A foreign national may be treated as 'Resident' for a particular year if he or she fulfills the legal requirements as above, whereas a Bangladeshi national may be treated as a 'Non-resident' if he, or she does not fulfill the said requirements.

To test residential status of an individual, the following flow chart will be helpful:



In case if an individual is found to be resident in more than one country due to his/her physical presence, normally 'tie breaker rule' is applied. As per this rule first it need to be ascertained which country is his/her citizenship. If it is found that he/she is a citizen of both countries, then it shall be ascertained where is his/her habitual residence is.

Bangladeshi resident company

Section 2(61) defined Bangladeshi company as those company formed and registered under the Companies Act 1994 as well as established or constituted by or under any Bangladeshi law and having its registered office in Bangladesh. As per Section 2(45(c)) of ITA, 2023 all such Bangladeshi company as well as any other company the 'control and management' of whose affairs is situated wholly in Bangladesh in that year shall be treated as Bangladesh resident.

Control and management

Control and Management normally involve holding of directors meeting, physical undertaking and subjects of trade etc. It can happen that a company is resident in one country but the trading is undertaken in another country. In India the term used is "place of effective management", which means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made. Control of a business not necessarily means from where the actual trading or physical business activities are conducted. A fundamental case on this matter is De Beers Consolidated Mines Ltd v Howe where a South African incorporated mineral company is determined as having resident of London, UK. This matter is also elaborated further in various avoidance of double taxation treaty prepared under OECD guidelines.

Taxation implication of resident or non-resident

Determination of residential status of an assessee has a significance bearing on the tax liability as incidence of income tax varies according to the residential status of an assessee. In this regard we can consider the following issues:

I. To determine the amount of total income: Determination of total income is different for residents and non-residents. Global income of a resident is deemed as his "total income". Whereas only income earned in Bangladesh of a non-resident is deemed as his "total income".

II. To determine minimum limit of taxable income: A resident and non-resident Bangladeshi has to pay tax if his total income is more than Tk. 3,50,000 as per the Finance Act (in case of women, and elderly citizens being 65 years old, the limit is Tk. 4,00,000, for 3rd gender and disable persons the limit is Tk. 4,75,000 and for war wounded freedom fighter the limit is Tk. 5,00,000). The threshold limit in case of parents or legal guardian of any person with disability will be Tk. 50,000 more. If both father and mother of the disable person is assessee then anyone will avail this benefit. But for a non-resident foreigner such minimum limit is not applicable.

II. **Tax rate***:* For an individual being a resident or non-resident Bangladeshi tax is calculated using the rates applicable for various levels of income. Such as, for first Tk. 3,50,000 @ 0%, for next Tk. 1,00,000 @ 5%, next Tk. 300,000 @10%, next Tk. 400,000 @15%, next Tk. 500,000 @ 20% and rest of the income @25%. But a non-resident foreign individual has to pay tax @ 30%.

III. **Investment tax credit**: An individual being a resident or non-resident Bangladeshi gets tax credit on investment allowance. But, for a non-resident foreigner no tax credit is applicable.

IV. **Tax liability**: The average tax rate applicable for a resident and non-resident Bangladeshi is less than that of a non-resident foreigner since tax is calculated using different tax rates (such as 5%, 10%, 15%, 20% and 25%). But a non-resident foreigner must pay tax @30%.

Thus, determination of residential status of an assessee has a significant bearing on the tax liability as total income; and tax rate are found to vary according to the residential status of an assessee.

Impacts of residential status in assessing income:

Determination of residential status of an assessee has a significant bearing on the tax liability as incidence of income tax varies according to the residential status of an assessee as per section 26 of the ITA, 2023. Therefore, the scope of total income varies according to the residential status of an assessee. These provisions may be summarized as under:

Particulars of income	To be taxed or not	
	Resident	Non-resident
Income received or deemed to be received in Bangladesh	Taxable	Taxable
Income accrued or arose or deemed to accrue or arise in Bangladesh	Taxable	Taxable
Income accrued or arose outside Bangladesh	Taxable	Non-taxable

Worked example – 1.1

Mr. Uzzal, an Indian citizen, stayed in Bangladesh from 1st August 2022 to 31st December 2022 and left for London. What will be his residential status in the income year 2022-23?

Solution

Mr. Uzzal is a non-resident since his stay in Bangladesh during income year 2022-23 is [31 +30+31 +30+31] = 153 days which is less than required 183 days.

Worked example – 1.2

Mr. Arif, a Bangladeshi citizen, stayed in Bangladesh from 1st July 2022 to 31st December 2022 and left for Japan. What will be his residential status in the income year 2022-23?

Solution

Mr. Arif is a resident because he resides in Bangladesh during 2022-23 income year is [31+31+30+31+30+31] = 184 days, which is more than required 183 days.

Worked example – 1.3

Mr. Akash stayed in Bangladesh from 1st September 2022 to 31st January 2023 and left for Trinidad. He came back on 1st May 2023 and still staying in Bangladesh. What will be his residential status in the income year 2022-23?

Solution

Mr. Akash is a resident because he resides in Bangladesh September 2022 to January 2023 [30+31+30+31+31] = 153 days and from 1st May to 30th June 2023 [31+30] = 61 days. In total he stayed for [153+61] =214 days in the income year 2022-23, which is more than required 183 days.

Worked example – 1.4

Mr. Rakesh Jason, a citizen of USA, has been staying in Bangladesh since 1st January 2018. He leaves Bangladesh on 16 July 2021 on a visit to USA and returns on 1st March, 2022. What will be his residential status in the income year 2021-22?

Solution

His stay in Bangladesh during the income year 2021-22 is:

July 2021	18
March 2022	31
April 2022	30
May 2022	31
June 2022	30
Total staying	**140 days**

His stay in proceeding 4 income years:

2020-21	365
2019-20	366
2018-19	365
2017-18	181 [From 1st January 2018 to 30th June 2018]
	Total 1,277 days

As his stay was more than 90 days in the income year 2021-22 and more than 365 days in the preceding 4 years, he is resident.

Worked example – 1.5

Mr.Juris Reinhards, a British citizen comes every year to Bangladesh for 100 days since 2017-18 income year:

(a) Determine his residential status for the income year 2021-22.
(b) Will your answer be different if he comes to Bangladesh for 90 days instead of 100 days every year?

Solution

(a) He is a resident as he stayed in Bangladesh for 100 days (more than required 90 days) in the income year 2021-22 and 400 days (100 x 4) (more than required 365 days) in the preceding 4 income years i.e., 2017-18, 2018-19, 2019-20 and 2020-21.

(b) Yes, the answer will different. He will, in this case, be a non-resident as he stayed in Bangladesh for 90 days (equal to required minimum 90 days) in the income year 2021-22 but 360 days (90 x 4) (less than required 365 days) in the preceding 4 income years i.e., 2017-18, 2018-19, 2019-20 and 2020-21 as he failed to fulfill the required conditions.

Worked example – 1.6

Mr. Jashim Uddin was outside Bangladesh from 20th August, 2020 for an employment contract valid for two years, i.e., from 1st August, 2020 to 31st July, 2022. Mr. Jashim Uddin did not come to Bangladesh at any time during the year 2021. He finally came to Bangladesh on 10th January, 2022 and did not go back. Determine his residential status for the income year 2021-22.

Solution

Total number of days Mr. Jashim Uddin stayed in Bangladesh during respective years:

2021-22 (From 10th January, 2022 to 30th June, 2022): [22+28+31+30+31+30) = 172 days.

2020-21 (From 1st July, 2020 to 20th August, 2020): [31 +20) = 51 days.

2019-20 (From 1st July, 2019 to 30th June, 2020) = 365 days

2018-19 (From 1st July, 2018 to 30th June, 2019) = 365 days

2017-18 (From 1st July, 2017 to 30th June, 2018) = 365 days

Mr.Jashim Uddin is a resident since he fulfills the second condition. His duration of stay in Bangladesh during the income year 2021-22 is 172 days which is more than required 90 days in that year, and [51+365+365+365)=1,146 days during previous 4 years which is more than required 365 days.

Worked example – 1.7

Mr. Jayed provides the following particulars of his period of stay in Bangladesh over last 6 years:

Year	Days
2016-17	40
2017-18	55
2018-19	182
2019-20	200
2020-21	94
2021-22	110

a) Determine his residential status for the income year 2021-22.
b) What will happen if he stays for 85 days in the year 2021-22?
c) What will happen if he stays for 80 days in the year 2019-20?
d) What will happen if he stays for 185 days in the year 2021-22 and total 360 days during last four years?

Solution

a) Mr. Jayed is a resident since he fulfills the second condition. His period of stay in Bangladesh during the income year 2021-22 is 110 days which is more than required 90 days in that year, and [55+182+200+94] = 531 days during previous 4 years which is more than required 365 days.

b) Mr. Jayed would be a non-resident since he doesn't fulfill the second condition. His stay in Bangladesh during income year 2021-22 is 85 days which is less than required 90 days in that year, although he stayed [55+182+200+94] = 531 days during previous 4 years which is more than required 365 days.

c) Mr. Jayed is a resident since he fulfills the second condition. His stay in Bangladesh during income year 2021-22 is 110 days which is more than required 90 days in that year and his total stay during previous four years is 411 days [55+182+80+94] which is more than the required 365 days.

d) Mr. Jayed would be a resident since he fulfills the first condition. His stay in Bangladesh during income year 2021-22 is 185 days which is more than required 182 days of the first condition. In such a case, it is not important to know regarding his stay during 4 preceding years.

Worked example – 1.8

Alex Deliveries is a partnership firm whose

(a) Control and management of affairs is situated wholly in Bangladesh.

(b) Control and management of affairs is situated partly in Bangladesh.

(c) Control and management of affairs is situated wholly outside Bangladesh.

Determine the residential status of the firm.

Solution

(a) Resident; since control and management of affairs is situated wholly in Bangladesh.

(b) Non-resident; since control and management of affairs is not situated wholly in Bangladesh.

(c) Non-resident; since control and management of affairs is situated wholly outside Bangladesh.

Worked example – 1.09

DBH is non-banking financial institution in Bangladesh whose

(a) Control and management of affairs is situated wholly in Bangladesh.

(b) Control and management of affairs is situated partly in Bangladesh.

(c) Control and management of affairs is situated wholly outside Bangladesh.

Solution

(a) Resident; since control and management of affairs is situated wholly in Bangladesh.

(b) Non-resident; since control and management of affairs is situated partly in outside Bangladesh.

(c) Non-resident; since control and management of affairs is situated wholly outside Bangladesh.

Worked example – 1.10

Mr. Akanda has earned following income from various sources during the year 2021-22:

1. Salary income earned and payable in Bangladesh Tk.100,000.
2. Profit of Tk.40,000 from a business in London.

3. Profit of Tk.60,000 from a business in Singapore. The Business has been managed and controlled wholly from Singapore.
4. Profit of Tk. 70,000 from a business in Dubai has not yet been brought in Bangladesh.

Compute the amount of total income of Mr. Akanda, assuming that he is a

(a) Resident;

(b) Non-resident

Solution

Mr. Akanda
Income year: 2022-23;
Assessment year: 2023-24
Computation of total income

Particulars	Resident Tk.	Non-resident Tk.
1. Income earned in Bangladesh: Salary income	100,000	100,000
2. Foreign income:		
Profit from business in London	40,000	-
	60,000	-
Profit from business in Singapore		
Profit from business in Dubai	70,000	.
Total income	**270,000**	**100,000**

Worked example – 1.11

The following are the particulars of income of Mr. Zaman for the income year 2021-22:

1. Rent from a property in Dhaka received in India Tk. 40,000
2. Income from a business in USA controlled from Bangladesh Tk. 150,000
3. Income from a business in Dhaka controlled from Pakistan Tk. 180,000
4. Rent from a property in Canada received there but subsequently remitted to Bangladesh Tk. 60,000
5. Interest from bank deposits in Canada Tk. 20,000
6. Gifts received from his parents Tk. 45,000

Compute total income of Mr. Zaman, assuming that he is a

(a) Resident;

(b) Non-resident

Solution

Mr. Zaman
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Particulars	Resident Tk.	Non-resident Tk.
Rent from property in Bangladesh (wherever paid)	40,000	40,000
Income from business in USA controlled from Bangladesh (as income accrues outside Bangladesh)	150,000	----------
Income from business in Dhaka controlled from Pakistan (as it is received in Bangladesh)	180,000	180,000
Interest on bank deposits at Canada	20,000	----------
Total income	**3,90,000**	**2,20,000**

Note-1: Rent from a property in Canada received there but subsequently remitted to Bangladesh Tk. 60,000 is exempted from payment of tax as per 6th Schedule (Part –1) para-17.

Note-2: Gift is not income.

Worked example – 1.12

From the following particulars of Mr. Rahman for the income year 2021-22, compute total income if he is resident or non-resident:

a. Income from employment received in Bangladesh for services rendered in Afghanistan Tk. 40,000
b. Income from profession in Bangladesh, but received in Nepal Tk. 150,000
c. Profits earned from business in Chittagong Tk. 60,000
d. Property income in South Africa Tk.1,80,000 (out of which Tk. 90,000 was remitted to Bangladesh)
e. Income from agriculture in Bhutan Tk. 20,000

Solution

Mr. Rahman
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Particulars	Resident Tk.	Non-resident Tk.
Income in Bangladesh		
(a) Income from employment received in Bangladesh	40,000	40,000
(b) Income from profession accrues in Bangladesh,	150,000	150,000
(c) Profits earned from business in Chittagong	60,000	60,000
Foreign income:	90,000	----------
(a) Property income in South Africa		
(b) Income from agriculture in Bhutan	20,000	----------
Total income	**360,000**	**250,000**



Chapter 2

Tax Administration and Taxes Appellate Tribunal

Contents

Introduction

Examination context

Topic list

2.1	Various income tax authorities
2.2	Appointment of income tax authorities
2.3	NBR and its functions
2.4	Subordination and control of income tax authorities
2.5	Power and functions of income tax authorities
2.6	Taxes Appellate Tribunal
2.7	Alternate Dispute Resolution (ADR)

Self-assessment questions

Introduction

Learning objectives

- Identify the different income tax authorities
- Powers and functions of NBR and other income tax authorities
- Powers and functions of the Taxes Appellate Tribunal.

Practical significance

There are presently 15 classes of income tax authorities. Each class of authorities has definite functions and responsibilities.

Taxes Appellate Tribunal is not the income tax authority. The power and functions of the Tribunal are normally exercised by its Benches constituted by the President of the Taxes Appellate Tribunal.

Understanding of the structure of income tax authorities and the Tribunal's procedures are essential for both tax advisers and the assessee for dealing the tax matters when required.

Stop and think

Do you have the clear idea of the income tax authorities? Did you know that in case of practical income tax cases, the knowledge on the tax authorities is very important?

Working context

The knowledge on the administrative structure of income tax authorities and the Tribunal's procedures covered by this chapter are important for both the taxpayers and tax advisers to deal with it.

On behalf of assessee, the accountants are sometimes required to assist in submission of tax return, hearing to the court etc., so they should have a clear idea about income tax authorities and its powers and functions and the Tribunal's procedures in their mind to assist their clients in resolving relevant tax issues.

Syllabus links

The topics covered in this chapter are important to your understanding of income tax authorities and The Taxes Appellate Tribunal.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Show the structure of various income tax authorities
- Discuss the appointment procedures of income tax authorities
- Mention the powers and functions of different income tax authorities
- Identify the Taxes Appellate Tribunal.

Question practice

For question practice on this topic, please go to the suggested answers of this chapter.

2.0 ADMINISTRATION AND TRIBUNAL

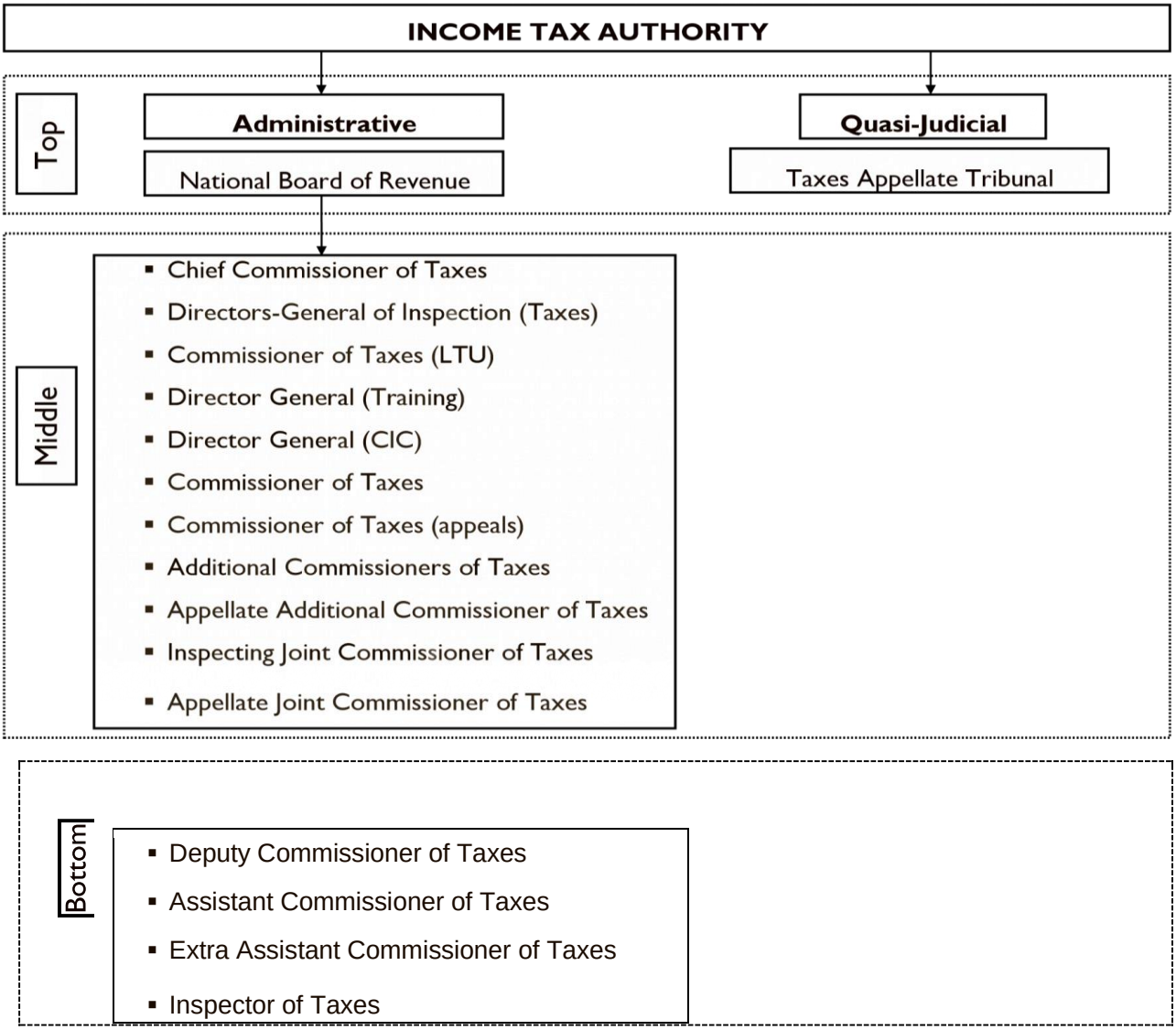
Section overview

- ➔ There shall be 15 classes of income tax authorities for the purposes of the Act.
- ➔ NBR is the highest income tax authority and Inspector is the lowest authority.
- ➔ Each class of authorities has definite powers and functions.
- ➔ Government shall constitute a Taxes Appellate Tribunal consisting of a President and other members.
- ➔ The procedures followed by the Taxes Appellate Tribunal in disposing of the appeals have been specified in the Taxes Appellate Tribunal (Procedure) Rules, 1985.
- ➔ The procedure followed by the Alternate Dispute Resolution (ADR) to resolve disputes.

2.1 Various income tax authorities

Depending on the functions, income tax authorities may be classified into two major groups, namely,

I. Administrative: Executive looking after the overall tax administration
II. Quasi-Judicial: They are not income tax authority, only exercising judicial function in appeal cases



2.2 Appointment of income tax authorities: section 5

(1) Income tax authorities shall be appointed in accordance with applicable law, rules and regulations [section 5(1)].
(2) Board may appoint any person as income tax authorities in accordance with rules as may be prescribed [section 5(2)].
(3) Board may appoint required number of employees subject to organizational structure [section 5(3)].

2.3 NBR and its functions

National Board of Revenue (NBR) is the highest executive tax authority. It is a statutory body and its members are appointed by the Government to manage, control and supervise the whole income tax

department. The NBR is empowered to make necessary rules concerning income tax matters. It cannot act by issuing any instructions to be construed as interference to the authority of judicial personnel like the Commissioner of Taxes (Appeals), Appellate Additional Commissioner of Taxes, Appellate Joint Commissioner of Taxes and the Taxes Appellate Tribunal when they exercise their judicial powers.

Main functions of the NBR

1. To declare any foreign un-incorporated association as a company for the purposes of the Act. [section, 2(31)(Ta)]
2. To delegate powers of any income tax authority to another income tax authority [section 6]
3. To determine the functions of the Director General (Inspection), the Director General (Central Intelligence Cell), to determine and redetermine area of income tax authority, to transfer of power and jurisdictions of one income tax authority to another income tax authority [section 8]
4. To determine the place of assessment of assessee by issuing order [section 8]
5. To issue orders, directions or instructions to all officers and other persons engaged in the performance of any functions under the Act. [section 10]
6. To direct to deposit withheld income tax to the Government exchequer within the specified time. [sec 146]
7. To recognize and authorize practicing chartered accountant, practicing cost and management accountant, income tax practitioner and practicing members of other accounting bodies for appearance in income tax matters as authorized representative of the assessee. [section 327]
8. To take disciplinary action against any authorized representative in case of professional misconduct. [section 327]
9. To allow tax holiday or tax exemption to approved undertakings. [sec. 85]
10. To accord and withdraw recognition to Superannuation Fund, Gratuity Fund and Pension Fund. [2nd Schedule part 1, 2 & 3]
11. To reward employees of the tax department or any other person for detection of tax evasion and collection therefrom. [section 340]

2.4 Subordination and control of income tax authorities: section 7

Board, by issuing order may make rules related to subordination and control of income tax authorities.

2.5 Power and functions and jurisdiction of income tax authorities: section 8

As per section 8(1), subject to the provision of the Act**,** member (tax) can apply such power and implement such act which power and act can be done by the Board under this act.

(2) the **Director-General of Inspection** shall perform the following functions, namely:

(i) carry out inspection of income tax cases;

(ii) Make proposal for rectification of tax policy and development of tax administration area based on inspection ;

(iii) Furnish report including comments and recommendations as prescribed by the Board.

(iv) Other functions as may be assigned to them by the Board.

(3) the **Director General of Central Intelligence Cell** shall perform the following functions, namely: -

I. Carry out intelligence works to gather information about taxpayers;
II. Analyze information gathered through intelligence work vis-a-vis concerned income tax records;
III. Detect tax evasions, concealments of income and offences as described in part 13 and 15;
IV. Carry out investigations to prove tax evasion or concealment or any other irregularities relating to taxes and to collect evidences in support of tax offences or tax frauds for recovery of tax with penalty and to suggest prosecutions in fit cases;
V. To carry out functions as authorized by any other law.

(4) The Board, by order may determine and redetermine area of income tax authority, to transfer of power and jurisdictions of one income tax authority to another income tax authority
(5) Abovementioned transfer can be made any level of normal activities and subsequent activities can be taken at which level such transfer was made.
(6) The Board, by order may fix the place of assessment of the assessee.

Exercise of jurisdiction by successor: section 9

Where, in respect of any proceeding under the Act, an income tax authority is succeeded by another, the income tax authority so succeeding may continue the proceeding from the stage at which it was left by his predecessor.

Officers etc. to follow instructions of the Board: section 10

All officers and other persons engaged in the performance of any functions under the Act shall, in the matter of discharging those functions, observe and follow such orders, directions or instructions as the Board may issue from time to time.

However, no order, directions or instructions shall be given so as to interfere with the discretion of the Appellate Joint Commissioner or the Commissioner (Appellate) in the exercise of their appellate functions.

Guidance to the Deputy Commissioner of Taxes: section 11

In the course of any proceedings under the Act, the Deputy Commissioner of Taxes may be assisted, guided or instructed by any income tax authority to whom he is subordinate or any other person authorized in this behalf by the Board.

Exercise of assessment functions by the Inspecting Joint Commissioners and the Inspecting Additional Commissioners: section 12

The Commissioner may, with prior approval of the Board, by general or a special order in writing, direct that in respect of all or any proceedings relating to specified persons of classes or persons within his jurisdiction, to the effect that power and activities of any income tax authority shall be exercised by the immediate superior income tax authority.

Any abovementioned order shall be deemed to have been made immediately to the higher income tax authority.

2.6 Taxes Appellate Tribunal

Establishment of Appellate Tribunal: section 13

(1) For the purpose exercising the functions of the Taxes Appellate Tribunal under the Act, the Government shall establish a Taxes Appellate Tribunal consisting of a President and such other members as the Government may, from time to time, appoint [section 13(1)].

(2) A person shall not be appointed as a member of the Taxes Appellate Tribunal unless-

(i) he was or is a member of the Board; or
(ii) he is, was or has been a District Judge; or
(iii) he was a Commissioner of Taxes; or
(iv) he is an tax lawyer under section 327 and practiced professionally in income tax offices for a period not less than 10 years; or
(v) he is a professional legislative expert having experience for a period not less than 10 years in the process of drafting and making financial and tax laws; or

(3) The Government shall appoint a member of the Appellate Tribunal to be the President thereof who is a member of the Board or holds current charge of a member of the Board [section 13(3)].

Exercise of power of the Tribunal by Benches: section 14

(1) Unless the president in any particular case or class of cases otherwise directs, the powers and functions of the Appellate Tribunal shall be exercised by Benches of the Appellate Tribunal, hereinafter referred to as Bench, to be constituted by the President.

(2) A Bench shall be so constituted that it has not less than two members.

(3) At least one member of the every Bench constituted under sub-section (1) shall be appointed from below person:

a) Member of National Board of Revenue, or
b) Commissioner of taxes.

Decision of Bench: section 15

(1) Subject to the provisions of sections (2) and (3), the decision of bench in any case or on any point shall be given in accordance with the opinion of the majority of its members.

(2) Any point on which the members of a Bench are equally divided shall be stated in writing and shall be referred by the president to one or more other members of the Appellate Tribunal for hearing and the point shall be decided according to the majority of the members of the Appellate Tribunal who have heard it including those who first heard it.

(3) Where there are only two members of the Appellate Tribunal and they differ in any case, the Government may appoint an additional member of the Appellate Tribunal for the purpose of hearing

of the case and the decision of the case shall be given in accordance with the opinion of the majority of the members of the Taxes Appellate Tribunal as constituted with such additional member.

Exercise of power by one member: section 16

Notwithstanding anything contained in section 14, the Government may direct that the powers and functions of the Appellate Tribunal shall be exercised by any one of its members, or members or by two or more members jointly or severally.

Regulation of procedure of the Appellate Tribunal: section 15

(1) Subject to the provisions of the Act, the Appellate Tribunal shall regulate its own procedure and the procedure of its Benches in matters arising out of the discharge of its function including the places at which a Bench shall hold its sittings. [section 15]

(2) A Bench shall hold its sittings at its headquarters or such other place as the President may consider convenient [TATP Rule 3].

(3) A Bench shall hear and determine such appeals and applications made under the Act as the President may, by general or special order, direct [TATP Rule 4].

(4) The office of the Tribunal shall, subject to any special order of the President, observe the same office hours and holidays as the office of the Supreme Court (High Court Division) at Dhaka [TATP Rule 5].

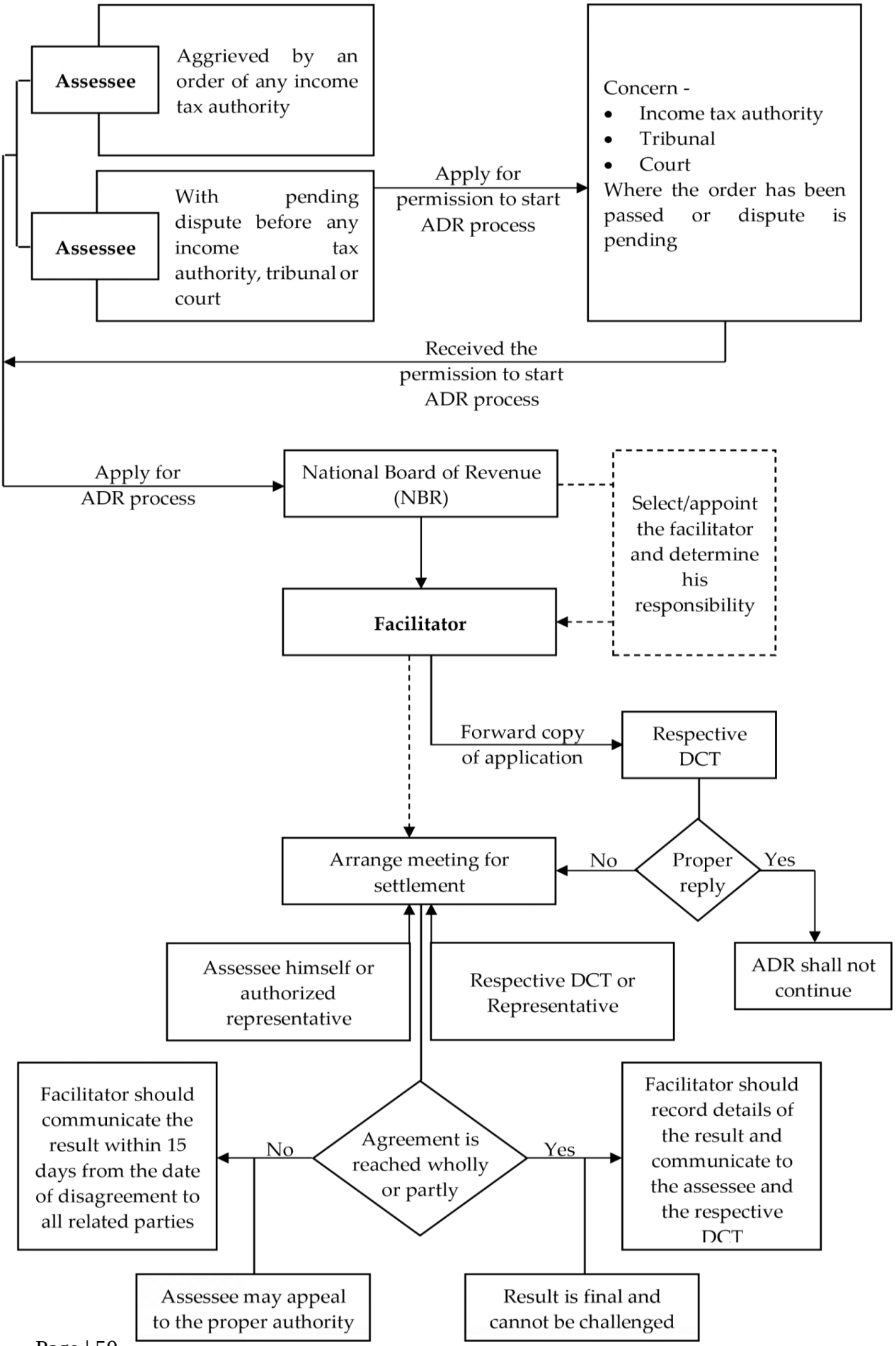
(5) The language of the Tribunal shall be English [TATP Rule 6].

Taxes Appellate Tribunal's procedures

The procedures followed by the Taxes Appellate Tribunal in disposing of the appeals have been specified in the Taxes Appellate Tribunal (Procedure) Rules, 1985 (TATP Rules).

2.7 Alternate Dispute Resolutions (ADR)

Alternate Dispute Resolution in ITA, 2023 to resolve any dispute of an assessee lying with any income tax authority, Taxes Appellate Tribunal, or Court. This is done to simplify and speed up dispute resolution process. The whole process is summarized in following figure:


Assessee
Aggrieved by an order of any income tax authority
Assessee
With pending dispute before any income tax authority, tribunal or court
Apply for permission to start ADR process
Concern -
Income tax authority
Tribunal
Court
Where the order has been passed or dispute is pending
Received the permission to start ADR process
Apply for ADR process
National Board of Revenue (NBR)
Select/appoint the facilitator and determine his responsibility
Facilitator
Forward copy of application
Respective DCT
Arrange meeting for settlement
No
Proper reply
Yes
Assessee himself or authorized representative
Respective DCT or Representative
ADR shall not continue
Facilitator should communicate the result within 15 days from the date of disagreement to all related parties
No
Agreement is reached wholly or partly
Yes
Facilitator should record details of the result and communicate to the assessee and the respective DCT
Assessee may appeal to the proper authority
Result is final and cannot be challenged

An assessee may apply for resolution of the dispute through the ADR process if aggrieved by an order of an income tax authority or if a dispute is pending before any income-tax authority, tribunal or court. In case of any pending dispute, the assessee is required to get permission from the authority where it is pending in writing before applying for ADR and if approval is received and assessee applies for ADR, the matter shall remain stayed during ADR negotiation process.

To resolve dispute in an alternative way, the Board may select or appoint Facilitator and determine his duties and responsibilities. The assessee shall be allowed to negotiate himself personally or along with an authorized representative, with the Commissioner's Representative for the concerned dispute under the facilitation and supervision of such Facilitator.

Upon receiving the application of ADR, the Facilitator shall forward a copy of the application to the respective Deputy Commissioner of Taxes and also call for his opinion on the grounds of the application. If the Deputy Commissioner of Taxes fails to give his opinion regarding fulfillment of the conditions, the Facilitator may notify in writing the applicant and the Commissioner of Taxes or the Commissioner's Representative to attend the meetings for settlement of disputes on a date mentioned in the notice. Where an agreement is reached, either wholly or in part, between the assessee and the Commissioner's Representative, the Facilitator shall record, in writing, the details of the agreement sign and shall communicate the same to the assessee and the concerned Deputy Commissioner of Taxes.

However, where no agreement is reached or the dispute resolution is ended in disagreement between the assessee and the concerned Commissioner's Representative for noncooperation of either of the parties, the Facilitator shall communicate it within fifteen days from the date of disagreement, to the applicant and the Board, the concerned court, Tribunal, appellate authority and income tax authority, as the case may be, about such unsuccessful dispute resolution.

Where an agreement is reached, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or any other income tax authority. Where an agreement is not reached, the assessee may prefer an appeal in following manner:

Dispute arises out of an order of	Appeal to
Deputy Commissioner of Taxes	Appellate Joint Commissioner of Taxes, or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals)
Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals)	Taxes Appellate Tribunal

The assessee-applicant may also appeal to the respective appellate authority or court from where he has got permission to apply for ADR.

Self-assessment questions

1. What are the income tax authorities?
2. Discuss the powers and functions of the Commissioner of Taxes.
3. Discuss briefly the powers and functions of the Deputy Commissioner of Taxes.
4. How Taxes Appellate Tribunal established?
5. What are the qualifications required for appointment as a Member of the Taxes Appellate Tribunal?
6. How ADR can be used to resolve the disputes?



Chapter 3

Charge of income tax

Contents

Introduction

Examination context

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3.9	Charge of 50% tax on the difference of investment, import, export
3.10	Scope of the total income
3.11	Income deemed to accrue or arise in Bangladesh
3.12	Same income shall not include twice in total income
3.13	Special tax treatment in respect of some investments

Introduction

Learning objectives

- Identify the ways of charging income tax
- Illustrate the charge of surcharge, additional tax and minimum tax

- Recognize the scope of total income
- Recognize the different types of deemed income

Practical significance

Income tax shall be charged levied, paid and collected at different rates in respect of the total income in accordance with the provisions of the Act. It may be deducted at source, or paid or collected in advance. The rates of tax can vary on the basis of income and types of assessee. The assessee may be required to pay surcharge, additional tax or minimum tax depending on the situation. Reduced tax rate is also applicable in certain cases.

The scope of total income of a resident and non-resident includes the sources and forms of income of these persons of any income year.

Stop and think

Think about different ways of charging income tax and identify the similarity and differentiation of the scope of income of a resident and a non-resident. Do you realize that the different types of unexplained investment will be deemed as income under different heads? Do you acknowledge about the special tax treatment in respect of some investment?

Working context

Before determining individual and corporate tax, the rate of tax and the scope of total income need to be identified. Based on residential status the scope of total income varies. Unexplained investments are also taxable under respective heads.

An accountant will be expected to understand the scope of total income, deemed income, applicable tax rate, and special tax treatment and to give advice on how the total income of individual and company can be determined. This can also suggest their clients to take the facility of special tax treatment by investing in those specific areas.

Syllabus links

You will be familiar with the charge of income tax and to prepare for the application level and also for the case study.

Detailed knowledge on this issue helps you to understand the progression level and stage of your study.

You will be using this knowledge again when you tackle the taxation paper later on in the Professional Stage and it will also underpin the technical aspects at the Advanced Stage.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Clarify how income tax shall be charged
- Define the surcharge, withholding tax, additional tax and minimum tax
- Determine scope of total income depending on the residential status.
- Identify the income deemed to accrue or arise in Bangladesh
- Recognize different unexplained investment etc., deemed to be taxable income
- Demonstrate the different category of investment for which special tax treatment are allowed

Question practice

For question practice on these topics, go to the suggested question and answer.

Examiner's comments on how students tackle questions

Students need to take care of the sources of total income including different classes of unexplained investment, as these are required for calculation of total income of an assessee.

3.0 CHARGE OF TAX

Section overview

- ➔ Tax shall be charged at the rate or rates according to the Finance Act.
- ➔ The rates of tax can be varied on the basis of income and types of assessee.
- ➔ The assessee may be required to pay surcharge, simple interest, minimum tax etc.
- ➔ Tax may be deducted at source, or paid or collected in advance.
- ➔ Unexplained investments can be considered under the scope of total income.
- ➔ The scope of total income of a resident and non-resident are different.

Any income has to be brought under respective heads of income under section 30 and can be charged to tax only if it is so chargeable under the computing section corresponding to that head of income. The liability to tax arises by virtue of this charging section which does not depend on assessment; assessment order only quantifies the liability which is finally created by the charging section. Following basic principles can be deduced from the analysis of the charging section:

(i) Income tax is to be charged at the rate or rates fixed for the year by the Finance Act. The liability to tax does not arise until the annual Finance Act is passed [*Kamakhya Narayan Singh V CIT (1946) ITR 683].* Section 339 provides that if on the first day of July in any year provision has not been made by any Act for the charging of income tax for that year, the provision in force in the immediately preceding year or the provision proposed in the Finance Bill then before Parliament, whichever is more favorable to the assessee, shall apply until the new Finance Act is passed.

(ii) Income should be calculated with reference to the income year but tax rate/rates should be the rate/rates applicable to respective assessment year. The use of the expression charged both in the Finance Act and Income Tax Act does not mean that the income is charged to income tax under both the Act and Act. They are used in different senses. The tax will be charged in accordance with and subject to the provisions of the Income tax Act and the said charge shall be in accordance with the rates prescribed in the Finance Act [*Kesoram Industries and Cotton Mills LTD V C. W. T* Calcutta (1466) ITR, 767].

(iii) The income to be taxed is the income of the income year and not of the assessment year. Since tax is levied on the actual income of the income year, the sources must be taken as they existed during the income year it is immaterial whether the source of income actually exists in the assessment year [*Muthappa Chettian V CIT (1945) ITR, 311*]. However, there are exceptions for a discontinued business, for persons leaving Bangladesh etc. when income year is the assessment year

(iv) The charge is on every person as stated in section. 2 (46) i. e. an individual, a firm, an association of persons, a Hindu undivided family, a local authority, a trust, a fund, a company and any other artificial juridical person. Estoppel is a rule of evidence, not a cause of action and it cannot be the basis of liability under the Income Tax Act. So, an assessment cannot be made on a stranger to the income, merely he agrees or desires to be assessed on it *[Asit Kumer Ghose V CIT, ITR, 576*].

(v) The tax is levied on the total income of the assessee computed in the manner laid down in specified sections and subject to the provisions of this Act. It will be for the assessee to produce materials to hold that a receipt is of a casual or capital nature not chargeable to tax and for the Revenue to consider the materials and arrive at a reasonable conclusion.

(vi) Tax is imposed in three stages. There is the declaration of a liability that is the part of the statute which determines who is liable in respect of what. Next, there is the assessment liability that does not depend on the assessment. That ex-hypothesis has already been fixed. But assessment particularizes the exact sum which a person is liable to pay. Lastly, the recovery comes if the person taxed does not pay voluntarily.

3.1 Charge of income tax: section 18

(1) Income tax shall be levied, imposed, paid or collected on the basis of total income of any person in any income year.

(2) Subject to the provision of this Act, income tax shall be levied, impose, paid or collected at the assessment year wise prescribed rate provided by any act passed by the Parliament.

However, income tax to be charged in respect of the income of a period other than the income year, income tax shall be charged, levied, paid and collected accordingly.

(3) Under the provision of this Act, following taxes may be levy, impose, paid or collected, namely:-

a. Tax at source;
b. Advance income tax;
c. Minimum tax; and
d. Any other tax.

(4) Subject to the provision of this Act, a surcharge or any other charge shall be levied, imposed or collected at such rate and in such manner as may be prescribed by Act passed by the Parliament.

(3) Notwithstanding anything contained in this section (i.e. section 18), tax shall be charged at the rates specified in the part 7 and seventh schedule in respect of-

(i) any income computed as 'capital gains';
(ii) any income computed as 'dividend income'; and
(iii) any receipt by wining of lottery, crossword puzzles, card games, online games or such nature game.

3.2 Charge of additional tax: section 19

Wealth Surcharge on individuals reporting net wealth of more than Tk. 3 crore

Finance Act 2023 introduces wealth surcharge on taxes payable before charging such surcharge for individual assessee who reports net wealth more than Tk. 4 crore in Form at the time of submitting income tax return.

Wealth surcharge is to be paid on tax payable at the following rate with effect from the assessment year 2023-24:

1. 10% if net wealth exceeds Tk. 4 crore but does not exceed Tk.10 crore or ownership of more than one motor cars or ownership of house property having an aggregate area of 8,000 sft. 2. 20% if net wealth exceeds Tk. 10 crore but does not exceed Tk.20 crore 3. 30% if net wealth exceeds Tk. 20 crore but does not exceed Tk.50 crore, 4. 35% if it exceeds Tk.50 crore.

Illustration 1

Tax liability after investment tax rebate	Tk. 45,000
Net wealth as per last assessment year	Tk. 20,78,000
Accretion in net wealth during current year	Tk. 8,23,000
Net wealth up to this assessment year	Tk. 29,01,000
Owner of motor car/house property	No motor car/house property
Wealth Surcharge	Nil (net wealth is less than Tk. 4 crore and no motor char/house property)
Total tax liability (no surcharge)	Tk. 45,000

Illustration 2

Tax liability after investment tax rebate	Tk. 160,000
Net wealth as per last assessment year	Tk. 2,86,23,000
Accretion in net wealth during current year	Tk. 44,08,000
Net wealth up to this assessment year	Tk. 4,30,31,000
Wealth Surcharge	Tk. 16,000 (10% of Tk. 160,000)
Total tax liability (including surcharge)	Tk. 176,000 (Tk. 160,000 + Tk. 16,000)

Illustration 3

Tax liability after investment tax rebate	Tk. 8,00,000
Net wealth as per last assessment year	Tk. 8,81,23,000
Accretion in net wealth during current year	Tk. 24,08,000
Net wealth up to this assessment year	Tk. 9,05,31,000
Wealth Surcharge	Tk. 80,000 (10% of Tk. 8,00,000)
Total tax liability (including surcharge)	Tk. 8,80,000 (Tk. 8,00,000 + Tk. 80,000)

3.3 Charge of additional tax: section 19

Notwithstanding anything contained in any other provision of Income Tax Act, 2023, where any person employs or allows, any foreigner to work at his business or profession, without prior approval of competent authority of the Govt. such person shall be charged additional tax @ 50% of tax payable or Tk.5,00,000 whichever is higher.

Illustration-1

Company B, a private limited company, employs one foreign employee to work at its factory who has no valid work permit. Company B will be liable to pay additional tax in the following way:

	Taka	Taka
Income	2,00,00,000/	
Income tax @ 27.5%:		55,00,000/
Additional tax @ 50% of tax or Tk.5,00,000 whichever is higher		27,50,000/
Total tax to be paid		82,50,000/

3.4 Charge of minimum tax for companies: section 18 (3) and section 163

Every company shall, irrespective of its profits or loss in an assessment year for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of earlier year or years or the claiming of allowances or deductions (including depreciation) allowed under Income Tax Act, 2023 be liable to pay minimum tax at the following rates.

Classes of assessee	Rate of minimum tax on gross receipt
Manufacturer of cigarette, bidi, chewing tobacco, smokeless tobacco or any other tobacco products.	3%
Carbonated beverage	3%
Mobile phone operator	2%
Individual other than Manufacturer of cigarette, bidi, chewing tobacco, smokeless tobacco or any other tobacco products	0.25%
In any others case	0.60%

However, the rate would be 0.10% of gross receipt in case of new industry engaged in manufacturing of goods for the 1st three income years.

For the purposes of this section, 'gross receipts' means-

(a) all receipts derived from the sale of goods;
(b) all fees or charges for rendering services or giving benefits including commissions or discounts;
(c) all receipts derived from any heads of income.

Illustration 1

In the assessment year 2023-24, company X reports loss of Tk. 10,00,000 with annual turnover of Tk. 1,00,00,000. The company is required to pay Tk. 60,000 (0.60% of Tk. 1,00,00,000) as minimum tax. Remember, the company has made a loss, still it requires to pay tax.

Illustration 2

In the assessment year 2023-24, company X, a publicly traded company, reports taxable profit of Tk. 1,00,000 with annual turnover of Tk. 1,00,00,000. The company is required to pay Tk. 60,000 (0.60% of Tk. 1,00,00,000) as minimum tax. Because tax on regular income at regular rate amounts to Tk. 20,000 that is lower than Tk. 60,000.

Illustration 3

In the assessment year 2023-24, company X, a publicly traded company, reports taxable profit of Tk. 10,00,000 with annual turnover of Tk. 1,00,00,000. Tax liability of the company will be Tk. 2,00,000 (20% of Tk. 10,00,000) applying regular tax rate which is higher than minimum tax of Tk. 60,000 (0.60% of Tk. 1,00,00,000).

Illustration 4

In the assessment year 2023-24, company A, a publicly traded company, reports total income of Tk. 3,00,000 from business, house property and other sources. Annual assessed business turnover is Tk. 10,00,000, property income Tk. 2,00,000 and receipt from other sources i.e., interest on bank deposit Tk. 1,20,000.

Here, the gross receipt of the company would be:

	Heads of receipts	**Amount (TK)**
(a)	Receipts derived from the sale of goods (turnover)	10,00,000
(b)	Income from house property (rental receipts not known)	2,00,000
(c)	Income from other sources (interest on bank deposit)	1,20,000
	Total	**13,20,000**

Tax liability on regular income at regular tax rate is Tk. 60,000 (20% of Tk. 3,00,000). However, minimum tax is Tk. 7,920 (0.60% of Tk. 13,20,000). As regular tax is higher than minimum tax, tax liability of the company will be Tk. 60,000.

3.5 Charge of minimum tax for partnership firm: section 18 (3) and section 163

Every partnership firm having gross receipts of more than Tk. 50,00,000/ will also be required to pay minimum tax @0.60% on its gross receipt or tax calculated on the basis of total income whichever is higher.

3.6 Charge of minimum tax for individual: section 18 (3) and section 163

Every individual having gross receipts of Tk. 3,00,00,000/ or above will also be required to pay minimum tax @0.25% on its gross receipt or tax calculated on the basis of total income whichever is higher. But if an individual engaged in tobacco manufacturing or mobile phone operation then the rate would be 3% or 2% respectively.

3.7 Charge of 10% tax on stock dividend: section 23

If in an income year, the amount of stock dividend declared or distributed by any listed company exceeds cash dividend then tax shall be payable @10% on the whole amount of stock dividend.

3.8 Charge of 10% tax on retained earnings, reserves, surplus etc.: section 22

If in an income year, the total amount transferred to retained earnings or any fund or reserve or surplus, called by whatever name, by any listed company which exceeds 75% of the net income after tax, then tax shall be payable @10% of the total amount so transferred.

3.9 Charge of 50% tax on the difference of investment, import and export: section 20

(a) If any assessee has shown any different amount at his income statement deviated from real import or export value, then, 50% tax will be charged on the difference between actual and shown value.

(b) If any assessee has shown any investment but his actual investment found lower than the disclosed investment, then 50% tax will be charged on the over-statement of investment.

3.10 Scope of the total income: section 26

(1) The total income of any income year of any person includes-

(a) in relation to a person who is a resident, all income, from whatever source derived, which-

(i) is accrues or arises, or is deemed to accrue or arise to him in Bangladesh during that year; or
(ii) is accrues or arises, or is deemed to accrue or arise to him outside Bangladesh during that year; or
(iii) is received or deemed to be received in Bangladesh by or on behalf of such person in such year; or
(iv) is received or deemed to be received outside Bangladesh by or on behalf of such person in such year; or

(b) in relation to a person who is a non- resident, all income, from whatever source derived, which-

(i) is accrues or arises or is deemed to accrue or arise to him in Bangladesh during that year.
(ii) is received or deemed to be received in Bangladesh by or on behalf of such person in such year.

3.11 Income deemed to accrue or arise in Bangladesh: section 27

The following income shall be deemed to accrue or arise in Bangladesh, namely:

(1) any income which falls under the head ‘salaries’, wherever paid if-

a) it is earned in Bangladesh; or
b) it is paid by the Government or a local authority in Bangladesh to a citizen of Bangladesh in the service of such Government or authority;

(2) any income accruing or arising, whether directly or indirectly, through or from-

a) any permanent establishment in Bangladesh;
b) any property, asset, right or other source of income including intangible property in Bangladesh; or
c) transfer of any assets situated in Bangladesh:
d) the sale of any goods or services by any electronic means to purchasers in Bangladesh or
e) any intangible property used in Bangladesh.

Explanation. - For the purpose of above clause :-

a) the shares of any company which is a resident in Bangladesh shall be deemed to be property in Bangladesh;
b) intangible property shall be deemed to be property in Bangladesh if it is-

i) registered in Bangladesh; or
ii) owned by a person that is not a resident of Bangladesh but has a permanent establishment in Bangladesh to which the intangible property is attributed;

(3) The transfer of any share in a company that is not a resident of Bangladesh shall be deemed to be the transfer of an asset situated in Bangladesh to the extent that the value of the share transferred is directly or indirectly attributable to the value of any assets in Bangladesh;

(4) any divided paid outside Bangladesh by a Bangladeshi company;

(5) any income by way of interest payable, if such -

a) is payable by the Government: or
b) is payable by a resident. However, shall not applicable in following cases if such loan or borrowing:

i received from outside Bangladesh; and
ii used for the purpose of carrying on business outside Bangladesh or for the purpose of deriving income from a source located outside Bangladesh

c) by a person who is a non-resident where the interest is in respect of any debt incurred or moneys borrowed and used, for the purposes of a business or profession carried on by such person in Bangladesh or for the purpose of making or earning any income from any source in Bangladesh.

(6) any income by way of fees for technical services payable-

a) by the Government: or
b) is payable by a resident. However, shall not applicable in following cases if such fee:

i received from outside Bangladesh; and
ii used for the purpose of carrying on business outside Bangladesh or for the purpose of deriving income from a source located outside Bangladesh

c) by a person who is non- resident, where such fees are payable in respect of services utilized in a business or profession carried on by such person in Bangladesh or for the purpose of making or earning any income from any source outside Bangladesh.

(7) any income by way of royalty payable-

a) by the Government: or
b) is payable by a resident. However, shall not applicable in following cases if such royalty:

i received from outside Bangladesh; and
ii used for the purpose of carrying on business outside Bangladesh or for the purpose of deriving income from a source located outside Bangladesh

c) by a person who is a non-resident, where royalty is payable in respect of any right, property or information used or services utilized for the purpose of a business or profession carried on by any such person in Bangladesh or for the purpose of making or earning any income from any source in Bangladesh

(8) insurance or reinsurance premium accrued or payable by resident or non-resident against protection against any risk within Bangladesh.

3.12 Same income shall not include twice in total income: section 28

Where any amount consisting of either the whole or a part of any income of a person has been included in his total income or the basis that it has accrued or arisen, to him any year, it shall not be included again in his total income on the ground that it is received or deemed to be received by him in Bangladesh in another year.

3.13 Special tax treatment in respect of some investments

a) Investment in residential building/apartment. – Frist Schedule, Part 1, para 1:

Any sum invested by a person in purchase or construction of residential building or apartment will be deemed to have been explained if he pays tax at the prescribed rate per square meter before the completion of assessment.

b) Special tax treatment in respect of investment in Economic Zone or Hi-Tech Park. – Frist Schedule, Part 1, para 2:

If any amount is inested by any company in the Economic Zone or Hi-Tech Park as Economic Zone declared under section 5 of the Bangladesh Economic Zone Act, 2010 or the Bangladesh Hi-Tech Park Authority Act, 2010 for the purpose of production of any goods or services, any question about the source of such investment shall not be raised, if in the relevant income year 10% income tax is paid on invested amount before submitting the return.



Chapter 4

Income from employment

Contents

Introduction

Examination context

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4.1	Scope of income from employment
4.2	Valuation of perquisite, allowances and benefit
4.3	Determination of income derived from employee share scheme
4.4	Provident fund
4.5	Non-assessable income under the head “income from employment
4.6	Tax rebate on certain investment
4.7	Salient points in assessment of income from salaries

Introduction

Learning objectives

- Identify the different heads of income.
- Computation of income from ‘employment’.
- Definition of perquisites, allowances and benefits under employment income.
- Identify the allowable deduction under head ‘income from employment’.
- Concept of provident fund and other funds related to salary.
- Understanding investment allowance and computing tax rebate on that.
- Computing tax liability of salaried person.

Practical significance

Income from employment is very important for many reasons. This is a common head of income for most of the individual taxpayers. It can even be said that individual taxation depends on this head of income. Government collects a significant portion of tax under this head. Thus, tax law covering income from employment is very significant and scope of learning is also wide. This chapter carries significance for corporate practitioners also in the sense that this expense in certain conditions cannot be shown as

expense. The application of perquisites and its impact on computing company tax is also very important. Income from employment is the first head of income out of 7 heads of income. Out of the 7 heads, this is a very common head of income. Again, this head encompasses different technical and conceptual issues like perquisites, provident fund and other funds where clear understanding is very important as a tax practitioner and tax professional.

Computing taxable income under the head income from employment, computing investment allowance and testing the amount for maximum limit, computing tax rebate on investment allowance, understanding the tax credit on tax deducted at sources and finally computing net tax liability of an individuals are some note able points that is covered in this chapter and thus this chapter become very significant for the CA students. This chapter lays the foundation of the following chapters also.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'income from employment' is one of the basic requirements for determining tax liability? Can you calculate the taxable income from salary? Do you understand the application of investment allowance in computing final tax liability?

Working context

In practice, as the accountants are sometimes required to prepare their clients' tax returns, they need to advice the clients on how to calculate the taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

As individual assessee is abundant and most of the individual assessee has income under the head, understanding this chapter is very useful in practical life.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the different heads of income.
- Define the concept of salaries.
- Recognize the perquisites, allowances and benefits under salary income.
- Recognize the income assessable under the head.
- Illustrate the exemptions allowed in determining taxable income under the head.
- Understand investment allowance and tax rebate on that.
- Compute final tax liability on salary income.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each content of this chapter will help candidates to resolve any problems relating to computation of taxable income.

4.0 INCOME FROM EMPLOYMENT

Section overview

- ➔ There are seven heads of income.
- ➔ Total income and taxable income may not be the same.
- ➔ Tax free ceiling of allowances.
- ➔ Computation of total income from employment.
- ➔ The perquisites and allowances need to be considered in determining salary income.
- ➔ Treatment of provident fund and other funds.
- ➔ Scope of investment allowance and tax rebate on that.
- ➔ Computing tax liability.

Heads of income: section 30

All incomes shall, for the purpose of charge of income tax and computation of total income, be classified and computed under the following heads of income, namely:

(a) Income from employment.
(b) Income from rent.
(c) Income from agricultural.
(d) Income from business.
(e) Income from capital gains.
(f) Income from financial assets
(g) Income from other sources.

Aggregation of income: section 31

1. Save as otherwise provided in this Act, following incomes shall be included in the total income of a person, namely:-

a) If a person is a partner of a partnership firm or a member a association of persons (AOP), his share of income of that firm or AOP:
b) Income of spouse or minor child of such person, if –

   a. Said spouse or minor child is dependent on him;
   b. Such person has reasonable control over such income;
   c. He/she is willing to such aggregation.

Provided that such provision shall not apply if separate tax is assessed on said spouse or minor child.

2. If a person is a partner of a partnership firm or a member of a AOP, his share in the income of said firm or AOP shall be determined by the following formula, namely:-

   A = B + (C – D) X E%, where, -
   A = The person’s share of income from partnership firm or AOP;

B = Salary, interest, commission or other remuneration received by the said person from said partnership firm or AOP;
C = Total income of said partnership firm or AOP;
D = The amount of salary, interest, commission, or other remuneration payable by said partnership firm or AOP to all partners or members;
E = % of share held by the person in the partnership firm or AOP.

4.1 Scope of income from employment: section 32

According to section 32(1), the following income of an assessee is classified and computed under the head "salaries", and thereby chargeable to tax, namely-

(a) any financial receipts, salary and benefits received or receivable from employment;
(b) income earned from employee share scheme;
(c) any untaxed arrear salary;
(d) any amount or benefit received from any past or future employer.

According to section 32(2), income from employment shall not include the following receipt, namely :-

(a) any amount received for medical expenses related to heart, kidney, eye, liver and cancer operations of any such employee who is not a shareholder director;
(b) conveyance allowances, traveling allowances and daily allowances received and expended wholly and solely for the performance of the duties of the job.

Explanation: -

i) Salary:

There is no exhaustive definition of "salary" in the Act. An inclusive definition has, however, been given in section 32(2) of the Income Tax Act, 2023 as follows: - 'salary' means any amount of any nature received by employee from employment and shall includes followings, namely -

(a) any salary, wages or remuneration;
(b) Any allowance, holiday allowance, leave encashment, bonus, fee, commission, overtime;
(c) advance salary
(d) gratuity, annuities, pensions or its supplements;
(e) Perquisites;
(f) receipt in lieu of salary or wages or receipt in addition to salary or wages

ii) 'Receipt in lieu of salary or wages' or 'receipt in addition to salary or wages' includes:

(a) any compensation received on account of termination of employment called by whatever name;
(b) remaining portion of provident fund or any other fund exceeding employee's contribution;
(c) received amount or fair market value of benefits received as a result of changes in the terms of employment contract;
(d) received amount or fair market value of received benefit on joining the job or under any condition of the employment.

ii) Perquisite:

'Perquisite' means any payment or benefit, including incentive bonues, given by the employer to the employee, but shall not include the following payment, namely –

(a) Basic salary, arrears salary, advance salary, festival bonus, leave encashment and overtime;

(b) Contribution to recognized provident fund, approved pension fund, approved gratuity fund and approved superannuation fund.

iii) Basis Salary:

'Basic Salary' means monthly or otherwise payable salary on the basis of which other allowances and benefits are determined, however, shall not include following allowances or benefits, namely:-

(a) All types of allowance, perquisite, annuity, bonus & benefits; and
(b) Contributions made by the employer to various funds of the employee.

4.2 Valuation of perquisite, allowances and benefit: section 33

Perquisite, allowance and benefit which are not paid in monetary value, monetary value of such perquisite, allowance and benefit will be determined as below:

Perquisite, allowance, benefits etc.	Monetary value
Accommodation	Where rent is fully paid by employer or accommodation is provided by employer, annual value shall be included to income from employment. Where accommodation is provided at a concessional rate, the difference between the rent actually paid by employee and annual value shall be added to the income from employment.
Car benefit	In case of motor car up to 2,500 CC, monthly BDT 10,000 shall be added to the income from employment. In case of motor car exceeding 2,500 CC, monthly BDT 25,000 shall be added to the income from employment.
Any other perquisite, allowance or benefit	Monetary value of fair market value of perquisite, allowance or benefit.

Illustration 1

Mr. X is paid a monthly basic salary of Tk. 40,000 and a dearness allowance of Tk. 3,000 per month. He has also been provided with a rent-free accommodation. The employer has similar flat in the same building which is rented outside Tk. 20,000 per month. However, monthly reasonable rent of the flat is Tk. 25,000. How much amount will be added to his income from employment?

Annual rental value of similar flat (Tk. 20,000 ×12 months)	240,000
Annual reasonable rent of similar flat (Tk. 25,000 ×12 months)	300,000
Amount to be added to income from employment (higher one)	300,000

Illustration 2

Mr. X has been paid a monthly basic salary of Tk. 40,000. Besides he has been provided with accommodation at a concessional monthly rate of Tk. 10,000. The employer has similar flat in the same building which is rented outside Tk. 20,000 per month. However, monthly reasonable rent of the flat is Tk. 25,000. How much will be added with taxable income due to availing this opportunity from the employer?

Annual rental value of similar flat (Tk. 20,000 ×12 months) 240,000

Annual reasonable rent of similar flat (Tk. 25,000 ×12 months)	300,000
Annual value of accommodation (higher one)	300,000
Less: amount paid by employee (10,000 X 12)	120,000
Amount to be added to income from employment	180,000

4.3 Determination of income derived from employee share scheme: section 34

1. Employee share scheme means any agreement or arrangement under which a company –

a. May issue share to employee of the company or its affiliated company;
b. Shares can be issued to the trustee of a trust and subsequently the trustee can issue the share to any employee of the said company or any of its affiliates as per the trust deed.

2. If shares are received under an employee share scheme, in the year in which the share are received, income shall be added to the 'Income from Employment' according to A – B, where –

   A = Fair market value of shares on the date of receipt
   B = Cost of acquiring the shares

3. Cost of acquiring the shares referred to above shall mean the sum of following cost:

a. If employee paid any amount to acquire the shares;
b. If employee paid any amount to acquire the right or opportunity of share.

4. If the right or opportunity to acquire shares under the employee share scheme is sold or transferred by the employee, income shall be added to the 'Income from Employment' according to A – B, where –

   A = Sale or transfer value of right or opportunity to acquire share;
   B = Amount paid to for right or opportunity to acquire share.

Illustration

On 1 January 2020 ABC Limited granted option over 10,000 of its shares to Mr. X, one of its senior employee. One condition of the share option was that Mr. X must work for the ABC Limited for upcoming 3 years. Mr. X continued to be employed by ABC Limited during 2020, 2021 and 2022.

Since the condition was met, ABC limited granted 10,000 shares to Mr. X on 31 December 2022. The fair value of share on 31 December 2020, 2021 and 2022 was Tk 100, 120, and 110 respectively.

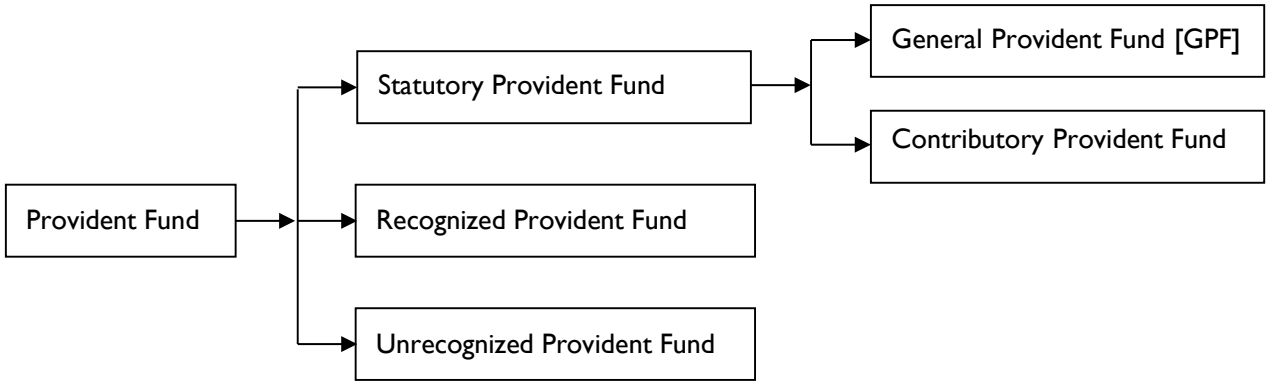
It should be noted that Mr. X paid Tk. 60,000 as share transfer fee as per condition of the above scheme.

How much amount will be added to the income from employment of Mr. X.

Fair market value of share at the grant date (10,000 X 110)	1,100,000
Less: Cost of acquiring the share	60,000
Amount to be added to income from employment	1,040,000

4.4 Provident fund

Provident fund is the fund where funds are accumulated during the active period of employees for his financial protection at the end of his service life, amount contributed by the employee or the employer or both employee and employer. The amount lying in the fund is invested in trust securities that yield fair but secured returns. When an employee leaves his service either on retirement or for any other reason, he gets back the money standing to the credit of his provident fund account. In case of death of the employee, the amount is refunded to his nominee. Provident fund is a social security measure provided to employees for his rainy days of post-employment period. There are three types of provident fund:



General Provident Fund [GPF]:

General provident fund is controlled and maintained by the government for the government employees. Such fund is constituted and run by the government under Provident Fund Act 1925, General Provident Fund Rules 1979 and Contributory Provident Fund Rules 1979. Government employees who are permanently transferred to the pensionable jobs, they contribute to general provident fund where government as an employer contributes nothing. On the other hand, government employees who have no benefits from pension, they contribute to contributory provident fund where both government bodies and the employee contribute. Generally, most of the government employees of our country are pensionable.

Points to remember at the time of tax computation:

a. Since employer does not contribute to general provident fund there is no question of its inclusion with salary. But where government bodies contribute to contributory provident fund, government's contribution will be included with salary.

b. Employee's contribution to statutory / general (government) provident fund will be considered as investment allowance.

c. Accumulated balance of GPF at the credit of employees when received will not be included in his total income. It is excluded from total income under Para 7, Part 1 of Sixth Schedule of the Income Tax Act, 2023.

Recognized Provident Fund [RPF]:

Recognized Provident fund is constituted under the conditions mentioned in Part 3 of Second schedule in the Income Tax Act, 2023 and approved by the Commissioner of Taxes. These funds are available in non-government organizations where both employees and employer contribute the same amount. In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the NBR may prescribe:

(i) All the employees shall be employed in Bangladesh or shall be employed by an employer whose principal place of business or head office is in Bangladesh. In case of exceptional situation, the recognition criteria will depend on the Commissioner's judgment.
(ii) Employer must deduct a certain percentage from the salary of employee and deposit the same to the fund.
(iii) Employer will also contribute the same amount as deducted from the employee.
(iv) The fund will constitute taking the contribution of both the employer and employee.
(v) The fund will be managed by trustee of two or more persons.
(vi) Employer will not be entitled to take any amount from the fund.
(vii) Employee will receive the amount deposited to his account including principal and interest at the time of leaving the job.

Points to remember at the time of salary income computation:

a. Only, employer's contribution to RPF shall be included in the total salary income of the employee as per law.
b. Both employers and employee's contribution to RPF are considered to be a part of investment allowance.
c. Accumulated balance at the credit of employee in the RPF, when received shall be excluded from total employment income.

Unrecognized Provident Fund:

Unrecognized provident fund is not the recognized or statutory fund. This fund is not constituted under Part 3, Second Schedule in the Income Tax Act, 2023 or under any other applicable acts or laws and is not approved by the Commissioner of Taxes. In this fund, both the employees and employer contribute and generally it is found in nongovernment organization. In this case, the employers' contribution and interest thereon is not included in the total income of the employee. At the time of the employee's retirement, the accumulated balance of the UPF except employees' contribution is included in the total income.

Points to remember at the time of tax computation:

a. Employer as well as employee may contribute to this provident fund, but employer's contribution will not be added in computing taxable salary income.
b. At the time of employee's retirement, the accumulated balance of this fund minus the employee's contribution is taxable and will be added with salary.

Approved Superannuation Fund:

This type of fund is created for granting pension and other benefit to the employees on their retirement, or after a specified age or his death. This fund is run by the individual name of the employees. This fund is approved and run under the provisions of Part 1, Second Schedule of the Income Tax Act, 2023. Both employee and employer contribute to the fund. The contribution of the employer is added to the income of the employee.

Approved Gratuity Fund:

If the employer agrees to constitute a gratuity fund for the benefit of the employees on the job contract, then the employer contributes to the gratuity fund for the benefit of the employees in the event of retirement. The approved gratuity fund is approved by the NBR and run under the conditions mentioned in at Second Schedule, Part 2. Employee contributes nothing in this fund. The contribution by the

employer is considered as income of employee. But the amount received up to Tk.2.5 crore from approved gratuity fund is tax free.

Worker's Profit Participation Fund [WPPF]:

It is established under the Bangladesh Labour Act, 2006 (Act. XXXXII of 2006). Any payment received by any worker from this fund, shall be excluded from the total income.

4.5 Non-assessable income under the head "income from employment":

In Part 1 of Sixth Schedule of the Income Tax Act, 2023, some income relating to salary have been mentioned as non-assessable:

i) One third of income from employment or Tk 450,000 (whichever is lower) shall be deducted from 'Income from Employment' (Sixth Schedule, Part 1, Para 27)
ii) The income of any employee of intergovernmental organization or any international organization tax of which is exempted by under any Act passed by the parliament or under any agreement signed by the Government. (Sixth Schedule, Part 1, Para 1)
iii) Remuneration received form the concern Government by virtue of their employment by Ambassador, High Commissioner, Envoy, Minister, Charge the Affairs, Commissioner, Councillor, Consul the Career, Secretary, Advisor or Atache of Ambacy, High Commission, Legation or commission of a foreign State. (Sixth Schedule, Part 1, Para 2)
iv) Any income received by a trade commissioner or other official representative in Bangladesh of a foreign State (not holding office as such in an honorary capacity) as his official salary, if the official salary of the corresponding officials, if any, of the Government, resident for similar purposes in the country concerned, enjoy a similar exemption in that country. (Sixth Schedule, Part 1, Para 2)
v) Any income by a member of the staff of any of the officials referred to above (i.e. ii and iii), as his official salary, when such member is not a citizen of Bangladesh and is either a subject to the country represented or a subject of some other foreign State and is not engaged in any business or profession or employment in Bangladesh otherwise than as a member of such staff, and the country represented has made corresponding provision for similar exemptions in the case of member of the staff of the corresponding officials of the Government of the People's Republic of Bangladesh in that country. (Sixth Schedule, Part 1, Para 2)
vi) Any pension due or received from the Government. (Sixth Schedule, Part 1, Para 4)
vii) Any gratuity up to taka two crore fifty lakh received from Government Pension Fund. (Sixth Schedule, Part 1, Para 5)
viii) Any recognized provident fund, approved superannuation fund, pension fund, approved gratuity fund-
    a) Any contribution received by the employee and employer; and
    b) Income distributed to the beneficiary thereof from which the fund is liable to tax

    Provided that the amount received by the taxpayer as gratuity from by approved gratuity fund does not exceed the limit two crore fifty lakh. (Sixth Schedule, Part 1, Para 6)
ix) Any income from a provident fund established under the Provident Fund Act, 1925. (Sixth Schedule, Part 1, Para 7)
x) any amount received by any employee of a Government body, local authority or autonomous or semi-autonomous body and their controlled units or institutions on voluntary retirement under any scheme approved by the Government for this purpose. (Sixth Schedule, Part 1, Para 8)

In addition to above, Board or Government exempted some employment income through issuing SROs, namely -

a) According to SRO 182-law/99, dated 1 July 1999, if salary tax is paid by employer, tax shall not be applicable on such paid tax.

b) According to SRO 298/2015 dated 8 October 2015, foreign expatriate having technical knowledge employed by any company, operating for production of goods or rendering service in any Economic Zone (as declared and established under section 5 and 4 respectively, of Bangladesh Economic Zone Act 2010), 50% of tax payable by him/her will be exempted from income tax for 3 years from appointment by said company.

4.6 Tax rebate on certain investment

According to section 78 of Income Tax Act, 2023, resident individual and non-resident Bangladeshi shall be entitle to tax rebate as under:

Lower of :

(i) 0.03 X A ; or
(ii) 0.15 X B ; or
(iii) Tk 10 lakh.

Where,

A = Computed total income excluding tax-exempted income, income subject to reduced tax rate, income subject to minimum tax.

B = Total investment and expenditure of the taxpayer as per Part 3 of Sixth Schedule.

4.6 Items included in investment allowance related to salary income:

From basic salary, the employer can deduct a certain amount of money under various heads according to the contract between employer and employee. Of those some of the deductions are included in the items of investment allowance for which tax rebate is admissible: As per the regulations of Part 3 of Sixth Schedule of the Income Tax Act, 2023, the following salary items are considered as a part of the investment allowance:

i) Any sum deducted from salary to a deferred annuity or for making provisions for his wife or children, provided that the sum so deducted shall not exceed one-fifth of the salary. (Para 3)
ii) Employee's contribution to a General Provident Fund [GPF]. (Para 4)
iii) Employee's and Employer's contribution to RPF (Para 5)
iv) Ordinary annual contribution to approved superannuation fund. (Para 6)
v) Employee's contribution to a benevolent fund or group insurance scheme. (Para 12).

Computation of taxable income from salary at a glance:

Description	Amount that will be added with salary
1. Basic salary	Full
2. Dearness allowance	Full
3. Bonus	Full
4. Commission and fees	Full
5. Advance salary	Full
6. Arrear salary	Full, provided that, it was not taxed in earlier years
7. Leave encashment	Full
8. Approved Pension	Nothing, since fully tax free
9. Approved Gratuity	Amount exceeding Tk.2.5 crore
10. Annuity	Full

11. Profit in lieu of salary	Full
12. Profit in addition to salary	Full
13. Education allowance for children	Full
14. Employer's contribution to RPF	Full
15. Employer's contribution to employee's life insurance policy	Full
16. Entertainment allowance	Full
17. Medical allowance	Full
18. Traveling allowance	Unspent amount.
19. Special allowance	Nothing, if given and spent for official purpose.
20. House rent allowance	Full
21. Rent free accommodation	Annual value
22. Accommodation at concessional rate	Difference between annual value and amount received from employee
23. Conveyance allowance	Full
24. Transport / conveyance facility	Motor car up to 2,500 CC monthly 10,000 shall be added to the income, if motor car exceed 2,500 CC monthly 25,000 shall be added to the income
26. Free tea, coffee or light beverage in office premises	Nothing
27. Free dress, telephone, power, gas, water in office etc.	Full
28. Servant allowance	Full
29. Compensation	Full
30. Allowance received as head of the department / Charge allowance.	Fully tax free if it spent for office purpose.
31. Overtime	Full
32. Residence telephone bills / utility bills / club bills reimbursed	Full

4.7 Salient points in assessment of income from salaries

(i) Tax is payable by an assessee under the head "Income from Employment" in respect of any salary or wages, any annuity, pension or gratuity and any fees, commission, perquisites or profits in lieu of, or in addition to, any salary or wages, and any advance salary.

(ii) Tax is levied on salaries which are due, whether paid or not, as well as on salaries which are paid, whether due or not.

(iii) Relationship of employer and employee must exist between the payer and the recipient of salaries. The employer may be Government, a local authority, a company or any other public body or association or any private employer.

(iv) Death-cum-retirement benefits or gratuities and certain payments from funds are completely exempt from tax.

(v) Income chargeable under the head "Income from Employment" is to be computed after making certain deductions.

(vi) The provisions regarding different types of provident funds and payment of life insurance premium are very important and are to be carefully studied to find out the correct income tax on income chargeable under the head "Income from Employment".

(vii) Salaries are subject to deduction of tax at source. Hence, income tax is to be paid on Salaries for a particular assessment year at the rates applicable thereto.

Worked Examples and Solutions

Worked example 1

From the following data **compute total income and tax payable** by Mr. Amit Bhowmik for the income year ended 30 June 2022:

Elements of salary

Basic salary: @ Tk 20,000 p.m. 2,40,000
Bonus: 2 months' Basic Pay
Free furnished accommodation of which annual value was 200,000:
Performance bonus: Tk. 450,000.
Employer's contribution to RPF: @ 10% of basic salary
Car (2,000 CC): partly used for office and partly for personal purpose
Life insurance premium paid by Mr. Amit Bhowmik 6,000

Solution 1:

Mr. Amit Bhowmik
Assessment year 2023-24
Income year ended on 30 June 2022

Computation of total income and tax liability

Income from "salaries" u/s 21:	Tk.
Basic salary @ Tk. 20,000 p.m. for 12 months	2,40,000
Free furnished accommodation – Annual value	200,000
Car benefit (monthly 10,000 as 2,000 CC)	120,000
Employer's contribution to RPF – 10% of Basic	24,000
Bonus – 2 months basic	40,000
Performance bonus	450,000
Total income from employment before exemption	**1,074,000**
Less: Exemption (lower of 1/3 of total employment income or 450,000)	**358,000**
Total income from employment	**716,000**

Calculation of tax liability:

On first Tk. 3,50,000 @ 0%	0
On next Tk.1,00,000 @ 5%	5,000
On next Tk. 266,000 @ 10%	26,600
Gross tax liability	31,600
Less: Tax rebate (note1)	8,100
Tax liability after investment rebate	**23,500**
B. Net tax payable [Minimum tax]	**5,000**
Tax liability (Higher of A and B)	**23,500**

Note – 1: Actual investments made:

Contribution to RPF by both employee and employer	Tk.	48,000
Life insurance premium paid	Tk.	6,000
Total investment	Tk.	54,000

Maximum limit [as per section 44(3)]:

Lower of i) Tk 21,480 (0.03 X 716,000) or ii) Tk 8,100 (0.15 X 54,000) and iii) Tk 10 lakh.

Worked example 2

Mr. Milky, CEO of a Multinational company in Bangladesh, has got the following income for the income year ended 30 June 2022. You are required to calculate the total income and tax payable of Mr. Milky

(a) Basic pay of Tk.150,000 per month sent directly to his bank account.
(b) Rent free accommodation provided by the company annual value of which is Tk 600,000.
(c) Full time company car (3,000 CC) for his own use and for his family.
(d) Company pays Tk. 100,000 p.m. for his three school going children which is paid to the school authority directly.
(e) He received two festival bonus equivalents to basic pay during the festival time which he spent partly for his family and partly for the poor people in his village.
(f) Driver's salary was Tk. 10,000 p.m. paid to his driver's bank account.
(g) Company paid Tk. 300,000 to him during the year being the reimbursement of various utility bills of his house;
(h) Medical allowance Tk. 5000 p.m. His actual expense is more than this.
(i) He was paid Tk. 1,000,000 for his overseas travels for the official trip out of which he saved 25% during the year;
(j) Bill paid for international club Tk. 295,000
(k) He received interest on securities Tk. 175,000 on his investments;
(l) He has got one house of his own at Baridhara and he received total Tk. 12,00,000 as rent from letting it out to a foreigner.
(m) He paid Tk. 1,50,000 as LIP for himself
(n) He invested Tk. 15,00,000 on Govt. bond and primary shares of listed companies;
(o) Received cash dividend (net of TDS) Tk. 2,02,500/ during the year.
(p) TDS applied by employer Tk 700,000.

Solution 2:

Mr. Milky
Assessment year 2023-24
Accounting year ended 30 June 2022
Computation of total income and tax liability

Income from employment:		Tk.	
Basic salary @ Tk. 150,000 p.m.	Tk. 150,000 × 12	18,00,000	
Free accommodation – Annual value		6,00,000	
Car benefit (3,000 CC)	Tk. 25,000 × 12	300,000	
Fee to school going children	Tk. 100,000 × 12	12,00,000	
Festival bonus	Tk. 150,000 × 2	3,00,000	
Reimbursement of utility bills		3,00,000	
Savings from official oversees travel	Tk. 1,000,000 × 25%	2,50,000	
Bills paid for international club		2,95,000	
A. Total income from employment			5,054,000

B. Less: Exemption (lower of 1/3 of total employment income or 450,000)			450,000
Taxable income from employment (A-B)			4,595,000
Income from "Income from financial asset"			
Interest on securities			175,000
Income from "house property"			
Annual value		1,200,000	
Less: Allowable expenses - Repair and maintenance @ 25%		300,000	900,000
Income from other source (u/s 33-34)			
Cash Dividend income	Tk. 2,02,500 ×100/90		225,000
Total income			**5,895,000**

Income tax liability:	**Tk.**
On first Tk. 3,50,000 @ 0%	-
On next Tk. 1,00,000 @ 5%	5,000
On next Tk. 3,00,000 @ 10%	30,000
On next Tk. 4,00,000 @ 15%	60,000
On next Tk. 5,00,000 @ 20%	100,000
On balance Tk. 4,245,000 @ 25%	1,061,250
Gross tax on liability	**1,256,250**
Less: Investment tax rebate (note 1)	176,940
Tax liability after investment tax rebate	**1,079,310**
Less: Tax deducted at sources	
On cash dividend @10%	22,500
TDS by company employer	700,000
Net tax payable	**356,810**

Note – 1: Actual investments made:

Investment in Government Bonds and Primary Shares	Tk.	1,500,000
Life insurance premium		1,50,000
Total investment	Tk.	1,650,000

Investment rebate:

Lower of:		
i) 0.03 X 5,895,000	Tk.	176,940
ii) 0.15 X 1,650,000		247,500
iii) Tk 1,000,000		1,000,000

Worked example 3

Mr. Mallik is a service holder. Following are the particulars of his income from salary for the year ended on 30th June 2022:

a. Basic salary Tk. 25,000 per month.
b. Dearness allowance - 10% of Basic salary
c. Two festival bonus - each equal to one month's basic salary
d. He has been provided with a rent-free quarter, the annual value of which is Tk. 180,000.
e. He has been provided with a car (2,000 CC) for both office and private use.
f. Medical allowance - Tk. 250 per month.
g. During the year he received Tk. 6,000 as traveling allowance.
h. He is given a servant allowance of Tk. 200 per month.
i. He contributes 1% of his basic salary to the Group Insurance Scheme.
j. He deposited Tk. 500 per month on a Deposit Pension Scheme.

Compute total income from salary and investment allowance.

Solution 3:

Assessee: Mr. Mallik
Assessment year 2023-24
Income year ended 30 June 2022
Computation of total income

Heads of income	Tk.	Tk.
Income from employment (section - 21):		
i) Basic salary (25,000x12)	3,00,000	
ii) Dearness allowance (3,00,000x10%)	30,000	
iii) Festival bonus (25,000x2)	50,000	
iv) Rent free accommodation (Annual value)	180,000	
v) Conveyance facility (Monthly 10,000)	120,000	
vi) Medical allowance (250x12)	3,000	
vii) Traveling allowance	6,000	
viii) Servant allowance (200x12)	2,400	
Total employment income before exemption		**6,91,400**
Exemption (lower of 1/3 of total employment income or 450,000)		**230,467**
Total income from employment		**460,933**

Investment: (actual)

Particulars	Amount (Tk.)
Employee's contribution to Group Insurance Scheme 1% of B.S. (3,00,000x1%)	3,000
Contribution to DPS (500x12)	6,000
Total	**9,000**

Worked example 4

On June 2023, Mr. Syful Hoque's basic salary falls on Tk. 10,200 in the scale of 9,600-200x1212,000. His date of yearly increment is on 1st April. He received dearness allowance @ 10% of basic salary and medical allowance Tk. 300 per month. During the year his actual amount of medical expense was Tk. 3,000. He received two bonus equivalents to one month's basic salary-one received before the date of increment and another after increment.

He contributes 10% of his basic salary to a recognized provident fund from which he has also received an interest of Tk. 1,500 @ 14% on which the fund was taxable. His employer also contributes the same amount to the RPF. He has been provided with a rent-free quarter of which annual value is Tk. 300,000 and a car (1,500 CC) for both official and personal purpose. During the year he has also received an entertainment allowance of Tk. 5,000 of which Tk. 4,500 has actually been spent. His investments during the year were as follows:

a) Purchase of shares of a listed company Tk. 2,000.
b) Purchase of gold Tk. 10,000.
c) Payment of his life insurance premium Tk. 4,000 (Policy value Tk. 35,000)
d) Purchase of books and magazine Tk. 3,000.
e) Contribution to a Deposit Pension Scheme Tk. 500 on a monthly basis.

Compute total income and tax liability of Mr. Syful Hoque for the assessment year 2023-24.

Solution 4:

Assessee: Mr. Syful Hoque
Assessment year 2023-24
Accounting year ended 30 June 2023
Computation of total income and tax liability

Heads-of income	Tk.	Tk.	Tk.
Income from employment:			
i) Basic salary [(10,000x9) + (l0,200x3))		1,20,600	
ii) Dearness allowance (1,20,600xl0%)		12,060	
iii) Medical allowance (300xI2)		3,600	
iv) Bonus [10,000+ 10,200)		20,200	
v) Employer's contribution to RPF [1,20,600xl0%]		12,060	
vi) Interest on RPF@14%	1,500		
Less: Exempted as per 6th schedule part 1 para 6	(1500)		
vii) Rent free accommodation (Annual value)		300,000	
viii) Car facility (2,500 CC) (10,000 X 12)		120,000	
ix) Entertainment allowance		5,000	
Total income before exemption			**605,720**

Less: (lower of 1/3 of total employment income or 450,000)			**(201,907)**
Total income from employment			**403,813**

Computation of investment allowance:

Particulars	**Amount (Tk.)**
1. Purchase of shares of listed company	2,000
2. Employee's and employer's contribution to RPF (12,060x2)	24,120
3. Payment of life insurance premium 4,000; maximum (10% of the policy value i.e., 10% of 35,000 = 3,500)	3,500
4. Contribution to Deposit Pension Scheme (500x12)	6,000
Total	**35,620**

Computation of tax liability:

Amount	**Tax rate**	**Tax**
First Tk 350,000	0%	Nil
Remaining Tk 53,813	5%	2,691
Gross tax liability		2,691
Less: Investment rebate		(5,343)
Tax Liability (minimum tax)		5,000

Computation of investment rebate:

Lower of i) Tk 12,114 (0.03 X 403,813) or ii) Tk 5,343 (0.15 X 35,620) and iii) Tk 10 lakh.

Worked example 5

Mr. Zaman Hoque was the HR Manager of Axiata Bangladesh Ltd. On July 2022, his basic salary was Tk.52,000 in the scale of 40,000-4,000x8-72,000. His date of yearly increment is on 26th March. He was terminated from Axiata Bangladesh ltd. on 30th April, 2023 and Joined Grameen phone Ltd. on 1st June of the same year. During the income year his income from Axiata Bangladesh Ltd and Grameen phone Ltd. are as follows:

From Axiata Bangladesh Ltd.:

He received dearness allowance @ 10% of basic salary and medical allowance Tk. 2,000 per month. He received two festival bonus each equivalent to one month's basic salary in the month of September and April respectively. He contributes 10% of his basic salary to a recognized provident fund. He has been provided with a rent-free quarter of which reasonable rental value was Tk 450,000 (per year) and a full-time car (2,000 CC) by the employer. During the year he has also received an entertainment allowance of Tk. 1,000 per month. He has received compensation for the termination of Tk. 2,00,000 and unapproved gratuity of Tk. 1,00,000. Moreover, his accumulated balance from the RPF was Tk. 1,80,000.

From Grameen Phone:

His basic salary is Tk. 60,000 per month with 40% house rent allowance and Tk. 5,000 medical allowance per month. He is also entitled to receive Tk. 4,000 conveyance allowance per month. He contributes 10% of his basic salary to a recognized provident fund. His employer also contributed the same.

His taxable income from other sources was Tk. 213,119 during the year. During the year total TDS from various sources of his income was Tk. 20,000. Moreover, his refund claims of Tk. 10,000 for excess payment of tax in the last assessment year was to be adjusted with current year's tax liability. His investments during the year were as follows:

a. Purchase of savings certificate Tk. 100,000.
b. Payment of his life insurance premium Tk. 20,000 (Policy value Tk. 5,00,000)
c. Contribution to DPS Tk. 3,000 per month.

Compute total income and tax liability of Mr.Zaman Hoque for the assessment year 2023-24.

Solution 5:

Assessee: Mr. Zaman Hoque
Assessment year 2023-24
Income year ended 30 June 2023
Computation of total income and tax liability

Heads of income	**Tk.**	**Tk.**
Income from salaries:		
i) Basic salary (Note 1)	584,774	
ii) Dearness allowance (Axiata) (5,24,774x10%)	52,477	
iii) Medical allowance (Total)[(2,000x10) + 5,000]	25,000	
iv) Bonus [52,000+56,000]	108,000	
v) Employer's contribution to RPF (Total) [5, 84,774x 10%]	58,477	
vi) Rent free accommodation (Axiata): (450,000x (10/12))	375,000	
vii) Car facility (Axiata) (10,000 X 10)	100,000	
viii) Entertainment allowance (Axiata) (l,000x10)	10,000	
ix) Compensation (Axiata)	2,00,000	
x) Gratuity (Axiata)	100,000	
xi) Accumulated balance of RPF (Axiata)	180,000	
xii) House rent allowance (Grameen phone) (60,000x40%)	24,000	
xiii)Conveyance allowance	30,000	
Total		1,647,728
Less: (lower of 1/3 of total employment income or 450,000)		(450,000)
Income from employment		**1,197,728**
Income from other sources		**213,119**
Total income		**1,410,847**

Computation of Investment allowance

Particulars	Amount (Tk,)
1. Purchase of savings certificate	100,000
2. Payment of life insurance premium 20,000; maximum (10% of the policy value i.e., 10% of 5,00,000 = 50,000)	20,000
3. Contribution to DPS (3,000 x12)	36,000
4. Employee's and employer's contribution to RPF (58,477x2)	116,954
Total	**272,954**

Investment rebate: Lower of i) Tk 42,325 (0.03 X 1,410,847) or ii) Tk 40,943 (0.15 X 272,954) and iii) Tk 10 lakh.

Tax liability:

	Income	Rate	Tax
On the first	350,000	0%	-
On the next	100,000	5%	5,000
On the next	300,000	10%	30,000
On the next	400,000	15%	60,000
On balance	260,847	20%	52,169
Total			**147,169**
Less: Investment tax rebate			(40,943)
Less: TDS			(20,000)
Previous Refund adjustment			(10,000)
Net tax liability			**76,226**

Note:

1. Total basic salary:
   From Axiata:
   Basic salary from July 18 to February 21= [Tk. 52,000 x 8] = Tk. 4,16,000
   Basic salary for the month March 21 = [(52,000"25/31) + (56,000"6/31)] = Tk. 52,774
   Basic salary for the month April 21 = Tk. 56,000
   = Tk. 5,24,774
   From Grameen phone:
   B. S. for the month June 21 = Tk. 60,000

   Total basic salary for the income year 2020-21 = Tk. 5,84,774

Self-assessment question

1. (a) What is meant by “perquisite” under the Income Tax Act,1984?

   (b) Does it include employer’s contribution to a recognized provident fund?

   (c) Discuss the allowable perquisites limit under the Act.

2. A question may arise why employer’s contribution to RPF is once added to income and again rank for investment allowance of an assessee. This device is meant to raise total income so that the assessee is put into higher slab of income tax rate.



Chapter 5

Income from financial asset

Contents

Introduction

Examination context

Topic list

5.1	Nature of securities
5.2	Bond washing transactions through sale and buy back of securities
5.3	Types of securities
5.4	Interest grossing up
5.5	Admissible expenses
5.6	List of tax-free securities

Worked examples

Introduction

Learning objectives

- Understanding the head 'Income from financial asset'.
- Compute the taxable income under the head 'Income from financial asset'.
- Knowing different type of securities available in Bangladesh.
- Identify the allowable deductions under the head 'Income from financial asset'.
- Illustrate the allowable, inadmissible and not permissible deductions in determining the income from 'Income from financial asset'.
- Define cum-interest, ex-interest and bond washing transactions.

Practical significance

Income from financial asset is the sixth head of income. It is very important to know interest bearing financial asset available in market and how this income is brought under the purview of taxation. Though the revenue from this source is not so significant to the Government, still this chapter comprises some technicalities over which professional accountants should have sufficient expertise.

Application of cum and ex interest and bond washing transaction in computing taxable interest income is very important and necessitates professional judgment and competence. These topics are explained in this chapter.

This chapter has practical significance in a sense that the students will interact with the capital market directly. Approved commercial securities are traded in the market and thus the professional accountants can play a significant role in computing tax liability of individuals and corporate as well.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'Income from financial asset' is one of the seven heads of income and includes some complexity? Do you feel that you are in a position to compute tax liability under this head independently? Can you visualize the scope of tax avoidance and remedies in this regard?

Working context

In practice, as the accountants are sometime required to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income from different heads for a particular year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses and exemptions so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

You will also be able, using this knowledge, to plan tax in such a way that tax can be minimized.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify income under the head 'Income from financial asset.
- Define the concepts of interest-bearing financial asset or securities.
- Recognize the allowable expenses and inadmissible expenses under the head.
- Define different types of securities.
- Calculate taxable income under the head 'Income from financial asset.
- Understand the application of ex and cum interest.
- Handle situations like bond washing transactions.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of one concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income.

5.0 INTEREST ON SECURITIES

Section overview

- ➔ There are seven heads of income. Income from financial asset is one of them.
- ➔ There are some allowable, inadmissible and not permissible deductions under different heads of income.
- ➔ Computation of taxable income from financial asset is very important.
- ➔ Grossing up of interest on financial asset.
- ➔ Tax shall be payable when an assessee actually received interest on financial asset.
- ➔ The two main methods of accounting are cash system and mercantile system.
- ➔ An assessee may be allowed to set off of losses but carry forward not allowed.

Scope of 'Income from financial asset'

As per section 62 of the Income Tax Act, 2023, Income classifiable under the head "Income from financial asset" includes:

(i) Interest, profit or discount of the Government or Government approved securities;
(ii) Interest, profit or discount of debentures or other securities issued by or on behalf of a local authority or a company.
(iii) Interest or profit receivable from following sources, namely –
  a) Deposit into any bank or financial institute called whatever name;
  b) Any financial product or scheme
(iv) Dividend

Definition 'Securities'

Section 2 (87) provides that 'Securities' shall includes –

(a) Treasury bills, bonds, savings certificate, debenture, sukuk or shariah-based securities or similar instruments issued by the Government.
(b) Share or stock issued by any company or legal entity or issuer, deed issued by way of mortgage or charge or hypothecation, bonds, debenture, derivatives, units of any joint investment scheme including mutual funds or alternative investment fund, sukuk or similar shariah based deed, and purchase right or warrant to accept the aforesaid deed.

Provided that it shall not include any currency or note, draft, cheque, bill of exchange, bank acceptance, trade receivable or trade payable.

Exclusion from scope of 'Income from financial asset'

Capital gain arising from transfer of financial asset shall not be treated as 'Income from financial asset'. Such capital gain shall be treated as 'Income from capital gain' under section 57 of Income Tax Act, 2023.

Timing of tax on 'Income from financial asset'

According to section 63 of the Income Tax Act, 2023, in the income year in which a person receives income from financial asset or in the income year in which such income accrues to him, whichever occurs first, it shall be included in that income year.

Allowable deductions from 'Income from financial asset'
Deductions permissible in the determination of income from financial asset as per section 64 are:

(i) Any amount deducted (other than income tax) against interest or profit by bank or financial institute;
(ii) Interest paid on borrowed money solely for the purpose of earning from 'Income from financial asset';
(iii) Any other expenditure (in addition to above) incurred solely for the purpose of earning the relevant income i.e. 'Income from financial asset'.

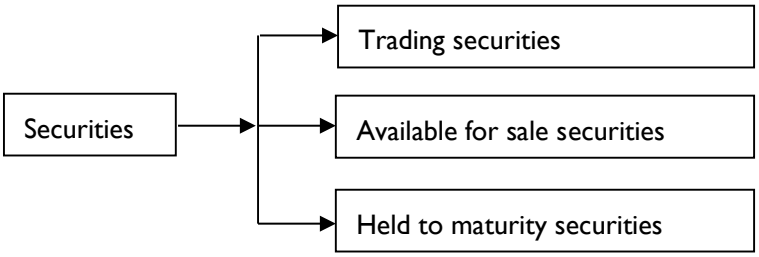
Non-allowable deductions

According to section 65 of the Income Tax Act, 2023, following expenditure shall not be treated as allowable expenditure for the purpose of computing 'Income from financial asset':

(i) Any interest payable outside Bangladesh from which withholding income tax has not been applied or paid in accordance with the provision of this Act;
(ii) Interest or commission paid against such income from financial asset on which tax is exempted;
(iii) Any expenditure of a capital or personal nature.

5.1 Nature of securities

Dealings of securities may have various purposes from the part of the investors. For example, it may take any of the following three natures:



Trading securities are those types of securities where the main purpose is to earn profit through trading (buying and selling) of securities. However, held to maturity securities are those types of securities where investment is made for a specific time period. However, available for sale securities fall in between which is not an investment for long time or where the dealing is not so frequent. The investors wait for a while to see how to maximize profit on the deal. As interest on securities is a separate head of income, even if the securities are held as trading assets within the course of business undertaken by a bank or an insurance company or a stock broker, the interest must be charged under this head and not under section 28 as income from business or profession or under section 33 as income from other sources [*Central Exchange Bank LTD. V. C.I.T. (1955) I.T.R. 167]*.

5.2 Bond washing transactions through sale and buy back of securities

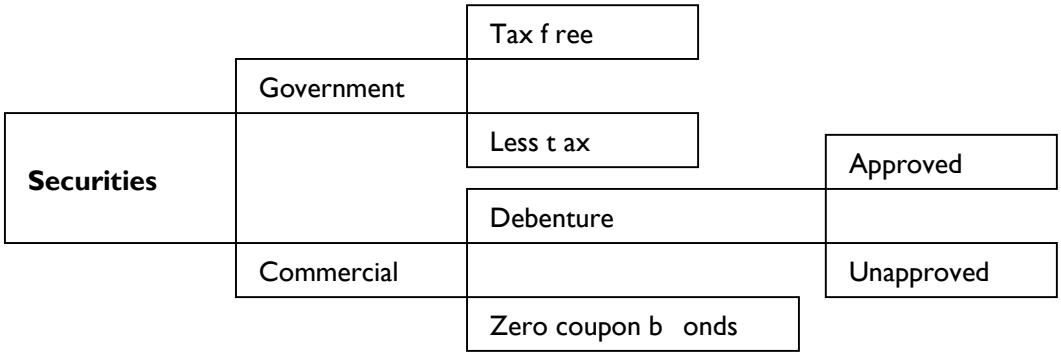
When some transactions happened between two parties to wash out the impact of interest on taxable income and thus avoiding the taxes on that mutually by both of the parties, such type of transaction is referred to as bond washing transaction. It is a smart way of tax avoidance. In this case, securities are sold cum interest with an agreement to re-sell or retransfer the securities. Securities are sold to a person whose income is less than the minimum taxable limit and then he doesn't need to pay any tax on interest on securities since his income is less than the taxable limit. On the other hand, since securities are capital asset, no tax will be given on the disposal value of the securities by the seller. In this way both the seller and buyer can avoid tax.

To prevent the avoidance of tax in this manner, section 242 of the Income Tax Act, 2023 provides that where a security owner transfers the securities on the eve of due date of interest and reacquires them

eventually, the interest received by the transferee/purchaser will be deemed as income of the transferor/seller and, accordingly, it will be included in the total income of the transferor/seller and not the transferee/purchaser. There is wide scope to avoid tax in this way and Section 242 has given sufficient authority to the DCT to handle those cases of tax avoidance. It should be mentioned here that stocks/shares are also defined as securities at section 242.

5.3 Types of securities

In terms of taxability, securities may be classified as either Government securities (securities issued or approved by the Government) or Commercial securities (securities issue by others).



Government securities: Securities issued or approved by the Government fall under this category. It may be tax free if tax is not imposed on interest or may be less tax on the reasoning that the assessee will enjoy some exemption on interest income.

Tax free: Any income received by an assessee form Wage earners development bond, US dollar premium bond, US dollar investment bond, Euro premium bond, Euro investment bond, Pound starling investment bond or Pound starling premium bond is exempted income tax under Sixth Schedule, Part 1, Para 18.

Tax deductible Government securities: These are the government securities including treasury bill/bond and Islamic securities on which tax is to be deducted at source at the time of payment on maturity at specified rate [current TDS rate is 5%].

Commercial securities: Securities issued by or on behalf of a local authority or a company and approved by the SEC will be considered as commercial securities. These types of securities may be either debenture or zero-coupon bonds.

Debenture: These are the securities issued by or on behalf of a local authority or a company and approved by the SEC. Thus, debentures are approved securities.

Zero-coupon bond: A Zero-coupon bond is such type of bond where coupon (interest) is zero. This type of securities is initially sold at a price lower than its face value and the owner receives the face value at maturity. Thus, the gap between the purchase price and face value is the benefit of buying such security to the owner. Any income derived from Zero-coupon bond received by a person other than Bank, Insurance or any Financial Institution is fully tax free [Sixth Schedule, Part 1, Para 25]. The price of a zero-coupon bond can be calculated by using the following formula:

$P = M / (1+r)^{n}$

Here P represents price, M represents maturity value; r represents investor's required annual yield / 2 and n is the number of years until maturity x 2.

Example:

If you want to purchase a Company XYZ zero-coupon bond that has a BDT 1,000 face value and matures in three years, and you would like to earn 10% per year on the investment, using the formula above you might be willing to pay:

BDT 1,000 / $(1+.05)^6$ = BDT 746.22

Thus, the tax-free income from investment in zero-coupon bond here will be BDT 253.78 (BDT 1,000 – BDT 746.22).

5.4 Interest grossing up

As tax @5% is deductible from interest on securities at the time of maturity, so net interest needed to be grossed-up.

5.5 Expenses admissible

As per section 64 of ITA, 2023, the following expenses are admissible for deduction to compute income taxable under the head:

1. **Bank commission/charges for collection of interest:** If such interest is collected through bank and eventually bank charges the client for collecting interest, such amount can be deducted for computing taxable income with the following two exceptions:
   a. This deduction is not permissible if such charge is made for collecting interest of such securities on which tax cannot be imposed. Example: tax free government securities, zero coupon bond.
   b. Personal or capital nature expenditure.

2. **Interest on borrowed capital for investment in securities:** Any interest on money borrowed for the purpose of investment in the securities by the assessee will be an allowable expense. But interest on borrowed capital for investment in tax-free government securities and zero-coupon bond is not allowable expense as interest on these securities is not taxable.

5.6 List of tax-free securities

Interest income is exempted from taxes in following occasions as per ITA, 1984:

Name	Reference
[1] Wage earners development bond [2] US dollar premium bond [3] US dollar investment bond [4] Euro premium bond [5] Euro investment bond [6] Pound sterling premium bond [7] Pound sterling investment bond	Sixth Schedule, Part 1, Para 18
Zero-coupon bond	Sixth Schedule, Part 1, Para 25

Worked example

Worked example 1:

ABC Bank Ltd. a Bangladeshi listed bank received interest on Treasury bond Tk.10,00,000/ during the calendar year 2021. Bangladesh Bank neither deducts tax at upfront system or at the time of maturity.

Calculate income under the heard ‘Income from financial asset’ and tax to be paid.

Solution 1:

ABC Bank Ltd.
Assessment year 2023-24
Income for year ended on 31st December 2021
Computation of income from interest on security under section 22:

Interest on securities (Treasury Bond) Fully taxable as it is not tax-free----------Tk.10,00,000

Tax @ 37.5% comes at Tk.3,75,000 (No tax credit as there was no TDS)

Worked example 2:

Mr. Jamal Kaiser has the following interest income from investments in securities during the income year 2022-23:

1. Tk. 100,000 from interest on Bangladesh Wage Earner's Development Bond (Purchased on 1" September, 2017).
2. Tk. 200,000 from Bangladesh Investment Bond (Purchased on 30th June,2020). Tax @ 5% was deducted at that time at upfront system. That's why no further tax was deducted at the time of maturity on 30th June,2023.
3. On 31" March, 2020, 3 years Zero Coupon Bond of Tk. 50,000 was matured and he has received the amount as maturity value, whether the acquisition price of the same was Tk. 35,000. The collection fee of Tk. 500 was charged in this regard by his bank.

Compute income from interest and tax payable by Mr. Jamal Kaiser for the income year 2022-23.

Solution 2:

Mr. Jamal Kaiser
Assessment year: 2023-24
Income year: 2022-23
Computation of total income

	Tk.	Tk.
Income from securities (section: 22 & 23):		
(1) Interest form tax free government securities (wage earner development Bond)	1,00,000	
Less: tax free as per 6th schedule (part-A) para-24A	1,00,000	0
(2) Interest on Bangladesh Investment Bond	2,00,000	2,00,000
(3) Interest on zero coupon bond	15,000	
Less: exemption (full) As per 6th Schedule (Part-A) Para-40	15,000	
		0
Taxable income from interest on securities		2,00,000
		========
Tax zero as income is below taxable ceiling of Tk.3,50,000 assuming he has no other income source.		

Self-assessment question

1. What incomes are included in “Income from financial asset” under the Income Tax Act, 2023?
2. Is interest on private loan is an interest on securities?
3. What deductions are allowable from such income under the Act?
4. Do you know the list of tax-free securities?



Chapter 6

Income from rent

Contents

Introduction

Examination context

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6.1	Income from rent
6.2	Computation of 'Income from rent'
6.3	Allowable deductions in computing 'Income from rent'
6.4	Formalities to be followed by the landlord receiving monthly rent more than Tk.25,000
6.5	Tax to be deducted at source from house property

Worked examples

Introduction

Learning objectives

- Identify the income under the head 'Income from rent'.
- Compute the taxable income under this head.
- Knowing annual value and its computation.
- Identify the allowable deductions under the head.
- Identify non-assessable income under the head.
- Deemed income from rent
- TDS from house rent in case of commercial use.
- Computation of net tax liability from rent income.

Practical significance

Income from rent is the second head of income and very significant for income tax professionals. It includes some conceptual issues and technicalities that require clear understanding about the topic.

Annual value is the value representing the gross rent from house property. It is the higher value of annual rent and reasonable rent determined by the tax authority. Annual rent is again adjusted for

different expenses and TDS. These computations require some rationality on part of the tenants and landlords.

Scope of allowable deductions is another difficulty. Capitalized expenses cannot be deducted and in case of partly let out properties, expenses are deducted proportionately. Repairs and maintenance is considered separately depending on the status of the property as either commercial or residential due to its significance. Advance receipts from the tenants are considered as income and at the time of refund it has got separate treatment. All of these adjustments are very technical and sometimes require professional judgment and this is the reason why the chapter is practically significant.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think

Do you realize that the computation of taxable income under the head 'Income from rent' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Do you understand application of tax deducted at sources by the tenants?

Working context

In practice, as the accountants are sometimes required to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income for any income year under different heads. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses in different heads of income so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Have clear concept of rent income.
- Define annual value.
- Recognize the allowable deductions and allowances.
- Know self-occupancy and its impact in computing taxable income under the head.
- Identify tenant's expenses borne by the landlord and landlord's expenses borne by the tenants.
- Know TDS rate and its application in computing net tax liability.
- Determine interest on borrowed capital and installments for loan taken during construction period.
- Adjustment of advance received from tenants.
- Know impact of capitalized expenses in computing house property income.
- Know the application of vacancy allowance and allowances for un-collectible rents.
- Computing repairs and maintenance expenses in different cases.
- Know the treatment of unspent number of repairs and maintenance
- Know the residential and commercial use of house property and its impact on computing taxable income.
- Understand different status of a house property; fully let out, partly let out and self-occupied.
- Know penal measures if the landlord does not follow rules/instructions by the NBR.
- Compute net tax liability.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

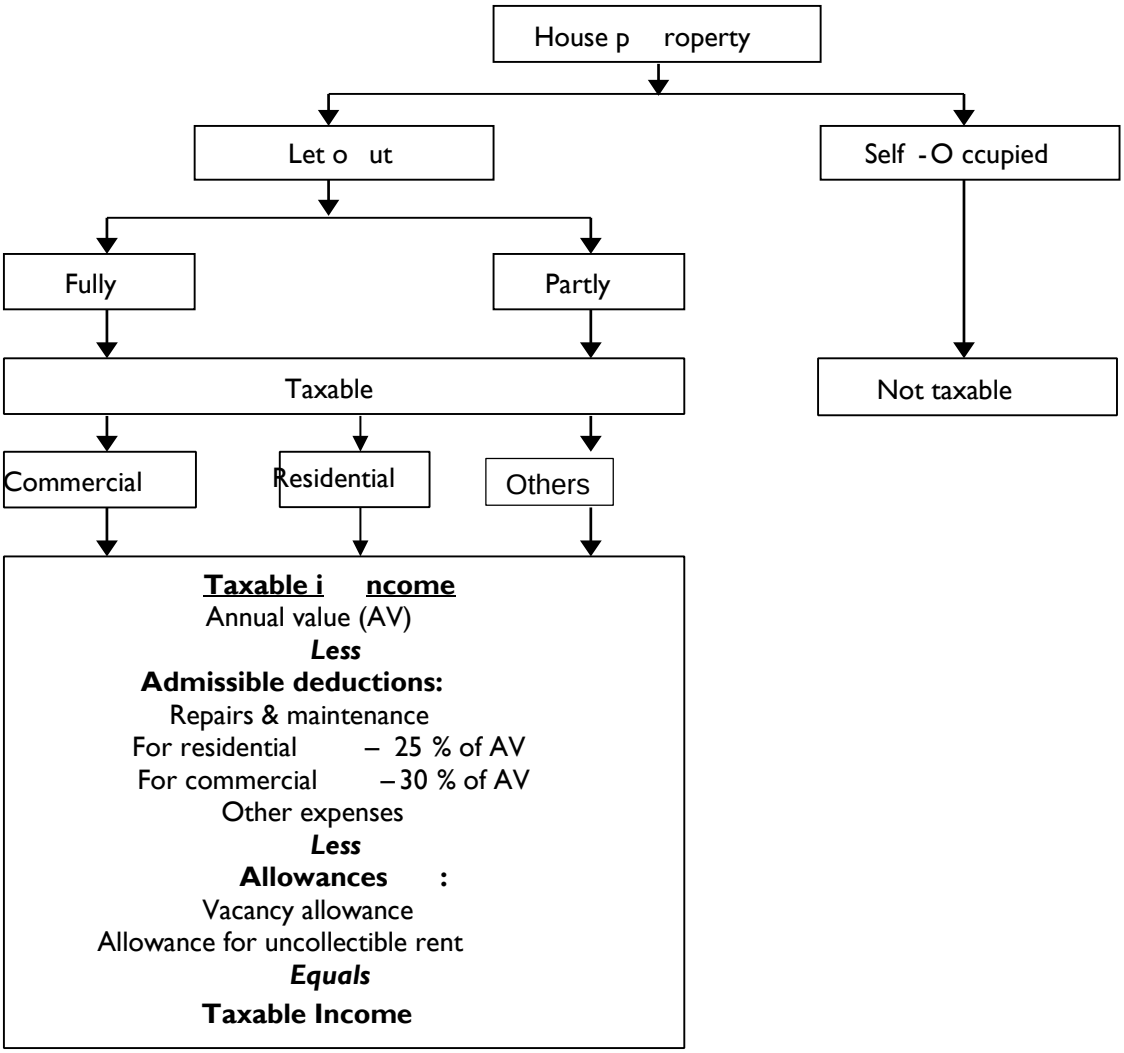
Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income under the head 'income from rent' which is vital for calculating total tax liability. Clear concept and understanding of the contents presented in this chapter will help candidates to resolve any problems relating to computation of income from the head.

6.0 INCOME FROM RENT

Section overview

- ➔ Income from rent is the second head of income.
- ➔ House property may be fully let out, partly let out or self-occupied.
- ➔ There are some allowable and some inadmissible deductions under the head.
- ➔ Computation of income under the head.
- ➔ House property may be let out for residential purpose or commercial purpose.
- ➔ Annual value is the higher one between rent received shown by the assessee and reasonable rent determined by the DCT.
- ➔ Actual rent will be adjusted for expenses and TDS.
- ➔ Tenants are sometimes allowed to deduct taxes before giving rent to the landlords.
- ➔ Landlords can claim allowances for vacancy and uncollected rents.
- ➔ Advances received from tenants that are not adjustable with rents are considered as income.

Scope of income from rent:



Income from house property is taxable on the basis of its annual value of any house property, including furniture, fixture, fittings etc. whether used for commercial or residential purposes.

Definition:

1. House property:

Section 35(1) of the Income Tax Act, 2023 defines 'House property' as –

(a) Furniture, fixture, fitings which are integral part of the house; and
(b) The land on which the house is situated. However, shall not include factory building.

2. Rent:

As per section 35(2) of the Income Tax Act, 2023, 'Rent' means the grant of the right to use property for a specified period of time without relinquishing ownership or title. However, rent provided by scheduled bank, investment bank, development financial institution or Mudaraba or leasing company (owned by itself or not) shall not include 'Rent'.

3. Property:

Section 35(3) of the Income Tax Act, 2023, provides that 'Property' means house property, land, furniture, fixture, factory building, business premises, machinery, personal vehicles and any other physical asset of capital nature, which is rentable.

4. Annual value:

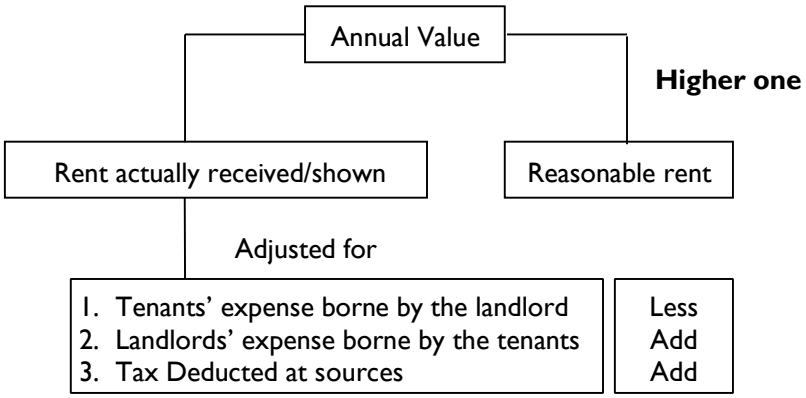
Section 2(62) of the Income Tax Act, 2023, states that, 'Annual value' means the rent of any property, -

(a) The reasonable rent of the property for of the year; or
(b) Where the annual rent exceeds the amount determined (a) above, the annual rent.

Thus, annual value is not necessarily be the annual rental income disclosed by an assessee but the value determined as such by the tax authorities. If the annual rent is higher than the value as determined by the tax authorities on the basis of the expected rent, annual rent is considered as the annual value.

Where the property is owned by two or more persons and their respective shares are definite and ascertainable, the owners are assessable on their respective share of income from the property and not jointly as an association of persons.

Thus, the annual value will be the higher one between rent received shown by the assessee and reasonable rent determined by the DCT. Actual rent is the amount of rent received or deemed to be received by the owner. It may require some adjustments as shown below:



Quick Guide

Tenants expenses (Expenses for temporary occupancy)	WASA bill, Gas bill, Electricity bill
Landlords expenses (Expenses for ownership)	Municipal tax, Insurance premium, Service charge, interest on house building loan etc.

6.1 Income from rent

1. Rental income shall be computed as total rental value of any property of a person less total allowable expenses mentioned in this chapter.
2. If any part of the property is engaged for the purpose of own business and income derived from that business is included 'Income from business', such part shall not be included under 'Income from rent'.

3. Irrespective of nature of rent of the property, trade, business, income from rent shall be computed under the head 'Income from rent'.
4. Where more than one person owns the property, 'Income from rent' shall be computed as below:

Where share of the person to the property is definite and certain	At the rate proportionate to the share of ownership
Where share of the person to the property is not certain	Owners shall be treated as association of person (AOP) for the purpose of income from rent of the property.

6.2 Computation of 'Income from rent'

Income from rent shall be computed according to below formula, namely –

A = (B + C + D) – E – F, where –
A = Total rent,
B = Total rent received from the property or annual value whichever is higher,
C = The amount of advance rent received from the property in that income year, called by whatever name,
D = Any other amount from the property or monetary value of any benefit received in the income year in excess of the amount mentioned under B and C above,
E = Any such advance amount which has already been included in the total income in any previous income year.
F = Vacancy allowance

Provided that it required to be informed to the DCT by 30 days every month of non-availability of rental income or vacancy.

6.3 Allowable deductions in computing 'Income from rent'

Following expenses shall be deductible in computing 'Income from rent', namely –

(a) Premium paid for any insurance against the risk of loss or destruction of any property;
(b) Interest or profit paid on any capital loan taken from any financial institution for acquisition, construction, renovation, reconstruction or reconstruction of the property;
(c) Any tax, fee or any other annual charge paid on the property which is not in capital nature;
(d) The amount mentioned in the below table for expenses related to repairs, rent collection, water and sewerage, electricity, maintenance and various basic services:

Nature of property	**Deductible expense (% of total rental value)**
House property used for commercial purpose	30%
House property used for non-commercial purpose	25%
Other property (where applicable)	10%

Provided that this exclusion shall not apply where the tenant pays the services charge in addition to the rent of the property.

(e) If any interest or profit has been paid to any financial institution on any capital loan used for acquisition, construction, repair, reconstruction of the property during the pre-rental period, such interest shall be deductible in equal 3 installment in consecutive income years.
(f) No pre-rental interest or profit or any part thereof (if any) shall not be deductible beyond the period as mentioned under (e) above.

6.3 Limitation of expenditure allowance

1. In respect of any such expenditure where withholding income tax was applicable, if tax is not withheld or collected at source, if deducted or collected tax is not duly deposited to the Government exchequer in accordance with the provision of this Act, such expenditure shall not be allowable under this chapter;
2. Where the property is rented partially, expenditure shall be allowable proportionately;
3. Where the property is rented for part of the income year, the expenditure shall be allowable at a rate proportionate to the period during which the property was rented.

Illustration 1

Mr. B.Rahman owns a 5 storied residential house with 3 flats in each floor. This is a fully let out house property and monthly rent of each flat is Tk. 8,000. Yearly reasonable rent of the house is Tk. 16,00,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 ×3 ×5 ×12]	Tk. 1,440,000
Reasonable rent	Tk. 1,600,000

Annual value, whichever is higher Tk. 1,600,000

Illustration 2

Mr. B. Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for his own residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000. Yearly reasonable rent of the whole house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 ×3 ×4 ×12]	Tk. 1,152,000
Reasonable rent [Tk. 1,600,000 × 12/15]	Tk. 1,280,000

Annual value, whichever is higher: Tk. 1,280,000

Illustration 3 [In case of tenant's burden borne by landlord]

Mr. B Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for his own residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000 including Tk. 1,000 for water, gas and electricity bill of the tenant. Yearly reasonable rent of the whole house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 ×3 ×4 ×12]	Tk.1,152,000
Less: Tenant's expense borne by landlord [Tk. 1,000 ×3 ×4 ×12].	Tk. 144,000

Actual rent after adjustment	. 1,008,000
Reasonable rent [Tk. 1,600,000 × 12/15]	. 1,280,000

Annual value, whichever is higher: Tk. 1,280,000

Illustration 4 [In case of owner's burden borne by the tenant]

Mr. B. Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000. In addition to monthly rent, tenants also bear municipal tax@ Tk. 10,000 per tenant annually. Yearly reasonable rent of the whole house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 ×3 ×4 ×12]	Tk.1,152,000
Add: Landlord's exp. borne by tenant [Tk. 10,000 ×3 ×4]	120,000
Actual rent after adjustment	. 1,272,000
Reasonable rent [Tk. 1,600,000 × 12/15]	. 1,280,000
Annual value, whichever is higher:	. Tk. 1,280,000

Illustration 5

Mr. B. Rahman owns a 5 storied building which is let out to a business house. After deducting taxes, Mr. B. Rahman receives Tk. 1,900,000 annually. Mr. B Rahman is responsible to pay for all gas, electricity and water bills of the tenant which amount to Tk. 80,000 annually. However, as per agreement, the business house is required to pay municipal tax and insurance premium for the building which amounts to another Tk. 180,000. Yearly reasonable rent of the house is Tk. 2,000,000. Compute annual value. [Note: Applicable TDS rate is 5%]

Annual value:

Actual rent after TDS	Tk.1,900,000
Add: Landlord's expense borne by tenant	180,000
Add: TDS [(Tk. 1,900,000/1-0.05) × 0.05]	100,000
Less: Tenant's expense borne by landlord	(80,000)
Actual rent after adjustment	.2,100,000
Reasonable rent	2,000,000
Annual value, whichever is higher:	Tk. 2,100,000

6.4 Formalities to be followed by the landlord receiving monthly rent more than Tk.25,000

According to rule 8A of Income Tax Rules 1984, in case of let out property if the gross monthly rent exceeds Tk. 25,000 the owner shall have to:

(a) Maintain bank account and deposit entire monthly rent directly to the account (Irrespective of part or full of rent is received in cash);
(b) Maintain a register about tenants, house rent received from the tenants.

According to 267 of the Income Tax Act, 2023, if he fails to do so then penalty may be imposed by the income tax authority @ 50% of tax on house property income or Tk. 5,000 whichever is higher.

6.5 Tax to be deducted at source from house property

Where the tenant in respect of a house property is the government or any authority having the authority to deduct taxes, shall deduct @ 5% tax as advance tax. But such amount of tax is subject to refund if income of the owner is not tax payable or if amount of advance tax is more than the owner's total tax liability. No such deduction is required when the owner holds certificate stating that there is no assessable income against this assessee.

According to section 109 of the ITA, 2023 –

1. Where the tenant is a deducting authority as per section 109 of the ITA, 2023 in respect of a house property, the tenant shall deduct tax @5% from the house rent paid or payable.

2. Where, after the assessment made for the relevant year, it is found that no tax was payable by the owner of the house property or the amount of tax deducted is in excess of the amount payable, the amount deducted shall be refunded,

   (a) if no tax was payable, in full, or
   (b) if the amount deducted is in excess of the amount payable, to the extent of the excess deduction to the owner of the house property.

3. Where the DCT, on an application made in this behalf, gives a certificate in the prescribed form to an owner of house property that, to the best of his belief, the owner is not likely to have any assessable income during the year or the income is otherwise exempted from payment of income tax under any provisions of this Act, payment referred to in sub-section (1) shall be made without any deduction until the certificate is cancelled.

Rate of TDS from house property –

According to section 109 of the ITA, 2023, every person mentioned in that section who is responsible for making any payment to the owner of a house property on account of house rent shall deduct tax @ 5% on such payment.

Worked examples and solutions

Worked example 1:

Mr. Mushtaque Ahmed's house is let out at Tk. 10,000 per month. Income year ended on 30 June 2023. Tenant quitted the house on 31 March 2023 and owed Tk. 20,000 for rent being unpaid. House remained vacant for 3 months during the alterations. The owner claimed the following deductions:

	Tk.
Cost of repairs	15,000
Alterations expenses	30,000
Interest on mortgage	12,000
Fire insurance premium	5,000
Municipal tax	10,000

Legal action to recover unpaid rent which was later realized – Tk. 6,000.

Required: Compute his house property income.

Solution 1:

Mr. Mushtaque Ahmed
Assessment year 2023-24
Income for year ended on 30 June, 2023

Computation of income from rent:

Annual value:

Annual rent (Tk. 10,000 × 12 months)	120,000	
Reasonable rent	Not given	
Whichever is higher	Tk. 120,000	
Less: Allowable deductions:		
Repair & maintenance 25% of Tk. 120,000	30,000	
Interest on mortgage	12,000	
Fire Insurance premium	5,000	
Municipal tax	10,000	
Vacancy allowance (Tk. 10,000 × 3)	30,000	
Total Deductions	**Tk. 87,000**	
Taxable income under section 24		33,000
Deemed income u/s 19(30) Tk.30,000-15,000-6,000		9,000
Net income from house property		**Tk. 42,000**

Worked example 2:

Mr. Faruq owns a residential house at Santinagar, Dhaka, which was constructed 10 years back with a 15% loan of Tk. 20,00,000 from House Building Finance Corporation. The house has been let out for commercial purpose @ Tk. 150,000 per month. The reasonable rent of the house is Tk. 15,00,000.

The following expenses were incurred in the income year 2022-23 for that house:

1. Repair expense Tk. 44,000;
2. City Corporation Tax Tk. 35,000;
3. Rent collection expenses Tk. 12,000;
4. Fire insurance premium Tk. 8000 per quarter;

Compute income from house property for the assessment year 2023-24.

Solution 2:

Mr. Faruq
Assessment year: 2023-24
Income year: 2022-23
Computation of income from rent

Computation of house property income

Annual value:		
Actual rent (Tk. 150,000 × 12 months)	18,00,000	
Reasonable rent	15,00,000	
Whichever is higher	Tk.18,00,000	
Less: Allowable deductions u/s 25		
Repair & maintenance 30% of Tk. 18,00,000	5,40,000	
City Corporation tax	35,000	
Fire Insurance premium (Tk. 8,000 × 4)	32,000	
Interest on HB loan (15% of Tk. 20,00,000)	3,00,000	

Total deductions	Tk. 9,07,000
Income u/s 24	8,93,000
Deemed income u/s 19(30)	4,84,000
Net income from house property u/s 24 &19(30)	**Tk.** 13,77,000

Notes:

1. Since the house is let out for commercial purpose, repair and maintenance expense is considered as 30% of the annual value. Here actual spending for repair expenses and collection expenses is less than 30%. So, the unspent amount [Tk.5,40,000-44,00012,000=4,84,000] will be treated as income from house property as per section19(30).
2. Annual expenses should be deducted from the annual value of the house. So, fire insurance premium is converted to annual figure by multiplying 4 with quarterly premium.

Worked example 3:

Mr. Marwari has a house at Mohakhali C/A with an area of 4,800 square feet. He let out this house to a computer firm at an annual rent of Tk. 600,000. The reasonable rent per square feet at Mohakhali commercial area is 120.The following expenses were incurred in the income year 2022-23 for that house:

1. Repair expense Tk. 90,000;
2. City Corporation Tax Tk. 15,000;
3. Fire insurance premium Tk. 9,000;
4. Night guard's salary Tk. 7,000;
5. Installation of electricity line Tk. 25,000;

During the year Mr. Marwari paid installment of loan to HBFC Tk.67,500 (out of which principal amount is Tk. 64,000). According to the agreement the owner bears the water and gas bill of the tenant which amounted to Tk. 20,000 for the year. Compute income from house property for the income year ended 30th June 2023.

Solution 3:

Mr. Marwari
Income year: 2022-23
Assessment year: 2023-24
Computation of income from rent

Annual value:	
Actual rent	600,000
Less: Tenant's expense borne by the landlord	20,000
Revised actual rent	**580,000**
Reasnable rent (4,800xTk. 120)	576,000
higher one:	**580,000**
Less: Allowable deductions u/s 25	
Repair and maintenance – 30% of Tk. 5,80,000	174,000
City Corporation tax	15,000
Fire Insurance premium	9,000
Interest on borrowed fund (Tk.67,500– Tk. 64,000)	3,500
	201,500
Income from rent	**378,500**

Notes:

1. Installation of electricity line is a capital expenditure, so this is not admissible.

Worked example 4:

Mr. Pakrasi is the owner of three houses at Gulshan, Dhaka; Khulsi, Chittagong; and Mia Bazar, Comilla. Details of these houses are given below:

Details	**House at Gulshan**	**House at Khulsi**	**House at Mia Bazar**
Number of floors	3	1	2
Number of flats in each floor	2	1	4
Rental status	Fully let out	Self-Occupied	Partly let out
	Tk.	Tk.	Tk.
Reasonable rent (annual)	9,00,000	1,20,000	7,00,000
Rental value (each flat per month)	12,000	-	7,000
Expenses incurred:	80,000	25,000	65,000
Repair and maintenance			
Insurance premium (quarterly)	2,000	-	1,500
Salary of guard	15,000	5,000	7,000
Ground rent	2,000	3,000	-
Municipal tax (per month)	1,200	600	500
Interest on HB loan	5,000		4,000

In Gulshan, Dhaka one flat remains vacant for two months and in Mia Bazar, Comilla two flats are occupied by his sons who are fully dependent on him. House at Gulshan has been let out for residential purpose while house at Mia Bazar has been let out to a commercial firm. Compute income from house property for the income year ended 30th June 2023.

Solution 4:

Mr. Pakrasi
Income year: 2022-23
Assessment year: 2023-24
Computation of income from rent

House at Gulshan:	**Tk.**	**Tk.**
Actual rent (12,000 x 12 x 3 x 2)	864,000	
Reasonable rent (4,800 × Tk. 120)	900,000	
Whichever is higher	900,000	
Less: Allowable deductions		
Repair and maintenance – 25% of Tk. 9,00,000	225,000	
Ground rent	2,000	
Insurance premium (2,000 x 4)	8,000	
Municipal tax (1,200 x 12)	14,400	
Interest on HB loan	5,000	
Vacancy allowance [(9,00,000 x 1/6) x 2/12]	25,000	
Total deductions	279,400	

Income from house at Gulsahn		**620,600**
House at Mia Bazar:		
Actual rent (7,000 x 12 x 3 x 2)	504,000	
Municipal value (Tk. 7,00,000 × 6/8)	525,000	
higher one-	525,000	
Less: Allowable deductions		
Repair and maintenance – 30% of Tk. 5,25,000	157,500	
Insurance premium [(1,500 x 4) x 6/8)	4,500	
Municipal tax [(500 x 12) x 6/8)	4,500	
Interest on HB loan [4000 x 6/8]	3,000	
Total deductions	169,500	
Income from house at Mia Bazar		**355,500**
Total income from rent		**976,100**

Notes:

1. House at Khulsi is elf-occupied, so there is no tax implication because it was not let-out.
2. No income was taken on those flats occupied by his son as it was not also let-out.

Worked example 5:

Mr. Jamilur Rahman is the owner of a five-storied building at Lalmatia. He resides with his family in the 2nd floor and all other floors (in each floor there are two units) are let out for residential purpose at a monthly rent of Tk. 10,000 per flat including Tk. 1,000 as WASA and DESA bill. The reasonable rent of the house is Tk. 1,000,000. Mr. Jamilur Rahman also receives Tk. 450,000 as security money from the tenant which is not adjustable against rent of the units during the income year ended on June 30, 2023.

Mr. Rahman claims the following deductions:

1. Repair expenses Tk. 130,000;
2. Land development tax Tk. 22,000;
3. Insurance premium Tk. 16,000;
4. Caretaker and Night guard salary Tk. 24,000;
5. Ground rent Tk. 2,000;
6. Alteration cost for ground floor Tk. 30,000.

Mr. Rahman has taken a building renovation loan of Tk. 1,500,000 at a flat interest rate of 18% from BRAC Bank limited on December 15, 2018. During the year one of the tenants in the ground floor left the house without paying rent for one month. Mr. Rahman even after taking necessary legal action fails to collect this rent. Besides, the same flat remained vacant for another two months during the year. Compute income from house property for the income year ended 30th June 2023.

Solution 5:

Mr. Jamilur Rahman
Income year: 2022-23
Assessment year: 2023-24
Computation of income from rent

	Tk.
Actual rent (Tk. 10,000 × 4 × 2 × 12)	960,000
Less: Tenants' expense borne by the landlord (Tk. 1,000 × 4 × 2 × 12)	96,000
	864,000
Reasonable rent (1,000,000 × 4/5)	800,000
Whichever is higher	864,000
Add: Security money received (note-1)	450,000
Annual value + security money	**1,314,000**
Less: Allowable deductions	
Repair and maintenance – 25% of Tk. 864,000	216,000
Land Development tax (4/5)	17,600
Insurance premium (4/5)	12,800
Ground rent (4/5)	1,600
Vacancy allowance (Tk. 864,000 × 1/8× 2/12)	18,000
Allowance for uncollectible rent (Tk. 864,000 × 1/8× 1/12)	9,000
Interest on borrowed fund (18% of Tk. 1,500,000)	270,000
Total deductions	**545,000**
Total income from rent	**769,000**

Note 1: The amount received as security money not adjustable against rent is deemed to be the income of the assessee for the income year in which it is received and be classified under the head "Income from rent".

Worked example 6:

Mr.Subir Mazumder is the owner of a two-storied building at Dhanmondi where he stays with his family in ground floor and the 1st floor was let out to a government authority at a gross monthly rent of Tk. 30,000. However, he has taken a 13% loan of Tk. 500,000 on November 01, 2020 from HBFC for modernization of the 1st floor of his building and the floor remained vacant for two months during the modernization period. It is again let out to the same authority from January 1, 2021 at a gross monthly rent of Tk. 50,000. The government authority deducts tax at source at prescribed rate before paying the rent to him. The reasonable rent of the house is Tk. 900,000.

The following expenses were incurred in the income year 2021-22 for his whole building:

1. Repair expenses Tk. 50,000;
2. City Corporation Tax Tk. 22,000;
3. Insurance premium Tk. 16,000;
4. Caretaker and Night guard salary Tk. 24,000;
5. Land revenue paid Tk. 2,000.

Compute income from house property for the income year ended 30th June 2022.

Solution 6:

Mr. Subir Mazumder
Income year: 2021-22
Assessment year: 2023-24

Computation of income from rent

	Tk.
Actual rent (Tk. 30,000 × 6) + (Tk. 50,000 × 6)	480,000
Reasonable rent (900,000 × 1/2)	450,000
Whichever is higher	480,000
Less: Allowable deductions	
Repair and maintenance – 30% of Tk. 480,000	144,000
City Corporation tax (50% allowed being 50% of the house was let out and annual value was taken accordingly)	11,000
Insurance premium (50%)	8,000
Land revenue (50%)	1,000
Vacancy allowance (Tk. 30,000x2 months)	60,000
Interest on borrowed fund (500,000 x 13% x 8 months)	43,333
Total deductions	**267,333**
Total income from rent	**212,667**

Worked example 7:

Ms. Halima Khatun owns two houses; one at Sutrapur and another at Lalbagh. From the following particulars compute her income form house property for the income year 2022-23 and also tax liability for the assessment year 2023-24.

House at Sutrapur: This is a three storied building (in each floor there are two flats). One of the flats in first floor is used as residence by Ms. Halima Khatun and the other flat in the same floor is used by her son-in-law who pays nothing for it. All other flats were let out at a monthly rent of Tk. 8,000 each. The municipal value of the house is Tk. 4,80,000. She has also received Tk. 1,00,000 as advance from the tenants which is not adjustable against rent. Expenses of the house for the year were as follows:

White wash expense	Tk. 20,000
Rent collection expense	3,000
City Corporation tax, quarterly	2,400
Land revenue paid	12,000
Salary of guard, monthly	500

Loan repayment to HBFC (including interest Tk. 4,200)	42,500
Installation of generator	15,000

The owner bears the electricity and gas bill of the tenants which amounted to Tk. 30,000 for the year. One flat remains vacant for two months during the year and she claims vacancy allowance.

House at Lalbagh:

The house is let out to a private bank branch and received monthly rent of Tk. 47,500 . 'The municipal value of the house is Tk. 6,00,000. Expenses of the house for the year were as follows:

Fire insurance premium	Tk. 25,000
Municipal tax	Tk. 12,000
Cost of alteration	Tk. 55,000
Ground rent	Tk. 10,000
Legal expenses	Tk. 12,000

According to the terms of the agreement the bank has to bear service charge which amounted to Tk. 15,000 for the year. During the year, Ms. Halima Khatun incurred the following investments and expenses:

Family expenses	Tk. 350,000
Insurance premium:	
Own (policy value Tk. 500,000)	40,000
Spouse (policy value Tk. 500,000)	60,000
Investment in shares in secondary market	25,000
Donation to the President's relief fund	20,000
Donation to a local club	6,000
Donation to Government Zakat fund	30,000
Donation to a Mosque	10,000

Solution 7:

Ms. Halima Khatun
Income year: 2022-23
Assessment year: 2023-24
Computation of income from rent

[1] House at Sutrapur:	**Tk.**	**Tk.**
Annual value:		
Actual rent (8000 x 4 x 12) (As 1 flat was not let out to son-in-law so there is no scope to determine annual value as per section 2(7))	384,000	
Less: Tenant's burden paid by landlord	30,000	
Revised actual rent	354,000	
Reasonable rent (480,000 x 4/6)	320,000	
Whichever is higher	354,000	
Add: Nonadjustable advance	100,000	

	454,000	
Less: Allowable deductions		
Repair & maintenance (354,000 X 25%)	88,500	
City Corporation Tax (2400 x 4 x 4/6)	6,400	
Land revenue paid (12000 x 4/6)	8,000	
Interest paid to HBFC (4,200 x 4/6)	2,800	
Vacancy allowance (8,000 x 2)	16,000	
Total deductions	121,700	
Income from rent		**332,300**
[2] House at Lalbagh:		
Annual value:		
Actual rent [Tk. 47,500 x 12]	570,000	
Add: TDS [570,000 x 5/100-5]	30,000	
Add: Landlord's burden paid by tenant	15,000	
Actual rental value	615,000	
Reasonable rent	600,000	
Whichever is higher	615,000	
Less: Allowable deductions		
Repair & maintenance (615,000 x 30%)	184,500	
Fire Insurance premium	25,000	
Municipal tax	12,000	
Ground rent	10,000	
Total deductions	231,500	
Income from rent		**383,500**
Total income from rent		**715,800**

Calculation of investment allowance for tax rebate:

Actual investment:	**Tk.**	**Tk.**
Insurance premium		
Own	40,000	
Maximum limit (500,000 x 10%)	50,000	40,000
Spouse	60,000	
Maximum limit (500,000 x 10%)	50,000	50,000
Donation to Government Zakat fund		30,000
Investment in shares at secondary market		25,000
Total investment		**145,000**

Investment rebate: Lower of i) Tk 21,450 (0.03 X 715,800) or ii) Tk 21,750 (0.15 X 145,000) and iii) Tk 10 lakh.

Calculation of tax liability:

		Rate	Amount (Tk.)
On the first	Tk. 350,000	0%	Nil
On the next	100,000	5%	5,000
On the next	265,000	10%	26,580
Total	**715,000**		**31,580**
Less: investment tax rebate			21,450
Net tax liability			**10,130**

Self-assessment questions

(a) Define "Annual Value" of a property under the Income Tax Act, 2023.

(b) Is the 'Annual value' of a property to be determined when it is occupied by its owner for residential purposes?

(d) What are the allowable deductions from annual value in determining the 'Income from house property' under the Act?

(e) If any owner of the house received house rent more than Tk. 25,000 per month then what formalities to be maintained by him as per Rule-8A of I.T. Act, 2023? What will happen if he does not follow the rules and instructions issued by the NBR?



Chapter 7

Income from agriculture

Contents

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Examination context

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7.6	General allowable deductions in computing income from agriculture
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7.9	Non-assessable agricultural income
7.10	Special reduced tax rates

Worked examples

Introduction

Learning objectives

- Identify income from agriculture.
- Compute the taxable income under the head ‘income from agriculture’.
- Identify different types of agricultural income.
- Identify the allowable deductions under the head.
- Illustrate the non-assessable income under the head.
- Identify the area of reduced tax rate.
- Identify partly agricultural income and partly business income.
- Compute net tax liability in different situations.

Practical significance

The head ‘Income from agriculture’ has good potential for increasing the revenue to the Government in Bangladesh due to its significance. Bangladesh is an agricultural country and its agriculture sector has significant contribution to GDP every year. But collection of tax from this head is insignificant. Here, professional accountants can play an important role by devising the way of collecting tax under the head through simplification and modernization of tax laws and process.

This chapter presents different form of agricultural income, allowable deductions, and non-assessable income under the head, non-agricultural income, and other related topics. A clear understanding on each topic presented in the chapter will make the students expert to give opinions to their clients in tax related issues.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head ‘income from agriculture’ is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

You will be also using this knowledge when you tackle the taxation paper later on in the Professional Stage and it will also underpin the technical aspects at the Advanced Stage.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define income from agriculture.
- Identify different types of agricultural income.
- Compute the taxable income under the head ‘Income from agriculture’.
- Differentiate fully, partly and other agricultural income.
- Identify the allowable deductions under this head.
- Illustrate the non-assessable income under this head.
- Know the application of reduced tax rate and areas where this tax rate is applicable.
- Define non-agricultural income and its impact on computing total income and tax liability.
- Compute net tax liability in different situations.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each content of this chapter will help candidates to resolve any problems relating to computation of agricultural income.

7.0 INCOME FROM AGRICULTURE

Section overview

- ➔ Income from agriculture is one of the important heads of income.
- ➔ The total income may not be taxable income.
- ➔ There are some allowable, inadmissible and not permissible deductions under the head.
- ➔ Some income under the head is not assessable.
- ➔ On some specific classes of income under the head is taxed at a reduced rate.
- ➔ Depreciation allowance on agricultural property is different.
- ➔ A part of the gain on sale of agricultural asset will be reported as income from agriculture.
- ➔ It is very important to know non-agricultural income and partly agricultural income.
- ➔ Advance tax need not be payable on agricultural income up to Tk 8 lakh.

7.1 Scope of income from agriculture

According to section 40 of the Income Tax Act, 2023 –

1. Income earned by a person from any activities related to agriculture shall be classified under the head 'Income from agriculture'.
2. 40% of proceeds from tea and rubber production or process by any person shall be considered as business income and 60% shall be considered as 'income from agriculture'.
3. Agriculture means any kind of horticulture, animal husbandry, natural use of land, poultry and fish farms, reptile farms, nurseries, any kind of cultivation on land or water, egg and milk production, timber, grass and shrubs, production of fruit, flower and honey and production of seed shall be included.

7.2 Characteristics of agricultural income

a) Income should be derived from land. A person may transfer his agricultural land to another in consideration of a life annuity as was in the case of *Gopal Saran Narain Singh V CIT 1935, ITR 237 (P.C)* or of other thing which is charged upon the land. The annual receipt would not be agricultural income.

b) The land on which agricultural income is assessed must be situated in Bangladesh.

c) The land must be used for agricultural purpose. Unless there is some measure of cultivation of the land, some expenditure of skill and labor upon it, it cannot be said to
be used for agricultural purposes. Income from the sale of forest trees, bushes, bamboos, fruits and flowers growing on land naturally without any human skill and labour is not agricultural income. Income derived from the sale of wild grass or trees of spontaneous growth is not agricultural income. But land leased for grazing or pasturing animals required for agricultural purpose is used

for agricultural purposes and income from lease is agricultural income irrespective of whether the grass on the land is cultivated or grown naturally.

d) No advance tax is payable on agricultural income up to Tk 800,000.

7.3 Special agricultural income

According to section 41 of the Income Tax Act, 2023 _

1. Without prejudice to the section 40 of ITA, 2023, the provision of section 41 shall be apply to compute special agricultural income.
2. As per section 41 (2), if an asset is sold in any income year after being used by the assessee for agricultural purpose under section 40, it shall be computed as follows, namely –

If sale proceeds is more than the acquisition value	Income from capital gain = A - B Income from agriculture = B - C
If sale proceeds is not more that acquisition value but exceeds written down value (WDV)	Income from agriculture = A - C

3. As per section 41 (3), if in any income year the amount received as insurance, salvage or compensation due to the abandonment, destruction of any asset being used by the assesses in his agricultural work, exceeds the WDV, the said amount shall be included under the head 'Income from agriculture' as below, namely –

If insurance, salvage or compensation value is more than the acquisition value	Income from capital gain = A - B Income from agriculture = B - C
If insurance, salvage or compensation value is not more that acquisition value but exceeds written down value (WDV)	Income from agriculture = A - C

4. For the purpose of section 41, –

   A = Sale proceeds of the asset or insurance, salvage or compensation value of the asset
   B = Acquisition value of the asset
   C = Written down value (WDV) of the asset after allowing depreciation under third schedule

5. If difference between sale proceeds or salvage/compensation value and WDV of the asset being used in agricultural purpose is negative i.e. loss, the loss shall be treated as allowable expense for the purpose of computation of 'Income from agricultural'.

7.4 Non-agricultural income

Sometimes, we may be confused with some income not generated from agriculture but may be closely related to that. A possible list is given below and any income from these sources should be considered as income from other sources.

(i) Income from ferry ghat and mooring terminal
(ii) Income from sale of produce that grow up in the agricultural land without agricultural works e.g., forest trees, wild grass, fruit and flowers grown spontaneously and without human effort
(iii) Income from salt production by flooding the land with sea water and then extracting salt there from
(iv) Income from cutting and selling of timber on contract

(v) Interest on arrear of rent for agricultural land
(vi) Income from letting out vacant land not used for agricultural purpose
(vii) Royalty / ground rent against lease of land for mining, potteries, quarries etc.
(viii) Sale of soil used for brick field
(ix) Income from sale of water used for irrigation
(x) Income from sale of forest trees, flowers, bamboo, wild grass, reeds or fruits produced naturally without any agricultural work
(xi) Sale of stones from quarries
(xii) Income from salary for working as an agricultural supervisor / manager
(xiii) Income from sale of crops which has been purchased from others for resale
(xiv) Income from dairy firm established for business purpose
(xv) Income from poultry firm established separately for business purpose (xvi) Income from fisheries established for business purpose (xvii) Fish hunting, ship anchor etc.
(xviii) Income derived from butter and cheese making
(xix) Income received as commission for working as middleman in agro products
(xx) Remuneration received by managing agent at a fixed percentage of net profit from a company having agricultural income.
(xxi) Interest received by an assessee against loan in the form of agricultural produce (xxii) Dividend paid by a company out of its agricultural income.

7.5 Income from agricultural house property

When the property is occupied by the cultivator or the recipient where any process as may be described agricultural, is carried therein by the recipient of agricultural income, or in the immediate vicinity of agricultural land, and is used as a dwelling house by the cultivator or the recipient of agricultural income, in connection with the land, any income from such house property is regarded as agricultural income. But non-agricultural income does not become agricultural by reason of only in direct connection with agricultural land [*Premier Construction Co. V.C.LT. 1948 I.T.R. 380, 384].*

7.6 General allowable deductions in computing income from agriculture

As per section 42 of ITA, 2023, in computing 'Income from agriculture' in any income year, the amount wholly and exclusively expended (not capital or personal expenditure) for the purpose of agriculture, shall be treated as allowable deduction. And following deduction shall be treated as general allowable deduction, namely –

(a) Any tax, land development tax or khajana paid on land or ground used for agricultural purpose;
(b) Rent payable for land or ground used for agricultural purpose, development and maintenance expense and cultivation expense;
(c) Interest or profit payable on loan taken for agricultural purpose;
(d) Repair and maintenance of machinery and equipment used for agricultural purpose, rearing of livestock for cultivation, processing or transport related expenditure;
(e) Insurance premium;
(f) Expenditure for protecting agriculture from natural calamities or other damages;
(g) Depreciation and amortization expense as per third schedule of this Act;
(h) Where animal which was used for agricultural purpose has died or become permanently disabled, the difference between purchase price and sale proceeds of animal or its meat;
(i) Any expenditure (not in capital nature) incurred in connection with a visit abroad as a member of any Government sponsored agricultural delegation;
(j) Any expenditure incurred on training to Bangladeshi citizens related to such scheme as approved by the Board;
(k) Expenditure incurred in conducting scientific research related to agriculture or expenditure incurred in conducting such scientific research whereby the research is conducted wholly and exclusively of the purpose of agricultural development of the taxpayer in Bangladesh.

Note that only so much of expenditure related to income from agriculture shall be treated as allowable expenditure.

7.7 Calculation of special deductions in case of non-maintenance of books of accounts

According to section 43 of the Income Tax Act, 2023, where it appears that, -

(a) The assessee does not applying accounting system regularly;
(b) The assessee is applying an method on the basis of which it appears to the DCT that it is not possible to arrive at a conclusion as to the income of the assessee;
(c) The assessee has failed to maintain accounts and transactions; or
(d) Accounts or transaction maintained by the assessee are not verificable.

In such case, notwithstanding anything contained in any other section, 60% of market value of the agricultural produced shall be treated as allowable expenditure.

Note that above provision shall not apply in case where the owner receive income from Adhi, Borga, Bhaga, or share.

Section 44 of ITA, 2023 states that if withholding tax is not applied (where applicable) on any expenditure, such expenditure shall not be treated as allowable expenditure. Additionally, the provision of section 55 of ITA, 2023 as if the provision was related to 'income from agricultural'.

7.8 Dpreciation allowance

According to part 1 of Third Schedule of ITA, 2023, depreciation allowance in respect of any capital asset, works or physical infrastructure owned by a taxpayers used for agricultural purpose, depreciation shall be allowed as per below table:

Assets	Rate
1. A building or structure constructed by brick, concrete, steel or similar material	5%
2. House constructed by tin, bamboo or similar materials	10%
3. Permanent fence	10%
4. Tube – well	10%
5. Tank	10%
6. Irrigation works, channels, pipes	10%
7. Agricultural instruments made by wood or bamboo	20%
8. Weight machine	10%
9. Tractors, oil engines and light machinery	10%
10. Truck, delivery van, other motor vehicle	10%
11. Piper pumping equipment	20%
12. Non-mechanical van	15%
13. Steam engine	10%
14. Factory machinery	15%
15. Any such common instrument, tools, plant and other property	10%

7.9 Non-assessable agricultural income

According to Sixth Schedule, Part 1, Para 20 of ITA, 2023, income up to Tk 200,000 of any individual assessee under the head 'Income from agricultural' shall be exempted from tax if the said individual –

(a) Is a farmer by profession;

(b) Does not have any income other than following income, namely –
(i) income arising land cultivation;
(ii) Income not more than 20,000 from interest or profit.

Illustration 1

Mr. Rajib reports Tk. 12,00,000 as income from agriculture during the income year ended on June 30, 2022. He has no income from other sources. In this case, Mr. Rajib will pay taxes on Tk. 650,000 only. His non-assessable income is Tk. 5,50,000 (Tk. 3,50,000 + Tk. 2,00,000). It is assumed that Mr. Rajib doesn't fall in elderly citizen or disable category.

7.10 Special reduced tax rates

(a) Tax rate on income from **fisheries, hatchery and Poultry** has been re-shuffled through SRO No. 157 dated 01/6/2022 with effect from the assessment year 2023-24 which is as follows:

Income range	Reduced tax rate
Up to Tk.10,00,000	Nil
On next Tk.10,00,000	5%
On next Tk.10,00,000	10%
On remaining income	15%

(b) Any income from pelleted poultry feed production, seed production, marketing of locally produced seeds, and livestock farming, frog farming, horticulture, mulberry farming, sericulture, mushroom farming and floriculture will be taxed at the following reduced tax rate as per SRO no-199 dated 30/6/2015:

Income range	Reduced tax rate
On 1st Tk.10,00,000	03%
On next Tk.20,00,000	10%
On rest amount of income	15%

Some basic operations like application of human skill and labor on the land are required to constitute agriculture. Thus, spontaneous growth of forest trees without the aid of any human agency is not regarded as income from agriculture.

Worked examples and solutions

Worked example 1

Relevant information regarding the agricultural income of Mr. Jamal Ahmed for the year ended on June 30, 2023 is given below:

Sale of paddy	150 maunds @ Tk. 600 per maund
Sale of jute	100 maunds @ Tk. 800 per maund
Sale of rabi crops	Tk. 65,000
Income from barga	Tk. 20,000

Lease rental of agricultural land Tk. 30,000

Expenses relating to this income are as follows:

Cost of seeds and fertilizer	Tk. 40,000
Cultivation cost	65,000
Transportation cost	15,000
Ordinary processing cost	25,000
Land revenue paid	7,000
Crop insurance premium	5,600
Allowable depreciation	3,000
Interest on borrowed fund	2,800

Compute total income of Mr. Jamal Ahmed assuming that:

(a) he did not maintain proper books of accounts
(b) he maintained necessary books of accounts

Solution 1:

(a) When proper books of accounts are not maintained:

Mr. Jamal Ahmed
Income year: 2022-23
Assessment year: 2023-24
Computation of agricultural income

Income from agricultural :			
Sale of paddy (150 x Tk. 600)	90,000		
Sale of jute (100 x Tk. 800)	80,000		
Sale of rabi crops	65,000		
Income from barga	20,000		
Lease rental of agricultural land	30,000		
		2,85,000	
Less: Admissible expenses:			
1. Production cost (235,000 x 60%)	1,41,000		
3. Union parisad tax	4,400		
4. Crop insurance premium	5,600		
5. Allowable depreciation	3,000		
6. Interest on borrowed fund	2,800		
		1,56,800	
			1,28,200
Total income			1,28,200

(b)

When proper books of accounts are maintained:

Mr. Jamal Ahmed
Income year: 2022-23 [Assessment year: 2023-24]
Computation of agricultural income

Income from agricultural :			
Income from sale of paddy (150 x 600)	90,000		
Income from sale of jute (100 x 800)	80,000		
Income from sale of rabi crops	65,000		
Income from Borga	20,000		
Lease of agricultural land	30,000		
		2,85,000	
Less: Admissible expenses:			
1. Production cost-			
Cost of seeds and fertilizer	40,000		
Cultivation costs	65,000		
Transportation cost	15,000		
Ordinary processing cost	25,000		
	1,45,000		
2. Land revenue paid	7,000		
4. Crop insurance premium	5,600		
5. Allowable depreciation	3,000		
6. Interest on borrowed fund	2,800		
		1,63,400	
			1,21,600
Total income			1,21,600

Worked example 2

Mr. Sanjib Majumder is a farmer who owns agricultural land which is used three times a year to produce agricultural goods. Such cultivation is mainly done for commercial purpose; however, a very insignificant part is consumed by him. He is an elderly citizen (age more than 65 years) and has reported income from no other sources. During the income year ended on June 30, 2023, he has reported following information relating to income from agriculture:

Agricultural produce	Volume of production	Self-consumption	Market price
Paddy	215 maunds	15 maunds	Tk. 700 per maund
Potato	112 maunds	12 maunds	Tk. 180 per maund
Cereals	835 kgs	35 kgs	Tk. 115 per kg

In addition to above income, he also produced seasonal vegetables (beans) during winter on the surroundings of his agricultural land. Total production was 256 kgs and sold at the rate of Tk. 16. Out of the total production, 16 kgs are used for self-consumption and reported Tk. 1,200 as cost of bean production.

He also has reported Tk. 95,000 income from poultry firm and fulfills all conditions to be non- assessable. He has also reported Tk. 180,000 income from fisheries.

Expenses relating to agricultural produce like paddy, potato and cereals are as follows:

Cost of seeds and fertilizer	Tk. 36,500
Labour charge	40,000
Maintenance costs of agricultural equipment	4,000
Union parisad tax	5,800
Crop insurance premium	8,200
Depreciation on tractor @ 20%	14,000

Mr. Majumder has borrowed Tk. 50,000 from Rajshahi Krisi Unnayon Bank at an interest rate of 12% per annum on 15th October 2019. Allowable depreciation for tractor as per the Third Schedule of the ITA, 2023 is 10%. Cost of seeds and fertilizer includes Tk. 1,500 spent against Borga. He maintains books of accounts properly.

Solution 2:

Mr. Sanjib Mojumder
Income year: 2022-23
[Assessment year: 2023-24]
Computation of agricultural income

Agricultural income :			
Market price of paddy production (215 x 700) [note-1]		150,500	
Market price of potato (112 x 180)		20,160	
Market price of cereals (835 x115)		96,025	
Market price of seasonal vegetables (256 x16)		4,096	270,781
Income from poultry farm	95,000		
Less: exempted upto Tk.10,00,000	95,000	nil	
Income from fisheries Tk.	1,80,000		
Less: exempted upto Tk.10,00,000	1,80,000	nil	
Less: Admissible expenses:			
1. Production cost-			
Cost of seeds and fertilizer	36,500		
Labour charge	40,000		
Maintenance of agricultural equipment	4,000		
		80,500	
2. Union parisad tax		5,800	
3. Crop insurance premium		8,200	
4. Allowable depreciation (note 2)		7,000	
5. Interest on borrowed fund (note-3)		4,250	
6. Cost of bean production		1,200	
			106,950
Total			163,831
Less: exemption as per 6thschedule, part-1, Para 20			200,000
Total income			**(36,169)**

Notes:

1. Market price of the produce is to be taken as sales proceeds. So self-consumption has not been taken into consideration, rather whole produce has been multiplied by market price to arrive sale proceeds.
2. Allowable depreciation = (14,000/.20) x .10 =7,000
3. Interest on borrowed fund = (50,000 x 12%) x 8.5/12 = 4,250
4. As agriculture is the only source of income for Mr. Sanjib Majumder, he is allowed to get maximum Tk. 2,00,000 exemption as per 6thschedule, part-1, Para 20 in assessing his total income.

5. As total income of Mr.Sanjib Majumder doesn't exceed the non-assessable limit of Tk. 3,00,000; he will have no tax liability.

Worked example 3

From the following particulars of income, compute the total income Mr. Jibon Karmaker for the income year 2022-23.

1. Sale of paddy: (250 maunds @ Tk. 500)	Tk.	125,000
2. Sale of jute: (100 maunds @ Tk. 400)		40,000
3. Sale of rabi crops:		50,000
4. Annual rental from leasing agricultural land		20,000
5. Sale of forest timber and bamboo		6,000
6. Income from tea garden		30,000
7. Income from rubber garden		40,000
8. Income from tobacco industry		30,000
9. Income from sugar industry		50,000
10. Income from poultry farm		35,000
11. Income from cattle rearing		3,000
12. Income from sale of palm and date Juice		6,000
13. Income from sale of honey		5,000

Expenses for cultivation are as follows:

	Rice and rabi crops	**Jute**
Cost of seeds and fertilizer	25,000	7,000
Labor charge	5,000	2,000
Cost of hiring pump machine	3,000	1,000
Repair expense of equipment	500	-
Transportation cost	2,000	500

Mr. Karmaker maintains proper books of accounts for rice and rabi crops, however, he maintains no books for jute.

Other expenses as incurred were as follows:

Union parisad tax	2,000
Land revenue	1,000
Crop insurance premium	2,500
Allowable depreciation	9,000
Maintenance cost of irrigation plant Insurance premium – Tractor	4,000 7,000

He had a pump machine which was purchased at Tk. 25,000. It has become obsolete and has been discarded at Tk.12,000. As on the date of discard, the written down value after charging depreciation on the basis of prescribed rate at the ITA, 2023 amounted to Tk. 10,000.

He has taken agricultural loan of Tk. 50,000 @ 8% interest from Bangladesh Krishi Bank.

Mr. Karmaker has a tractor which was purchased for Tk. 250,000 on which he has an active insurance policy. During the income year, the tractor becomes out of order and he filed a claim with insurance company. After proper scrutiny, he receives Tk. 82,000 from insurance company as coverage. However, depreciation charged so far on the tractor as per IT Act is Tk. 150,000.

Solution 3:

Mr. Jibon Karmaker
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Income from agricultural:		**Tk.**	**Tk.**	**Tk.**
Sale of rice (250 x 600)		125,000		
Sale of jute (100 x 400)		40,000		
Sale of rabi crops		50,000		
Annual lease rental		20,000		
Income from tea garden (30,000 x 60%)		18,000		
Income from rubber garden (40,000 x 60%)		24,000		
Income from poultry farm	35,000			
(-) exemption (full)	35,000	-		
Income from cattle rearing		3,000		
Income from sale of palm and date juice		6,000		
Income from sale of honey		5,000		
Gain from sale of obsolete equipment (Sales - WDV = 12,000 - 10,000)		2,000		
				293,000
Less: admissible expenses				
1. Production expenses:				
Cost of seeds & fertilizer		25,000		
Labor charge		5,000		
Cost of pump machine hire		3,000		
Repair expanses of agricultural equip.		500		
Transportation cost		2,000		
Production costs for rice & rabi crops		35,500		
Costs of jute production (40,000 x 60%)		24,000	95,000	
2. Union parisad Tax		2,000		
3. Land revenue		1,000		
4. Crop insurance premium		2,500		
5. Allowable depreciation		9,000		
6. Maintenance cost of irrigating plant		4,000		
7. Insurance premium – Tractor		7,000		
8. Loss from tractor (Tk. 100,000 – Tk. 82,000)		18,000		
9. Interest from borrowed fund (50,000 x 8%)		4,000	47,500	
				142,500
Income from business:				150,500
Income from tea garden (30,000 x 40%)		12,000		
Income from rubber garden (40,000 x 40%)		16,000		
Income from tobacco (direct 45% tax will be imposed)		30,000		
Income from sugar industry		50,000		108,000
(Fully business income as NBR not yet segregate this income)				

Income from other sources	
Sale of forest timber and bamboo	6,000
Total income	**2,64,500**

Self-assessment questions

1. Define ‘agricultural income’ under the Income Tax Act, 2023.
2. Discuss the allowable deductions as per section 42 and 43 of the Act in computing the taxable income under the head ‘income from agriculture’.
3. How will you compute the income in respect of tea and rubber industries?
4. What are the different types of agricultural income?
5. On what categories of agricultural income, taxes are imposed at a reduced rate?



Chapter 8

Income from business

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Worked examples and solutions

Introduction

Learning objectives

- Identify income from business.
- Compute the taxable income under the head ‘income from business’.
- Identify the allowable deductions under the head.
- Identify the expenses that are inadmissible.
- Identify the complexity of computing income from business and profession.
- Identify the expenses admissible up to a certain limit.
- Compute net tax liability in different situations.

Practical significance

The head ‘Income from business’ is very important to tax authority. A significant part of tax revenue government collects from this head. This head also includes lot of complex issues on which clear understanding is required to practice tax. This chapter lays the basic foundation of corporate tax assessment.

This chapter presents an idea of how conventional profit and loss account can be adjusted with applicable tax laws. It presents the scope of income under the head, admissible expenses, inadmissible expenses and other related issues.

Some expenses are admissible up to a certain limit. These are explained with some examples. Other complex issues like perquisites, balancing charge etc. are simplified with examples.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think

Do you realize that the computation of taxable income under the head ‘income from business’ is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define income from business.
- Identify different scope of income under the head.
- Compute the taxable income under the head ‘income from business.
- Illustrate the income cannot be reported under the head.
- Identify the allowable deductions under the head.

- Illustrate the expenses admissible up to a certain limit.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income from business and profession.

8.0 INCOME FROM BUSINESS AND PROFESSION

Section overview

- ➔ Scope of income from business.
- ➔ The gross income may not be taxable income.
- ➔ There are some allowable, inadmissible and not permissible deductions under the head.
- ➔ Computation of income under the head is very significance.
- ➔ Any amount of perquisites, entertainment allowance, and free sample are admissible but up to a certain ceiling.
- ➔ Depreciation allowance is very important factor for determining profit.
- ➔ Revenue expenditure and capital expenditure is considered differently.

8.1 Meaning of business

"Business" defined in section – 2(70) as including –

- Any trade, commerce or manufacturing of goods;
- Undertake any risk or endeavor in any trade, commerce or production of goods;
- The exchange of goods or services of any for profit or not for profit entity;
- Any profession

According to Oxford Advanced Learner's Dictionary, business means the activity of making, buying, selling or supplying goods or services for money.

8.2 Scope of income under the head 'income from business'

Scope of income under the head 'income from business' encompasses the following areas as per different sections of Income Tax Act, 2023:

(a) Any profit and gain from a business carried on or deemed to be carried on by the assessee during the income year;
(b) Income derived from any trade or professional association or other association of like nature on account of specific services performed for its members;
(c) The fair market value of any benefit arising out of or in continuation of any person's past, present or potential future business relationship whether convertible into cash or not;
(d) Any management fee incurred by any management company including Mudaraba management company;
(e) Any amount dur to the lessor bank insurance or financial institution against the lease of any asset owned by itself or other;
(f) Realized gain from currency exchange as per Third Schedule of this Act;

(g) Any income received during the income year from any discontinued business.

8.3 Special area of business income

1. Income from special area of business income shall be computed as below:
2. If any asset used in the business of the assessee is sold in any income year:

If sale proceeds is more than the acquisition value	Income from capital gain = A - B Income from business = B - C
If sale proceeds is not more that acquisition value but exceeds written down value (WDV)	Income from business = A - C

3. If in any income year the amount received as insurance, salvage or compensation due to the abandonment, destruction of any asset being used by the assesses in his business, exceeds the WDV, the said amount shall be included under the head 'Income from agriculture' as below, namely –

If insurance, salvage or compensation value is more than the acquisition value	Income from capital gain = A - B Income from business = B - C
If insurance, salvage or compensation value is not more that acquisition value but exceeds written down value (WDV)	Income from business = A – C (if A>C) Allowable deduction under 'income from business' = C – A (if A<C)

For the purpose of above –

A = Sale proceeds of the asset or insurance, salvage or compensation value of the asset

B = Acquisition value of the asset

C = Written down value (WDV) of the asset after allowing depreciation under third schedule

It should be noted that the business in which the asset is used prior to the sale shall be deemed to be carried on by the assessee in the income year to which the asset is sold

Further, if an asset is exported or transferred outside Bangladesh after being used in the assessee's business, the date of such export or transfer shall be deemed to the the date of sale of the asset and the purchase price of the asset shall be deemed to be the sale proceeds.

4. Where during any income year an assessee, being an exporter of garments, transfers to any person, the export quota or any part thereof allotted to him by the Government, such portion of the export value of the garments exportable against the quota so transferred as may be prescribed for this purpose shall be deemed to be income of the assessee for that income year, classifiable under the head "Income from business"

5. Any expenditure on account of interest or profit payable to any person is not paid within 3 years after the end of the income year in which the deduction is made, in the subsequent income year the unpaid interest or profit amount shall be treated as 'income from business'.

Provided that if any such interest or profit (which has been treated as business inome under above provision) is paid in any subsequent year, the said payment shall be excluded from the computation of income of the assessee in the relevant income year.

6. If in computing income under this 'Income from business' in any income year any trading liability is take in account and –

(a) if any subsequent income is received by the assessee in respect of trading liability in the said income year, the monetary value of that benefit shall be treated as income from business of the assessee in the income year in which the benefit is received;

(b) if the trading liability or any part thereof remains unpaid within 3 years after the end of the income year in which the said trading liability has been taken, then the said unpaid trading liability shall be treated as income from business of the assessee in the income year following the completion of the said 3 years

Provided that if any such trading liability treated as income is paid in any subsequent year, such amount shall be excluded in computing the income of the assessee.

7. If a loss, credit or any expense is deducted in computing income from business in any income year and if in any subsequent income year the assessee receives any benefit in respect of such deducted losss, credit or expense, the monetary value of that benefit shall be treated as income from business in the income year in which the benefit is received.

8. In case of filing return under section 180 of ITA, 2023, any deficiency in the initial capital shown at any time within 5 years after the year in which the return is filed shall be treated as income from business.

9. In computing the income of a financial institution, interest or profit income on loans classified by the Bangladesh Bank as bad loans or doubtful loans shall be credited as profit and loss in the income year, or in the income year in which they actually received, whichever is earlier, income from business of the financial institution shall be included.

8.4 Some specific guidelines

In line with section 47 of ITA, 2023, some typical companies should compute taxable income as per the guidelines given in different schedules as mentioned below:

Fourth Schedule: The profits and gains from insurance business and the tax payable thereon

Fifth Schedule: The profits and gains from the exploration and production of natural gas, petroleum and other minerals and the tax payable thereon.

Further, as per section 48 of ITA, 2023, any speculation business carried on by any person shall be treated as separate and distinct business from the other business of that parson.

8.5 General allowable deduction in computing income from business

According to section 49 of ITA, 2023, subject to the provision the Act, in computing the income from business in any income year, following expenses shall be included in the general deduction, namely –

(a) Expenditure on purchase of raw materials, inventory, goods for the purpose of business and use in business and any depreciated inventory expense;
(b) Duty-taxes, municipal taxes, local taxes, land development tades or rents and Government fees for the purpose of business not paid under ITA, 2023 or the Gift Tax Act 1990.
(c) Rent, development and maintenance expense payable for land or grounds used for business purpose;
(d) All such expenses, welfare expenses or remuneration which are treated under the head ‘income from employment’;
(e) Repair and maintenance expenses;
(f) Insurance premium incurred and paid for business purpose;
(g) Cost of electricity and other services including fuel;
(h) Goods transportation, clearing and forwarding charges;

(i) Sales related commission, brokerage, discount or warranty charge related to expenses;
(j) Advertising and camping expenses;
(k) Expenditure for employee training;
(l) Conference, hotel and accommodation expense of sales representatives;
(m) Conveyance and travel expense;
(n) Internet service, postal and telecommunications expense;
(o) Legal, audit and other professional services expenditure;
(p) Entertainment and hospitality related expenses;
(q) Realized foreign exchange loss as per Third Schedule;
(r) Subscription to any club or trade association, including entry fees for use facilities;
(s) Any expenses incurred in connection with travel abroad as a member of a trade delegation sponsored by the Government;
(t) Royalty, technical fees, head office expenses;
(u) Payment to Workers Profit Participation Fund (not exceeding 5% of disclosed net business profit).
(v) Other expenses incurred wholly and exclusively for the business purpose.

8.6 Special allowable deduction in computing income from business

According to section 50 of ITA, 2023,

1. following expenses shall be deductible subject to the permissible limits and conditions set out in the Third Schedule, namely –

(a) General depreciation allowance;
(b) Initial depreciation allowance;
(c) Accelerated depreciation allowance;
(d) Amortization allowance; and
(e) Research and development expense.

2. If an asset mentioned in the Third Schedule is sold in any income year and the sale proceeds is less than the WDV, the difference between WDV and sale proceeds shall be allowable deduction in computing 'income from business'.
3. Allowable bad debt expenditure under section 51 of ITA, 2023 shall be deducted from income from business.
4. Allowable interest expense under section 52 and 53 of ITA, 2023 shall be deducted from income from business.

8.7 Allowable bad debt expense

According to section 51 of ITA, 2023,

1. In case of other than bank and financial institution bad debt expenditure shall be allowed, if –

(a) Bad debt or part of the bad debt is finalized as uncollectible and in the books of accounts it is disclosed as written-off;
(b) All reasonable steps are taken for recovery before writing – off;
(c) Bad debt or part of bad debt is treated as income in any income year.

2. In case of bank and financial institution, bad debt expenditure shall be allowed if –

(a) Bad debt or part of bad debt is finalized as uncollectible by International Accounting Standards (IASs) and the related bank and financial institution disclosed as written-off in its books of accounts;
(b) All reasonable steps are taken for recovery before writing – off;
(c) Bad debt or part of bad debt is treated as income in any income year.

8.8 Computation of special deduction of interest or profit

According to section 52 of ITA, 2023,

1. Any payment of interest, or as the case may be, payment of profit share, on any capital borrowed for the purpose of business shall be treated as allowable business expenditure.
2. If it is found that any part of the borrowed money has been used for any other purpose outside the business or any part of the assets acquired by the borrowed money has been transferred outside the business to any toher place where the investmen is not the business of the transferor, the part of the money or assets which is in the business purpose, interest or profit shall be allowable expense at the rate proportionate to the portion utilized in the business purpose.

8.9 Special limit for allowable interest

According to section 53 of ITA, 2023,

1. Notwithstanding anything contained in any other provision in ITA, 2023, interest expenditure shall be approved as per procedure and limit prescribed by the Board in case of a resident person (other than bank and financial institution) received loan from associated entity as defined under section 233.
2. Above provision shall not be applied in case of interest paid not exceeding Tk 1500,000.

8.10 General conditions for allowable deduction

According to section 54 of ITA, 2023,

1. If in any income year any such expenditure is allowed as deduction which represents in whole or in part an asset, no further deduction shall be allowable in respect of that asset in the same income year;
2. In approving any expenditure under section 49 of ITA, 2023, the commercial reasonableness of the expenditure shall be considered and following matters shall be taken into account in considering the commercial reasonableness, namely –

(a) If the expenditure is incurred for the purpose of earning income from business;
(b) If the expenditure incurred is revenue in nature; and
(c) If the expenditure is reasonable in the circumstances.

8.11 Deduction not admissible in certain cases

According to section 55 of ITA, 2023, following deductions shall not be allowable in imputing income from business, namely –

(a) Any expenditure or payment in respect of which the provisions of Part 7 of ITA, 2023 have not been duly complied with;
(b) Interest, salary, commission or gratuity paid by any firm or association to any partner of the firm or any member of the association;
(c) Payment of any commission or discount by a company to a shareholder director;
(d) Any amount in excess of 1,000,000 paid to an employee in respect of perquisites as defined in section 32;

Provided that nothing shall apply in respect to the payment of wages to employees for implementing the recommendations of Wage Board constituted by the Government, by notification in the Government Gazette, on the basis of Government decision.

(e) Exceeding 10% of the net business profit disclosed in the financial statements in relation to the total amount of expenses for royalty, license fee, technical service fee, technical know-how fee, technical assistance fee or any fee of similar nature;
(f) Head office or intra-group expenditure, by whatever name called, incurred by any such company not registered in Bangladesh exceeding 10% of net business profit disclosed in the financial statements;
(g) Amount exceeding 0.5% of business turnover disclosed in the financial statements in respect of expense related to foreign travel

Provided that this shall not apply if the assessee travels abroad for rendering any service to the Government.

Provided further that the limit provided above shall not apply if evidence is produced in support of the additional amount is commercial reasonable.

(h) Exceeding amount to the limit stated below as entertainment expenase –
a. 4% of first 1,000,000 of assessed business income excluding entertainment expense;
b. 2% of remaining assessed business income excluding entertainment expense.
(i) Distribution of free sample exceeding the following limit:

Assessed turnover	**% of turnover**		
	Pharmaceutical industry	Food, cosmetics and toiletries	Other industry
Up to Tk. 5 crore	2%	1%	0.50%
Exceeding Tk. 5 crore, but up to Tk. 10 crore	1%	0.5%	0.25%
Exceeding Tk. 10 crore	0.50%	0.25%	0.10%

(j) amount exceeding 0.5% of business turnover in respect of promotional expenditure (other than advertising).
(k) Any such amount treated as 'Income from employment' of the employee is paid through other than banking channel;
(l) If any amount which is treated as 'Income from rent' is paid through other than banking channel;
(m) Payment of any amount in respect of raw material exceeding Tk 500,000 paid through other than banking channel;
(n) In case of all types of expenses than (k), (l) and (m) above if any amount exceeding Tk 50,000 is paid though other than banking channel ;
(o) Any amount paid to any such person who is required to submit proof of submission return under clauses 25, 26, 28, 29, 36, 37, 42 and 43 of sub-section 3 of section 264 fails to collect proof of submission return;
(p) Any expenditure in capital or personal nature;
(q) Any liability which is not specifically identifiable;
(r) All expenditure not related to business activities;
(s) Any depreciation and interest for Right of Use as per IFRS. Provided that in case of rent development and maintenance expense payable for the land or premises used for business purpose shall be allowable expense;
(t) Impairment less;
(u) Any amount paid to unapproved fund;
(v) All unsubstantiated expenses if the accounts was not maintained in prescribed manner;

For the purpose of above –

(i) 'Net business profit' means the business profit directly carried on by an entity, does not include profit derived from any subsidiary, associate or joint venture;

(ii) 'Promotional expense' means business expenses claimed against the providing of goods, money or the benefits to any person for the purpose of business, but shall not include advertising expense.

8.12 Computation of special business income

According to section 56 of ITA, 2023,

1. Notwithstanding anything contained in any other provision of this Act, all expenditure disallowed under section 55 (other than s) shall be treated as 'special business income'.
2. No expenditure, adjustment of losses or carry-forward and no allowance under Third Schedule shall be allowed against any income treated as 'special business income' (disallowance under section 55) or 'special area of business income' (special area of business income under section 46).

8.13 Capital and revenue expenditure

Capital expenditure

All expenditure incurred in acquisition of an asset of a permanent nature which is held for the purpose of carrying on business, such as land, building, plant, furniture etc. is called capital expenditure. Such expenditure retains a permanent value of the business except for the wear and tear which the assets undergo on account of their use. If an amount is expended on an existing asset, its value is increased. It will be regarded as capital expenditure. Expenditure incurred in obtaining a license to secure an agency will be a capital one though the agency might not have become secured. Any expenditure incurred for the following purposes will be capital expenditure:

(1) For acquiring fixed assets, e.g., land, building, machinery, furniture etc. held for use in the business. The cost of a fixed assets will include all expenses incurred up to the time the assets become ready for use, e.g., legal charges, broker's charges, freight, import duty, clearing, carriage, cartage and erection charges;
(2) For retaining capital assets;
(3) For improvement and extension of fixed assets, cost of making additions to building, machinery, plant and furniture etc. and other improvements of assets;
(4) For increasing in any way, the profit earning capacity of a business, e.g., the cost of shifting the business to better and more suitable premises;
(5) For raising money for capital purposes, e.g., brokerage and commission paid for procuring loans;
(6) Cost of constructing a factory or installing machinery;
(7) Cost of equipment and apparatus;
(8) Cost of machinery, plant and furniture;
(9) Expenses incurred in connection with the erection of buildings and plants;
(10) Amount spent on the construction of reservoir;
(11) Expenditure incurred on improvements to property, as distinguished from mere repairs;
(12) Expenditure incurred in respect of reconstruction of business premises or converting the same from one type to another;
(13) Price paid for the purchases of copyright or patent right.

Revenue expenditure

All expenditure incurred in buying goods for resale or converting raw materials to manufactured articles or incidental to the conduct and financing of the business, is treated as revenue expenditure. Cost of goods purchased for the business in which a person deals, sums paid as rent, salaries and wages, repairs etc. are instances of revenue expenditure. Expenditure incurred for any of the following purposes will be regarded as revenue expenditure:

(1) For purchasing assets with a view to re-selling them at profit or manufacturing them in a saleable condition, e.g., goods, raw materials and stores;

(2) For maintaining capital assets in good working order, e.g., repairs and renewals of buildings;

(3) For meeting day-to-day expenses of carrying on a business, e.g., salaries, wages, rents etc.

Tests for determining an expenditure as either capital or revenue nature

If the money comes from circulating capital, it will be revenue expenditure; if it emanates from fixed capital, it will be capital expenditure.

If the answer to any of the following questions is in the affirmative, it is a capital expenditure, otherwise it is revenue expenditure:

(a) Does the expenditure result in the acquisition or retention of a capital asset?
(b) Is there an addition or improvement to fixed assets?
(c) Has it in any way improved income-generating capacity of the business?
(d) Has it been incurred to raise any capital sum for business?

The following expenses which, prima facie, are of a revenue nature, become capital under certain circumstances as under:

(1) Raw materials and stores when utilized in making a fixed asset;

(2) Wages and salaries when paid in connection with the installation or construction of a fixed asset. Thus, when a company manufactures a machine for its own use, the wages and salaries of persons employed on the work will be capital expenditure;

(3) Carriage and freight expenses incurred in connection with the acquisition of fixed assets;

(4) Cost of repairs incurred in putting a second-hand fixed asset into a proper operational state;

(5) Legal charges incurred in connection with the acquisition of fixed assets, e.g., building, machinery, plant etc. and expenses incurred in clearing encumbrances thereon.

A particular item of expenditure may be of both capital and revenue nature, e.g., the combined cost of repairs, renewals etc. The amount should be apportioned after deciding how much of the total expenditure represents cost of improvements or additions etc. and how much of it is in the nature of pure repairs.

The following types of expenditure have been held to be capital expenditure:

(1) Preliminary expenses incurred for floating or acquiring a business;

(2) Expenses incurred for raising of capital;

(3) Cost of shifting business from one place to another with a view to increasing its revenue-earning capacity;

(4) Lump sum payments made to retiring directors of a company in order to restrain them from entering into competition with the business of the company.

8.14 Illustrations of some important concepts

Balancing charge

Balancing charge is the revenue gain earned by a business at the time of disposal of any building, machinery and plant used for the purpose of business or profession. Total gain on disposal is the difference between sale proceeds and written down value (WDV) of the asset. If the sale proceed is higher than the original cost, it results capital gain. And balancing charge results once capital gain is deducted from total gain. At different amount of sale proceeds applied on same asset, different concept is exemplified below:

XYZ Company owns an asset originally purchased for Tk. 100,000. The company recently disposes the asset when written down value of the asset amounts to Tk. 56,000. Assuming different sale proceeds, the concepts are presented below:

Sale proceeds	Total gain (Sale proceeds - WDV)	Capital gains (Sale proceeds - cost)	Revenue gain (Total gain – Capital gains)	Revenue loss (WDV – Sale proceeds)
(a) 120,000	64,000	20,000	44,000	Nil
(b) 90,000	34,000	Nil	34,000	Nil
(c) 50,000	Nil	Nil	nil	6,000

Compensation received from insurance company

When any building, machineries or plant used for the purpose of business or profession is demolished, destroyed or discarded and insurance compensation is received, amount equal to balancing charges is reported as income from business or profession. The application is similar to balancing charge, the only difference is that the asset is not disposed rather destroyed and thus the amount is received from insurance company as compensation money.

Let's assume the same asset. The asset is now destroyed and there is an active policy covering the risk of the asset. And the company lodged claim with different amount of compensation money received as shown below:

Compensation received	Total gain (Compensation received - WDV)	Capital gain (Compensation received - cost)	Revenue gain (Total gain – Capital gains)	Revenue loss (WDV – Compensation received)
(a) 130,000	74,000	30,000	44,000	Nil
(b) 100,000	44,000	Nil	44,000	Nil
(c) 40,000	nil	Nil	nil	16,000

Fractional income in certain cases (transfer of garments export quota, tea, rubber)

In certain cases, income from business or profession is assessed as a certain percentage of total income. These are:

1. 3% of the export value of the garments exportable against the export quota in case the export quota is transferred to other (Rule 30A)

2. 40% of the income derived from the sale of tea grown and manufactured by the seller in Bangladesh (section 40)
3. 40% of the income derived from the sale of rubber grown and manufactured by the seller in Bangladesh (section 40)

Let's assume that XYZ Company has income from the following sources as mentioned below:

1) The company has transferred a part of its export quota of garments to another company that may generate a total of Tk. 1,500,000 export value.
2) Income derived from the sale of tea grown and manufactured by the company, Tk. 500,000.
3) Income derived from the sale of rubber grown and manufactured by the company, Tk. 300,000.

Sources	**Computation**	**Income from business**
From transfer of export quota	3% of Tk. 1,500,000	45,000
From sale of tea	40% of Tk. 500,000	200,000
From sale of rubber	40% of Tk. 300,000	120,000
Total income from business		Tk. 365,000

Entertainment expenses

Any amount representing entertainment expense is not allowed for deductions. For allowable deductions under the head, the following bases and percentages are prescribed in Rule 65.

Income, profits and gains of the business and profession (Before charging such allowance)	**Allowable rate**
On the first Tk. 10 lakh of profit	4%
On the balance / rest of the profit	2%

For example, XYZ Company reports Tk. 89,00,000 as profit for the year ended June 30, 2022 after charging Tk. 150,000 as entertainment allowance. Compute the amount of allowable entertainment expense.

On first profit of Tk. 1,000,000	@ 4%	Tk. 40,000
On balance of Tk. (89,00,000+1,50,000-10,00,000) 80,50,000	@ 2%	1,61,000
On total profit Tk. 9,050,000 (before charging entertainment expense)		2,01,000

Thus, allowable amount of entertainment expense is Tk. 201,000 but as the claim is lower so entertainment will be allowed Tk. 150,000/-

Free sample distribution

Expenditure on distribution of free sample is admissible up to the percentage as given below:

Ceiling of turnover	In respect of pharmaceutical industries
(a) Turnover up to Taka 5 crore	2 %
(b) Turnover in excess of TK. 5 crore but up to TK. 10 crore	1 %
(c) Turnover in excess of Taka 10 crore	0.50%

For example, let's assume that the turnover of XYZ pharmaceutical Company is given in the table below. The allowable deduction for free sample distribution would be:

Turnover	Pharmaceutical industry	
	Rate	Amount (Tk.)
a) If turnover is Tk. 5,00,00,000	2%	10,00,000
b) If turnover is Tk. 10,00,00,000	2% + 1%	15,00,000
c) If turnover is Tk. 12,00,00,000	2%+1%+ 0.50%	16,00,000

Perquisites

Perquisite to any employee for any year is allowed up to Tk. 10,00,000. If actual perquisite given to an employee exceeds Tk. 10,00,000; such amount exceeding Tk. 10,00,000 will be disallowed. For example, let's assume that Mr. X enjoys the following benefits during the income year ended on 30th June, 2022 from his employer:

1.	Basic salary	Tk. 12,00,000
2.	House rent allowance	800,000
3.	Festival bonus –equal the two months basic salary	84,000
4.	Leave encashment	42,000
5.	Conveyance allowance	1,55,000
6.	Contribution to Recognized Provident Fund @ 10%	50,400
7.	Servants wages	20,000
8.	Children educational allowance	50,000
9.	Performance bonus	40,000
10.	Bungalow utilities	25,000

Compute the amount of perquisites to be disallowed.

Actual perquisites received

1.	House rent allowance	Tk. 800,000
2.	Conveyance allowance	155,000
3.	Servants wages	20,000
4.	Children educational allowance	50,000
5.	Performance bonus	40,000
6.	Bungalow utilities	25,000

Value of perquisites received	10,90,000
Allowable perquisites	10,00,000
Excess perquisites to be disallowed	90,000

Expenses allowed up to a certain percentage

It is important to remember that some expenses, where there is a scope of reporting higher amount, are permitted but up to certain limit. Amount exceeding that limit is not allowed and thus taxable. These expenses are enumerated below:

Expenses	Allowable limit
Head Office expenses by a company not incorporated in Bangladesh	10% of disclosed net business profit
Royalty, technical services fee, technical knowhow fee or technical assistance fee	10% of disclosed net business Profit
Overseas travelling expense	0.50% of turnover

Worked example 1:

State with reasons whether the following expenses are fully or partly admissible as deduction while computing income from business or profession:

1. Stock-in-trade was lost in fire, amounting to Tk. 12,000 and was debited to Profit and Loss Account.
2. Amount spent on a successful suit filed against a person for infringing trade mark of the assessee - Tk. 10,000;
3. Interest paid to bank Tk. 15,000 in connection with overdraft obtained for paying dividend;
4. Overseas traveling expense Tk. 60,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
5. Incentive bonus Tk. 300,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
6. Salary paid to two employees @ Tk. 20,000 per month; one is paid in cash and another through bank transfer.
7. Royalty paid Tk. 2,00,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
8. Salary expense of a firm Tk. 100,000 of which Tk. 40,000 is paid to a partner as salary;
9. Installation cost of an IPS, Tk. 50,000;
10. Penalty paid for violating income tax law Tk. 25,000.
11. Repair expense of the hired premises paid Tk. 50,000. The building is used both for office and residence at an equal proportion.
12. Insurance premium paid Tk. 25,000, of which Tk. 5,000 is the life insurance premium of the owner.

Solution 1:

1. Loss of stock-in-trade is an admissible business loss as per section 49 (ka) of ITA, 2023.
2. Litigation / legal expense is an admissible expense as it is spent for protecting business interest. Any legal expense for illegal purpose is not allowable.
3. Interest expense on overdraft taken for business purpose is admissible expense.
4. Overseas traveling expense is admissible up to 0.50% of the disclosed turnover, so here the expense is admissible Tk. 20,000 (0.50% of Tk. 40,00,000) and rest of Tk. 40,000 will be inadmissible.

5. Incentive bonus is admissible is admissible expense.
6. Out of total salary expense Tk. 480,000, Tk. 240,000 is admissible as it has been paid through bank transfer and the remaining Tk. 240,000 is also admissible as it within the limit of Tk. 20,000 per month. So, there is no violation of section 30(i).
7. Royalty is admissible up to 10% of disclosed net profit, so here admissible amount is Tk. 200,000 (10% of Tk. 20,00,000).
8. Out of total salary expense Tk.100,000, Tk. 60,000 is admissible as it has been paid to employees and rest of Tk. 40,000 is inadmissible as it has been paid to a partner of the partnership firm violating section 30(b).
9. Installation cost of an IPS not admissible, as it is a capital expenditure.
10. Not admissible as the penalty is imposed for violation of laws.
11. Out of total repair expense of Tk. 50,000, Tk. 25,000 is admissible which is for the portion of office use and the rest Tk. 25,000 is inadmissible as half portion of the house has been used for residence.
12. Out of total insurance premium of Tk. 25,000, Tk. 20,000 is admissible which is for the protection of business interest and the rest of Tk. 5,000 is inadmissible as it is given for personal interest of the owner.

Worked example 2:

The Profit and Loss Account of Janani Traders owned by Mr. Rajon Majumder for the year ended on June 30, 2023 is given below:

Janani Traders
Profit and Loss Account
For the year ended on June 30, 2023

Debit	Taka	Credit	Taka
Salary	380,000	Gross profit	1,950,000
Commission	70,000	Interest on securities	180,000
Rent of premises	132,000	Interest on bank deposit	32,000
Fund embezzlement	30,000	Recovery of bad debt	18,000
Donations	150,000	Gain on sale of furniture	27,000
Bad debt	80,000		
Life Insurance premium	50,000		
Depreciation on furniture	40,000		
Provision for income tax	38,000		
Repair expense	26,000		
License renewal fee	4,000		
Penalty and fine	37,000		
Bonus	80,000		
Royalty	70,000		

Interest on Bank Loan	45,000		
Household expenses	22,000		
Net profit	953,000		
	2,207,000		**2,207,000**

Other information:

1. Salary includes Taka 87,000 paid to the owner.
2. Fund embezzlement occurred after office hour.
3. Donations include Taka 70,000 paid to a charitable hospital that is not approved by the Board
4. Life insurance premium is the payment against the insurance policy in the owner's name.
5. Tax depreciation amounts to Taka 30,000.
6. Furniture sold for Tk. 78,000 that was originally purchased for Tk. 70,000. Written down value of the furniture on the date of sale was Tk. 51,000.

   Compute the income from business or profession of **Janani Traders** for the year ended on June 30, 2022.

Solution 2:

Assessee: Janani Traders

Income year: 2022-23 [Assessment year: 2023-24]

Particulars	**Taka**	**Taka**
Income from business and profession:		
Profit as per P/L Account		953,000
Add: Inadmissible expenses		
1. Salary [Note-1]	87,000	
2. Fund embezzlement [Note-2]	30,000	
3. Donations [Note-3]	70,000	
4. Life insurance premium [Note-4]	50,000	
5. Depreciation (to be considered later on)	40,000	
6. Provision for income tax	38,000	
7. Penalty and fine	37,000	
8. Household expense	22,000	
	374,000	
		1,327,000
Less: Depreciation (As per tax law)		30,000
Less: Non-business income		1,297,000
1. Interest on securities	180,000	
2. Interest on bank deposit	32,000	
3. Capital gain on sale of furniture [Note-7]	8,000	
		220,000
Taxable income from business		**1,077,000**

Notes:

1. Salary paid to the owner is not admissible expense.
2. Fund embezzlement occurred after office hour is not allowable expenditure.
3. Donation Tk. 70,000 to un- approved organization not allowable.
4. Life insurance premium is inadmissible as this is personal expense.

5. Royalty is admissible up to an amount equal to 10% of the disclosed net profit i.e., 10% of Tk. 9,53,000 i.e., Tk. 95,300. Thus, actual royalty payment Tk.70,000 is admissible because it is lower than admissible limit.
6. Capital gain on sale of furniture was Tk. 8,000 (Tk. 78,000 – Tk. 70,000). This amount should be considered as income under the head 'Capital Gains'. Actual revenue gain is Tk.19,000 but shown Tk.27,000, so Tk. 8,000 is to be deducted to arrive real income from business or profession.

Worked example 3:

The Trading and Profit & Loss Account of **Jahur and Brothers** for the year ended on June 30, 2023 is given below:

Jahur and Brothers
Trading & Profit and Loss Account
For the year ended on June 30, 2023

Debit	Taka	Credit	Taka
Opening stock	80,000	Sales	1,450,000
Purchases	700,000	Closing stock	160,000
Wages	60,000		
Depreciation on machinery	15,000		
Power and fuel	10,000		
Gross profit	745,000		
	1,610,000		**1,610,000**
Salaries	120,000	Gross profit	745,000
Rent, rates and taxes	18,000	Compensation received	80,000
Annual membership fee	40,000	Bad debt recovered	27,000
Legal expenses	15,000	Interest and discount received	25,000
Underwriting commission	30,000	Interest on commercial securities	80,000
Purchase of trademarks	80,000	Dividend on listed company's share	60,000
Bad debts	30,000	Commission	28,000
Accounting fees	40,000		
Depreciation - office building	35,000		
Penalties	18,000		
Donation to flood relief fund	50,000		
Gratuity to employees	136,000		
Advance income tax	35,000		
Loss on sale of office furniture	18,000		
Dowry paid to the daughter	70,000		
Miscellaneous expense	30,000		
Net profit	280,000		
	1,045,000		**1,045,000**

Other information:

1. Salaries include Taka 20,000 as salaries paid to the owner.
2. Recovered amount of bad debt was previously allowed as bad debt expense.
3. Legal expense is incurred for filing and continuing a case against competITAr for protecting the interest of the business.
4. Penalties were due to avoidance of tax payment at an earlier period.
5. Annual membership fee is the fee paid to trade union for the interest of the business.
6. Compensation money is received from insurance company against a claim lodged due to destroy of machinery originally purchased for Tk. 70,000 with a written down value of Tk. 50,000.
7. Tax depreciation was calculated as follows:

a. Depreciation on machinery Taka 25,000

b. Depreciation on office building Taka 50,000

Required: Compute the income from business or profession and also total income of Jahur and Brothers for the year ended on June 30, 2023.

Solution 3:

Assessee: Jahur and Brothers
Income year: 2022-23
Assessment year: 2023-24

Particulars	Tk.		Tk.
Income from business and profession:			
Net profit as per Profit and Loss Account			280,000
Add: Inadmissible expenses			
(1) Salaries paid to owner		20,000	
(2) Underwriting commission		30,000	
(3) Purchase of trademarks		80,000	
(4) Penalties		18,000	
(5) Advance income tax		35,000	
(6) Dowry paid to the daughter		70,000	
(7) Accounting Depreciation (to be considered later on)			
On machinery	15,000		
On office building	35,000	50,000	303,000
			583,000
Less: Tax Depreciation allowance (As per tax law)			
On machinery	25,000		
On office building	50,000		75,000
			508,000
Less: Non-business Income			
(1) Interest on tax free commercial securities		80,000	
(2) Capital gains (Tk. 80,000 – Tk. 70,000)		10,000	
(3) Dividend on X Ltd.'s share		60,000	150,000
Taxable income from business or profession			**358,000**

Add: Non-business income		
Income from interest on securities	80,000	
Interest on commercial securities	10,000	
Income from other sources (cash dividend)	60,000	150,000
Total income		**508,000**

Worked example 4:

For the income year ended on June 30, 2023, Gaco Pharmaceutical Company reports net profit of Tk. 17,983,000. A close scrutiny of its books of accounts reveals the following items:

1. Salary and allowances include perquisites of five directors as mentioned below:

Director 1	Director 2	Director 3	Director 4	Director 5
Tk.405,000	Tk.475,000	Tk.580,000	Tk.625,000	Tk.455,000

2. Amount paid to a contractor of Tk. 85,000 without deducting tax at source.
3. Profit includes Tk. 85,000 as gain on sale of asset. The original cost of the asset was Tk. 70,000 and on the date of sale, the written down value of the asset was Tk. Tk. 50,000.
4. The company lodged a claim against the demolishing of an asset and recovered Tk. 70,000. The cost was Tk. 80,000, however, the written down value of the asset was Tk. 50,000.
5. The company has income of Tk. 420,000 from tea grown and manufactured in Bangladesh which was not considered at the time of computing profit.
6. The company has transferred export quota of garments to another company whose export value is estimated as Tk. 800,000. No income is reported in profit and loss account.
7. Entertainment expense charged was Tk. 450,000.
8. Finance director received foreign travel allowance of Tk. 500,000 which is charged against the profit. He has also received similar allowance in last year and it was allowed at that time.
9. Expense for free sample distribution is shown as Tk. 340,000. Reported turnover for the year is Tk. 87,953,000.
10. Royalty expense charged Tk. 112,000.
11. Depreciation charged Tk. 253,000 whereas tax depreciation is Tk. 180,000.

Compute income from business or profession, considering the information given above.

Solution 4:

Assessee: Gaco Pharmaceutical Company
Income year: 2022-23
Assessment year: 2023-24

Particulars	Taka	Taka
Income from business and profession:		
Net profit as per Profit and Loss Account		17,983,000
Add: Inadmissible expenses		
1. Excess perquisites	105,000	
2. Payment to contractor without TDS	85,000	
3. C/Gain for consideration at separate head (Tk. 85,000 – Tk. 70,000)	15,000	
4. Entertainment	450,000	
5. Foreign travel allowance (note-2)	500,000	
6. Depreciation (to be considered later on)	253,000	1,408,000
		19,391,000
Less: Depreciation allowance (As per tax law)	180,000	
Entertainment (note-1)	404,220	584,220
		18,806,780
Add: Income from tea garden (40% of Tk. 420,000)	168,000	
Income from transferring export quota (3% of Tk. 800,000)	240,000	408,000
Taxable Income from business or profession		**19,214,780**

Notes:

1. Allowable entertainment expense is – 1,000,000 @ 4% + 18,211,000 @ 2% = 40,000 + 364,220 = Tk. 404,220.
2. Foreign travel allowance is allowable for once in every two years. As last year, the director received such allowance and it was considered at that time, so nothing to be allowed this year.
3. Expense for free sample distribution is within the allowable limit. So nothing to be disallowed as it is within limit.
4. Royalty expense is within the limit. Thus, the whole amount is admissible.

Self-assessment questions

1. The Income statement with selective notes thereon of Zian Ltd for the year ended on June 30, 2023 is as under:

Zian Ltd
Income statement
For the year ended on June 30, 2023

Particulars	Taka
Net sales	15,000,000
Less: Cost of goods sold	8,800,000
Gross profit	6,200,000
Add: Gain on sale of building (Note 1)	2,200,000
	4,000,000
Less: Administrative and selling & distribution expenses (Note 2)	2,400,000
Net profit	**1,600,000**

Other information:

1. The Cost of the Building was Taka 8,000,000 and the amount of accumulated depreciation up to the date of sale was Taka 2,700,000 and sold for Taka 7,500,000.

2. Administrative and selling & distribution expenses:

Salaries and wages	Taka	1,562,000
Fines and penalties		125,000
Rents, rates & taxes		80,000
Provision for bad and doubtful debts		60,000
Legal charges		37,000
Underwriting commission		120,000
Incentive bonus		40,000
Cost of issuing shares		100,000
Audit fees		60,000
Overseas traveling expense		100,000
Depreciation		116,000
Total		**2,400,000**

3. Salary and wages include Taka 180,000 as payment to the owners and Taka 520,000 as payment classified as perquisites.
4. The fines and penalties are charged by a local court for involvement in illegal business transactions.
5. Legal charges have been incurred for defending a suit for breach of a trading contract.
6. Tax depreciation amounts to be Taka 80,000.

Compute income from business or profession of Zian Ltd for the year ended on June 30, 2023.



Chapter 9

Capital gains

Contents

Introduction

Examination context

Topic list

9.1	Basic principles of capital gain
9.2	Some definitions
9.3	Computation of capital gain
9.4	Other matters in determining capital gain
9.5	Tax exempted capital gains
9.6	Tax rate in respect of capital gain
9.7	Special tax rates on capital gain from sale of shares of listed companies
9.8	Apportionment of sale proceeds between original cost and subsequent improvements

Worked examples

Introduction

Learning objectives

- Identify capital gain.
- Compute the taxable income under the head ‘capital gain’.
- Identify the allowable deductions under the head.
- Identify tax exempted capital gains.
- Identify the complexity of computing income from capital gains.
- Identify special reduced tax rate on capital gain earned by individuals.
- Compute tax liability on capital gains in different situations.

Practical significance

The head ‘capital gain’ is very significant in terms of understanding and applications. Transfer of capital assets is very common in business. Thus, in what situations, transfer of capital assets will result capital gain, what may happen if the gain is reinvested within a certain time period, what are the powers of DCT regarding the value of declared sale proceeds are some important points covered in the chapter.

Capital gains tax rate is different than the regular tax rates applicable to individuals and other assesses. Thus, the assessment and computation of tax liability is to a greater extent different in case of capital gain. These points are also addressed with due importance.

The chapter, as usual, also presents the scope of income under the head, admissible expenses, inadmissible expenses and other related issues.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head ‘capital gain’ is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining real capital gain.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define capital gain.
- Identify different scope of income under the head.
- Compute taxable capital gain.
- Illustrate non-taxable capital gains.
- Identify the allowable deductions under the head.
- Illustrate the power of the DCT if he believes that the declared value at which the capital asset is transferred is lower than fair market value.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each content of this chapter will help candidates to resolve any problems relating to computation of income from capital gain.

9.0 CAPITAL GAIN

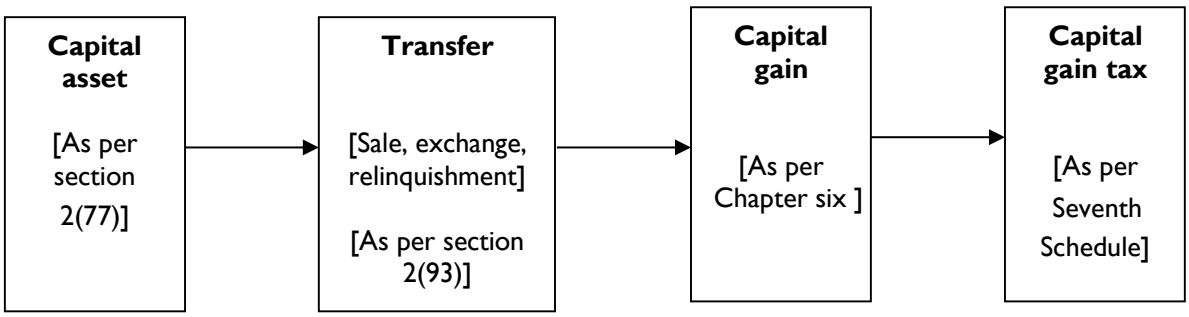
Section overview

- ➔ There is no capital gain tax on transfer of personal effects and shares of listed companies for individual taxpayers.
- ➔ There is no capital gain tax on the transfer of land and buildings to a new company formed to set up an industry.
- ➔ In determining the transfer value, income tax authority may consider the fair market value if he beliefs that transfer value is lower than fair market value.
- ➔ Capital loss can only be set off against any other capital gain during the year.
- ➔ It is taxed @ 15 % in the case of company.
- ➔ Non-resident individuals are also exempt from capital gain tax on gain from sale of stocks and shares of listed companies provided they enjoy the same benefit in their home country.

9.1 Basic principles of capital gain

Chapter six provides that tax shall be payable by an assessee under the head “capital gain” in respect of any gain arising from the transfer (i.e. sale, exchange or relinquishment, etc.) of any capital asset. Such gain shall be deemed to be the income of the income year in which the sale, exchange, relinquishment, etc. took place.

Any gain arising from transfer of a capital asset (both movable and immovable) as defined in section 2(77) of the Income Tax Act, 2023 is chargeable to income tax in accordance with Seventh Schedule of the Act which prescribe rates of income tax on capital gain.



9.2 Some definitions

Capital asset

A capital gain arises only due to the transfer of capital asset. Capital asset is defined in section 2(77) of ITA, 2023. Capital asset means –

(a) Any nature or kind of property held by the assessee;
(b) Any business or undertaking as a whole or as a unit;
(c) Any share or stock.

Sale or transfer price in open market

According to section 58(2) of ITA, 2023,

The sale or transfer price in open market means the open market sale or transfer price of an asset, higher of A and B below, where –

A = Amount received or accrued form transfer of asset; and

B = Fair market value of the asset on the transfer date.

Acquisition cost of the asset

According to section 58(2) of ITA, 2023,

1. Acquisition cost of an asset shall be the sum of the following costs –
a. Any expense which are solely related to the transfer of ownership of the asset;
b. Purchase price of the asset; and
c. Expenditure on the development of such asset, if any, other than expenditure allowed under section 38, 42, 49, 50 or 64.
2. In case the asset was acquired as below:
a. Under any gift, donation or bequest;
b. Succession, inheritance;
c. Under transfer of a trust;
d. Any distribution of capital asset through winding up of a company;
e. By way of distribution of capital asset in case of separation of firm or AOP, HUF.

In such case the fair market value on the date of acquisition of ownership of the asset shall be considered as acquisition value of the asset.

Transfer

According to section 2(93) of ITA, 2023, 'Transfer', in relation to a capital asset, includes the sale, exchange or relinquishment of the asset, or the extinguishment of any right therein, but does not include:

a) Any transfer of the capital asset under a gift, bequest, will or an irrevocable trust;
b) Any distribution of the assets of a company to its shareholders on its liquidation; and
c) Any distribution of capital assets on the dissolution of a firm or other association of persons or on the partition of a Hindu undivided family [section 2(66)].

9.3 Computation of capital gain

Section 58 of ITA, 2023 states that capital gain shall be computed as the difference between the sale or transfer price of the asset in the open market and acquisition cost of the asset.

9.4 Other matters in determining capital gain

As per section 61 of ITA, 2023,

1. If the fair market value of any asset is more than 15% of the value disclosed by the assessee, the DCT, with the prior approval of Additional Commissioner of Taxes, may determine the fair market value of the asset.
2. If the fair market value of any asset is more than 25% of the value disclosed by the assessee, the DCT, as per the manner prescribed by the Board, may offer to purchase the asset at the disclosed value.
3. Capital gian arising form the transfer of all assets of a partnership firm to a new company incorporated under the Companies Act, 1994 shallb e exempted form tax if the consideration of the transfer of all assets is invested in the equity of the new company.

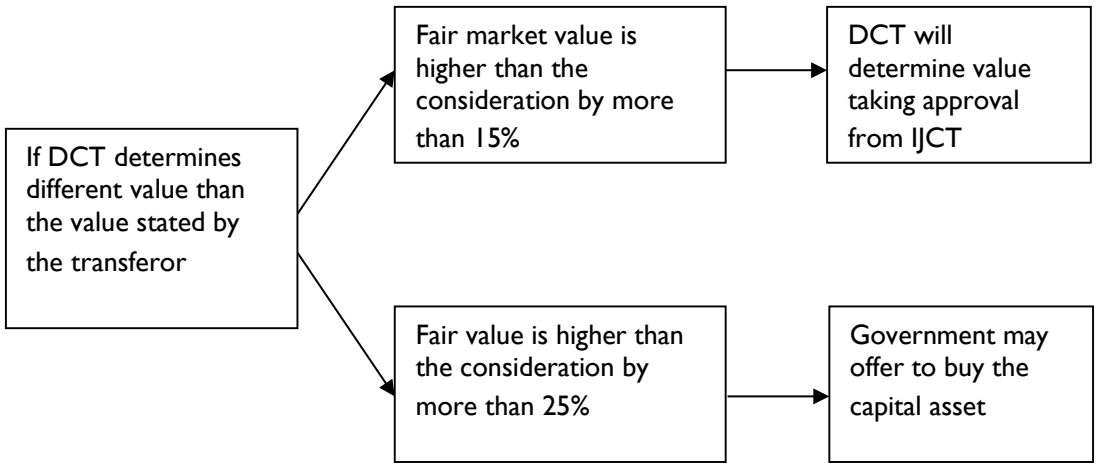


Illustration-1

Mr.Jashim declared the price of a piece of land at Tk. 3,000,000 on 15th July, 2023; however, the DCT estimates the fair value of the land to be Tk. 3,500,000 i.e. more than 15% of the declared value. He can with the prior approval of the IJCT, determine the fair value at Tk. 3,500,000 and can compute capital gain or loss accordingly rejecting thereby Mr.Jashim's declared value.

Further the Government may offer to buy the land when in the opinion of the DCT; the fair market value of the said land is say, Tk. 4,000,000 i.e., at least 25% more than the declared value. It is not clear whether in this case, Government would actually buy or uses the preemption right to determine under-declaration.

The manner to be followed in connection with the purchase of a capital asset by the Government under section 61(2) of the Act shall be as follows:

(1) Where the DCT has reason to believe that any immovable property is being transferred by a person (hereinafter referred to as the transferor) to another person (person hereinafter referred to as the transferee) and the fair market value of such property exceeds the declared value by more than twenty-five per cent, and the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay the tax under the Act in respect of any income arising from the transfer or any other taxes or duties, he may, subject to the provisions of this rule, initiate proceedings for the acquisition of such property by the Government.

(2) The DCT shall initiate proceedings for acquisition of immovable property under rule 40 by giving a notice to that effect in the official Gazette and a copy of such notice shall also be published in the two leading newspapers of wide circulation where such property is located; a copy of such notice shall also be served on the transferor, the transferee and the person in occupation of the property. However, no such proceedings shall be initiated after the expiry of a period of two years from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908.

(3) Objection against the acquisition of the immovable property in respect of which a notice has been published in the official Gazette and the newspapers may be made in writing by the transferor or the transferee to the DCT within 60 days of the publication of the notice in the official Gazette or newspapers.

(4) The DCT shall fix a date and place for the hearing of the objections against the acquisition and shall give notice of the same to every person who has made such objection. However, notice shall also be given to the transferee of such property even if he has not made any such objection.

(5) After hearing the objections, if any, after taking into account all the relevant materials on record, if the Deputy Commissioner of Taxes is satisfied that-

(a) The fair market value of such property exceeds the consideration paid therefore by more than twenty-five per cent of such consideration, and

(b) The consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (1); he may make an order for the acquisition of the property under this rule.

(6) Any person aggrieved by an order made under rule 40(5) may prefer an appeal under the Act to the Appellate Joint Commissioner of Taxes.

(7) As soon as may be after the order of acquisition of any immovable property has been made under Rule-40(5) and after the disposal of appeal, if any, the DCT may by notice in writing, order any person who may be in possession of the immovable property to surrender or deliver possession thereof to him or any other person duly authorized by him in writing in these behalf within 30 days of the service of the notice.

(8) If any person refuses or fails to comply with a notice under rule 40(7), the DCT or any other person duly authorized by him under that clause may take possession of the immovable property and may, for that purpose, requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition and may use such force as may be necessary.

(9) When the possession of the immovable property is surrendered or delivered under rule 40(7), the DCT or the person duly authorize by him in that behalf or, as the case may be, when the possession thereof is taken under rule 40(8), the Government shall tender as consideration a sum equal to the aggregate of the amount of the declared value for its transfer plus 10% of the said amount to the transferor and the property shall vest absolutely in the Government free from all encumbrances. However, nothing in rule 40(9) shall operate to discharge the transferor or the transferee or any other person (not being the Government) from any liability in respect of such encumbrances, and notwithstanding anything contained in any other law, such liability may be enforced against the transferor or the transferee or such other person by a suit for damages.

(10) Notwithstanding anything contained in rule 40(9), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Government shall deposit in the principal civil court of original jurisdiction the amount required to be tendered under rule 40(9) and refer such dispute for decision of the court and the decision of the court thereon shall be final.

9.5 Tax exempted capital gains

Some capital gains are non-assessable and thus exempted from gain tax. These are -

(a) Transfer of Government securities and shares of public-listed companies: SRO 196/2015

Capital gains arises from transfer of Government securities are exempt from tax.

(b) Transfer of capital asset of a firm to a new company: section 61(3)

When capital gains arise from the transfer of capital asset of a firm to a new company registered under the Companies Act, 1994 and the whole amount of capital gain is invested in the equity of the said company by the partners of the firm, then the capital gain shall not be charged to tax in the year of transfer.

9.6 Tax rate in respect of capital gain

Capital gain tax is different than regular tax and is prescribed in Seventh Schedule of Income Tax Act, 2023.

Capital gains in the hands of a company other than the capital gain arising out of disposal of share will be taxed as a block of income separate from other income of the assessee company at a flat rate of 15% regardless of the period of holding of the asset from the date of its acquisition.

If the assessee is other than a company and the asset is transferred before the expiry of five years from the date of its acquisition, the capital gains will be taxed at the usual tax rate applicable to the assessee's total income including the capital gains. If the asset is transferred at any time after the expiry of five years from the date of its acquisition, the capital gains will be taxed at 15%. Thus, in short, the rates can be specified as below:

Capital gain arises to	**Tax rate**
(a) company	@ 15%
(b) person other than company	
i) due to disposal within 5 years at regular slab rate	
ii) due to disposal after 5 years At 15%	

9.7 Special tax rates on capital gain from sale of shares of listed companies

As per SRO 196-AIN/IT/2015 circulated on 30/6/2015, special tax rate is applied on capital gains from sale of shares by specified persons as mentioned below:

The following reduced tax rates will be applicable on the income earned from transaction of securities (excluding government securities) listed in the Stock Exchanges:

Sl.	Nature of taxpayer's income	Tax rate
(a)	Any income earned from trading of shares/securities by any **Sponsor Shareholder / Director** of **a Bank, Financial Institution, Merchant Bank, Insurance Company, Leasing Company, Portfolio Management Company, Stock Dealer or Stock Broker Company**	5%
(b)	Any income earned from trading of shares/securities by any Shareholder [excluding the Sponsor Shareholders/Directors mentioned in above Sl. (b)] having 10% or more shares of the total paid up capital of a company / companies listed at any time during the income year	5%

1. If a shareholder mentioned in Sl. (c) is a company or firm, then tax rate will be 10%, as 10% tax rate is applicable for company and partnership firm.
2. In case of transferring the shares by any sponsor shareholder / director mentioned in Sl. (b), tax will be deducted at the rate of **5%** on the difference between transfer value and cost of acquisition of the securities as per section 53M of the ITA, 1984.
3. The income from trading of shares of all other types of taxpayers' excluding those mentioned in the above lists is **exempted** from tax.
4. Here, the term "securities" will include any stocks, shares, mutual fund units, bonds, debentures or other securities of any listed company tradable in the stock exchanges of the country (excluding the securities issued by the government).

9.8 Apportionment of sale proceeds between original cost and subsequent improvements

Since capital gain tax differs in rates in case of assessee other than a company depending on the length of period the property is held by the assessee, it is essential to assign capital gain on them separately.

Illustration

Mr. Jarin bought a building within the jurisdiction of Dhaka Municipality 8 years back for Tk. 65 million on which he also incurred another Tk. 35 million as improvements 4 years ago. He sold the property in mid-June, 2020 for Tk. 180 million.

Now, sale proceeds of Tk. 180 million should be apportioned between original cost and improvements due to different capital gain tax rate applicable for transfer made within 5 years and after five years. Such apportionment is made below proportionately:

On original cost: Tk. 180 million × 65/100 = Tk. 117 million
On improvement: Tk. 180 million × 35/100= Tk. 63 million

Now capital gains and tax on capital gain will be computed as below:

	Original cost	**Improvements**
Cost	65,000,000	35,000,000
Sale proceeds	117,000,000	63,000,000
Capital gain assessed	52,000,000	28,000,000
		15%

Improvement part has been disposed of within 5 years of acquisition and thus Tk. 28 million would be included with the total income of the assessee. Original cost part has been held for 8 years and the tax on it, would be taxed at15% on capital gian.

Worked examples and solutions

Worked example 1:

Mr. Ershad has recorded the following transactions for the year ended on June 30, 2023. You are required to comment on implication of capital gain and capital gain tax on each of the following transactions independently.

(a) Sold a 3-storied building for Tk. 3,000,000 in December 2021, which was purchased on March 2011 for Tk. 1,800,000. In January 2015, the building was extended at a total cost of Tk. 500,000. The fair value of the building in December 2021 was Tk. 3,200,000.

(b) Sold an agricultural land situated outside the jurisdiction of Cumilla Cantonment Board at a total price of Tk. 2,000,000 which was purchased 5 years back at a total price of Tk. 1,000,000.

(c) Sold a machine, purchased at a price of Tk. 80,000 for the purpose of his business, at a price of Tk. 150,000 at fair market value. Another Tk. 30,000 was spent to improve the machine. At the time of sale, the machine had accumulated depreciation amounting to Tk. 60,000.

Solution 1:

(a) Calculation of capital gains from the sale of building:

Sale proceeds or fair market value whichever is higher		Tk. 3,200,000
Less:		
Cost of acquisition	Tk. 1,800,000	
Cost of extension	500,000	2,300,000
Capital gain		Tk. 900,000

Here, capital gain will be taxed at 15% as transfer is made after 5 years (both original cost and extension work).

(b) Gain on sale of agricultural land situated outside the jurisdiction of a cantonment board was tax free as per section 2(15)(c). But now it is taxable with effect from 01/7/2014 as section 2(15)(c) has been deleted through finance act,2014.

(c) Calculation of capital gain from the sale of machine:

Sale proceeds or fair market value whichever is higher		Tk. 150,000
Less:		
Cost of acquisition	Tk. 80,000	
Cost of improvement	30.000	110,000
Capital gain		**Tk. 40,000**

Worked example 2:

Mr. Ashiqur Rahman purchased an apartment in November 2018 for Tk. 1,600,000. He has paid 1% brokerage fee and subsequently spent another Tk. 500,000 for the renovation of the house. On 1st July, 2022 he entered into an agreement to sell the property to Mr. Anowar for a consideration of Tk. 5,000,000 and received earnest money (advance money) of Tk. 100,000.

As per the terms of the agreement, the balance payment should be made within 90 days of the agreement otherwise the earnest money will be forfeited. As Mr. Anowar could not make the payment within the stipulated time the amount of Tk. 100,000 was forfeited by Mr. Rahman. Subsequently on 10th June, 2021, Mr. Rahman sold the apartment to Mr. Abdur Rahman for Tk. 5,500,000. He also paid 2% brokerage fee on sale of the apartment. The fair market value of the house on the date of sale was Tk. 5,200,000. Calculate taxable capital gains for the assessment year 2023-24.

Solution 2:

Computation of taxable capital gain:

Particulars	Taka	Taka
Income under "capital gain":		
Full value of consideration received against capital asset:		
(Including the forfeited amount of Tk. 100,000)	5,600,000	
Fair Market Value at the time of transfer,	5,200,000	
Disposal vale of the capital asset (whichever is higher)		5,600,000
Less - Allowable deductions		
Brokerage fee for sale (5,500,000 x 2%)	110,000	
Cost of acquisition [1,600,000 + (1,600,000 xl %)]	1,616,000	
Cost of improvements of the asset	500,000	2,226.000
Capital gain		3,374,000

Worked example 3:

Mr. Jason runs a business of his own. He has purchased plant and machinery for the purpose of his business at a cost of Tk. 10,000,000 on 1st January 2012. He incurred installation cost of Tk. 170,000. He sold it on July 15, 2023 at Tk. 22,000,000. For this sale, he has to pay brokerage fee @ 2% on the gross sales amount received.

On June 30, 2022 he has purchased another plant and machinery at a cost of (a) Tk. 10,000,000 (b) Tk. 12,000,000 and expressed his intention of getting roll over relief of capital gain on new plant and machinery in writing to DCT.
He also had Tk. 200,000 as taxable income from interest on securities and Tk. 100,000 from income from other sources.

Solution 3:

Assessee: Mr. Jason
Income year: 2021-22
Assessment year: 2023-24

Particulars	Taka	Taka	(a/b) Taka
Income under "capital gain" :			
Sale proceeds of plant and machinery	22,000,000		
		22,000,000	
Less - Allowable deductions			
Expenditure incurred to transfer the asset (Note 2)	440,000		
(b) Cost of acquisition (Note 3)	10,170,000		
Capital expenditure incurred for improvement of the asset	nil		
		10,610 000	

Capital gain	11,390,000
	200,000
Income from financial asset	11,390,000
Capital gain (as calculated above)	
Income from other sources (given)	100,000
Total **taxable income**	11,690,000

Computation of tax liability:

Taxable income			**Rate**	
Income tier	**Case (a)**	**Case (b)**		**Case (a/b)**
Tax on capital gain (15% on 11,390,000)				1,708,500
Tax on remaining taka 300,000 will be at regular rate (up to 350,000 0%)				nil
Net tax liability				**1,708,500**

Notes:

1. The plant and machinery qualified as capital asset.
2. Expenditure incurred to transfer the capital asset, Taka 440,000 (brokerage fees @ 2% of Tk. 22,000,000).
3. Cost of acquisition, Tk. 10,170,000 (cost + installation)
4. capital gain rolled over basis is not allowed as per ITA, 2023.
5. There is no revenue gain as the cost and written down value of the asset is same.
6. Here, the assessee is a person other than a company and the asset is sold after 5 years of purchase. So, as per 7th schedule, tax rate will be at 15% flat rate on capital gain.

Self-assessment questions

1. Explain the terms “capital asset”, “cost of acquisition” and “fair market value” under the Income Tax Act, 2023.
2. State the capital gain exempted from payment of tax under the ITA, 2023 and SRO.
3. Mr. Hasan has purchased a machine at a total cost of Tk. 500,000 on 23'" April 2015 for the purpose of his profession. In addition, he has paid Tk. 10,000 as legal fees. He has spent an additional sum of Tk. 50,000 for improvement of the machine.

On 30th December 2021, he sold the machine at Tk. 600,000 when the balance of allowable accumulated depreciation was Tk. 126,000 in his books of accounts. But in the opinion of DCT the fair market value on that date amounts to Tk. 650,000. He incurred advertisement cost of Tk. 20,000 and 1.5% as brokerage commission on the sale value. He has taxable income of Tk. 230,000 from all other sources.

Compute capital gain, total income, and specify tax rate thereon.



Chapter 10

Income from other sources

Introduction

Examination context

Topic list

10.1	**Special area of income from other sources**
10.2	Royalty
10.3	Fees for technical service
10.4	Income from letting of factory building along with machinery
10.5	Allowable deductions
10.6	Inadmissible expenses

Introduction

Learning objectives

- Identify income from other sources.
- Compute the taxable income under the head 'income from other sources'.
- Identify the allowable deductions under the head.
- Identify tax exempted income under the head.
- Introduce the complexity of computing income from other sources.
- Explain the application of TDS and Grossing Up of income in certain cases.
- Compute tax liability on income from other sources in different situations.

Practical significance

The head 'income from other sources' is very significant due to its importance as a residual head of income. Income that doesn't fall under any other head comes under the scope of this head. Thus, it is important to know different categories of income coming under the head.
Royalty income, fees for technical services, income from letting factory building along with machineries are some income coming under this head.

Tax usually deducted at sources as per law in some categories of income under this head. These incomes are required to be grossed up before reporting them in return of income.

The chapter, as usual, also presents the scope of income under the head, admissible expenses, inadmissible expenses and other related issues.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think
Do you realize that the computation of taxable income under the head 'income from other sources' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context
In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links
The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define income from other sources.
- Identify different scope of income under the head.
- Compute the taxable income under the head.
- Identify the allowable deductions under the head.
- Introduce grossing up of income in certain cases and illustrate its impact on computing taxable income.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income from other sources.

10.0 INCOME FROM OTHER SOURCES

Section overview

- ➔ Income from other sources is the last and residual head of income.
- ➔ The total income may not be taxable income.

- ➔ There are some admissible and not admissible deductions under the head.
- ➔ Royalty and fees for technical services are significant sources of income under the head.
- ➔ On some income under the head, tax is deducted at sources at specified rates.
- ➔ Grossing up of income is important to report taxable income.
- ➔ There are some admissible and inadmissible deductions under the head.

According to section 66 of ITA, 2023, following income shall be consider as 'Income from other sources':

(a) Royalty, license fee, technical know-how fee, income from granting right to use of intangible asset;
(b) Cash incentive paid by the Government;
(c) Any such income which is not classified under section 30.

10.1 Special area of income from other sources

According to section 67 of ITA, 2023,

1. Without prejudice to the section 66, in special cases, the provision of section 67 shall apply in computing 'income from other sources' in accordance with the provision of chapter eight.
2. Where any sum is found credited in the books of an assessee maintained for any income year and the assessee offers no explanation about the nature and source thereof, or the explanation offered is not, in the opinion of the Deputy Commissioner of Taxes, satisfactory, the sum so credited shall be deemed to be his income for that income year classifiable under the head "Income from other sources".
3. Where any assessee owns any asset or incurs any debt or incurs any expenditure any such transaction which affect the asset of the assessee, in such case if (A+B+C) is grater than (D+E+F) an amount equal to (A+B+C) – (D+E+F) shall be included as income of the assessee under the head 'Income from other sources'. Where –

   A = Increase in net asset;
   B = Actual cost incurred;
   C = Other expenditure from fund other than A and B above;
   D = Gross assessed income;
   E = Assessed tax exempted income;
   F = Other acceptable receipts of fund other than D and E

4. Where any assets, not being stock-in-trade or financial asset, are purchased by an assessee from any person and the Deputy Commissioner of Taxes has reason to believe that the price paid by the assessee is less than the fair market value thereof, the difference between the price so paid and the fair market value thereof, the difference between the price so paid and the fair market value shall be deemed to be income of the assessee classifiable under the head "Income from other sources".
5. Where any amount is received by an assessee during any income year by way of goodwill money or receipt in the nature of compensation or damages for cancellation or termination of contracts and licences by the Government or any person, such amount shall be deemed to be the income of such assessee for that income year classifiable under the head "Income from other sources".
6. Where any lump sum amount is received or receivable by an assessee during any income year on account of salami or premia receipts by virtue of any lease, such amount shall be deemed to be income of the assessee of the income year in which it is received and classifiable under the head "Income from other sources".
7. Where any payment made for acquiring any asset or constitutes any asset and tax has not been deducted therefrom in accordance with Part 7, such payment shall be deemed to be the income of the person responsible for making the payment under this Ordinance and classifiable under the head "Income from other source" in the income year in which the payment was made.
8. Where any benefit or advantage, whether convertible into money or not, is derived by an assessee during any income year on account of cancellation of indebtedness, the money value of such

advantage or benefit shall be deemed to be his income for that income year classifiable under the head “Income from other sources’.

Provided that above provision shall not apply in the following cases:

(a) Waiver of loan or interest to natural persons granted by any financial institution registered under the Scheduled Bank or Financial Institution Act, 1993;
(b) Benefit not exceeding Tk 1,000,000 on account of any margin loan or waiver of interest arising thereon by a registered merchant banker and portfolio manager or stock broker in light of the Bangladesh Securities and Exchange Commission Act, 1993 or the rules made thereunder against an individual assessee investment in any securities traded on the stock exchange.

9. Where any benefit or advantage, whether convertible into money or not, is derived by an assessee during any income year on account of cancellation of indebtedness, the money value of such advantage or benefit shall be deemed to be his income for that income year classifiable under the head “Income from other sources”.
10. Where a company, not listed with any stock exchange, receives paid up capital from any shareholder during any income year in any other mode excepting by crossed cheque or bank transfer, the amount so received as paid up capital shall be deemed to be the income of such company for that income year and be classifiable under the head "Income from other sources".

    Provided that this provision shall not apply if any asset or service other than cash are received as paid-up capital in accordance with the Companies Act, 1994.

11. Where any company assessee borrows any amount form any other person other than through banking channel, such amount shall be deemed to be income of the assessee in the income year in which the loan was received and it shall be treated as ‘Income from other sources’.

    Provided that where such loan or any part thereof is repaid in any subsequent year, the amount so repaid shall be excluded from the income in the said income year.

12. Where an assessee, being a company, purchases directly or on hire one or more motor car or jeep and value of any motor car or jeep exceeds ten percent of its paid up capital together with reserve and accumulated profit], then fifty percent of the amount that exceeds such ten percent of the paid up capital together with reserve and accumulated profit] shall be deemed to be the income of such assessee for that income year classifiable under the head "Income from other sources".
13. Where any individual assessee receives any advance, loan, donation or any other form of deposit exceeding Tk 500,000 from any other person other than crossed check or bank transfer, the amount so received shall be treated as income from other source.

    Provided that above provision shall not apply in following cases –

(a) If such amount is received from spouse, parent or child and the same is withdrawn from the payer’s bank account;
(b) Any deposit received by bank, financial institution and any organizations registered with the NGO Affairs Bureau or Microcredit Regulatory Authority.

14. Where an assessee, not being an assessee engaged in real estate business during any income year, purchases on credit any material for the purpose of construction of building or house property or its unit and fails to pay the sum or any part thereof representing the liability in respect of such purchase, the sum or any part thereof, which has not been paid within two years from the end of the income year in which the purchase was made, shall be deemed to be the income of the assessee for the income year immediately following the expiry of the said two years and be classifiable under the head "Income from other sources”.
15. Where an assessee files an amended return under section 175, 180 or 212 and shows in the amended return any such income which is exempted or subject to a reduced tax rate, amount equal to A-B shall be treated as income from other sources, where –

A = Amount shown in the revised or corrected return which is tax exempted or subject to reduced tax rate;

B = Income shown in original return

Provided that above provision shall not apply in case where the banking medium is attached and appropriate evidence is produced.

10.2 Royalty

As per section 2 (79) of ITA, 2023, royalty means consideration (including any lump sum consideration but excluding any consideration which is classifiable as income of the recipient under the head "capital gains") for -

(a) transfer of all or any rights, including the granting of a license in respect of a patent, invention, model, design, secret process or formula, or trade mark or similar property;
(b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret process or formula, or trade mark or similar property;
(c) the use of any patent, invention, model, design, secret process or formula, or trade mark or similar property;
(d) the imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill;
(e) the transfer of all or any rights, including granting of a license, in respect of any copyright, literary, artistic or scientific work, including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for sale, distribution or exhibition of cinematograph films;
(f) the rendering of any services in connection with any of the aforesaid activities

Tax deducted at sources on royalty income

If the royalty is paid by the government or any other authority, corporation or body, company (including banking and insurance company), or any co-operative bank or any registered NGO, 10% or 12% (depending on the base amount) tax will be deducted at source under section 91 and such amount as deducted will be considered as final payment of tax liability as per section 163 (minimum tax).

Thus, grossing up is required if royalty income is received after TDS.

Illustration

Let’s assume that Mr. Bhowmik has received a net amount of Tk. 90,000 as royalty income from the government during the income year 2021-22. He has taken a total of 18 months to complete the work. Thus, royalty income may be allocated between this year and the immediately preceding year after grossing up as follows:

Grossed Up Income: Tk. 90,000/1-0.1 = Tk. 100,000 This income
will be allocated as follows:
Income year 2020-21: Tk. 50,000
Income year 2021-22: Tk. 50,000

10.3 Fees for technical services

According to section 2(30) of ITA, 2023, fees for technical services means any consideration (including any lump sum consideration) for rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration

for any construction, assembly, mining or like project undertaken by the recipient, or consideration which would be income of the recipient classifiable under the head salaries.

Tax deducted at sources on fees for technical services

If the fees for professional or technical services is paid by the specified persons as mentioned at section 90 and SRO 206/2023, 10% or 12% tax to be deducted at source based on the base amount under section 52AA. However, the rate would be 50% higher if the recipient does not have any TIN. Grossing up is required to report gross income.

Illustration:

Let's assume that Soft Tech Solutions received Tk. 90,000 as technical fee from BRTA during the year. As the income was generated from a government authority, tax has been deducted at source @ 10% (assuming they have TIN) and thus the gross income to be reported by Soft Tech Solutions would be Tk. 100,000 (Tk. 90,000/1-0.1).

10.4 Income from letting of factory building along with machinery

Income from letting of machinery, plant or furniture belonging to the assessee and also building inseparable from the mentioned assets is taxable as income from other sources

10.5 Allowable deductions

As per section 68 of ITA, 2023,

1. Subject to the provisions of ITA, 2023, in computing the income of a person under the head 'Income from other sources' in any income year, such expenditure incurred by such person solely for the purpose of earning the relevant income, is not a capital or personal expenditure, shall be treated as allowable expense.
2. Except sub-section 5 and 6 of section 67, no expenditure shall be allowed in computing income under any other sub-section of section 67.
3. In allowing expenditure under 1 above, the reasonableness of such expenditure shall be considered.

10.6 Inadmissible deductions

As per section 69, of ITA, 2023:

1. Expenditure allowed in whole or in part against any asset under this chapter in any income year shall not be allowed against the same asset.
2. The provision mentioned in section 55 relating to limitation of authorization of expenditure shall apply to such case in this chapter.

Worked example 1

Mr. Abdur Rahman has reported the following income classifiable under the head 'Income from Other Sources for the income year ended on June 30, 2023. Compute total income of Mr. Rahman.

(1)	Dividend from a Private Limited Company	9,000
(2)	Interest on Fixed Deposit	5,400

(3) Interest on Savings Certificate 18,000
(4) Interest on Post Office Savings Bank account 1,800
(5) Remuneration for exam script evaluation and invigilation 1,000
(6) Prize bond lottery 25,000
(7) Income from sale of fish of pond 1,000
(8) Sale of forest tree and bamboo 1,500
(9) Income from copyright 4,000
(10) Honorarium as director 10,000
(11) Gift from marriage anniversary 5,000
(12) Income from license 2,000

During the year he has purchased jewellery of Tk. 125,000 the source of which has not been explained to the DCT. During the year he has paid Tk. 200 as license renewal fee and Tk. 800 as interest on loan taken to purchase the shares of private limited company.

Solution 1

Assessee: Mr. Abdur Rahman
Income year: 2022-23
[Assessment year: 2023-24]
Computation of total income

Income from financial asset :		
1. Dividend from Pvt. Ltd. Co. (9,000/1-0.1)	10,000	
2. Interest on fixed deposits (5,400/1-0.1)	6,000	
3. Interest on savings certificate (18,000/1-0.1) [final u/s 163]	20,000	
4. Interest on Post Office Savings Bank (1,800/1-0.1)	2,000	38,000
Less: Interest on loan for purchase share		(800)
		37,200
Income from other sources:		
Remuneration for exam script evaluation	1,000	
Prize bond lottery	25,000	
Income from sale of fish of pond	1,000	
Sale of forest tree and bamboo	1,500	
Income from copyright	4,000	
Honorarium as director	10,000	
Income from license	2,000	
Unexplained investment at jewellery	125,000	169,500
		206,700
Less: Allowable deductions (license reneal fee)		(200)
		206,500

Notes:

1. Assuming copyright has been received from an individual, where no TDS is applicable.
2. Income from marriage anniversary is a gift not income.

Worked example 2

Mr. Joarder Hossain has reported the following incomes for the income year 2022-23 classifiable under the head 'income from other sources'. Compute taxable income of Mr. Hossain.

1. Dividend from ICB Mutual Fund (gross amount) 30,000
2. Profit on Islami Bank Mudaraba Savings Scheme 2,700
3. Interest on savings certificate (gross) 30,000
4. Income from royalty of a book (time of completion – 10 months) 2,000
5. Prize of winning crosswords (no tax was deducted) 2,000
6. Income from letting out household machineries 1,000
7. Sale of forest timber 1,500
8. Income from a newspaper for column writing 5,000
9. Income from unused leased land 2,000
10. Honorarium for attending a symposium 30,000
11. Income from private tuition in a Coaching Center 10,000
12. Royalty income from a publisher 1,800

During the year he spent Tk. 200,000 on a party in Hotel Radisson, the source of expenditure remained unexplained to the DCT. He has also visited Singapore incurring a total cost of Tk. 100,000 and purchased a Diamond set of Tk. 200,000 for his wife for which the source of the money was not satisfactory to the DCT. During the year he has paid Tk. 2,000 as commission for collecting the dividend and Tk. 8,000 as interest on loan taken to purchase ICB mutual fund.

Solution 2:

Assessee: Mr. Joarder Hossain
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Income from financial asset:	**Tk.**	**Tk.**
1. Dividend from ICB Mutual Fund	30,000	
2. Profit on Islami Bank Scheme (2,700/1-0.1)	3,000	
3. Interest on savings certificate [final tax-SRO 253/2023]	30,000	63,000
Less: Allowable deductions:		
Commission for collecting dividend	2,000	
Interest on loan	8,000	10,000
		53,000
Income from other sources:		
4. Income from royalty of a book	2,000	
5. Prize of winning crosswords	2,000	
6. Income from letting out household machineries	1,000	
7. Sale of forest timber	1,500	
8. Income from newspaper column writing	5,000	

9. Income from unused leased land	2,000	
10. Honorarium for attending a symposium	30,000	
11. Income from private tuition in a coaching center	10,000	
12. Royalty income from publisher (1,800/1-0.1)	2,000	
13. Unexplained investments:		
Party in hotel	200,000	
Travel to Singapore	100,000	
Purchase of diamond jewellery	200,000	555,500
		608,500

Self-assessment questions

What is meant by "dividend" under the Income Tax Act, 2023?

1. What are the items assessable as "income from other sources" under the Act?
2. Mr. Joynal Akand has earned the following incomes for the year 2022-23.

Dividend from preference shares of a Public Limited Company	45,000
Dividend from ICB Mutual Fund	18,000
Income from underwriting shares of a Company	30,000
Income from mooring terminal	40,000
Interest on Savings Bank Deposit	27,000
Honorarium received as a director to be a member of the Board	10,000
Prize of winning Red Crescent lottery	36,000
Income from betting/housie	48,000
Interest on loan given to a friend	15,000
Income from consultancy work not related to his profession	40,000
Income from participating in a training program	20,000
Income from birthday party	50,000
Income from royalty of a book [which took two years to write the book]	90,000

During the year he spent Tk. 200,000 to purchase a piece of land, Tk. 90,000 to purchase a motorcycle and the explanation given regarding the source of expenditure was unsatisfactory to the DCT. Through investigation, the DCT has also identified an FDR of Tk. 500,000 in a local bank, source of which has also remained explained.

He has also visited India incurring a total cost of Tk. 100,000 and purchased a Diamond set for Tk. 100,000 for his wife for which the source of the money was also unexplained. During the year he has paid Tk. 1,500 as commission for collecting the dividend. His other expenditures during the year are as follows:

Purchase of books and magazine	15,000
Donation to President's Relief Fund	30,000
Contribution to a deposit pension scheme	80,000
Purchase of a cow for Eid ul Azha	15,000
Purchase of a Laptop	130,000
Purchase of shares from secondary market	200,000

Compute total income and tax liability of Mr. Joynal Akand for the assessment year 2023-24.



Chapter 11

Depreciation and Amortization

Contents

Introduction

Examination context

Topic list

11.1	**Basics of depreciation allowances**
11.2	Depreciation allowance for different heads of income
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11.4	Depreciation allowance on assets used in business or profession
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11.8	Initial depreciation allowance
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11.10	**Arrangements relating to profit or loss and sale or transfer of asset**
11.11	Amortization
11.12	**Carry-forward of depreciation allowance**

Worked examples

Introduction

Learning objectives

- Explain depreciation allowance.
- Compute depreciation allowance,
- Define balancing charge and capital gain.
- Identify different types of depreciation allowances.
- Differentiate accounting depreciation and tax depreciation.
- Identify different rates of accelerated depreciation for different assets.

- Define written down value and its application at acquisition and disposal of assets.
- Explain gain and losses of assets in disposal.

Practical significance

Depreciation allowance is very important in computing income from business and profession. It is an allowable deduction in computing income from agriculture and income from business and profession. Thus, computing depreciation and understanding its implication is very significant.

Accounting depreciation and tax depreciation may not be the same. If it is not same then it generates deferred taxation. And it is very important for professional accountants to practice deferred taxation. This chapter presents different types of depreciation allowances, investment allowance and other related topics.

It also presents a definition of written down value with the application of gain and loss on disposal of assets. It also presents different exceptions to the common rule.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of depreciation allowance is one of the important issues for determining tax liability? Can you determine the taxable income under the heads 'income from agriculture' and 'income from business and profession' after allowing tax depreciation allowance?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define depreciation allowance.
- Compare depreciation allowance and investment allowance.
- Define written down value, balancing charge, industrial undertaking and capital gain.
- Presents different rates of depreciation for different types of assets.
- Explain rates of depreciation for plant, machinery, ships and other exceptional assets.
- Understanding the difference between accounting depreciation and tax depreciation.
- Define written down value and its application at acquisition and disposal of assets.
- Explain gain and loss of assets in disposal.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income under the heads 'income from agriculture' and 'income from business or profession'.

11.0 DEPRECIATION ALLOWANCE

Section overview

- ➔ Depreciation is allowed on cost but investment allowance is over and above cost and depreciation allowance.
- ➔ Any Government subsidy or any grant from any authority received for the purchase is to be deducted from cost.
- ➔ Sale value of motor car costing more than Tk. 30 lakhs is to be scaled down in proportion to Tk. 25 lakhs limit and the same with assets used partly for business or profession and partly for private purpose of the assessee.
- ➔ Full depreciation is allowed in the year of purchase and none is allowed in the year of disposal of asset.
- ➔ Sale value exceeding original cost is capital gain and should be taxed accordingly.
- ➔ Depreciation is calculated on reducing balance method (WDV) on all assets other than accelerated depreciation or on ships and vessel where cost is used.
- ➔ Balancing charge is the revenue gain and should be taxed separately.
- ➔ Accounting depreciation and tax depreciation are different and it creates deferred taxes.

11.1 Basics of depreciation allowances

Besides various expenditure allowed under section 50 in arriving at the profit or loss on business or profession in an income year, allowances are also given for depreciation of capital assets within prescribed rules and at prescribed rates.

Normally accountants charge depreciation on fixed assets other than lands in calculating profit or loss of business or profession periodically. This is a normal wear and tear of fixed asset caused by use, defluxion of time or obsolescence. The rates and method of depreciation depend on the particular accounting policy followed by the assessee.

In calculating accounting depreciation, accountants should not consider what tax authorities allow and tax authorities also do not consider accounting depreciation in computing depreciation allowed under tax laws. It may be that accountant has not charged any depreciation on fixed assets or charged whole of a particular fixed asset in a year, but to the tax man, it is immaterial since he would add back accounting depreciation and deduct tax depreciation in his assessment process.

Some basic rules or concepts used in the calculation and granting of depreciation allowances are stated below:

(i) It is allowed on fixed assets other than land i.e., buildings, plant and machinery, furniture and fittings, equipment etc.

(ii) Assets must be used in the relevant income year in business or profession. It may be used for the whole year or for just one day in the year. The allowance is given for the whole year without time apportionment. However, it would be on proportionate basis when assets or some of these are used for private purpose and business purpose.

(iii) Ownership of the assets must be with the concerned assessee in the income year. This condition overrides prima facie that of use when in the case of operating lease, or any other arrangement of hire purchase purpose, the lessor retains the ownership. He is thus allowed full tax depreciation though the assets have been used by the assessee.

(iv) It is obligatory on the part of the assessee to furnish the prescribed particulars in respect of depreciation claim (Rule 41). If the prescribed particulars are not furnished, the DCT may even refuse to grant any allowance for depreciation. However, where the particulars furnished are incomplete or inaccurate, he cannot decline to grant allowance where he should call for further information to complete his own depreciation allowance.

(v) Aggregate depreciation allowed shall not exceed cost and the law deals with the subject of cost elsewhere.

(vi) No depreciation is allowed in the year the asset is sold, discarded or demolished even when it was used for major or most part of the year. However, balancing allowances is allowed in that year when WDV of the asset is greater than the proceeds.

(vii) Third Schedule prescribes different rates of depreciation allowances for different classes of assets. On ocean going ships and vessels the rate of depreciation is based on actual cost and accelerated depreciation on plant and machinery is also based on cost not WDV, in all other cases, it is based on written down value (WDV) of the asset.

(viii) Cost of motor vehicle used in the business or profession is restricted up to Tk. 30 Lakhs for the purpose of depreciation allowance calculation.

(ix) No depreciation is allowed on assets before the commencement of business i.e., commercial production.

(x) While acquiring the asset, the assessee receives any capital grant or Government subsidy or any assistance from any other authority or person such amount shall be excluded from the acquisition cost for the calculation of depreciation allowance.

(xi) Fluctuation in the foreign exchange rate is given effect to determine the cost base of any asset acquired with money borrowed and payable in foreign currency.

(xii) Depreciation is not treated as an expense unlike the matching of cost with revenue by the accountants. However, it is given as a specific case for the diminution in capital assets used in business or profession. Since, it is not treated as a cost by the tax people, tax profit or loss is calculated first without having regard to depreciation allowance.

If there is any profit, depreciation is set off against that. If not or if insufficient to absorb the whole, the balance is and can be carried forward indefinitely as unabsorbed depreciation. But in case of loss, it can be carried forward only for six years and when cannot be set off within that, is regarded a capital loss. This facility of carry forward of unabsorbed depreciation is extended to all tax holiday or exempted enterprises when however, they cannot carry forward their business losses beyond the holiday or exempt period.

11.2 Depreciation allowance for different heads of income

Income Tax Act, 2023 prescribes depreciation allowances for fixed assets used in different heads of income as follows:

a) Agricultural income
b) Income from business or profession

11.3 Depreciation allowance on assets used for agricultural purpose

Depreciation allowances on fixed assets used for agricultural purposes are allowed at prescribed rates as given in Third Schedule. The schedule is produced below:

Third Schedule
[Para 1]

Sl. No.	Capital asset	Rate of depreciation (%)
1	**2**	**3**
1)	A building or structure constructed by brick, concrete, steel or similar material	5
2)	House constructed by tin, bamboo or similar materials	10
3)	Permanent fence	10
4)	Tube – well	10
5)	Tank	10
6)	Irrigation works, channels, pipes	10
7)	Agricultural instruments made by wood or bamboo	20
8)	Weight machine	10
9)	Tractors, oil engines and light machinery	10
10)	Truck, delivery van, other motor vehicle	10
11)	Piper pumping equipment	20
12)	Non-mechanical van	15
13)	Steam engine	10
14)	Factory machinery	15
15)	Any such common instrument, tools, plant and other property	10

11.4 Depreciation allowance on assets used in business

According to para 2 of Third Schedule, Part 1,

1. Depreciation allowance for the relevant income year on any asset used by an assessee and owned by him for business purpose shall be granted on the basis, rates and limitation, qualification and conditions set out in part 1 of Third Schedule.
2. Above depreciation allowance normal depreciation allowance and initial depreciation allowance for the relevant income year used by the assessee for business purpose shall be on the depreciated value of the said asset subject to basis, rate, limitation, qualification, and condition presceibed in Part 1 of Third Schedule.
3. Where the asset was not used fully in the business of an assessee, depreciation allowance shall be allowed proportionately.

4. Depreciation allowance shall not be allowed on any asset unless the return of the assessee reflects a claim that the asset is used for business purpose.
5. Where the asset is not fully used for business purpose, in computing the depreciated value of the asset (WDV), the asset shall be deemed to have been fully used for business purpose.
6. The total deduction allowed against any asset shall not exceed the purchase price of said asset.
7. Depreciation of asset owned by a particular leasing company and leased to any other person shall be deductible only against the lease rental income arising from such lease.
8. No allowance shall be allowed to the lessor in respect of any such machinery, plant, vehicle or furniture which has been given to any lessee on finance lease.
9. No allowance shall be admissible under this part if –
   a. Information or documents as prescribed by the Board or required by DCT was not submitted at the time of filing return;
   b. Such assets was not used in the relevant income year.
10. For the purpose of this Part 1 of Third Schedule, 'specified leasing company' means any leasing company, banking company, or any financial instigiution which is engaged in leasing business.

11.5 Determination of purchase price of an asset

According to Para 3 of Part 1 of Third Schedule,

1. The purchase price of any motor vehicle shall be considered not more than Tk 3,000,000 if said depreciation allowance is allowable for any passenger motro vehicle other than a bus or minibus used for the transportation of students, teacher or employee of the assessee.
2. In computing the purchase price of any asset, the value of any allowance, subsidy, rebate, or commission and assistance (other than interest-bearing or interest fee loan) received by the assessee from the Government or any authority or person shall be excluded.
3. Where the assessee acquires any used asset (other than motor vehicle), the acquisition cost of the said asset shall not exceed its fair market value.
4. Where the acquisition of an asset involves foreign currency loan or foreign currency engagement, the acquisition cost of said asset shall be computed after making the following adjustments, namely –

a. Adding exchange rate fluctuation loss or exchange rate hedging expense;
b. Deducting the exchange rate fluctuation gain.

11.6 Types of depreciation allowance

As per Third Schedule of ITA, 2023, depreciation allowances may be classified as under:

Reference	Types of allowances
Para 4, Third Schedule	Normal depreciation allowance
Para 5, Third Schedule	Initial depreciation allowance
Para 6, Third Schedule	Accelerated depreciation allowance on machinery and plant

11.7 Normal depreciation allowance

As per para 4 of Part 1, Third Schedule, normal depreciation allowance is allowed at the following rates:

SL. No.	Classification of assets	Rate (% of the written down value)

1	Building (unless otherwise specified in this table)	5
2	Factory building	10
3	Furniture and fittings	10
4	Office equipment	10
5	Machinery, plant and equipment (unless otherwise specified in this sheduel)	10
6	Ocean-going ships	
	) New	5
	) Old at the time of purchase whose age is –	
	(i) Not more than 10 years	10
	(ii) More than 10 years	20
7	X-ray, electrotherapeutic and other medical equipment incouding its spare parts	20
8	Battery operated appliances and rechargeable batteries	30
9	Equipment used for production and display of audio visual products	20
10	All types of motor vehicle not plying for hire	10
11	All types of motor vehicle plying for hire	20
12	Computer hardware incouding printers, monITArs and ancillary item	25
13	Professional and reference books	25
14	Aircraft, aeroengines and aerial photographic equipment	30
15	Moulds used in manufacture of glass or plactic goods or concrete pipe	30
16	Mineral oil concerns -	
	) Below ground installation	100
	) Above ground installatins, that is to say, portable boilers, drilling tools, well-head tanks and rigs	25
17	Bridge	2
18	Road	2
19	Flyover	2
20	Pavement runway, taxiway	2.5
21	Apron, tarmac	2.5
22	Communication, navigation aid and other equipment	5
23	Any such physical asset not mentioned in this schedule	10

11.8 Initial depreciation allowance

According to para 5 of part 1 of Third Schedule, initial depreciation shall be allowed in respect of the income year in which the asset is first used by an assessee for his business purpose or in the income year in which commercial production is first stated, whichever occurs later.

Rate of initial depreciation shall be as below:

(a) In the case of building	10%
(b) In the case of machinery or plant other than ships or motor vehicles not plying for hire	25%

Notes:

(1) Initial depreciation allowance will not be applicable in case of –

(a) any motor vehicle not plying for hire, and

(b) any machinery or plant which has previously been used in Bangladesh.

11.9 Accelerated depreciation allowance

According to para 6 of part 1 of Third Schedule,

1. Where machinery or any asset covered by the establishment is used in an industrial undertaking situated in Bangladesh, accelerated depreciation allowance shall be allowed at the rate specified under para 6 subject to the limits and conditions set out in part 1 of Third schedule.
2. Accelerated depreciation allowance shall be allowed up to 3 years from the year of commencement of commercial production of the industrial undertaking.
3. Accelerated depreciation shall be calculated on the purchase price of the asset concerned at the rate specified in the below table:

SL no	Year of commencement of commercial operateion	Rate of accelerated depreciation
1	First income year	50%
2	Second income year	30%
3	Third income year	20%

4. Accelerate depreciation allowance shall be allowed subject to following conditions, limits and qualification, namely –
   a. The relevant asset is owned by the industrial undertaking and has not previously been used in Bangladesh;
   b. Ownership and management of industrial undertaking –
      i. Managed by by law for the time being in force or by body corporate established under the law having its head office in Bangladesh;
      ii. Carried on by a company as defined in the Companies Act, 1994 having its registered office in Bangladesh and having an authorized and paid-up capital of at lease TK 2,000,000 on the date of commencement of commercial production.
   c. The industrial undertaking –
      i. TIN holder;
      ii. Maintenance its books of accounts in accordance with the provision of this Act;
      iii. Maintain sperate and distinct accounts;
      iv. File its return in accordance with the provision of this Act.
   d. Follow the procedure described below, namely –
      i. An application for accelerated depreciation allowance shall be made to the Board, in prescribed form and manner, within 6 months from the last day of the month of commencement of commercial production;
      ii. A decleration to the effect that the industrial establishment is not exempted from tax under any section of this Act and has not and will not make any application to the Board for exemption from tax.
5. If accelerated depreciation allowance is allowed on any asset in any income year, no normal depreciation or initial depreciation allowance shall be allowed.

11.10 Arrangements relating to profit or loss and sale or transfer of asset

According to para 7 of part 1 of Third Scheduel, where any asset is sold or transferred by an assessee in any income year, no depreciation allowance shall be allowed under this Third Schedule against such asset in that income year.

11.11 Amortization

1. **Computation of Amortization:** According to para 1 of part 2 of Third Schedule, the amortization allowance shall be computed on straight line basis.
2. **Amortization of license fee:** where a resident company pays any amount as license fee for the purpose of obtaining permission from an authority approved by the Government to carry on business for two or more years, it shall be deducted from the income of the business of the company at the proportionate rate up to the last year of the last year of license period.
3. **Amortization of pre-commencement expense:** Rate of amortization of pre-commencement expense shall be 20%.
4. **Amortization of research and development expenditure:** Amortization rate of research and development expenditure shall be 10%.
5. **Amortization of computer software and applications:** The rate of amortization of computer software and application shall be as follows:

a. 20% in respect of any software and applications developed in Bangladesh;
b. 10% in respect of any software and applications developed outside Bangladesh.

6. **Amortization of disallowed expenditure:** If any expenditure claimed by the assessee is disallowed treating as capital expenditure, 10% amortization on such disallowed expenditure shall be allowable in subsequent assessment years.

11.12 Carry-forward of depreciation allowance

According to section 71 of ITA, 2023,

1. If any depreciation allowed under this Act, is not fully charged as expenditure against the gross income of an assessment year, it shall be added to the depreciation o the next assessment year.
2. No depreciation allowance shall be carry-forward in case of failure to comply with any provision of this Act.
3. Carry – forwarded loss shall be adjusted before charging carry-forwarded deprecation.
4. Allowable depreciation can be carry-forward till fully adjusted.

Worked examples and solutions

Worked example 1

Company X, whose accounting year is ended on June 30 each year, has purchased a machine for Taka 20 Lakhs on 29 June, 2019 and sold the same on 1st April 2022 for Tk. 25 lakhs. Compute balancing charge and capital gain.

Solution 1

Assessment year	Rate of depreciation	Depreciation	Written down value
			2,000,000
2019-20	10%	200,000	1,800,000
2020-21	10%	180,000	1,620,000
2021-22	10%	162,000	1,458,000

Total gain: Sale proceeds – Written down value = Tk. 2,500,000 – Tk. 1,458,000 = Tk.1,042,000

Capital gain = Sale proceeds – Original cost = Tk. 2,500,000 – Tk. 2,000,000 = Tk. 500,000
Balancing charge = Total gain – Capital gains = Tk. 1,042,000 - Tk. 500,000 = Tk. 542,000

Notes:

1. Difference between sales price and original cost is capital gain to be assessed in 2023-24 assessment year.

2. Balancing charge equals to depreciation allowances so far enjoyed i.e. Tk. 542,000 (200,000 + 180,000 + 162,000).

3. The company received the depreciation allowance in 2019-20 assessment year, for just buying the machine one day before its year end. Had it been 1st July, 2019, the allowance would have started from the assessment year 2020-21 i.e. corresponding income year 2019-20. Similarly, on disposal giving rise to balancing charge and capital gain, it has delayed the tax impact by one year just by completing the sale on 1st April, 2022 instead of 30 June, 2021.

Worked example 2

Company X bought a machine for Tk. 50 lakhs on 10th July, 2019 to be used in its expansion unit in Savar, Dhaka. The investment is qualified for accelerated depreciation under Third Schedule. The company sold the machine on 15 January, 2022 for Tk. 20 lakhs, The Company's year ends on 30th June. Calculate depreciation for the relevant assessment years.

Solution 2

Assessment year 2020-21

	Cost	Allowance
Machine	5,000,000	
Accelerated depreciation allowance (3rd Schedule) (50%)	2,500,000	2,500,000
		2,500,000

Assessment year 2021-22

Accelerated depreciation allowance (30%)		1,500,000
Written down value		1,000,000

Assessment year 2023-24

Sale proceeds		2,000,000
No depreciation in the year of disposal		nil
Less: WDV		1,000,000
Revenue gain from sale of machine		1,000,000

Notes:

Difference between accounting and tax profits arises mainly because of timing what accountants charge in the accounts as depreciation and what tax law allows. Since, both the way calculates on the cost as the upper limit, there would be no difference in the long run. However, after tax results of companies differ significantly from year to year or across the industry because of the taxation anomaly.

To remove this problem and to show an even after-tax results year after year companies can maintain deferred taxation account in accordance with IAS 12 (Accounting for income tax).

Self-assessment questions

1) Enumerate different types of depreciation allowance?
2) What is the basic difference between depreciation allowance and investment allowance?
3) An asset was bought some years back for Tk. 10,00,000, the WDV of which was Tk. 600,000. Find out the tax implication

    a) If it was sold for Tk. 11,50,000.
    b) If it was sold for Tk. 8,50,000.
    c) If it was sold for Tk. 4,50,000.



Chapter 12

Set off and carry forward of losses

Contents

Introduction

Examination context

Topic list

12.1	Introduction to set off and carry forward of losses
12.2	Set off and carry forward losses
12.3	Carry-forward of depreciation allowance

Worked examples

Introduction

Learning objectives

- Define set off and carry forward of losses.
- Identify areas where set off of losses is possible.
- Identify the heads of loss permissible for carry forward.
- Identify the situations when carry forward is not permissible.
- Explain maximum years when carry forward is possible.
- Differentiate carry forward of losses by individuals, firms and partners.
- Explain the carry forward of losses by undertakings enjoying tax holiday facilities.
- Illustrate the concept of set off and carry forward of losses in different situations.

Practical significance

Set off and carry forward of losses is very important and practically significant to compute total income of any year. These are the benefits enjoyed by assesses to cover up their losses before paying taxes to the government.
Set off means the coverage of loss under one head against another head in a specific year. Carry forward is the transferring of loss of a year to the succeeding year or years for coverage if set off was

not possible or insufficient. Such set off and carry forward facility can be availed provided that certain conditions are fulfilled. This chapter presents such guidelines.
After carry forward, losses from any head cannot be set off against income from any other heads. And losses cannot be carried forward for unlimited period. Thus, professional accountants need clear understanding on each topic of this chapter.

Subject to some conditions, an assessee is allowed to set off and carry forward of losses. The carry forward of losses under different heads of income are varied.

You will find the details of the above issues in this chapter with some practical example.

Stop and think
Do you realize that the understanding of set off and carry forward of loses is important for computation of total income? Can you determine the total income from different heads of income after set off and carry forward of losses?

Working context
In practice, as the accountants are sometimes required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total income for any income year. Before advising the clients, accountants should have the clear concept relating to set off and carry forward of losses in determining the total income.

Syllabus links
The topics covered in this chapter are very important for computing total income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, students may be required to:

- Understanding provisions regarding set off and carry forward of losses.
- Identify areas where set off of losses is possible.
- Identify carry forward of losses from income from agriculture.
- Identify carry forward of losses from income from business and profession.
- Identify carry forward of losses from income from speculation business.
- Identify carry forward of losses from capital gains.
- Identify carry forward of losses from income from house property.
- Identify carry forward of losses from income of a partnership firm.
- Identify the situations when carry forward is not permissible.
- Explain maximum years when carry forward is possible.
- Explain the application of unabsorbed depreciation and its impact on income from business and profession.
- Differentiate carry forward of losses by individuals, firms and partners.
- Explain the carry forward by undertakings enjoying tax holiday facilities.
- Illustrate the concept of set off and carry forward of losses in different situations.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to set off and carry forward of losses.

12.0 SET OFF AND CARRY FORWARD OF LOSSES

Section overview

- ➔ Loss arising in one head of income can be set off against profit arising under any other head except *from*, capital loss or loss on speculative business in the same year. *Business loss cannot be set off against house property income*.
- ➔ Balance of loss, if remains, can be carried forward to be set off against profit under same head for six years.
- ➔ Unabsorbed depreciation brought forward together with current year's depreciation allowance forms total depreciation charge for the year.
- ➔ Unabsorbed depreciation can be carried forward indefinitely i.e. without time limit of six years.

12.1 Introduction to set off and carry forward of losses

Tax is imposed on income and thus, if loss is generated from any heads; government offers sufficient options to make the assessee well off enough so that tax may be collected. Two such options are:

a) Set off
b) Carry forward and then set off

Logically, set off considers only one year whereas carry forward includes subsequent year or years. As assessee have multiple sources of income, it is very common that loss will not generate from each head. Thus, losses from one head may be adjusted with income from other heads so that net figure results income and tax can be imposed on it. However, if the total income from all head's results losses, set off cannot be done practically. In such a situation, loss of one year can be carried forward to subsequent year or years for set off. This chapter presents these two issues in detail.

12.2 Set off and carry-forward of losses: section 70

According to section 70 of ITA, 2023,

1. Subject to the provision of 2 (below), the assessed loss of any head in an assessment year can be set off against any other head.
2. No loss mentioned in the below table can be adjusted against income of head or source other than from that head or source, namely –

SL no	Source or head of loss	As can be adjusted
1.	Capital loss	Only with capital gain
2.	Business loss	Only with income from business
3.	Loss from speculation business	Only with income from speculation business
4.	Loss from tobacco business	Only with income from tobacco business

3. The loss of any source or head to which tax is exempted, reduced tax rate or minimum tax is applicable shall not be set-off or carry-forward.
4. The assessed loss of a firm or AOP shall be set-off only against the assessed income of the firm or AOP and shall not be set-off against the income of any partner of the firm or AOP.
5. If the assessed loss of any head in an assessment year is not fully set-off with the income of any other head or source of that year, set-off can be given in the next 6 successive years.

12.3 Carry-forward of depreciation allowance

According to section 71 of ITA, 2023,

1. If any depreciation allowed under this Act, is not fully charged as expenditure against the gross income of an assessment year, it shall be added to the depreciation o the next assessment year.
2. No depreciation allowance shall be carry-forward in case of failure to comply with any provision of this Act.
3. Carry – forwarded loss shall be adjusted before charging carry-forwarded deprecation.
4. Allowable depreciation can be carry-forward till fully adjusted.

Example:
A, B, and C were partners in a firm sharing profits in the ratio of 3:2:1. During income year 2022--23, B retired and partner A and C continued in the ratio of 3:1. Up to that year brought forward loss of the firm amounted to Tk. 300,000. Net profit for the current year amounted to Tk. 500,000.

Here is a case of change in the constitution of the firm. The firm cannot set off retiring partner's share of loss against its profit for the current assessment year 2023-24, which is (2/6 × Tk. 300,000) = Tk. 100,000 nor C can individually set off or carry forward his share of the loss.

Assessment year 2023-24

	Tk.
Net profit	500,000
Brought forward of previous year's loss	200,000
Adjusted profit	300,000

Above set-off loss arising from partnership firm is not allowed under section 70(4) of ITA, 2023.

Worked examples

Worked example 1

Mr. Amir Hossain has the following income in different income years. Calculate his total income after considering provisions relating to set off and carry forward of losses.

	2019-20	**2020-21**	**2021-22**
Interest on securities	20,000	30,000	20,000
Income from house property	1,30,000	1,20,000	1,30,000
Income from agriculture	(1,70,000)	(30,000)	40,000
Income from speculative business	-	(40,000)	50,000
Capital gain	25,000	-	-

Solution 1:

Mr. Amir Hossain
Income year: 2019-20
Assessment year 2020-21

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	20,000		
Income from house property	1,30,000		
Income available to set off losses from agriculture	1,50,000	1,50,000	
Income from agriculture	(1,70,000)	(1,70,000)	
Income available after set off		(20,000)	
Carry forward (losses from agriculture)			20,000
Income after set off & carry forward of losses	-		
Income from capital gains **Total**	25,000		
income	**25,000**		

Mr. Amir Hossain
Income year: 2020-21
Assessment year: 2021-22

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	30,000		
Income from house property	1,20,000		
Income available to set off losses from agriculture	1,50,000	1,50,000	
Income from agriculture	(30,000)		
Set off: Current year loss Income		(30,000)	
after set off	1,20,000	1,20,000	
Carry forward: last year loss from agriculture			20,000
Carry forward: Income from speculative business			40,000
Income after set off & carry forward of losses	**1,20,000**		

Mr. Amir Hossain
Income year: 2021-22
Assessment year: 2022–23

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	20,000		
Income from house property	1,30,000		
Income available to set off losses from agriculture	1,50,000		
Income from agriculture		40,000	
Set off: Losses carried forward from earlier year		(20,000)	
Remaining income from agriculture after set off Income from speculation	20,000	20,000	
		50,000	
Set off: Losses carried forward from last year Remaining income from speculation after set off	**10,000**	**10,000**	
Income after set off & carry forward of losses	**1,80,000**		

Worked example 2

Mr. Jamshed Sowdagor reports the following income for the income year ended on June 30, 2023.

Income from business and profession	Tk. 500,000
Income from house property	100,000
Capital gains	50,000
Income from speculative business	80,000

However, he has some losses carried forward from earlier years (income years) with the following details:

Heads	Amount of losses	Year of origin
Income from business and profession	Tk. 80,000	2016-17
Capital gain	50,000	2011-12
Income from speculative business	40,000	2013-14
Unabsorbed depreciation	50,000	2009-10

Solution 2:

Mr. Jamshed Sowdagor
Income year: 2022-23
Assessment year: 2023-24

Sources of income	**Tk.**	**Tk.**	**Tk.**
Income from business and profession		500,000	
Set off: Losses carried forward from 2016-17	80,000		
Unabsorbed depreciation	50,000	130,000	
Taxable income from business and profession			370,000
Income from house property			100,000
Capital gains		50,000	
Set off: not allowed as it exceeds 6 years			50,000
Income from speculation business		80,000	
Set off: Losses carried forward from 2013-14		40,000	40,000
Total income on which tax to be applied			560,000



Chapter 13

Exemption and allowances (Tax holiday / other exemptions)

Contents

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13.2	Exclusion from gross income: Section 77 (1) and Sixth Schedule, Part 1
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Introduction

Learning objectives

- Identify the area of investment for tax holiday scheme.
- Recognize the conditions for enjoying tax holiday.
- Determine the tax holiday income

Practical significance

Income from some newly established industrial undertakings are exempted from tax liability on the basis of fulfilling some conditions. To get the facility of tax holiday, the undertakings need to comply with some conditions and if any conditions are not fulfilled in the course of making assessment of an exempted assessee, the exemption will be withdrawn and the DCT shall determine the tax payable on such income.

The tax holiday and special tax exemptions or tax concessions are provided to different types of business and industrial undertaking to encourage those businesses and industries for overall development of the country. Significant exemption on income from export sales also a good initiative of government to promote the export oriented Bangladeshi companies.

Stop and think

When you want to start a new business, you can consider the opportunity of tax holiday or special tax exemption given by the Government. You can be the part of the development of the country and at the same time you can get the tax holiday facility to enrich your business.

Working context

Accountants are sometimes required by the entrepreneur for giving advice on how the business can be newly started or expanded along with the tax holiday or special tax exemption facility. Chartered accountants can help their clients regarding new business or expansion of their business in such way that the clients can enjoy the tax holiday opportunity. Accountants should have the detailed knowledge on the area of tax exempted business and the updates of the rules and regulations for getting tax holiday and other special tax exemption facility so that they can rightly advise their clients enjoying that facility.

Syllabus links

The topics covered in this chapter imply the area of industry and investments from where you can get tax holiday benefit with the conditions to get that benefit.

Examination context

Exam requirements

In the examination, students may be required to:

- Recognize the different industrial undertakings for taking tax holiday facility.
- Illustrate the various conditions for getting tax holiday.
- State the way of computing tax holiday income.
- Mention the reasons for withdrawal and cancellation of tax holiday.
- Define the exemption of tax liability for Bangladeshi exporting industries.
- Mention the different types of business considered for special tax exemptions.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

EXEMPTION AND TAX HOLIDAY

Section overview

- ➔ Assessee enjoying some non-assessable income.
- ➔ Assessee enjoying tax rebate on investment allowance.
- ➔ Some newly established industrial undertakings are enjoying tax holiday.
- ➔ There are some conditions to get the tax holiday facility.
- ➔ The purpose of tax holiday is to encourage industrial and other development of the country in many sectors like physical infrastructure, textile, hospital, exporting industries etc.
- ➔ Tax holiday income shall be computed like the computation of income from business or profession.
- ➔ Tax holiday may be cancelled or withdrawn if one or more conditions not fulfilled.

13.1 Exemption from tax: Section 76

According to section 76 of ITA, 2023,

1. The board, may by notification in the official gazette, grant exemption from tax to any person or class of person.
2. In case where exemption from tax has been granted to a person under the provision of this Act, if tax exemption is not granted by a notification under section 76(1) of ITA, 2023 such provision shall not be operative.
3. The Board may cancel any tax exemption by issuing a notification under section 76.
4. Not tax exemption under this Act shall be granted ex post facto.
5. Notwithstanding anything contained in Part 6 and any other provision of this Act, no person shall be exempt from tax under this Act in any assessment year if he fails to comply with the following conditions, namely –

a. Filing the return within the tax day; or
b. Filing return in compliance with the provision of section 166 and 171; or
c. Deduction of tax at source, collection, deposit or filing of return relating thereto and compliance with the provision of part 7. Or
d. Bank transfer of all receipts and income from any tax exempted source.

Provided that above provision (d above) shall not apply in case where the head of receipt is treated as ‘income from agriculture’ and the total amount of receipt does not exceed Tk 1 crore in any income year.

6. In computing income from an tax exempted source of a person, any expenditure disallowed under section 55, as the case may be, shall be deemed to be income from the said income head of the peron and tax shall be payable on the said income at the regular rate.

13.2 Exclusion from gross income: Section 77 (1) and Sixth Schedule, Part 1

Any income or class of income or the income of any person or class of persons specified in Part 1 of the Sixth Schedule shall be exempt from payment of tax as per section 77(1). Following items as specified in Part 1 of the Sixth Schedule of the ITA, 2023, are exempted from tax:

1. Income of any intergovernmental organization or any international organization or any of its employee, exempt from income tax under any Act made by the Parliament or any agreement signed by the Government; [para 1]
2. Any income of ambassador, high commission, trade commissioner etc. [para 2]
3. Grant and any tax, fee and duties received by Government or local authority; [para 3]
4. Received or due amount from the Government Pension Fund by the assessee; [para 4]

5. Gratuity received from Government Gratuity Fund up to Tk 25,000,000; [para 5]
6. Any recognized provident fund, approved superannuation fund, pension fund and approved gratuity fund – [para 6]
    a. Any contribution received from employer or employee; and
    b. The income distribution among the beneficiaries thereof for which the fund is chargeable to tax.

    Provided that the amount received by the assessee as gratuity from any approved gratuity fund does not exceed 25,000,000.

7. Any income accruing to or derived by a provided fund to which the Provident Fund Act, 1925 applies. [para 6]
8. Any amount received under any scheme approved by the Government for the purpose on voluntary retirement by any employee of a Government body, local authority, or autonomous body or semi-autonomous body and their controlled units or institutions; [para 8]
9. Any amount received as interest from Pensioners Savings Certificate where invested amount does not exceed Tk 500,000; [para 9]
10. Any income earned by following entities recognized by BSEC: [para 10]
    a. Mutual Fund;
    b. Alternative Investment Fund;
    c. Real Estate Investment Trust;
    d. Exchange Traded Fund;
11. Income of charitable or religious trust; [para 11]
12. Subscription received by religious or charitable institution used only for religious or charitable purpose; [para 12]
13. Any service charge arising out of the microcredit activities of any private organization registered with the NGO Affairs Bureau or Microcredit Regulatory Authority if –
    a. Revolving only as microcredit
    b. Fund is not used to acquire any asset other that microcredit revolving
    c. Fund not used as capital of any business other than microcredit revolving.
14. Reimbursement of expense of an employee by employer if –
    a. The said expenses are fully and necessarily incurred in accordance with the performance of the duties of the employee; and
    b. It was most convenient for the employer to incur such expense through said employee. [para 14]
15. The portion of income received by the assessee as a partner in a partnership firm as part of capital income on which tax has been paid by the firm. [para 15]
16. The amount received by an assessee as a member of HUF on which tax is paid by that family. [para 16]
17. Any income earned abroad by a Bangladeshi individual person which he brings into Bangladesh in accordance with existing laws relating to foreign remittance. [para 17]
18. Any income received from wage earner development fund, US Dollar premium bond, US dollar investment bond, Euro premium bond, Euro investment bond, pound starling investment bond or pound starling premium bond. [para 18]
19. Any income received from economic activities undertaken by indigenous Hillman in the hill districts of Rangamati, Bandarban and Khagrachari. [prar 19]
20. Income of any individual not exceeding Tk 200,000 within the scope of ‘Income from Agriculture’, if such person –
    a. Is a farmer by profession;
    b. Does not have any income other than following income in the relevant income year, namely –
    i. Income arising from land cultivation;
    ii. Income from interest or profit not more than Tk 20,000. [para 20]
21. Income derived from the business of software development and specific Information Technology Enabled Services (ITES) for the period from July 01, 2020 to June 30, 2024.[para 21]
22. Any income derived from the export of handicrafts for the period from July 01, 2020 to June 30, 2024. [para 22]

23. Any amount paid by the government as tax on behalf of a petroleum exploration company engaged in exploration of petroleum products in Bangladesh under Production Sharing Contract (PSC) with the Government of Bangladesh. [para 23]
24. Income derived from any Small and Medium Enterprise (SME) engaged in production of any goods and having an annual turnover of not more than Tk.50,00,000/. In case of woman entrepreneur, the ceiling is however Tk. 70,00,000.[para 24]
25. Any income derived from Zero Coupon Bond received by a person other than Bank, Insurance or any Financial Institution, subject to the following conditions:
    a. that the Zero-Coupon Bond is issued by Bank, Insurance or any Financial Institution with prior approval of Bangladesh Bank and Securities and Exchange Commission.
    b. that the Zero-Coupon Bond is issued by any institution other than Bank, Insurance or any Financial Institution with prior approval of Securities and Exchange Commission. [para 25]
26. Any receive by an educational institution which is not considered as 'income form financial asset' and if the educational institution comply with following conditions –
    a. Within the Government MPO;
    b. Follows the curriculum approved by the Government;
    c. The governing body is constituted as per rules of the Government. [para 26]
27. One third of income classified under the head 'income from emoloyment' or Tk 450,000 whichever is lower. [para 27]
28. Any income (except interest and dividend) received by any public university and professional body like ICAB, ICMAB and ICSB [Para 28]
29. Any honorarium or allowance from Bangladesh Freedom Fighters Welfare Trust or any welfare allowance received by any persons from the Govt. [Para 29].
30. Any reward received by any person from the Govt. [Para 30].
31. Income derived from the operation of an elderly care home or a day care home for children [Para-31]
32. Any distribution of taxed dividend to any company if the company distributing such taxed dividend has maintained separate account for the taxed dividend. [Para-32]
33. Business income earned by an ocean going ship being Bangladeshi flag carrier within 30 June 2030 bring similar income following the provision relating to foreign remittance. [para 33].

    It should be noted that above exemption is subject to following conditions as provided by section 77 (1) of ITA, 2023:

(a) Deduction from the total income shall be properly acconted for in the relevant column;
(b) The source and amount of income shall be submitted with return.

13.3 Subtract from gross income: Sixth Schedule, Part 2

As per section 77 (2) and Sixth Schedule, Part 2, following income shall be deducted from the total income, namely –

1. Assessee in any income year by bank transfer –
    a. Any income donated to any fund established under or by the Prime Minister's Education Assistance Trust Act, 2012 subject to following maximum limit –
    i. 10% of the income of the company or Tk 8 crores whichever is less;
    ii. 10% of the come of the other than company or Tk 1 crore whichever is less.
    b. Income donated to any girl's school or women college approved by the ministry of education;
    c. Income donated to any technical or vocational training institute approved by the ministry of education.
2. Income donated by the assessee in any income year through banking transfer to any national level organization involved in research and development for agriculture, science, technology and industrial development.

    It should be noted that above exclusion is subject to following condition as provided by section 77(2) of ITA, 2023,

(a) The donation is reflected in the return or particulars or documents annexed to the return;
(b) The total amount of the donation made under part 2 of Sixth Schedule does not exceed 10% of the total income disclosed before donation;
(c) The source and amount of income shall be submitted with return.

13.4 Genearl tax relief in respect of certain investment and expenditure: section 78 and Sixth schedule part 3

Subject to the provision of this Act and subject to the limits, conditions and qualifications set out in part 3 of the Sixth Schedule, any investment made or by the resident individual and nonresident Bangladeshi shall be eligible for rebate from tax on total income as per below –

(a) 0.03 X A; or
(b) 0.15 X B; or
(c) Tk 1,000,000.

Whichever is lower.

Where,

A = Total income excluding tax exempted income, income suject to reduced tax rate and income subject to minimum tax.

B = Total investment and expenditure of the assessee as per Part 3 of Sixth Schedule in any income year.

The following items should be considered as investment allowance to enjoy tax rebate facility as per Sixth Schedule (Part-3):

1. Life insurance premium [Para –1]:
   Any sum paid in Bangladesh by an assessee to effect on insurance or a contract for deferred annuity on the life of himself, spouse or minor child, provided that such payment shall not exceed 10% of the sum assured (excluding bonus or other benefits).

   Provided that not rebate under this para shall be allowed unless the premium or the life insurance policy or contractual deferred annuity is paid in Bangladesh.

2. Life insurance premium paid by a Hindu Undivided Family [Para –2]:
   Any sum paid in Bangladesh by a HUF to effect on insurance on the life of any male member of the family or the wife of any such member.

   Provided that not rebate under this para shall be allowed unless the premium or the life insurance policy or contractual deferred annuity is paid in Bangladesh.

3. Deduction from the salary of Government employee for deferred annuity [Para –3]: Any sum not exceeding one-fifth of the salary deducted from the salary payable by the Government or on its behalf to any individual in accordance with the service conditions to secure a deferred annuity for him or for his wife or children.

4. Contribution to Provident Fund [Para –4]:
   Any contribution by an assessee to any provident fund to which the Provident Fund Act, 1925 applies.

5. Employer's and Employee's contribution to a Recognized Provident Fund [Para –5]: Any sum paid to a recognized provident fund by the assessee and the employer, where the assessee is a participant subject to the limits laid down in Part 3 of the Second Schedule.

6. Contribution to Superannuation Fund [Para –6]:
Any sum paid by the assessee as ordinary annual contribution to approved superannuation fund in which assessee is a participant to the fund.

7. Investment in Savings Certificate etc. [Para –7]:
Any sum invested by an assessee other than a company in the following:

a) Any Government securities not exceeding Tk 500,000;
b) Unit certificates and mutual fund, ETF or mutual scheme certificate issued by any financial institution or ICB or asset management or fund management not exceeding Tk 500,000;
c) Deposit in a deposit pension scheme or monthly savings scheme sponsored by any scheduled bank or financial institution not exceeding 120,000 ;

8. Investment in listed securities [Para –8] :

Any sum invested by an assessee, invest, through of any secutiies listed with any stock exchange.

9. Donation to a charitable hospital [Para –9]:

Any sum paid as donation to NBR approved charitable hospital established outside the city corporation area, provided the donation is made after one year of establishment of the hospital.

10. Donation to organizations set up for the welfare of disabled people [Para –10]:

Any sum paid as donation to an organization set up for the welfare of disabled people, provided the donation is made after one year of establishment of the organization and is approved by the Social Welfare Department and the NBR.

11. Donation to Govt. Zakat Fund [Para –11]:

Any sum paid by an assessee as Donation/Zakat to the Zakat Fund established by or under the Zakat Fund Management Act, 2023.

12. Contribution to Benevolent Fund and Group Insurance Scheme [Para –12]:

Any sum paid by an assessee to make provision for his spouse, children or other dependent person to a benevolent fund or any premium paid under a group insurance scheme approved by the NBR.

13. Contribution to philanthropic or educational institution [Para –13]:
Any sum paid by an assessee as donation to Philanthropic or Educational Institution approved by the government for this purpose.

14. Donation to national level institution set up in memory of the liberation war [Para-14]: Any sum paid by an assessee as donation to a national level institution set up in memory of liberation war.

15. Donation to national level institution set up in memory of Father of the Nation [Para15]:

Any sum paid by an assessee as donation to a national level institution set up in memory of Father of the nation.

13.5 Tax Holiday

13.5.1 Income of approved tax holiday entity

According to section 81 of ITA, 2023,

1. Subject to the provisions of this Act, income under the head 'Income from business' earned by an approved tax holiday entity shall be fully or partially exempted under Part 4 of the Sixth Schedule and chapter 10 subject to limits, conditions and qualification for the prescribed period.
2. Any tax exempted income shall not be included in the total income of the assesse, however, shall be shown in the relevant part of the return.
3. An approved tax holiday entity shall be granted tax exemption under sub-section 1 of section 81 subject to following conditions, namely –

a. The entity is owned and operated by such person who –
 i. Is a statutory body established by or under law having its head office in Bangladesh;
 ii. Is a company as defined in the Companies Act, 1994 and having its registered office in Bangladesh and having paid-up capital not less than Tk 2,000,000.

4. The entity is not formed by separating from any such business which is already existence or by reorganization;
5. Any factory, machinery, equipment or any other important immovable property if previously not used by any entity in Bangladesh;
6. Said entity –

a. Obtained TIN;
b. Has maintained books of accounts in accordance with the provisions of this Act;
c. Maintained books of accounts separately.

Explanation – for the purpose of this section, 'approved tax holiday entity' means an entity in an income year from income is derived from business and which –

(a) Has been approved by the Board for partial or full tax exemption under chapter 8;
(b) Is allowed for such tax exemption or deduction in the relevant income year.

13.5.2 Approval of tax holiday entity by the board

According to section 82 of ITA, 2023,

1. A business entity shall submit an application in the manner prescribed by the Board within the month of commencement of its commercial activities for availing tax holiday benefit.
2. Within 60 days from the date of receipt of the application, the Board shall, by order in written, give a decision on the application filed under section 82(1).
3. If the board fails to give a decision within the period mentioned above (i.e. 60 days from application receipt), the application for tax holiday shall be deemed to have been granted and the business entity shall be deemed to be a tax holiday entity until the Board gives a its decision on this.
4. The board shall not cancel the application without giving reasonable opportunity of being heard.
5. If any applicant is aggrieved by the decision of the Board, the said applicant may appeal to the Board within 4 months of the receipt of the decision and the Board may reconsider the previous order and issue an appropriate order.
6. Without prejudice to the provisions of 1 above, the Board may grant and review approvals under this section or make rules on any matter as it thinks fit for the purpose of ensuring tax compliance of tax holiday entities.

13.5.3 Transactions with associated entities

According to section 83 of ITA, 2023,

1. Where an approved tax holiday entity enter into a transaction with any of its associated entity and if the DCT is satisfied that –
a. Transaction are not at open market price; and
b. The income of any associated entity in any income year is less than the actual income as a result of such transaction.

In such case the income to which the associated entity is understated shall be treated as income of the tax holiday entity and shall be classified under 'income from other sources' for the said income year.

13.5.4 Computation of income of approved tax holiday entity

According to section 84 of ITA, 2023,

1. Income of an approved tax holiday entity shall be computed separately from any other business.
2. Income of the approved tax holiday entity shall be computed in the same manner under the heard 'income form business'.
3. Only the normal depreciation as per Part 1 of the Third Schedule shall be allowed in computing the income from business of an approved tax holiday entity.
4. The computed loss of an approved tax holiday entity for any income year shall not be set off against the profit of any other entity or source/head of the assessee which is not an approved tax holiday entity.
5. Tax holiday benefit shall not be applicable to the income arising from said entity as a result of disallowance under section 55 and such income shall be taxed at the regular rate.

13.5.5 Cancellation of tax exemption

According to section 85 of ITA, 2023,

1. Where it appears from any proceedings taken under this Act that an approved tax holiday entity has failed to comply with any of the conditions set out in this chapter, the DCT shall not grant the exemption to the approved tax holiday entity and he can determine tax liability for the said entity in the regular manner and rate in the said income year.
2. The tax holiday entity may submit a written application to the Board against the cancellation order within one year from the order receipt date. The board may issue an appropriate order.
3. Notwithstanding anything contained in this chapter, the Board may, in the public interest, cancel wholly or suspend any exemption under this section by notification in the Official Gazette.

13.5.6 Types of business eligible for tax holiday.

Two types of business are eligible to apply for tax holiday: -
1. Industrial undertaking;
2. Physical infrastructure facility.

As per par 4 of Sixth Schedule following undertakings are eligible for tax holiday under Industrial Undertakings:

1. Active pharmaceuticals ingredient industry and radio pharmaceuticals industry;
2. Agriculture machineries;
3. Automatic bricks;
4. Automobile;
5. Barrier contraceptive and rubber latex;
6. Basic components of electronics (e.g. resistance, capacITAr, transistor,

7. integrated circuit, multilayer PCB etc.);
8. Bi- cycle including parts thereof;
9. Bio-fertilizer;
10. Biotechnology based agro products;
11. Boiler including parts and equipment thereof;
12. Compressor including parts thereof;
13. Computer hardware;
14. Furniture;
15. Home appliances (blender, rice cooker, microwave oven, electric oven, washing machine, induction cooker, water filter etc.);
16. Insecticide or pesticide;
17. Leather and leather goods;
18. LED TV
19. Locally produced fruits and vegetables processing;
20. Mobile phone
21. Petro-chemicals;
22. Pharmaceuticals;
23. Plastic recycling;
24. Textile machinery;
25. Tissue grafting;
26. Toy manufacturing;
27. Tyre manufacturing;
28. Electrical Transformer
29. Artificial fiber or manmade fiber manufacturing
30. Automobile parts and components manufacturing
31. Automation and Robotics design, manufacturing including parts and components
32. Artificial Intelligence based system design and/or manufacturing
33. Nanotechnology based products manufacturing
34. Aircraft heavy maintenance services including parts manufacturing,
35. Locally produced fruits and vegetables processing and preservation,
36. Tissue grafting, biotechnology and development of radio active (diffusion) application industry (i.e. improvement of polymer quality or degradation of polymers or preservation of food or sterilization of medical devices)
37. Any other category of industries as the Govt. may notify in the official Gazette,

Note that approved tax holiday entity shall be located in Bangladesh and shall commence commercial production between July 2020 and June 2025.

If any tax holiday entity is situated in any district (outside City Corporation area) other than Dhaka, or Chittagong Division and Rangamati, Bandarban or Khagrachari District, then it shall be exempted from tax for 10 years from the commencement of commercial production at the rates mentioned in the below table:

Year of commercial production	Exempted income
First year	90%
Second year	90%
Third year	75%
Fourth year	75%
Fifth year	50%
Sixth year	50%
Seventh year	50%
Eighth year	25%
Ninth year	25%

Tenth year	25%

If the approved tax holiday entity is located in Dhaka or Chittagong division (outside the city corporation area), it shall be eligible for tax exemption at the rate mentioned in the below table for a period of 5 years from the month of commencement of commercial production, namely –

Year of commercial production	Exempted income
First year	90%
Second year	80%
Third year	60%
Fourth year	40%
Fifth year	20%

As per part 4 of Sixth Schedule following categories are within the meaning of Physical infrastructure facility:

1. Deep sea port;
2. Elevated expressway;
3. Export processing zone;
4. Flyover;
5. Toll road or bridge;
6. Gas pipe line;
7. ICT park, zone or village;
8. Hi-tech park;
9. Approved water treatment plant;
10. Liquefied Natural Gas terminal and transmission line;
11. Mono-rail or sub-way railway;
12. Renewable energy (e.g., energy saving bulb, solar energy plant, windmill);
13. Any other category of industries as the Govt. may notify in the official Gazette,

Note that approved tax holiday entity shall be located in Bangladesh and shall commence commercial production between July 2020 and June 2025.

Tax exemption at the rate mentioned in the below table for a period of 5 years from the month of commencement of commercial production, namely –

Year of commercial production	Exempted income
First year	90%
Second year	90%
Third year	75%
Fourth year	75%
Fifth year	50%
Sixth year	50%
Seventh year	50%
Eighth year	25%
Ninth year	25%
Tenth year	25%

13.6 Fiscal and other incentives to foreign investors in Bangladesh

Bangladesh always encourages foreign investment in the country for the economic development of the country. Thus, the government provides incentives to encourage foreign investment in the country through different wings/departments of the government. A summary of such incentive is given below:

Approval authorities	Fiscal incentives	Other incentives
BOI/BIDA	Permission to establish industry	100% Foreign equity allowed
Bangladesh Bank	Remittance facility	Unrestricted exit policy
NBR	Concessionary income tax in lieu of tax holiday and accelerated depreciation, concessionary duty on imported machinery	Full repatriation facilities of dividend and capital at the event of exit
	Avoidance of double taxation in selective countries	
BEPZA	Remittance of royalty, technical know-how, technical assistance fee	

13.7 Corporate tax holiday for IT Hardware Producers [S.R.O. 163-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years on production of some selective IT (information technology) hardware [motherboard, casing, UPS (Uninterruptible Power Supply), speaker, sound system, power supply, USB (Universal Serial Bus) cable, CCTV (Closed-Circuit Television) and pen drive] if manufactured in Bangladesh. Conditions include registered with BIDA (Bangladesh Investment Development Authority), at least 30 percent value addition in own factory, and commencement of commercial production within 30 June 2030.

13.8 Corporate tax holiday for agro based industries [S.R.O. 164-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years to industries engaged in processing locally grown fruits and vegetables, producing milk and dairy products, producing baby food entirely from locally grown agricultural products, and manufacturing of agricultural machineries. Conditions include investment of at least Tk. 1 crore; registered with BIDA (Bangladesh Investment Development Authority); at least 30 percent value addition in own factory for manufacturing of agricultural machineries; and commencement of commercial production within a period from 1 July 2021 to 30 June 2030.

13.9 Corporate tax holiday for producer of light engineering products [S.R.O. 166 - ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years to the companies engaged in production of certain light engineering products. Conditions include registered with BIDA (Bangladesh Investment Development Authority); and commencement of commercial production within a period from 1 July 2021 to 30 June 2030.

13.10 Corporate tax holiday for producer of certain home and kitchen appliances [S.R.O. 167-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years to the companies engaged in production of certain home and kitchen appliances [washing machine, blender, microwave oven, electric sewing machine, induction cooker, kitchen-hood, and kitchen knives]. Conditions include registered with BIDA (Bangladesh Investment Development Authority); at least 30 percent value addition in own factory for manufacturing of the home and kitchen appliances; and commencement of commercial production within a period from 1 July 2021 to 30 June 2030.

13.11 Corporate tax holiday for training institutions [S.R.O. 168-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years from the date of approval to institutions established to impart all sorts of diploma and vocational education on agriculture, fisheries, science and IT, and also to institutions engaged in delivering professional training on automobile, aircraft maintenance, food, footwear, glass, mechanical, shipbuilding, leather, refrigeration, ceramics, mechanist, garments design and pattern making, pharmacy, nursing, integrated medical, radiology and imaging, ultrasound, dental, animal health and production service, clothing and garment finishing and poultry farming. Conditions include investment of at least Tk. 5 crore; registered with BIDA (Bangladesh Investment Development Authority); and approved from relevant Board/Council.

13.12 Corporate tax holiday for private hospitals [S.R.O. 169-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, for ten years to general hospitals with a minimum of 250 bed capacity and having child and infant care, women and mother care, oncology, wellbeing and preventive medicine units, and also to specialized hospitals with a minimum of 200 bed capacity. These hospitals are to be established in districts other than Dhaka, Narayanganj, Gazipur and Chittagong. Conditions include: registered with BIDA (Bangladesh Investment Development Authority); approval of DGHS (Directorate General of Health Services) as hospital; and commencement of commercial production within a period from 1 July 2021 to 30 June 2030.

13.13 Corporate tax holiday for producer of automobiles [S.R.O. 170-Ain/Aykar/2021, dated 03.06.2021]:

Tax exemption, subject to certain conditions, to the companies engaged in production of three and four wheelers in Bangladesh for ten years which may be extended to further ten years on the fulfillment of certain other conditions. Conditions include: investment of at least Tk. 100 crore; registered with BIDA (Bangladesh Investment Development Authority); at least 30 percent value addition in own factory over full tax exemption period; at least 40 percent value addition in own factory for tax rate of 10% over next 10 years, otherwise ordinary corporate tax rate is applicable; commencement of commercial production within 30 June 2030.



Chapter 14

Deduction/collection of tax at source

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Introduction

Learning objectives

- Recognize different classes of income from where tax are deducted or collected at source.
- Mention the time limit and manner of payment of tax deducted at source.
- Explain the consequence of non-deduction of tax at source where deduction is required by law.
- Define the computation, estimation and payment procedures of TDS.
- Mention the income heads that come under final settlement.

Practical significance

There are two methods of collecting taxes, one is direct method and another is tax deducted at source. The ordinary method of collection is direct collection of tax from the assessee. Deduction of tax at source is provided for in certain specified cases. If default is made in the deduction of taxes at source, the tax may be collected from the assessee directly, and further the person who is liable to deduct but has not deducted the tax under this section, may be held personally liable and treated as an assessee in default in respect of the tax.

This chapter presents areas of taxes deducted at source and related provisions as per income tax Act. Section 163 and its application are included in detailes here. For computing taxable income and tax liability this chapter is very important.

Stop and think

There are so many sources where tax is required to be deducted or collected at the time of payment

Working context

In corporate sectors, normally there are many payments made every day where deductions of tax at source are required by tax law. In some cases, the accountants are asking for advice on how and when the deductions need to be done. Accountants can provide the service to their clients on tax deduction at source so that the clients can avoid any penalty for non-compliance of tax law in this regard.

Detailed knowledge about the payment of tax before assessment in compliance with tax law can help accountants to support their clients significantly.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the classes of income from where tax is deducted or collected at source.
- Recognize the different amounts and rates of tax deducted at source.
- Identify the responsibility for deduction of tax at source.
- Define the time limit for payment of tax at source.
- Mention the manner of payment of tax deducted at source.
- Explain the result of deduction or non-deduction of tax at source where deduction is required by law.
- Identify the areas where tax deducted at source is considered as final payment of tax liability under section 163.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates need to remember the different amount and rates of tax deducted at source while preparing for exam. In practical problem at case study level, both tax deduction at source and calculation of advance tax may be asked.

14.0 PAYMENT OF TAX BEFORE ASSESSMENT

Section overview

- ➔ There are two methods of collecting taxes, direct tax and tax deducted at source (TDS).
- ➔ There are many classes of income from where tax is deducted or collected at source.
- ➔ TDS shall be paid to the credit of the Government normally within 2 weeks from the end of the month of deduction or collection except in the month of June and also in case of salary.
- ➔ Rate of TDS are varied.

- ➔ The deducted tax in some cases is treated as minimum tax.
- ➔ Tax deducting authority will be held liable for failing to deduct taxes and failing to deposit the same with government.
- ➔ Credit of TDS.

14.1 Person responsible for tax deduction at source: Section 140

Tax to be deducted or collected at source under Part 7 of ITA, 2023 in respect of any income shall be deducted in accordance with the provisions of the Act by the person responsible for making payment which constitutes the income of the payee.

(a) "Person responsible for making payment" means—
- (i) in the case of payments constituting income classifiable under head the 'income from employment' not being payment made by the Government, the employer himself or, if the employer is a local authority, company or institution, such authority, company or institution, including the principal officer thereof;
- (ii) in the case of payment constituting income classifiable under head 'income from financial property' not being payment made by or on behalf of the Government, the authority, company or other institution issuing the security; and
- (iii) in the case of payment of any other sum which constitutes an income of the payee chargeable to tax under the Act, the payer himself, or if the payer is a company or other institution, such company or institution including the principal officer thereof.

(b) "Specific person" means—
- (i) Company, firm, association of person, trust or fund,
- (ii) Public-private partnership,
- (iii) Foreign contractor, foreign enterprise, or entity registered outside Bangladesh,
- (iv) Hospital, clinic, or diagnostic center,
- (v) E-commerce platform having over Tk. 1 crore annual turnover,
- (vi) Hotel, community center, transport agency having over Tk. 1 crore turnover,
- (vii) Person other than farmer, engaged in tobacco leaf, cigarette, bidi, jorda, gul or other tobacco product production and distribution

14.2 Time limit for payment of tax deducted at source: Rule 8 of TDS Rules, 2023

1. All sums deducted or collected during the month of July to May shall be deposited to the credit of the Government within 2 weeks from the end of the month of deduction or collection.

2. In case of deduction or collection made in any day from the 1st to the 20th day of June of a year within 7 days from the date in which the deduction or collection was made.

3. In case of deduction or collection made in any other dates of the month of June of a year the next following day in which the deduction or collection was made

14.3 Manner of payment of tax deducted at source: Rule 9 of TDS Rules, 2023

The person responsible for making deduction or collection of tax under Part 7 of the ITA, 2023 shall pay the amount of tax so deducted or collected to the credit of the Government within the time specified in rule 8 by-

(a) A-Challan, or
(b) E-payment in the manner as specified by the Board.

14.4 Issuance of certificate of tax deducted or collected at source: Rule 10 of TDS Rules, 2023

(a) Certificate as per Schedule 2 of the Rules for Tax Deducted at Source, 2023 shall be provided in case of deduction from income form the employment under section 145 of the ITA except government employment.
(b) Certificate as per Schedule 3 of the Rules for Tax Deducted at Source, 2023 shall be provided in case of deductions made under any other section except section 86.
(c) Where collection of tax has been made under Part 7 of the ITA, certificate as per Schedule 4 of the Rules for Tax Deducted at Source, 2023 shall be issued.
(d) A-Challan as proof of deposit into the government treasury shall be submitted with the certificate.
(e) Certificate shall be issued within 2 weeks from the end of the month of deduction or collection or any time suitable to settle tax obligation of the person from whom tax has been deducted.
(f) Bill of entry, registration document, bank statement, payment slip or information relating deduction or collection shall be considered as certificate of deduction. However, the above documents shall not work for the deduction from income from employment.

14.5 Rates of TDS at a glance

Section	Source of income	Rates
86	Income from employment	Average rate
87	Remuneration of Members of Parliament	Average rate
88	Receipt from Worker profit participant fund	10%
89	Payment to contractor, supplier etc.	Note-1
90	Payment for services	Note-2
91	Payment for use of intangible property	10% - 12%
92	Advertisement (except media buying agency)	5%
93	Payment to actors, actresses, producer, etc.	10%
94	Commission, discount or fees, etc.	3% - 10%
95	Payment to travel agent	0.3%
96	Commission on Letter of Credit	5%
98	Payment made by cellular Mobile phone operator	10%
99	Excess payment over premium for a life insurance policy	5%
100	Insurance commission	5%
101	Fees of surveyors of a general insurance company	15%
102	Interest on savings deposit and fixed deposit etc.	5% - 20%
103	Interest on post office saving certificate	10%
104	Interest income of resident other than bank interest	10%
105	Interest on saving certificates	10%
106	Interest on securities	5%
107	Discount on the real value of Bangladesh Bank bills	Maximum rate
108	International gateway service in respect of phone call	1.5% - 7.5%
109	Rental income	5%
110	Rent of convention hall, conference centre etc.	5%
111	Compensation against acquisition of property	3% - 6%
112	Export cash subsidy	10%
113	Commission of freight forwarding agency	15%
114	Purchases of electricity	6%
115	Payment to landlord by the real estate developer	15%

116	Commission or remuneration paid to foreign buyer's agent	10%
117	Dividend income	10% or 15%
118	Income from lottery	20%
119	Deduction form income of non-resident	Note-3
120	Collection of tax from importers	TDS Rule 7
121	Export of manpower	10%
122	Commission of clearing & forwarding agents	10%
123	Collection of tax from exporter	1%
124	Payment from overseas for service, revenue sharing etc.	10%
125	Transfer of assets	TDS Rule 6
126	Real estate or land developer	Different rates
127	Commission on govt. stamp, court fee, cartridge paper etc.	10%
128	Lease property	4%
129	Cigarette manufacturer manually	10%
130	Bricks manufacturer	Tk. 45,000–150,000
131	Trade license and its renewal	Tk. 500 – 3000
132	Shipping business of resident	3% - 5%
133	Sale through public auction	1% - 10%
134	Transfer of share of a non-listed company by a resident	15%
135	Collection of tax from transfer of security	5%
136	Transfer of share by the shareholders of stock exchange	15%
137	Collection of tax from member of stock exchange	0.05%
138	Collection of tax from commercially playing motor vehicle	Different rates
139	Inland ship operation	Different rates

Note-1: Deduction from the ppayment to contractor, supplier etc.—section 89

TDS rates for supply		
Serial	**Particular**	**Rate**
1.	Where the base value does not exceed Tk. 5m	3%
2.	Where the base value exceeds Tk. 5m but does not exceed Tk. 20m	5%
3.	Where the base value exceeds Tk. 20m	7%

Special TDS rates for supply		
Serial	**Particular**	**Rate**
1.	In case of oil supplied by the oil marketing companies engaged in marketing of petroleum oil and lubricant	0.60%
2.	In case oil supplied by dealers or agents (except petrol pumps) of oil marketing companies	1%
3.	In case oil supply by companies engaged in oil refinery	3%
4.	Companies engaged in gas transmission	3%
5.	Companies engaged in gas distribution	3%
6.	Supply of locally produced Extra High Voltage Power Cable ranging from 33KV to 500KV by a company having Vertical Continuous Vulcanization Line	3%
7.	Companies engaged in producing cement, iron, or iron products, ferro alloy products except MS Billets	2%

8.	Companies engaged in producing MS Billets	0.5%
9.	Locally procured MS Scrap	0.5%
10.	Supply of rice, wheat, potato, onion, garlic, peas, chickpeas, lentils, ginger, turmeric, dried chilies, pulses, maize, coarse flour, flour, salt, edible oil, sugar, black pepper, cinnamon, cardamom, clove, date, cassia leaf, jute, cotton, yarn and all kinds of fruits	2%
11.	Supply of books to a person except any government bodies	3%
12.	Supply of trading goods to a retailer	5%
13.	Supply of raw materials to a manufacturer	4%

- The rate of deduction of tax at source shall be 10% in case of supply of any kind of tobacco products.
- Tax at source shall be difference between tax deductible under this section and tax deducted at import stage where imported goods were supplied.
- Different rates for supply of oil, gas, extra high voltage tower cable, MS billet, iron products etc.

Note-2: Payment for services—section 90

SL.	Source of income	Rates
1.	Advisory or consultancy service	10%
2.	Professional service, technical services fee, or technical assistance fee	10%
3.	Catering, cleaning, collection and recovery, private security service, manpower, creative media, event management, training, courier, packing and similar service etc. .) On commission) On total bill amount	 10% 2%
4.	Media buying agency service .) On commission or fees) On total bill amount	 10% 0.65%
5.	Indenting commission	8%
6.	Meeting fees, training fees, or honorarium	10%
7.	Mobile network operators, technical support service providers, etc.	12%
8.	Credit rating service	10%
9.	Motor garage or workshop	8%
10.	Private container port or dockyard service	8%
11.	Shipping agency commission	8%
12.	Stevedoring/berth operation commission/terminal or ship handling operator .) On commission amount) On total bill amount	 10% 5%
13.	) Transport, car rental, catering and repair and maintenance services,) Sharing economic platform including ride sharing service, working space service, housing service etc.	5%
14.	Wheeling charge for electricity transmission	3%
15.	Internet services	10%
16.	Agent, distributor, agency, or channel partner etc. of mobile financial services provider	10%

17.	Any other service which is not mentioned in above and not provided by bank, insurance, mobile financial or service of financial institutions	10%

If the amount for services in serial 3 and 4 shows both commission and fees and gross bill, tax shall be higher of (i) tax calculated on commission or fees applying relevant rate, and (ii) BxCxD {B=Gross bill, C=10% for serial 3 and 2.5% for serial 4, D=rate of tax applicable for commission}.

Note-3: Deduction form income of non-resident—section 119

SL.	Source of income	Rates
1.	Advisory, consultancy, commission, , , Interest, etc.	20%
2.	Pre-shipment inspection	20%
3.	Professional service, technical, service, technical know-how service	20%
4.	Architecture, fashion or process design	20%
5.	Certification, rating service	20%
6.	Charge for satellite, airtime or frequency, channel broadcast	20%
7.	Legal service	20%
8.	Event management service	20%
9.	Commission	20%
10.	Royalty, license fee or payments related to intangibles	20%
11.	Interest	20%
12.	Advertisement	20%
13.	Advertisement making and Digital marketing	15%
14.	Air transport or water transport	7.5%
15.	Contractor or sub-contractor	7.5%
16.	Supplier	7.5%
17.	Capital gain,	15%
18.	Insurance premium	10%
19.	Rental of machinery, equipment etc.	15%
20.	Dividend) Company, fund or trust) Others	 20% 30%
21.	Artist, singer or player	30%
22.	Salary and remuneration	30%
23.	Survey or drilling for petroleum	5.25%
24.	Coal, oil or gas exploration	20%
25.	Fees for surveyor of general insurance company	5.25%
26.	Making connectivity of oil & gas filed and export point	5.25%
27.	Bandwidth payment	10%
28.	Courier service	15%
29.	Other payments	20%

- Where any capital gain arises from the transfer of any share of a company, the authority shall not give effect of the transfer if tax on such capital gain has not been paid.
- Board may issue a certificate, within 30 days from the date of receipt of application accompanied by all the documents, for not to deduct tax or deduct tax at lower rate per tax treaties or any other reasons.

14.6 TDS as minimum tax: section 163

The following 37 heads of deduction shall be deemed to be the minimum tax u/s 163:

Section	Source of income
88	Receipt from Worker profit participant fund
91	Payment for use of intangible property
92	Advertisement (except media buying agency)
94	Commission, discount or fees, etc.
95	Payment to travel agent
100	Insurance commission
101	Fees of surveyors of a general insurance company
102	Interest on savings deposit and fixed deposit etc.
105	Interest on saving certificates
106	Interest on securities
108	International gateway service in respect of phone call
110	Rent of convention hall, conference centre etc.
111	Compensation against acquisition of property
113	Commission of freight forwarding agency
114	Purchases of electricity
115	Payment to landlord by the real estate developer
116	Commission or remuneration paid to foreign buyer's agent
117	Dividend income
118	Income from lottery
120	Collection of tax from importers
121	Export of manpower
122	Commission of clearing & forwarding agents
123	Collection of tax from exporter
124	Payment from overseas for service, revenue sharing etc.
125	Transfer of assets
126	Real estate or land developer

127	Commission on govt. stamp, court fee, cartridge paper etc.
128	Lease property
129	Cigarette manufacturer manually
132	Shipping business of resident
133	Sale through public auction
134	Transfer of share of a non-listed company by a resident
135	Collection of tax from transfer of security
136	Transfer of share by the shareholders of stock exchange
137	Collection of tax from member of stock exchange
138	Collection of tax from commercially playing motor vehicle
139	Inland ship operation

However, tax deducted from the following sources shall not be minimum tax:

- Under section 89 from a contractor or subcontractor of an oil company, an oil marketing company and its dealer or agent excluding petrol pump station, company engaged in oil refinery and any company engaged in gas transmission or distribution.

- Under section 120 from import of good by an industrial undertakings as raw materials except an industrial undertaking engaged in producing cement, iron or iron product, ferro alloy products, perfumes, carbonated beverage and toilet waters.

Income for which minimum tax is applicable shall be determined in regularly manner and tax shall be computed by using applicable rate, if tax so calculated is higher than the minimum tax, the higher amount shall be payable. However, income from below sources shall be final settlement of taxes (SRO- 253/ August 23, 2023):

Serial no.	Source of income	Section	Eligible person
1.	Interest on fixed and savings deposits	102	Person exempted from submission of return u/s 166(2)
2.	Income from savings certificate	105	All-natural person
3.	Export cash subsidy	112	All taxpayers

Minimum tax for an individual having gross receipt of Tk. 3 crore or more, or a firm or association of person having gross receipts exceeding Tk. 50 lakh, or a company shall be as follows:

Serial	Classes of assessee	Rate of minimum tax
1.	Manufacturer of cigarette, bidi, chewing tobacco, smokeless tobacco, or any other tobacco products	3% of the gross receipts
2.	Carbonated beverage	3% of the gross receipts
3.	Mobile phone operator	2% of the gross receipts
4.	Natural person except manufacturer of cigarette, bidi, chewing tobacco, smokeless tobacco, or any other tobacco products	0.25% of the gross receipt
4.	Any other cases	0.60% of the gross receipts

Rate of minimum tax shall be 0.10% for an industrial undertaking engaged in manufacturing of goods for the first three years since commencement of production. Here, gross receipt means all receipts derived from any heads of income.

Where the assessee has an income from any sources that is exempted from tax or is subject to a reduced rate tax, the gross receipt from such source shall be shown separately, and minimum tax shall be calculated as follows:

- Minimum tax for receipts from the sources that are subject to regular tax shall be calculated as per rates on gross receipt mentioned above;
- Minimum tax for receipts that are exempted or subject to reduced rate shall be calculated by applying rates on gross receipt as reduced in proportion to the exemption or the reduced rate of tax.
- Minimum tax for the taxpayer shall be aggregated of the tax computed for both types of receipts.

Note:

1. Tax deducted or collected at source from the sources where minimum tax applies shall not be adjusted against refund due for earlier year or years or refund due for the assessment year from any source.

2. Where any surcharge, additional interest, additional amount etc. is payable, it shall be paid in addition to minimum tax.

14.7 Other issues relating to TDS

Consequence of failure to deduct, collect, etc.—section 143

Person fails to deduct or collect tax at source or deduct at lesser rate or amount, or fails to pay deducted tax or pay lower than tax deducted to the government, or fails to company with any other provision of this part shall be liable (with other consequence) to pay:

(a) amount of tax that has not been deducted or collected;
(b) amount requires to be deducted as reduced by the amount actually deducted;
(c) amount collected but not paid to the government;
(d) a penalty up to Tk. 10 lakh for non-compliance in respect of cases other than mentioned above.

In addition to the above amount, person shall be liable to pay an additional amount at 2% per month on amount except penalty as mentioned in (d) above calculated for the period from the date of deduction or collection to the date of payment (however, period shall not exceed 24 months). DCT shall take necessary action for realization of payment after giving reasonable opportunity of being heard;

Person responsible for making payment or approving the payment or granting approval, clearance, registration permits, as the case may be, shall be jointly or severally liable to pay taxes, penalty or additional amount.

No realization of amount shall be made if meanwhile amount has been paid by the person from whom deduction was due.

Certificate of tax deduction etc., section 145

Every person who deducts or collects tax as required by the provisions of Part 7 of ITA, 2023 shall, at the time of making any payment in relation to which tax has been deducted or collected, furnish to the person to or from whom such payment or collection has been made, a certificate to the effect that the tax has been deducted or collected specifying therein-

(a) The name and TIN of the person from whom tax has been deducted or collected.
(b) the amount deducted or collected;
(c) section reference under which tax has been deducted
(d) the particulars of the payment; and
(e) such other particulars as may be prescribed.

Payment to Government of tax deducted: section 146

All sums deducted or collected as tax under the provisions of Part 7 shall be paid within the prescribed time by the person making the deduction or collection to the credit of the Government or as the Board may direct [Please see Rule 8 of TDS Rules, 2023].

Save as provided in the Act, no person shall charge, withhold, deduct, or collect any sum, directly or indirectly as tax and where any sum is so charged withhold, deducted or collected, it shall be paid in the manner provided.

Credit of tax deducted or collected at source: section 150

Any deduction or collection of tax made and paid to the account of the Government in accordance with the provisions of this Part shall be treated as a payment of tax of the person from whose income the deduction or collection was made.

Credit shall be given in determining tax liability in an income year in which tax has been deducted and collected. Where tax is paid at source by a person on behalf of another person, the credit referred above shall be given in determining the tax liability of that other person.

Payment of tax where no deduction is made: section 151

The tax under the Act shall be payable by the assessee direct-

(a) in any case where tax has not been deducted or collected as required by, and in accordance with, the provisions of this Part;
(b) in any case where the amount deducted or collected is found, after regular assessment, to be less than the tax due from the assessee to the extent of deficiency; and
(c) in the case of income in respect to which no provision has been made for deduction or collection of tax under the provisions of this Part.

Self-assessment questions:

(a) Discuss the various types of income from which tax is required to be deducted or collected at source under the provisions of the Income Tax Act, 2023.

(b) State the provisions regarding information to be furnished to the Tax Authorities in connection with payment of salary, interest, dividend, collection of tax from property, payment to nonresident, and other sources under the provisions of the Income Tax Act, 2023.

(c) Mention the application for final payment of tax liability under section 163.

(d) What are the consequences of failure of deducting taxes in time at prescribed rates or failure of depositing deducted taxes within time?






Chapter 15

Advance payment of tax

Contents

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Learning objectives

- Recognize different classes of assesses required to pay advance tax.
- Mention the time limit and manner of payment of advance tax.
- Explain the basis and methods of computing advance tax.
- Define the consequences of non-payment or insufficient payment of advance tax.
- Mention the situation when government will pay simple interest @ 10% to assessee.

Practical significance

Depending on assessed or provisionally assessed income, an assessee may require to pay advance tax. In some cases, the new assessee also requires to pay advance tax. The calculation of amount, rate, estimation and installment of advance tax are guided by the Act. The assessee shall get the credit of

advance tax. In case of excess or deficit payment of advance tax an assessee may receive or pay the interest from or to the Government. Tax paid in advance shall be adjusted at the time of tax payment on the basis of the return.

Payment of advance tax is important as failure of doing so will make the assessee being 'assessee in default'. Advance tax is a requirement and it reduces tax burden at the end of the year. Thus, it is helpful to the assessee as a method of tax planning. Professional accountants are required to help their clients in that regard.

Stop and think

Advance tax is required to pay on total income excluding income from agriculture and capital gain. Both old and new taxpayers are required to pay advance tax if they fulfill the threshold limit set by tax law. Do you think how advance payment of tax is made?

Working context

In corporate sectors, advance payment of taxes is very common as in many cases income exceeded the threshold limit of Tk. 400,000. In some cases, the accountants are asking for advice on how and when the advance taxes should be paid. The service for estimation and calculation of advance tax is required by some assessee. Chartered Accountants can provide the service to their clients relating to payment of advance tax so that the clients can avoid any penalty for non-compliance of tax law in this regard.

Detailed knowledge about the payment of advance tax in compliance with tax law can help accountants to support their clients significantly.

Syllabus links

You will also meet this area of taxation at advance stage.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the requirement of advance payment of tax.
- Demonstrate how the computation, estimation and payment procedures of advance tax are made.
- Describe the consequences of payment or not payment of advance tax.
- Identify different classes of assesses required to pay advance tax.
- Mention the time and installments of payment of advance tax.
- Illustrate the application of 75% test to compute simple interest in case of deficit.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates need to remember the methods of computing advance tax, basis of advance tax, 75% test, computation of simple interest @ 10% on deficit amount of tax and other complexities. In practical problem

at case study level calculation of advance tax may be asked for with different dates when installment falls due.

15.0 ADVANCE PAYMENT OF TAX

Section overview

- ➔ An assessee, both old and new, may require to pay advance tax.
- ➔ Advance taxes are paid on income excluding income from agriculture and capital gain.
- ➔ The assessee shall get the credit for advance tax.
- ➔ If the amount of advance tax paid along with TDS is less than 75% of due tax, assessee is required to pay simple interest @10% on such deficit.
- ➔ Government will also pay simple interest @10% if advance tax for any reason exceeds due tax.
- ➔ If the assessee fails to pay advance tax, he will be the assessee in default.

15.1 Requirement to pay advance payment of tax: Section 154

Except as provided in section 154(2), tax shall be payable by an assessee during each financial year by way of advance payment of tax, hereinafter referred to as 'advance tax', in accordance with the provisions hereafter made in this Part, if the total income of the assessee for the latest income year in respect of which he has been assessed by way of regular assessment, or has been provisionally assessed under the Act, exceeds Tk. 6,00,000.

Nothing in section 154(1) shall apply in the following cases:

(a) Taxpayers earns not more than Tk. 800,000 from cultivation of land only;
(b) Income classifiable under the heads 'capital gains' and 'one time income' on which advance tax is payable.

15.2 Computation of advance tax: Section 155

The amount of advance tax payable by an assessee in a financial year shall be the amount equal to the tax payable on his total income of the latest income year as assessed on regular basis or provisionally, as the case may be, as reduced by the amount of tax required to be deducted or collected at source in accordance with the preceding provisions of Part 7.

Advance tax shall be payable in four equal instalments (each for 25% of the payable amount) on the fifteenth day of September, December, March and June of the financial year for which the tax is payable.

In case, taxpayer failed to make full or part of any instalments, he shall pay next instalments upon adjusting the earlier unpaid amount. Where taxpayer estimate that the advance tax amount would be lower in an income year, then he shall submit estimates with DCT and make necessary adjustment of the advance tax payment based on estimates.

15.3 Payment of advance tax by new taxpayers: Section 156

If the income of an assessee who has not assessed previously, exceeds Tk. 600,000 in the income year immediately following the assessment year, he shall before the 15th of June of every financial year submit an estimated total income and advance tax payable to the DCT, and pay instalments as per manner prescribed in section 155(2).

15.4 Failure to pay installments of advance tax: Section 157

Where, an assessee who is required to pay advance tax fails to pay any installment of such tax, as originally computed or, as the case may be, estimated, on the due date, he shall be deemed to be an assessee in default in respect of such installment.

15.5 Credit of advance tax: Section 158

Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax, shall be treated as a payment of tax in respect of the income of the period which would be the income year for an assessment for the year next following the year in which it was payable and shall be given credit for in the assessment of tax payable by the assessee.

15.6 Levy of interest for failure to pay advance tax: Section 160

Where, in respect of an assessee who is required to pay advance tax, it is found in the course of regular assessment that advance tax has not been paid in accordance with the provisions of this Part, there shall be added, without prejudice to the consequences of the assessee being in default under section 157, to the tax as determined on the basis of such assessment, simple interest thereon calculated at the rate and for the period specified in section 162.

15.7 Interest payable by Government on excess payment of advance tax: Section 161

The Government shall pay simple interest at 10% per annum on the amount by which the aggregate sum of advance tax paid during a financial year exceeds the amount of tax payable by him as determined on regular assessment.

The period for which interest shall be the first day of July of the year of assessment to the date of regular assessment in respect of the income of that year or a period of two years from the said first day of July, whichever is shorter.

15.8 Interest payable by the assessee on deficiency in payment of advance tax: Sec 162

Where, in any financial year, an assessee has paid advance tax on the basis of his own estimate and the advance tax so paid together with the tax deducted at source, if any, under this Part is less than 75%, of the amount of tax payable by him as determined on regular assessment, the assessee shall pay, in addition to the balance of tax payable by him, simple interest @ 10% per annum on the amount by which the tax so paid and deduction falls short of 75% of the assessed tax. Interest shal be 50% higher if assessee failed to submit return on or before the Tax Day.

The period to compute interest shall be the period from the first day of July of the assessment year to the date of regular assessment or a period of two years from the said first day of July of the assessment year whichever is shorter.

Notwithstanding anything contained in sections 162(1) and (2) where-

(a) where tax is paid under section 173, or

(b) provisional assessment has been made under section 185 but regular assessment has not been made, the simple interest shall be calculated in accordance with the following provisions-

i. up to the date on which tax under-section 173 or provisionally assessed, was paid;

ii. thereafter, such simple interest shall be calculated on the amount by which the tax so paid falls short of the said assessed tax.

Where, as a result of appeal, revision or reference, the amount on which interest was payable under section 162(1) has been reduced, the amount of interest payable shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of tax that is refundable.

Illustration

For the assessment year 2021-22, an assessee has latest assessed income of Tk. 1,000,000. But he wants to pay advance tax for the year on the basis of his own estimate that amounts to Tk. 800,000. Regular tax rate is 30%. Regular assessment for the assessment year 2021-22 was completed on February 28, 2022 resulting Tk. 1,200,000 profit including Tk. 80,000 from capital gain and Tk. 220,000 from agricultural income.

Calculate the amount of excess or shortfall in payment of advance tax and explain the consequences for the same.

Income eligible to apply advance tax as per regular assessment is Tk. 900,000 (Tk. 1,200,000 – Tk. 80,000 – Tk. 220,000), excluding capital gain and agricultural income.

Tax liability as per regular assessment (30% of taka 900,000)	Tk. 270,000
Advance tax paid (30% of taka 800,000)	Tk. 240,000
Shortfall	**Tk. 30,000**

75% test*:* The deficit or shortfall is required to be tested for charging simple interest.
75% of tax liability as per regular assessment (75% of taka 270,000) Tk. 2,02,500

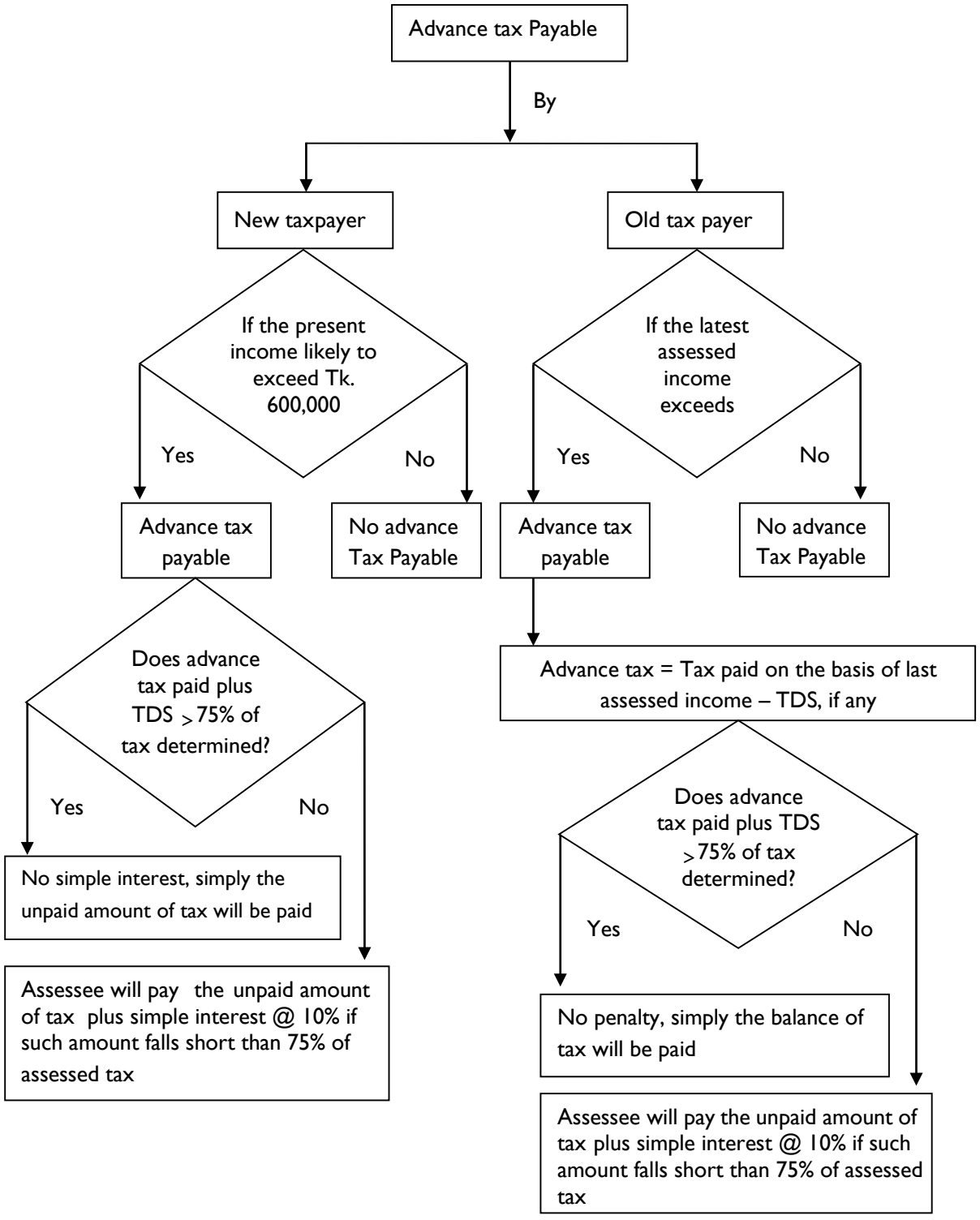
Advance tax paid actually	Tk. 240,000
Shortfall in case of 75% test	**nil**

Consequence: In this case, the assessee is required to pay the shortfall of Tk. 30,000 only. There is no question of charging simple interest as 75% is covered.

15.9 Payment of tax on the basis of return: Section 173]

Every person who is required to file a return u/s 166, 172, 175, 191, 193 or 212 shall pay the amount of tax payable on the basis of such return as reduced by the amount of any tax deducted from his income under Part 7 a advance tax on or before the return filed.

A person, who without reasonable cause fails to pay tax as required under this section, shall be deemed to be an assessee in default.



Worked examples and solutions

Worked example 1

DCT did the assessment for an individual assessee for the assessment year 2023-24 computing total income of Tk. 20,50,000. Assessee paid AIT Tk. 1,00,000. Last assessed income of the assessee for the assessment year 2022-23 was Tk. 20,00,000. Compute remaining tax to be paid by the assessee along with simple interest for short-payment of advance tax.

Solution 1:

Tax and simple interest calculation

On 1st Tk. 3,50,000----------nil
On next Tk. 1,00,000-------@5%----------5,000
On next Tk. 3,00,000-------@10%--------30,000
On next Tk. 4,00,000-------@15%--------60,000
On next Tk. 5,00,000-------@20%----- 1,00,000
On balance Tk.4,00,000----@25%-----1,00,000
Total tax= 2,95,000

Calculation of simple interest:

75% of Tk. 2,95,000 comes at Tk. 2,21,250
Less: AIT paid---------- Tk. 1,00,000
Shortfall to qualify 75%= Tk. 1,21,250
Simple interest @10% = Tk. 12,125 [say for 1 year]
Remaining tax to be paid Tk. 1,95,000 + Simple interest Tk. 12,125. Total Tk. 2,07,125

Self-assessment question

1. Discuss briefly the provisions of the Income Tax Act, 2023 with regard to the following:
(a) The assessee who are required to pay advance tax and the nature of incomes which are to be left out of consideration for this purpose;
(b) The basis on which advance payments of tax should be calculated for old assessee and new assessee, and the due dates of payment thereof;
(c) The interest payable by Government on excess payment and interest chargeable to assessee on shortfall, in respect of advance payment of tax.

2. In what situation, government will pay interest to assessee?

ABC & Co Ltd. calculated advance tax for the income year 2022-23 as per the latest assessed income of taka 1,000,000. Regular assessment for the assessment year 2021-22 was completed on June 30, 2022 and profit assessed amounts to taka 700,000. Applicable tax rate is say 30%. Calculate simple interest payable by the government (if any) on excess payment of advance tax.





Chapter 16

Return of income

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16.16	Return Form

Introduction

Learning objectives

- Explain the requirement to file return of income
- State the procedure of filing the return
- Identify the forms and documents to be submitted with the return of income
- Mention the information required to be provided with return
- Prescribe different return forms

Practical significance

Every person shall file or caused to be filed a return of his income or the income of any other person in respect of which he is assessable to tax. There are some rules and guidelines for submission of return. The total procedure covering the time limitation for submitting the return, documents and information to be provided with the return of income and duly filled return need to have the declaration and authentication.

Production of accounts and documents, statements of assets and liabilities, income statement, statement of individual regarding particulars of life style are the essential elements in case of submission of return.

Learning of income tax is finally reflected in submitting the form of return where income from different heads is reported and net tax liability is computed. This is the reporting of assesses to the income tax authority disclosing relevant information.

Stop and think

Do you realize that submission of return is an obligatory responsibility for every assessee by any means? Do you know that the production of supporting accounts, forms and documents and timely submission of return with authenticated declaration about the true information are very significant?

Working context

In case of submission of return, the accountants can guide their clients how to prepare their return with all supporting documents. Accountants should have the clear understanding about the legal procedures for submission of return.

Detailed understanding about the rules and procedures for filing return give the opportunity to the accountants in practice to help their as tax advisers.

Syllabus links

The topics covered in this chapter are very important for students, accountants, tax advisers and even for the assessee at large for compliance with the tax rules and procedures regarding submission of return.

Examination context

Exam requirements

In the examination, students may be required to:

Define the requirement to file return of income.

Mention the due date of submission of return.
Identify the forms, documents and information to be submitted with return.
Define the term of IT 10B and IT 10BB in case of filing return.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Students have historically prepared well for this area of the syllabus.

16.0 RETURN AND STATEMENT

Section overview

- ➔ An assessee shall file or cause to be filed a return of income in the prescribed form;
- ➔ The return of income shall be signed and verified;
- ➔ Return shall be submitted within Tax Day;
- ➔ The DCT can serve notice u/s 172/212 for filing return if not submitted within Tax Day;
- ➔ The return for individual assessee shall be accompanied by IT-10B and IT-10BB;
- ➔ Form of return for individual assessee and company is different. Moreover, different return form is applicable for different types of assessee. A separate form for spot assessment also available;
- ➔ Tax Day is different for company and other than company;

16.1 Requirement to file return of income: Section 166

(1) Every person shall file a return with the DCT for the relevant income year, if-

(a) if his total income during the income year exceeded the maximum amount which is not chargeable to tax under the Act;

(b) if he was assessed to tax for any one of the three years immediately preceding that income year;

(c) if the person is a company, shareholder director or a shareholder employee of a company, a firm, a partner of a firm, AOP, Non-resident company having PE in Bangladesh, NGO, MCO, Co-operative society an employee holding the position of executive or manager of a business, an employee of the Govt. an authority, or a non-resident having a permanent establishment in Bangladesh;

(d) if the person, not being an institution established solely for charitable purpose, has an income during the relevant income year which is subject to tax exemption or lower tax rate under Chapter 1 of Part 6;

(e) any person registrable as a taxpayer under section 261;

(f) person required to furnish proof of submission of return u/s 264.

However, return submission is not mandatory for any educational institution which is a primary or pre-primary school or government secondary or higher secondary school teaching in Bangali, or which is a MPO educational institution and which does not have an English version of the curriculum, a public university, Bangladesh Bank, local authorities, statutory public authority or jurisdiction, which has no income other than funds and interest income received from the Government, any entity established or constituted by or under

any law for the time being in force which has no income other than funds from the Government. [Section 166 (2)].

16.2 General rules for filing of return: Section 169

(1) The return shall be furnished in the prescribed form setting forth therein such particulars and information including the prescribed schedules, statements, accounts, appendices or documents.

(2) The following documents shall be attached with the return of the company or any person deriving income from execution of long-term contracts, namely:

(i) audited financial statements;
(ii) criteria prescribed by the Board, time to time, the proof of definite standard; and
(iii) a separate calculation sheet explaining the difference between the profit and loss shown in the financial statements and the income shown in the return.

(3) In the case of any such entity having international transactions in any income year, a statement relating to international transactions under section 208 shall be filed with the return.

(4) Any non-resident Bangladeshi may file his return of income along with proof of payment of tax on the basis of such return, to his nearest Bangladesh Mission and the Mission will issue a receipt of such return with official seal and send the return to the Board.

16.3 Signature and verification of return: Section 169(5)

The return of income shall be signed and verified-

(i) in the case of an individual, by the individual himself; where the individual is absent from Bangladesh, by the individual concerned or by some person duly authorized by him in this behalf; and when the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(ii) in the case of Hindu undivided family, by the Karta, and, where the Karta is absent from Bangladesh or is mentally incapacitated from attending to his affairs by any other adult member of such family;

(iii) in the case of a company or local authority, by the principal officer thereof;

(iv) in the case of a firm, by any partner thereof, not being a minor;

(v) in the case of any other association, by any member of the association or the principal officer thereof; and

(vi) in the case of any other person, by that person or by some person competent to act on his behalf;

16.4 Due date of submission of return of income: Section 171

s

The return of income shall be filed within tax day –

Bank, Insurance and other non-banking Financial Institution*	15th September
A company which is a subsidiary or holding company, branch, representative or liaison office of a parent company incorporated outside Bangladesh if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company*	Within 15th of the 7th month from the end of the income year
All other company*	15th January
Other than company*	30th November
Individual taxpayer never filed return previously	30th June following the end of the income year
Individual taxpayer residing outside Bangladesh for higher education or on deputation or employment under lien or residing outside Bangladesh with a valid visa and permit for the purpose of earning money	Within 90th day from the date of his return of Bangladesh

* The next working day following the tax day if the day is a public holiday. [Section 2(23)]

16. 5 Obligation to file return under self-assessment mode: Section 170

(1) All such persons subject to statutory obligation to file return under section 180 shall file return in self-assessment mode under section 180:

Provided that one person companies, banks, insurance and financial institutions other than companies and individuals leaving Bangladesh can file normal returns.

(2) For the purposes of this section, “normal return” means a return filed for assessment of tax under section 183 or 184.

16. 6 Regarding payment of income tax and surcharge on or before the date of filing return: Section 173

(1) Every person who is required to file a return under section 166, 172, 175, 191, 193 or 212 shall pay the tax payable on or before the date of filing the return.

(2) The tax payable shall be calculated in the following manner, where:

A = On the basis of return or the provisions of sub-section (5) of section 163 tax payable by the taxpayer, whichever is higher;

B = Tax at source or advance tax as per the provisions of Part 7.

(3) The amount paid under sub-section (1) shall be deemed to have been paid as tax payable by the taxpayer after assessment of regular tax.

(4) If any person, without reasonable cause, fails to pay the tax payable under sub-section (1), he shall be deemed to be an assessee in default.

16.7 Computation of tax in case of filing of return after tax day: Section 174

If any taxpayer fails to file the return within the tax day under section 166, the taxpayer shall, without prejudice to the liability arising under other provisions of this Act, be liable to pay tax in following manner:

C = A x (1 x 4% x B), where –

C = Total amount of tax payable, if –

i. taxpayer files return on any day after tax day; or
ii. the tax authority assesses the taxpayer's tax on any day subsequent to the tax day,

A = The total amount of tax the taxpayer would have paid if he had filed the return within the tax day, provided that –

i. the tax exempted income shall be included in the total income and shall be taxed at the regular rate; and
ii. it shall not include any penalty or tax imposed or levied under this Act other than minimum tax, surcharge and simple interest,

B = Number of months determined as under, namely –

i. number of months after the tax day has passed which maximum 24 month; and
ii. any fraction of the month shall also be counted as 1 month.

16.8 Filing of assets and liabilities statement: Section 167

(1) Subject to other provisions of this section, every individual taxpayer shall compulsorily file assets and liabilities if such person -

1 owner of total assets of more than BDT 40 (forty) lakh as on the last date of the income year; or
2 own a motor vehicle at any time during the income year; or
3 has made an investment in a house property or an apartment in the city corporation area; or
4 owns any asset abroad at any time during the income year; or
5 a shareholder becomes a director of a company:

Provided that, subject to compliance with the provisions of this sub-section, all public servants shall compulsorily file the assets and liabilities.

(2) Every resident Bangladeshi individual taxpayer shall file in his return all assets and liabilities situated in Bangladesh and outside Bangladesh.

(3) Every non-resident Bangladeshi individual taxpayer shall file in his return all assets and liabilities situated in Bangladesh.

(4) Every such individual taxpayer who is not a Bangladeshi shall file in his return all assets and liabilities situated in Bangladesh.

(5) Even if the filing of a statement of assets and liabilities under sub-section (1) is not mandatory for an individual taxpayer, he may voluntarily file a statement of assets and liabilities.

(6) Assets and liabilities statement of an individual taxpayer includes assets and liability of spouse or minor children if they do not have TIN.

(7) The DCT may, by notice in writing, require any person to furnish a statement of asset and liability in any income year, if

(a) the said person did not file the statement of assets and liabilities in the relevant income year; or
(b) assets and liability statement appear to be required for determining the tax liability of the said taxpayer for the relevant income year.

16.9 Filing of life style statement: Section 168

(1) Every individual taxpayer shall compulsorily file life style statement if such person -

(a) the income of the said person exceeds BDT 5 (five) lakh in the relevant income year;
(b) the person owns a motor vehicle at any time during the relevant income year
(c) the person derives any income from the business;
(d) the person becomes a shareholder director of a company; or
(e) the person invests in house property or apartment within the city corporation area in the relevant income year.

(2) The DCT may, by notice in writing, require any person to furnish a statement of life style in any income year, if -

(a) the said person did not file the statement of life style in the relevant income year; or
(b) life style statement appear to be required for determining the tax liability of the said taxpayer for the relevant income year.

16.10 Return of withholding tax: Section 177 + Section 186

(1) The following persons shall file a return of tax deducted or collected under the provisions of part 7 in such form as may be prescribed by the Board:

(a) a company other than a local authority, autonomous body, any authority of the Government, a primary or pre-primary school teaching in Bengali, a government secondary or higher secondary school, or any educational institution subject to a monthly payment order (MPO);

(b) firm; (c) AOP; (d) private hospitals; (e) clinic (f) diagnostic center.

(2) Return under sub-section (1) -
(a) shall submitted under the concern jurisdiction of the DCT
(b) the relevant details and information and schedules, statements, accounts, appendices or documents shall be submitted in the prescribed form;
(c) signed and executed to be done in the manner described in sub-section (5) of section 169;

(3) The return under sub-section (1) shall be filed at the following times, namely -

(a) the applicable return for the preceding month shall be filed by the 15th day of every month; and
(b) the next working day where the 15th day of any month is a weekly or public holiday;

(4) The DCT may extend the time for filing the return under this section by not more than 15 days from the due date or up to the last day of the said month.

(5) The Board may, by notification in the Official Gazette, prescribe the area, form and manner of filing returns in electronic readable or computer readable medium.

The DCT may select a number of withholding tax returns with the approval of the Commissioner of taxes for audit and may take action under Sections 143, 144 and 266. No such return shall be

selected for audit after the expiry of 4 years from the end of the year in which the return was filed. [Section 186]

16.11 Concurrent jurisdiction: Section 178

Board may, by general or a special order in writing, direct that in respect of all or any proceedings relating to receiving of return or revised return and issuance of acknowledgement thereof, the powers and functions of the DCT shall be concurrently exercised by such other authority as may be specified by the Board.

16.12 Notice for filing return: Section 172

The DCT may, at any time after expiry of the date specified in section 171, direct any person, by a notice in writing, to file a return of his income, if -

(a) the person is required to file a return under section 166; or
(b) the total income of such person is chargeable to tax in the relevant income year.

(2) Subject to sub-section 1, the return shall be filed within such period specified in the notice, not being less than 21 days or within such extended period as the DCT may allow.

16.13 Filing of revised return in respect of normal return: Section 175

(1) According to section 166 or 212 "If any omission or incorrect statement is noticed in the return after the filing of normal return, the revised return shall be filed without reduction of any tax.

(2) In cases where the assessment has not been completed, the revised return shall be filed at least 6 months before the last date of making the assessment order for the relevant assessment year or before the date of first hearing, whichever is earlier

16.14 Production of accounts and documents: Section 179

(1) The DCT may, by notice in writing, require an assessee who has filed a return under section 166, 175 or 176, or to whom a notice has been issued, the return of any such taxpayer as may be considered necessary for the purpose of audit proceedings or assessment of tax, may cause to produce such record, books, accounts, statements and documents, information or electronic records, not being earlier than 3 years prior to the income year.

2) DCT may issue notice for production of any record, statement, account, document, information or electronic record or any part thereof by electronic means.

(3) The account, statement, document, information or electronic record should be submitted before the specified date mentioned in the notice.

16.15 Production of other information as per different sections at the time of submission of return or in other circumstances

Monthly withholding tax return	Within 15 day of next month
Advance income tax	15th September, December, March & June
Corporate tax return	15th day of the 7th month following the end of the income year, or the 15th day of September following the end of income year where the said 15th day falls before the 15th day of September
Statement of international transaction	Submit with corporate tax return
Conditions: • For monthly withholding tax return DCT may extend time up to 15 days. • Information regarding salary to be attached with the WHT return in September . • Information regarding submitting tax return by employees to be attached with the return in April.	

16.16 Return Form

IT-11GA 2016—For individual taxpayers
IT-11GHA 2016—For Company taxpayers
IT-11CHA 2016—For taxpayers other than individual and company
IT-11GAGA—For spot assessment
IT-10B—Statement of assets, liabilities and expenditure
IT-10BB—Statement of lifestyle





Chapter 17

Assessment

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Introduction

Learning objectives

- Illustrate the various types of assessment.
- Identify the conditions, rules and procedure for different classes of assessment.
- Define the limitation for assessment.

Practical significance

Assessments of income and tax liability are very significant for every assessee. There are different types of assessment such as provisional assessment, assessment on the basis of correct return, self-assessment, minimum tax on income of certain persons, spot assessment, best judgment assessment etc.

Even there are various specialized/emergency assessments such as assessment in case of discontinued business, person leaving Bangladesh, deceased person, income escaping assessment etc. So, there is no way to avoid tax assessment if there is taxable income.

For every classes of assessment there are either some conditions, rules and procedures specified for assessee and/or for tax authorities.

Stop and think

Did you realize how important is the assessment for any assessee either individual or company? Do you think nobody can avoid tax assessment in any way if he is required to be assessed under tax law?

Working context

Assessment of tax is very important for every assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on conditions, rules and procedures for different assessments has the importance in case of required support for clients' tax assessment in many ways.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, students may be required to:

- Identify the different types of assessment.
- Define the provisional assessment.

- Characterize the assessment on the basis of correct return.
- Define the assessment under which tax liability shall be deemed as finally discharge tax liabilities.
- Define the specialty of self-assessment.
- Recognize the rules and procedures for spot assessment.
- Illustrate the assessment after hearing and best judgment assessment.
- Define the assessment of partnership firms.
- Typify the assessment in case of change in constitution of a firm and constitution of new successor firm.
- Typify the assessment in case of succession to business otherwise than on death and assessment of discontinued business.
- Define the assessment in case of partition of Hindu undivided family.
- Characterize the assessment in case of persons leaving Bangladesh, deceased person and income escaping assessment.
- Identify the limitation for doing assessment.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

17.0 ASSESSMENT

Section overview

➔ There are different classes of assessment of total income and tax payable.

➔ The conditions, rules and methods of various assessments are different.

➔ It is not easy for any person to escape assessment who is required to be assessed.

➔ There are certain limitations of assessment.

17.1 Introduction to assessment

Assessment to tax is an important stage in the whole cycle for tax collection. It is used to mean, sometimes, the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer [*C.I.T.V Khemchand Rahdas. 1938 I.T.R 441, 416(PC)].* The meaning to be assigned to the word "assessment" has to be understood in each section with reference to the context in which it has been used *[A.N. Lakshman Shenoy V.I.T.O. 958 I.T.R 275, 941(SC)].*

17.2 Provisional assessment: Section 185

(1) The DCT may assess the provisional tax on the total income of the taxpayer in any income year.

(2) Provisional assessment shall be made at the following times, namely -

(i) the return is to be filed at any time during the relevant tax year; or
(ii) the return not filed on the tax day or any day before the tax day for the relevant assessment year.

(3) Provisional assessment shall be prepared on the basis of the following matters, namely -

(i) in the case mentioned in clause (a) of sub-section (2), on the basis of return and accounts & documents, if any;

(ii) in the case mentioned in clause (b) of sub-section (2), any readily available information or material and at the best judgement of the DCT

(4) In making a provisional assessment under this section, the DCT shall proceed as follows -

a) rectify any arithmetical errors in the return, accounts and documents;
b) on the basis of the information available from the return, accounts and documents, allow any loss set off and carry forward or carry forward of depreciation allowance.

(5) For the purposes of payment and recovery, the tax as determined to be payable upon provisional assessment shall have effect as if it were determined upon regular assessment.

(6) In computing the tax payable under this section, the following amount shall be credited, namely -
(i) any tax deducted or collected at source and paid to the Government; and
(ii) any paid advance tax.

(7) Where any amount is paid against the tax claim by way of provisional assessment, tax credit for that amount shall be given in computing the tax payable under regular assessment for the same tax year.

(8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on merit of any issue which may arise in the course of regular assessment.

(9) There shall be no right of appeal against a provisional assessment under this section.

17.3 Assessment on the basis of correct return: Section 183

(1) Any taxpayer -

(a) if any return or revised return is filed or is liable to be filed under section 166, 212 or 175; or
(b) if taxable under sub-section (12) of section 182; or
(c) if any tax or other sum payable under the provisions of this Act

The DCT may, under this section, assess the tax or any other amount on the basis of the relevant returns or documents.

(2) Where a return or a revised return has been filed and the DCT is satisfied, without requiring the presence of the assessee or the production of any evidence, he shall assess the total income of the assessee and determine the tax payable, subject to the following conditions:

a) such return shall be filed on or before the date specified in section 171;
b) the amount of tax payable shall be paid on or before the date on which the return is filed;
c) such return does not show any loss or lesser income than the last assessed income,
d) if tax is determined on the basis of such return does not result in refund; and
e) such return shall mention Taxpayer's Identification Number;

(3) Where the DCT is not satisfied without requiring the presence of the person who filed the return or the production of evidence, the DCT shall give notice to the person to the effect that -
(a) shall appear before the DCT, in person or by an authorized representative, on the date and time specified in the notice; or
(b) to submit necessary evidence in support of the return mentioned in the notice

(4) Where the taxpayer complies with the notice given under sub-section (3), the DCT shall initiate the assessment process.

(5) The DCT may require further hearing or necessary evidence during the assessment proceedings of the taxpayer and in such case the notice shall specify the matters to be heard and the consequences arising out of failure to comply.

(6) The DCT shall not disallow any expenditure shown by the taxpayer without giving an opportunity of hearing.

(7) The DCT shall, after considering the evidence presented at the hearing, issue an order for assessment of tax in writing or by specified electronic means and shall inform the said order to the taxpayer within 30 days.

(8) If the taxpayer fails to comply with the notice given under sub-section (3) or (5), the DCT may determine the tax based on best judgement under section 184.

17.4 Self-assessment: Section 180

(1) A self-assessment return filed by a person under this section for any tax year shall be deemed to have automatically completed the assessment of his income, tax and other liability under this Act, if the return -
(a) submitted in compliance with all provisions mentioned in section 169; and
(b) tax payment made by complying with all provisions mentioned in section 173 and 174.

Provided that any return filed without complying with the provisions mentioned in section 169 shall be deemed to be a "normal return".

(2) After filing the return under sub-section (1) if taxpayer observed in the return filed by him -
(a) income shown; or
(b) tax exemption or credit claimed; or
(c) for any other reason,

If the tax payable under this Act has not been correctly calculated or the correct amount has not been paid, he may file a revised return stating the reasons in a written statement:

Provided that the taxpayer shall pay the tax and other sums which were under-calculated or under-paid before the filing of such revised return, and shall pay simple interest at the rate of 5% per month on such amount.

(3) Under sub-section (2) filing of revised return cannot be submitted in the following fields -
(a) after the end of 180 days from the date of filing the return under sub-section (1);
(b) after filing the revised return for the first time; or
(c) the original return is to be selected for audit under section 182.

(4) In respect of a return filed under sub-section (1), no question is to be raised to the source of initial capital investment in case of new assessee showing new business, if taxpayer -
a) income must be shown which is not exempted from tax and more than tax exemption ceiling;
b) income not less than 20% of initial capital;
c) pays tax calculated at the regular tax rate and other applicable sums on or before the filing of the return;
d) submits evidence regarding the shown existence business;
e) filed within the relevant tax day of the relevant tax year; and
f) mention in writing that the return filed is not a due return

(5) The provisions of sub-section (4) shall apply in such case, the amount of initial capital shown in 4 consecutive income years following the first income year shall not be less than the capital shown in the first income year and in any income year of the 4 consecutive income years following the first income year. If the amount of capital shown is less than the capital shown in the first income year, such deficiency shall be treated as "income from other sources" of the taxpayer in that income year.

17.5 Return process: Section 181

(1) The DCT shall process the “self-assessment return” or revised return filed under section 180 in the following manner, namely -

(a) any mathematical error in the return filed or in the said return or if any incorrect claim is observed in the light of any information contained in any statement or documents filed with the return, the same shall be computed as adjusted income;
(b) the tax payable under this Act and any other sum shall be calculated on the basis of clause (a); and
(c) shall determine the tax payable or refundable by providing advance tax paid including tax at source and credit of tax paid under this Act.

(2) If as a result of the return process, the amount of income, tax or other significant sum shown in the “self-assessment return” or revised return filed under section 180 differs, the DCT shall issue a written notice to the taxpayer as under, which -

(a) inform the tax payer of the difference amounting to the computation of income, tax, refundable tax or other related matters as a result of the return process attached to the notice;
(b) give an opportunity to the taxpayer to explain his position in writing regarding the excess liability arising in the return process or reduction of return within the period specified in the notice; and
(c) within the period specified in the notice, as applicable, he shall be afforded the following opportunities, namely -
(a) filing revised return adjusting the difference mentioned in the notice; and
(b) payment of taxes and other dues due as a result of said process.

(3) Where a notice is given under sub-section (2), the DCT -

(a) within 90 days after confirming the fulfilment of the conditions mentioned below send the revised return acceptance letter, namely -

(i) Whether the revised return has been filed in accordance with the proviso to clause (c) of sub-section (2).
(ii) whether any tax or other amount payable under this Act as a result of the process has been paid on or before the filing of the amended return; and
(iii) whether the difference referred to in sub-section (2) has been appropriate adjusted in the return

(b) If any of the conditions mentioned in clause (a) is not fulfilled, after the expiry of the date specified in the notice given under sub-section (2), a demand notice shall be issued with a statement of income, tax, refundable tax or other related matters;
(c) The notice of claim mentioned in clause (b) shall be issued within 6 months from the date of service of notice under sub-section (2).

17.6 Consequences of filing of incomplete return: Section 176

(1) In case of filing of any return or revised return, if the provisions of section 169 or any direction issued by the Board are not followed, the said return or revised return shall be deemed to be incomplete.

(2) If the return or revised return is considered to be incomplete, the DCT shall, with the reasons specified, send a notice to the taxpayer to submit the relevant information, verification, statement or document within the time specified in the notice.

(3) If a taxpayer fails to fully comply with the notice given under sub-section (2), the return or revised return, which was considered incomplete, shall be treated as void or ineffective as if it had not been filed.

(4) The return or revised return shall be deemed to have been completed on the date of filing if the taxpayer has fully executed the contents of the notice given under sub-section (2).

(5) A return shall not be deemed complete merely by reason of acknowledgment of receipt.

17.7 Audit: Section 182

(1) The Board or any authority under the Board with the approval of the Board may, in the manner prescribed by the Board, select returns for audit from among the returns or amended returns filed under section 180 and forward the same to the concerned DCT for the purpose of audit.

(14) No return or amended return filed under section 180 shall be selected for audit under sub-section (1), if

(a) returns or revised returns other than returns of banks and financial institutions showing total income of at least 15% more than the total income of the immediately preceding assessment year; and
(b) such returns or revised returns are filed as under, namely –

(i) corroborative evidence of tax-exempt income;
(ii) excluding the receipt of donations in the concerned year;
(iii) without showing tax exempted income under section 76; or
(iv) without any refund claim; and

Taxpayer files return under section 177 and complies with the provision of part 7.

17.8 Minimum tax: Section 163

As per Income Tax Act, 2023, minimum tax shall be payable by an assessee in accordance with Section 163 on the basis of higher of the following:

- Income tax on the basis of normal calculation of tax liability;
- Tax deducted or collected at sources from certain sections as specified in section 163; and
- Minimum tax on the basis gross receipts.

The following 39 heads of deduction shall be deemed to be the minimum tax as per section 163:

SL.	Section	Title
1	88	Receipt from Worker profit participant fund
2	89	Deduction from payment to contractors, suppliers, etc [Rule 3 of Source Tax Rules, 2023]
3	90	Deduction from the payment of certain services [Rule 4 of Source Tax Rules, 2023]
4	91	Payment for use of intangible property
5	92	Advertisement (except media buying agency)
6	94	Commission, discount or fees, etc.
7	95	Payment to travel agent
8	100	Insurance commission
9	101	Fees of surveyors of a general insurance company

10	102	Interest on savings deposit and fixed deposit etc.* [Condition as per SRO no. 253-law/incometax-09/2023]
11	105	Interest on saving certificates * [Condition as per SRO no. 253-law/incometax-09/2023]
12	106	Interest on securities
13	108	International gateway service in respect of phone call
14	110	Rent of convention hall, conference center etc.
15	111	Compensation against acquisition of property
16	113	Commission of freight forwarding agency
17	114	Purchases of electricity
18	115	Payment to landlord by the real estate developer
19	116	Commission or remuneration paid to foreign buyer's agent
20	117	Dividend income
21	118	Income from lottery
22	120	Collection of tax from importers
23	121	Export of manpower
24	122	Commission of clearing & forwarding agents
25	123	Collection of tax from exporter
26	124	Payment from overseas for service, revenue sharing etc.
27	125	Transfer of assets
28	126	Real estate or land developer
29	127	Commission on govt. stamp, court fee, cartridge paper etc.
30	128	Lease property
31	129	Cigarette manufacturer manually
32	132	Shipping business of resident
33	133	Sale through public auction
34	134	Transfer of share of a non-listed company by a resident
35	135	Collection of tax from transfer of security
36	136	Transfer of share by the shareholders of stock exchange
37	137	Collection of tax from member of stock exchange
38	138	Collection of tax from commercially playing motor vehicle
39	139	Collection of tax from inland ships

Income from the above 39 heads for which minimum tax is applicable shall be determined in regular manner and tax shall be calculated by using regular rate on such income. If the tax so calculated is higher than the minimum tax, the higher amount shall be payable on such income.

No need to compute income through back calculation from the following 3 sources and its final tax as per SRO no 253-law/incometax-09/2023

Sl no	**Sources of income**	**Section**	**Amount taken as income**	**Applicable person**
1.	Interest on savings deposit and fixed deposit etc.	102	Gross interest	Return submission is not mandatory u/s 166(2)
2.	Interest on saving certificates	105	Actual gross cash subsidy	All individual taxpayer
3.	Export cash subsidy	112	Gross bank interest	All taxpayer

17.9 Minimum tax on gross receipts

Minimum tax for person (having gross receipts exceeding 3 crore), firm & AOP (having gross receipts exceeding 50 lakhs) and companies on the basis of gross receipts as follows:

Sl	Classes of assessee	Rate of minimum tax on gross receipt
1	Manufacturer of cigarette, biri, chewing tobacco, smokeless tobacco or any other tobacco products	3%
2	Carbonated beverage	3%
3	Mobile phone operator	2%
4	Individuals assessee other than manufacturer of cigarette, biri, chewing tobacco, smokeless tobacco or any other tobacco products	0.25%
5	Others	0.60%
6	In case of newly manufacturing industries [for the first 03 years of commencement of its commercial production]	0.10%

17.10 Spot assessment: Section 195

(1) The DCT may assess the tax of any person on the spot, if such person -

(a) has taxable income;
(b) there is an obligation to file a return;
(c) has an obligation to comply with any provision of this Act;
(d) failure to enforce or comply with any provision of this Act.

(2) The Commissioner of Taxes may, in his jurisdiction, delegate to any DCT subordinate to him the power to assess tax under this section.

17.11 Best judgment assessment: Section 184

(1) Subject to the other provisions of this section, the DCT may determine the tax based on his best judgement of a taxpayer in the following cases, namely -

(a) where a person has failed to comply with the notice given under section 172 and has not filed any return or amended return under section 175; and
(b) where any person fails to comply with a notice given under section 172, 175, sub-sections (3) and (5) of 183, section 193 or 212;

(2) After considering the facts and issues received and after properly evaluating the legal and factual aspects of the case, the best judgement shall be determined.

(3) The tax assessment order passed under this section shall reflect the best judgement assessment of tax by the DCT.

(4) The DCT shall pass the best judgement assessment order in writing or by certain electronic means and shall notify the same to the taxpayer within 30 days from the date of passing such order.

17.12 Various specialized assessments

1. **Assessment of firms: Section 187**

In determining the taxation of any firm or AOP –

(a) first, the total income of the firm or AOP has to be determined and then the tax is to be assessed on the basis of total income; and
(b) thereafter the after-tax income is pro-rated among the partners or members

2. **Assessment in case of change in constitution of a firm: Section 188**

(1) Where, at the time of assessment of a firm, it is found that a change has occurred in the constitution of the firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

(2) Under sub-section (1) for the purpose of inclusion in the total income of the partners for any assessment year, be apportioned between the partners who, in such income year, were entitled to receive the same and when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

(3) For the purposes of this section, there is a change in the constitution of a firm-

(a) where all the partners continue with a change in their respective shares or in the shares of some of them, or

(b) where one or more persons who were partners continue to be so with a change by cessation of one or more partners or addition of one or more new partners.

3. **Assessment in case of new successor firm: Section 189**

Where, at the time of assessment on a firm, it is found that a new firm has been constituted to succeed the firm to which the assessment relates and it cannot be covered by section 188, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 190 relating to assessment in case of succession to business.

4. **Assessment in case of succession to business otherwise than on death: Section 190**

(1) Where, a person, carrying on any business or profession, has been succeeded therein otherwise than on death by another person in any income year, and the successor continues to carry on that business or profession-

(a) the predecessor shall be assessed, in respect of the income of the income year in which the succession took place, for the period up to the date of succession, and

(b) the successor shall be assessed, in respect of the income of the income year, for the period after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), where the predecessor cannot be found, the assessment of the income year in which the succession took place up to the date of succession and of the income year or years preceding that year shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor; and the provisions of the Act shall, so far as may be, apply accordingly.

(3) Where any sum payable under this section in respect of the income of a business or profession cannot be recovered from the predecessor, the Deputy Commissioner of Taxes shall record a finding to that effect, and thereafter the sum payable by the predecessor shall be payable by and recoverable from the successor who shall be entitled to recover it from the predecessor.

5. **Assessment in case of discontinued business: Section 191**

(1) Subject to the provisions of section 189, where a business is discontinued during a financial year, the tax shall be assessed for that year.

(2) In determining the tax for any income year under sub-section (1), the income shall be computed for the period from the beginning of the income year in which the business ceased to the date on which the business ceased.

(3) Any person discontinuing any business or profession in any financial year shall give to the Deputy Commissioner of Taxes a notice of such discontinuance within 15 days thereof; and such notice shall be accompanied by a return of total income in respect of the period between the end of the income year and the date of such discontinuance and that financial year shall be deemed to be the assessment year in respect of the income of the said period.

(4) Where, a person fails to give the notice required by sub-section 3, the Deputy Commissioner of Taxes may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income from the business or profession up to the date of its discontinuance.

(5) Where, an assessment is to be made under sub-section 1, the Deputy Commissioner of Taxes may serve -

(a) on the person whose income is to be assessed;
(b) in the case of a firm, on the person who was a partner of the firm at the time of discontinuance of the business or profession; and
(c) in the case of a company, on the principal officer of the company; a notice to furnish within such time, not being less than 7 days, a return of his total income giving such particulars and information as are required to be furnished with a return to be filed under section 169 along with such other particulars, records and documents as may be specified in the notice.

(6) The provisions of the Act shall, so far as may be, apply to a notice under sub-section 5 for the purpose of assessment of tax as if it were a notice under section 172.

6. **Assessment in case of partition of a Hindu Undivided Family (HUF): Section 192**

(1) A Hindu family hitherto assessed as a Hindu undivided family shall be deemed, for the purposes of the Act, to continue to be a Hindu undivided family except where, and in so far as, a finding of partition has been given under this section in respect of that family.

(2) Where, at the time of an assessment of a Hindu undivided family, it is claimed by any member thereof that a partition has taken place amongst the members of the family; the Deputy Commissioner of Taxes shall make an enquiry there into after giving notice to all the members of the family.

(3) On the completion of the enquiry, the Deputy Commissioner of Taxes shall record a finding as to whether there has been a partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) In the case of a finding under sub-section 3 that the partition of the undivided family took place after the expiry of the income year, the total income of the income year of the undivided family shall be assessed as if no partition has taken place; and each member or group of members of the family shall,

in addition to any tax for which he or it may be separately liable, be jointly and severally liable for the tax on the income of the family so assessed.

(5) In the case of finding under sub-section 3 that the partition of the undivided family took place during the income year, the total income of the undivided family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and each member or group of members of the family shall, in addition to any tax for which he or it may be separately liable, be jointly and severally liable for the tax on the income of that period as so assessed.

(6) Notwithstanding anything contained in this section, if the Deputy Commissioner of Taxes finds after completion of the assessment of Hindu undivided family that the family has already effected a partition, the tax shall be recoverable from every person who was a member of the family before the partition; and every such person shall be jointly and severally liable for tax on the income of the family so assessed.

(7) For the purposes of this section, the several liabilities of any member or group of members of a Hindu undivided family shall be computed according to the partition of the property of the undivided family allotted to him or it at the partition.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition of a Hindu undivided family as they apply in relation to levy and collection of tax in respect of any such period.

7. **Assessment in case of person leaving Bangladesh: section 193**

(1) Where it appears to the Deputy Commissioner of Tax that any person may leave Bangladesh during the current financial year or shortly after its expiry and that he has no intention of returning, an assessment may be made in that year, tax can be determine on the basis of the total income of such person if-

(a) he has been previously assessed, for the period from the expiry of the last income year of which income has been assessed to the probable date of his departure from Bangladesh; and

(b) he has not been previously assessed, of the entire period of his stay in Bangladesh up to the probable date of his departure there from.

(2) Assessment under sub-section 1 shall be made-

(a) in respect of each completed income year included in the period referred to in sub-section 1, at the rate at which tax would have been charged had it been fully assessed; and

(b) in respect of the period from the expiry of the last of the completed income years to the probable date of departure, at the rate in force for the financial year in which such assessment is made and that financial year shall be deemed to be the assessment year in respect of the income of the said period.

(3) For the purpose of making an assessment under this section, the Deputy Commissioner of Taxes may serve a notice upon the person concerned requiring him to file, within such time, not being less than seven days, as may be specified in the notice-

(a) a return in the same form and verified in the same manner as a return under section 166 setting forth, along with such other particulars as may be required by the notice, his total income for each of the completed income years comprised in the relevant period referred to in sub-section 1; and

(b) an estimate of his total income for the period from the expiry of the last of such completed income year to the probable date of his departure from Bangladesh.

(4) All the provisions of the Act shall, so far as may, apply to the notice under sub-section 3 for purpose of assessment of tax as if it were a notice under section 172.

8. **Assessment of income of a deceased person: Section 194**

(1) Where a person dies, his legal representative shall be liable to pay any tax or other sum payable under the Act which the deceased would have been liable to pay if he had not died, in the like manner and to

the same extent as the deceased; and the legal representative of the deceased shall, for the purposes of the Act, be deemed to an assessee. However, before deeming the legal representative of the deceased to be an assessee, a notice to that effect shall be issued to him by the Deputy Commissioner of Taxes.

(2) For the purposes of making an assessment of the income of the deceased and recovery of tax-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued from the stage at which it stood on the date of the death of the deceased; and

(b) any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative; and all the provisions of the Act shall, so far as may be, apply accordingly.

(3) The liability of legal representative under the Act shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

(4) For the purposes this section and other provisions of the Act in which the rights, interest and liabilities of the deceased are involved, 'legal representative' includes an executor, an administrator and any person administering the estate of the deceased.

9. **Escaped Payment: Section 212**

The following situations shall be deemed to have escaped payment:

- The income or any part of income has escaped assessment
- The income has been under assessed
- Excessive loss, relief, deduction or allowance in the return has been claimed
- Tax liability has been shown or computed lower by
  - [a] Concealment/misreporting of any income
  - [b] Concealment/misreporting of any assets
  - [c] Concealment/misreporting of any expenditure
  - [d] Concealment/misreporting of any particulars u/s 167 or 168
- Income has been under assessed or has been assessed at a lower rate than due tax rate
- Taxable income has been shown as tax exempted income.
- Excessive depreciation allowance or any other allowance has been claimed
- Tax has been paid or computed lower than due amount by reason of lower tax base

<u>Preconditions:</u>

i) Section 212 can be initiated by the DCT if he has reason to believe that any sum payable by an assessee has escaped payment.

ii) Before initiating the proceeding under section 212 previous approval in writing from the IJCT is to be taken, where return has been filed under sub-section 1 of section 180 or the assessment of tax for the relevant assessment year has been completed under any other provision of the Act.

iii) Notice under section 212 can be issued

- At any time where no return was filed and no assessment was made
- Before 6 years from the end of the assessment year in which the notice is issued

17.13 Limitation for assessment: section 197

(1) Subject to the provisions of sections 197(2) and (3),

[a] no order of assessment under sections 235 shall be made after the expiry of 3 years from the end of the assessment year.

[b] no order of assessment in case the return is not filed within the prescribed time under section 171 after the expiry of 1 years from the end of the assessment year.

[c] no order of assessment other than [a] & [b] above shall be made after the expiry of 6 months from the end of the assessment year.

(2) An assessment under section 212 may be made within two years from the end of the year in which notice under section 212(1) was issued;

(3) Notwithstanding anything contained under this section, limiting the time within which any action may be taken, or any order or assessment may be made, order or assessment, as the case may be, to be made on the assessee or any other person in consequence of, or to give effect to, any finding or direction contained in an order under section 213, 285, 289, 292, 294 or 295 or, in the case of a firm, an assessment to be made on a partner of a firm in consequence of an assessment made on the firm or an agreement made on the basis of agreement reached under section 304, may be made within 30 days from the date on which the order was communicated and such revised order shall be communicated to the assessee within 30 days next following.

(4) Where an order of assessment has been set aside by any authority in that case the assessment shall be made within 60 days from the date on which the order was communicated to him.

(5) Where, by an order under sections 213, 285, 289, 292, 294 or 295, any income is excluded from the total income of the assessee for an assessment year, and another assessment of such income for another assessment year shall, for the purposes of this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.

(6) Where, by an order under sections 213, 285, 289, 292, 294 or 295, any income is excluded from the total income of one person and held to be the income of another person, an assessment of such income of such other person, shall, for the purposes of this section, be deemed to be one made in consequence of or to give effect to, any finding or direction contained in the said order.

(5) Where the DCT fails to give effect to any finding or direction contained in an order referred to in sub-section 3 within the period stipulated therein, such failure of the DCT shall be construed as misconduct.

17.14 Bar to question assessment: Section 196

(1) No authority other than the authorities mentioned in section 4 or the Taxes Applied Tribunal established under this Act or Bangladesh Supreme Court shall have right to question any assessment made under the Act. Any action taken in violation of this provision shall be null and void and have no legal effect.
(2) Any action taken in violation of the provision of sub-section (1) shall be null and void and have no legal effect.





Chapter 18

Assessment of individuals

Contents

Introduction

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18.6	Assessment procedure
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Introduction

Learning objectives

- Illustrate the assessment of individuals.
- Identify different heads of income.
- Differentiate non-assessable and tax credit income.
- Define grossing up of income.
- State the procedure of assessment
- Prescribe a specimen format of computing total income and net tax liability.
- Define the time limitation for assessment.

Practical significance

Assessment of income and tax liability is very significant for every assessee. Assessing the income of individual assessee and tax liability thereof is important for individual assesses. This chapter recapitulates the taxable income, non-assessable income, tax credit income, grossing up of

income, applicable tax rates and related issues required for completing the assessment of individuals. Application of double taxation relief, set-off and carry forward of losses, minimum tax on the basis of TDS as per 163, rebate for income from a partnership firm are exemplified. Professional accountants are required to have sufficient expertise on all of these issues.

Stop and think

Did you realize how important is the assessment for individual? Can you do the assessment of individual assessee independently?

Working context

Assessment of tax is very important for every assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of total taxable income and tax liability thereof for individual assessee is very important in case of providing support for clients' tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of individuals.
- Identify taxable income across different heads.
- Computing investment allowance, eligible amount and investment tax rebate.
- Identify non-assessable income and its application in computing taxable income.
- Apply TDS under section 163 showing its impact on total income.
- Identify the procedure of assessment
- Compute net tax liability after due credit of TDS, investment tax rebate and others.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

18.0 ASSESSMENT OF INDIVIDUALS

Section overview

➔ Scope of income for individuals is different from firm or company.

➔ Applicable tax rates for individuals are different from company.

➔ Some income of individual assessee is non-assessable.

➔ On some investment/donation, the assessee enjoys investment tax rebate.

➔ For TDS, assessee will get full tax credit at the time of computing net tax liability.

➔ With certain terms and conditions, loss under one head can be set-off against income under another head

➔ If loss under one head cannot be set-off completely, it can be carried forward to succeeding 6 years to set-off against the income under the same head.

18.1 Definition of individual

The word 'individual' has special meaning in income tax law. To look at its reference in tax law, we should look at two definitions, i.e., assessee and person.

"Assessee", means a person by whom any tax or other sum of money is payable under ITA, 2923, and includes -
(a) every person in respect of whom any proceeding under ITA, 2023 has been taken for the assessment of his income or the income of any other person in respect of which he is assessable, or of the amount of refund due to him or to such other person;
(b) every person who is required to file a return under section 166, 191 or 193;
(c) every person who desires to be assessed and submits his return of income under ITA, 2023; and
(d) every person who is deemed to be an assessee, or an assessee in default, under any provision of ITA, 2023 [Section 2(22)].

"**Person**" includes an individual, a firm, and an AOP, a HUF, a trust, a fund, a company, an entity [Section 2 (69)].

Thus, the word 'assessee' means a person that includes an individual who is liable to pay tax as per Income Tax Act, 2023. This chapter represents the assessment of income of individuals and computation of tax liability of an individual assessee.

18.2 Scope of income of individual assessee

As per section 30 of ITA, 2023, for the purpose of charging income tax and computation of total income, all incomes shall be classified and computed under the following heads of income, namely:

(a) Income from employment
(b) Income from rent
(c) Agricultural income
(d) Income from business
(e) Capital gains
(f) Income from financial assets
(g) Income from other sources

18.3 Non-assessable income and tax rebate on investment allowance:

Across the 7 heads as mentioned at section 30, some categories of income are declared as non-assessable. Thus, at the time of assessment, it is important to know the items of non-assessable income so that it can be excluded at the time of computing taxable income. Whereas investment tax rebate facility can be availed by the taxpayer on investment at allowable sectors. The list of

non-assessable income and investment allowance is given in the following schedules that are subject to change from time to time through Finance Act:

- Non-assessable Income : Sixth Schedule, Part A & Part B
- Investment allowance on which tax rebate is applicable :

  Sixth Schedule, Part C

The economic rationality of these provisions is embedded in the equation:

Y = C+I

Where, Y represents income, C represents consumption and I represents investment.

To reduce the tax burden, some specific income from specific sources is declared non-assessable on which no tax is imposed. Again, to discourage consumption and motivate investment, some investments are allowed for claiming investment tax rebate.

18.4 Grossing up of income

Another important issue is the grossing up of income which is received by the assessee after TDS at specified rate. The equation used to gross up income is given below:

Gross income = Net income X 100/ 100 – Rate of tax deducted at source

Thus, for grossing-up income, it is important to know the rate of TDS. Only income received after tax is required to gross-up. Grossed up income should be included in calculating taxable income, however, tax already deducted or paid will be claimed as credit at the time of computing net tax liability.

18.5 Tax rate of individuals

Individuals are taxed as per the 5-tier taxation system in Bangladesh. However, these rates are same for every individual including Bangladeshi non-residents, HUF and Partnership Firm. Current rates applicable to individuals on total taxable income for the assessment year 2023-24 are:

Income tier		**Rates**
On the first	Tk. 3,50,000	Nil
On the next	Tk. 1,00,000	5%
On the next	Tk. 3,00,000	10%
On the next	Tk. 4,00,000	15%
On the next	Tk. 5,00,000	20%
On the balance		25%

Note:

a) The non-assessable income limit will be as follows:

For women, and elderly male citizens being 65 years of age or more	Tk. 4,00,000
For disable persons	Tk. 4,75,000
For Gazetted war wounded freedom fighter	Tk. 5,00,000
For 3rd gender assessee	Tk. 4,75,000
For being father of disable children or For being mother of disable children	Tk. 3,50,000 Tk. 4,00,000

b) If the aggregate income of an individual assessee exceeds Tk. 16,50,000 (Tk. 3,50,000 + Tk. 1,00,000 + Tk. 3,00,000 + Tk. 4,00,000 + Tk. 5,00,000), he will be charged @ 25% on such income as it exceeds Tk.16,50,000.

c) However, the minimum tax would be Tk. 5,000 or Tk. 4,000 or Tk.3,000 depending on the location of the assessee.

d) If the assessee is an owner of any small and cottage industry or engaged in such kind of activities in a NBR specified less developed / least developed area, he/she will be eligible to have a tax rebate on such income: [Finance Act, 2023]

If production / turnover increases by more than 15% but less than 25% comparing to previous year	5% rebate on tax applicable on such income will be allowed
If production / turnover increases by more than 25% comparing to previous year	10% rebate on tax applicable on such income will be allowed

e) Only individual assessee having net wealth exceeding Tk. 4 crore as per statement of assets & liabilities is liable to pay surcharge @10% on income tax payable and in case net wealth exceeds Tk. 10 crore but does not exceed 20 crore then surcharge is to be paid @20%, if wealth exceeds Tk. 20 crore but does not exceed 50 crore then surcharge is to be paid @30%, and if it exceeds 50 crore then the rate of surcharge will be 35%.

f) However, the rate of tax would be straight 30% (at maximum rate) if the individual assessee is classified as non-resident foreigner (NRF).

18.6 Procedure of assessment

Step 1: Compute taxable income under different heads.

[Don't forget to exclude non-assessable income and grossing up of income at the time of computing taxable income in specified areas]

Step 2: Compute allowable investments made

[Don't forget to test actual investment so that it must not exceed the maximum limit. If it exceeds maximum limit, allowable investment would be the lower one]

Step 3: Compute net tax liability

[Don't forget to consider tax credit due to TDS, refund adjustment, rebate, foreign tax credit and rebate on income from partnership firm]

18.7 Specimen form of computation of total income and total tax liability

Sources of income and particulars	Amount	Amount	Amount
1. Employment (Section 32 - 34):			
Basic Salary	***		
Dearness allowance	***		
Annuity	***		
Employees share scheme (Fair market value less Acquisition cost)	***		
Festival bonus / performance bonus	***		
Leave encashment / Compensation	***		
Employer's contribution to recognized provident fund	***		
Entertainment allowance	***		
Medical allowance	***		
House-rent allowance	***		
Advance salary / outstanding salary	***		
Conveyance allowance	***		
Car facility: up to 2500 CC - 10,000 per month; above 2500 CC - 25,000 per month	***		
Rent free accommodation: Annual rental value	***		
Accommodation at a concessional rate:	***		
The annual rental value Less: rent paid by the employee	***		
Taxable portion of Interest on recognized provident fund	***		
Retirement allowance / gratuity / pension	***		
Less: exempted pension full, gratuity up to Tk.2.5 crore	***		
Other benefits (actual or fair value)	***		
Total income from employment	***		
Less: 1/3 of total income from employment or 4,50000, whichever is lower	(***)	***	
2. Income from rent (section 35 -39):			
Annual value:			
Rental value	***		
Add: TDS (If any)	***		
Add: Owner's expenses paid by the tenant	***		
Less: Tenant's expenses paid by the owner	***		
Actual rental value	***		
Higher of annual value and actual rental value	***		
Add: Advance rent	***		
Add: Any receipts or sum other than rental value or advance rent	***		
Less: Adjusted advance rent which received previously	***		
Less: Vacancy allowance	***		
Rental income		***	
Less: admissible expenses:			
1.Repair & maintenance expenses			
[Collection charge, sewerage bill, salary of guard, liftmen, caretaker etc.]		***	
[Admissible limit: Residential house: 25%, Commercial house: 30% & Others 10%]		***	
2.Land development tax		***	
3.Insurance Premium		***	
4.Interest payable on house building Loan		***	

5.Annual tax [Municipal or local authority tax]		***	***
3. Agricultural income (section 40-43):			
Sale of crops	***		
Income from any land or building used for agricultural purposes	***		
Income from granting a right ['Borga']	***		
Income from tea garden or rubber garden [60%]	***		
Revenue profit by sale of discarded or demolished agricultural machineries	***		
Other income relating to agriculture	*		
	**	***	
Less: Admissible expenses –			
1. Land development tax	***		
2. Any taxes [local taxes, etc.]	***		
3. production costs	***		
Cost for cultivating the land or raising live-stock			
Ordinary processing costs to make crop marketable	***		
Transportation cost of crops or livestock to market	***		
Maintenance cost of agricultural equipment & up keeping of cattle for cultivation	***		
If proper books of accounts do not maintained an expenditure equivalent to 60% of sales proceeds is allowed as admissible expense	***		
4. Insurance premium	***		
5. Repair and maintenance of irrigation plant	***		
6. Depreciation			
7. Interest on mortgage loan	***		
8. Interest on borrowed capital	***		
9. loss due to discard/demolish of agricultural machineries	***		
10. Other revenue expenses	***	***	***
4. Income from business or profession (section 44-56):			
Net profit as per Profit and Loss Account		***	
Add: Inadmissible expenses as per section 54 and 55		***	
Add: Income under the head of business and profession that are not included earlier		***	
Less: Expenses that are allowed (not debited in P/L a/c)		***	
Total Income		***	
Less: Income that are not from business or profession (already credited in P/L a/c.)		***	***
5. Capital gain (section 57 - 61):	***		
Sale proceeds of capital assets, or	***		
Fair market value at the time of transfer, *whichever is higher*		****	
Less – Allowable deductions			
(a) Expenditure incurred to transfer the capital asset(s)	***		
(b) Cost of acquisition	***		
(c) Capital expenditure incurred for improvements of the asset(s)			
Capital gain	***	****	
6. Income from financial assets (section 62-65):			
(a) Interest from government securities		***	

(b) Interest from government securities				
(Full amount will be added if TDS at upfront system)			***	
Less: Admissible expenses -				
Bank charge and commission	**			
Interest on borrowed fund	**		***	
(c) Interest from securities based on Islamic principles			***	
(To be grossed-up if TDS at the time of payment)				
Less: Admissible expenses -				
Bank charge and commission	**			
Interest on borrowed fund	**		***	
(d) Interest from Wage earner Development Bond		***		
Less: exemption (full as per para-18)		***		
			***	
(e) Interest from zero-coupon bond		***		
Less: exempted – (full as per para-25)		***		
			***	
(f) Income from Dividend			***	
(g)Interest from bank deposit / profit from Islami Bank [Interest received X 100/90]			***	
(h)Interest on Savings Certificate [Interest received X 100/90]			***	
(i) Interest on Post Office Savings Bank account [Interest received X 100/90]			***	***
(j) Income from mutual / unit fund [Dividend received X 100/90]				
7. Income from other sources (section 66 - 69):				
			***	
Any commission/fee received from parties other than employer			***	
Royalty income from books			***	
Income from prize bond / lottery / quiz competition / crossword [Amount received X 100/80]			***	
Commission / fee as Director of any company			***	
Non-agricultural income like sale of forest trees, sale of fruits, sale of honey, sale of fish of pond (other than firm) etc.			***	
Income from invigilation & exam script evaluation			***	
Income from writing articles / columns in newspapers		***	***	
Income from participating in radio / TV/ cultural /training programs		(***)	-	
Income from lease of non-agricultural land			***	
Income from tuition				
Income from underwriting commission for sale of shares and securities.				
Income from patent / license			***	
Income from rent of boat / mooring terminal			***	
Income from letting out household appliances like furniture, machineries etc.			***	
Unexplained investments deemed to be income				
Any other income not classified under any head Less- Allowable deductions u/s 68:			***	
Interest on loan taken to purchase share			***	
Any other related revenue expenditure			***	***
				***

8. Share of profit in a partnership firm	
9. Income of spouse or dependent minor child	***
Total income	***

Calculation of tax liability:

	Tk.	Rates	Amount (Tk.)
On first	3,50,000	0%	-
On next	1,00,000	5%	*****
On next	3,00,000	10%	*****
On next On next	4,00,000	15%	*****
	5,00,000	20%	
On remaining balance Total	******	25%	*****
	******		*****
Less: Investment tax rebate			*****
Less: Tax rebate on income from partnership firm			*****
Less: Foreign tax credit			*****
Less: Tax deducted at source/Advance tax paid			*****
Less: Previous Tax refund adjustment			*****
Net tax liability			*****

Worked example

Example 1

Mr. Jamshed Hasan is an executive of a private firm. He furnished the following information for the income year 2022-23. Compute his total income and tax liability for the assessment year 2023-24.

Income from salaries:

i. Basic salary Tk. 33,000 per month;
ii. Festival bonus equivalent to two months basic salary;
iii. House rent allowance Tk. 15,000 per month;
iv. Entertainment allowance @ 5% of basic salary;
v. Medical allowance Tk. 2,000 per month (actual annual expense Tk. 18,000);
vi. Conveyance allowance Tk. 1,500 per month;
vii. Contribution to RPF both by employee and employer @ 10% of basic salary

Agricultural income:

i. Sale of crops Tk. 2,70,000;
ii. Income from sale of fish of pond Tk. 45,000 [not fish farming]

Income from business Tk.32,000

Income from financial asset:
i. Interest from fixed deposit Tk. 27,000 [net of tax];

ii. Interest from savings deposit Tk. 18,000 [net of tax];
iii. Interest received on post office savings bank Tk. 9,000 [net of tax]

Income from other sources:
Income from lease of non-agricultural land Tk. 35,000

Actual investment made by Mr. Jamshed Hasan during the year is given below.

i. Life Insurance Premium paid Tk. 20,000; Policy value Tk. 2,00,000
ii. Donation to local club Tk. 2,000;
iii. Gift to wife Tk. 20,000;
iv. Donation to a local mosque Tk. 5,000;
v. Investment in primary shares of listed companies Tk. 60,000;
vi. Purchase of Savings Certificate Tk. 30,000;
vii. Donation to a charitable Hospital Tk. 10,000;
viii. Purchase of furniture Tk. 15,000;
ix. Donation to Apollo Hospital Tk. 30,000;
x. Donation to Govt. Zakat Fund Tk. 5,000.

Mr.Jamshed Hasan has Tk. 8,500 refund adjustment from last year and a carry forward of loss from agriculture of Tk. 60,000 for last three years.

Solution 1:

Mr. Jamshed Hasan
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Sources of income	Amount	Amount	Amount
1. Income from employment (section: 32):			
Basic salary (33,000 X 12)	3,96,000		
Festival bonus (33,000 X 2)	66,000		
House rent allowance (15,000 X 12)	1,80,000		
Entertainment allowance @ 5%	19,800		
Medical allowance (2,000 X 12)	24,000		
Conveyance allowance (1,500 X 12)	18,000		
Employer's contribution to RPF	39,600		
		743,400	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		247,800	4,95,600
2. Agricultural income (section: 40):			
Sale of crops		2,70,000	
Less: Admissible expenses –			
cost of production (2,70,000 X 60%) assuming no books of accounts maintained		1,62,000	
		1,08,000	
Less: carry forward of previous loss		60,000	48,000
3. Income from business (section:44)			

Business Income			32,000
4. Income from financial assets (section: 62):			
Interest from fixed deposit (27,000 X 100/90)		30,000	
Interest from savings bank account (18,000 X 100/90)		20,000	
Interest on post office savings bank (9,000 X 100/90)		10,000	60,000
4. Income from other sources (section: 66):			
Income from sale of fish of pond		45,000	
Lease rental of non-agricultural land		41,000	
			86,000
Total income			**7,21,600**

Calculation of allowable investment	
	Amount
Life insurance premium (maximum up to 10% of policy value)	20,000
Investment in primary share of listed companies	60,000
Contribution to RPF (Tk. 39,600 × 2)	79,200
Purchase of savings certificate	30,000
Donation to:	
Charitable hospital (assuming govt. approved)	10,000
Govt. Zakat fund	5,000
Actual investment	2,04,200
Maximum limit:	
15% of actual investment;	30,630
3% of total income (7,21,600 X 3%);	21,648
Or 10,00,000	10,00,000
Whichever is lower allowable for investment	21,648

Calculation of tax liability:

	Income	**Rates**	**Amount**
On first	Tk. 3,50,000	0%	-
On next	Tk. 1,00,000	5%	Tk. 5,000
On balance	Tk. 2,71,600	10%	27,160
Total	**Tk. 7,21,600**		**32,160**
Less: Investment tax rebate			(21,648)
Less: Tax deducted at source			(6,000)
Less: Previous year's refund carry forward Tk. 3,988 (8,500-4,512)			(4,512)
Net Tax liability			-

Notes:

1. Actual allowable investment by Mr. Jamshed Hasan for the year is Tk. 2,04,200 x 15% = 30,630 or 3% of (7,21,600 X 3%) i.e., Tk. 21,648 or Tk. 10,00,000 whichever is lower, i.e., Tk. 21,648 is eligible amount.

2. Tax deducted at source includes Tk. 5,000 on interest from bank deposit, and Tk. 1,000 on post office savings bank.

Example 2

Mrs. Jarin Huq is the general manager of a private company. Her sources of income for the year ended 30th June, 2023 were as follows:

Salaries:

Basic salary per month		Tk. 45,000
Medical allowance per month (actual exp. Tk. 19,000)		2,000
House rent allowance per month		30,000
Conveyance allowance per month		3,000
Share scheme received	Fair value	50,000
Employer's Contribution to RPF		10% of Basic

Income from financial asset:

Dividend from listed company Tk. 25,000
Interest received from government securities (wherefrom 40,000 tax paid on upfront system 3 years before)

Income from house property:

Annual rent received Tk. 2,80,000
Municipal value 3,00,000

Expenses related to the house for the year:
Repair and Maintenance Tk. 1,00,000
Municipal tax Tk. 3,000

Agricultural income:
Sale of crops Tk. 3,00,000

During the year, Mrs. Huq incurred the following investment and expenses:

Life insurance premium	Tk. 48,000
Donation to local mosque	40,000
Purchase of share from IPO of listed companies	44,000

As per the list of assets and liabilities as at 30/6/2022, Mrs. Huq's net asset value Tk. 6 crore. From the above particulars of Mrs. Huq compute total income and tax liability for the assessment year 2023-24.

Solution 2:

Mrs. Jarin Huq
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Sources of income	Amount	Amount	Amount
1. Income from employment (section: 32):			
Basic salary (45,000 X 12)	5,40,000		
Medical allowance (2,000 X 12)	24,000		
House rent allowance: 30,000 X 12	3,60,000		
Conveyance allowance (3,000 X 12)	36,000		
Share scheme	50,000		
Employer's contribution to RPF	54,000		
		10,64,000	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		3,54,667	7,09,333
3. Income from rent (section: 35):			
Actual rental value	2,80,000		
Municipal value/reasonable rent	3,00,000	3,00,000	
Annual value (whichever is higher)			
Less: Admissible expenses –			
Repair and maintenance (3,00,000 × 25%)	75,000		
Municipal tax	3,000	78,000	2,22,000
3. Agricultural income (section: 40):			
Sale of crops		3,00,000	
Less: Admissible expenses –			
cost of production (3,00,000 × 60%) being no books of accounts are maintained		1,80,000	1,20,000
4. Interest on securities (section: 62):			
Dividend		25,000	
Interest from government securities (assuming she took credit of tax paid at upfront system during that year)		40,000	65,000
Total income			**11,16,333**

Calculation of allowable investment	
	Amount
Life insurance premium	Tk. 48,000
Contribution to RPF [both]	1,08,000
Share purchase from listed companies	44,000
Actual investment	2,00,000
Maximum limit:	
15% of actual investment	30,000
3% of total income (11,16,333 x 3%)	33,490
Or 10,00,000,	10,00,000
whichever is lower is the allowable investment allowance	30,000

Calculation of tax liability:			
		Rates	**Amount**
On first Tk.	3,50,000	0%	-
On next Tk.	1,00,000	5%	Tk. 5,000
On next Tk.	3,00,000	10%	30,000
On balance Total	3,66,333	15%	54,950
	11,16,333		89,950
Less: Investment tax rebate			30,000
			59,950
Add: Wealth Surcharge (59,950 X 10%)			**5,995**
Tax liability			**65,945**

Notes:

1. It is assumed that the house property has been let out for residential purpose and so the repair and maintenance expense is considered as 25% of annual value.
2. Production cost is considered as 60% of the selling price of the crops in absence of any books of accounts.

Worked example 3

Mr. Anu Ahmed has the following income for the income year ended on 30th June, 2023:

Income from salaries

Mr. Anu Ahmed received basic salary of Tk. 18,500 from the month of April, 2022 following the scale of his salary 17,000 – 1,500 – 20,000. Before that his basic salary per month was Tk. 17,000 as the date of annual increment is 1st April every year. Besides basic salary he received dearness allowance @ 15% of his basic salary; Entertainment allowance and Medical allowance @ 20% and @10% of basic salary respectively; Annual bonus Tk. 36,000; house rent allowance Tk. 11,000 per month; conveyance allowance Tk. 1,250 per month. He contributes 10% of basic salary to a

recognized provident fund (RPF) and his employer also contributes the same in the fund. During the year he received Tk. 15,000 as interest on provident fund and the rate of interest was 12.5%.

Income from financial assets

Mr. Ahmed received interest on Govt. Securities Tk.1,00,000. Nothing was deducted at source this year as because Tk.5,000 was deducted at upfront system @ 5% in the year of purchase

Income from business

Due to the economic problem and huge competition, his business results a loss of Tk. 80,000 this year which he likes to set-off against income from the sources mentioned above.

Capital gain

He has sold a machine at taka 150,000 before the expiry of 5 years which was purchased at a price of taka 80,000 for the purpose of his business. Another 30,000 taka was spent to improve the machine. At the time of sale, the machine had accumulated depreciation amounting to taka 60,000.

Mr. Ahmed made and incurred the following investments and expenses during the year:

1. Life insurance premium Tk. 6,000; policy value Tk. 70,000.
2. Purchase of books Tk. 6,000 and purchase of scientific instruments Tk. 10,000.
3. Purchase of primary shares of Listed Company Tk. 20,000.
4. Donation to religious institutions Tk. 8,000; donation to Govt. Zakat Fund Tk. 7,500; donation to president's relief fund Tk. 28,000; donation to a local club Tk. 9,000; donation to a blind school Tk. 15,000;
5. Purchase of a piece of land worth Tk. 70,000 in the name of his wife and a sum of Tk. 5,000 was spent for its registration.
6. Spent a sum of Tk. 15,000 as educational expenses of his children.
7. Purchase of ICB unit certificate Tk. 20,000.
8. Purchase of gold Tk. 20,000.
9. Contribution to group insurance scheme Tk. 2,000.

Ascertain his total income and tax to be paid for the assessment year of 2023-24

Solution 3:

Mr. Anu Ahmed
Income year: 2022-23
[Assessment year: 2023-24]
Computation of total income

Heads of income	Amount	Amount	Amount
1. Income from salaries (section: 21):			
Basic salary (Note – 1)	2,08,500		
Dearness allowance @ 15%	31,275		
Entertainment allowance @ 20%	41,700		
Medical allowance @ 10%	20,850		
Annual bonus and fees	36,000		
House rent allowance: (11,000 X 12)	1,32,000		

Conveyance allowance (1,250 X 12)	15,000		
Employer's contribution to RPF	20,850	5,06,175	
Interest from RPF	15,000		
Less: exempted –up to:			
33% of total salary from employment			
(5,06,175 x 33%) (Para 5, Part 3 of 2nd Schedule)	1,67,038	-	
		5,06,175	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		1,68,725	3,37,450
2. Income from business (section: 44)			
Loss from business		-80,000	
Revenue gain from sale of machine as per sec.19(16) (Cost Tk.1,10,000- WDV Tk.50,000)		60,000	
			-20,000
3. Capital gain (section: 57)			
Sale proceeds		1,50,000	
Less: Cost of acquisition	80,000		
Cost of improvement	30,000	1,10,000	40,000
Capital gain			
4. Income from financial assets (section: 62):			1,00,000
Total income			**4,57,450**

Heads of income	Amount	Amount	Amount
1. Income from salaries (section: 21):			
Basic salary (Note – 1)	2,08,500		
Dearness allowance @ 15%	31,275		
Entertainment allowance @ 20%	41,700		
Medical allowance @ 10%	20,850		
Annual bonus and fees	36,000		
House rent allowance: (11,000 X 12)	1,32,000		
Conveyance allowance (1,250 X 12)	15,000		
Employer's contribution to RPF	20,850	5,06,175	
Interest from RPF	15,000		
Less: exempted – up to:			
33% of total salary from employment			

(5,06,175 x 33%) (Para 5, Part 3 of 2nd Schedule)	1,67,038	-	
		5,06,175	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		1,68,725	3,37,450
2. Income from business (section: 44)			
Loss from business		-80,000	
Revenue gain from sale of machine as per sec.19(16) (Cost Tk.1,10,000- WDV Tk.50,000)		60,000	
Business loss carry forward (Section 70)		-20,000	
3. Capital gain (section: 57)			
Sale proceeds		1,50,000	
Less: Cost of acquisition	80,000		
Cost of improvement	30,000	1,10,000	40,000
4. Income from financial assets (section: 62):			1,00,000
Total income			**4,77,450**

	Amount	Amount
1. Life Insurance premium	Tk. 6,000	
Maximum: 10% of Tk. 70,000	7,000	Tk.6,000
2. Purchase of primary shares of listed Company		20,000
3. Donation to Govt. Zakat fund		7,500
4. Purchase of ICB unit certificate		20,000
5. Contribution to group insurance		2,000
6. Contribution to RPF (20,850 X 2)		41,700
Total allowable investment		97,200
Maximum limit of investment tax credit:	14,580	
(a) 15 % of actual investment	14,324	
(b) 3% of total income = (4,77,450 x 3%)		
(c) 10,00,000	10,00,000	
Whichever is lower		14,324
Thus, allowable investment for tax rebate		14,324

Calculation of tax liability:

		Rates	Amount
On first Tk.	3,50,000	0%	-
On next Tk.	1,00,000	5%	5,000
On balance Total	27,450	10%	2,745
	4,77,450		7,745
Less: Investment tax rebate			(14,324)
			(6,579)
Net Tax liability [minimum tax]			**5,000**

Notes:

1. After increment on April 1, 2022 Mr. Ahmed receives basic salary of Tk. 18,500 whereas before increment, he received basic salary of Tk. 17,000. So, his basic salary for the income year is (17,000 X 9 + 18,500 X 3) = Tk. 2,08,500.
2. Tax credit is not given on financial assets as there is no TDS during the year. Assuming he already enjoyed tax credit in the year of purchase at upfront system.
3. As the capital asset is sold within 5 years of acquisition, regular tax rate has been applied as per 7th schedule.
4. It is assumed that the revenue gain on sale of machinery is not included in income from business and profession. Thus, the business loss of Tk. 80,000 is set off against income under the same head first and the balance is carry forward as per section 70.

Worked example 4

Mr. Joynal Abedin works as an officer in a Multinational Company, headquartered in USA. His sources of income for the year ended on 30th June, 2023 were as follows:

a. **Income from salaries:**
1. Basic salary Tk. 15,000 per month.
2. Dearness allowance 10% of the basic salary
3. Two bonuses equivalent to two month's basic salary.
4. Medical allowance Tk. 1,000 per month (actual expense Tk. 10,000)
5. Entertainment allowance Tk. 200 per month
6. He has been provided with a free 2,500 CC car both for official and personal use.
7. He has also been provided with a rent-free quarter municipal value of which is Tk. 80,000.
8. Travelling allowance as a part of his service contract Tk. 1,00,000; from where he saved Tk. 10,000.
9. He contributes 10% of his basic salary to a Recognized Provident Fund. His employer also contributed the same
10. During the year, he received interest of Tk. 1,800 @ 12% from RPF.
11. He has taken Tk.21,500 as advance in the month of June, 2023 to meet up some of his financial difficulties.

b. **Income from financial assets:**

Mr. Abedin received interest on Govt. Securities Tk.1,00,000. Nothing was deducted at source this year as because Tk.5,000 was deducted at upfront system in the year of purchase 3 years back. Bank also charged Tk. 400 to collect the interest.

c. **Income from house property:**

He owns a two-storied house at Dhanmondi. He stays in one floor with his family and another floor is let out for residential purpose @ Tk. 9,000 per month. The municipal value of the house is Tk. 2,00,000 per annum. During the year he spent the following expenses:

Repair expense	Tk. 2,000
Fire Insurance premium	Tk. 4,000
Land development tax	Tk. 1,500
Sewerage and utilities expense	Tk. 1,000
Payment of HB Loan installment (including interest of Tk. 500)	Tk.5,000

During the year, the house has remained vacant for two months.

d. **Agricultural income:**

Sale of crops	Tk. 5,000
Income from borga	Tk. 2,000

e. **Share of profit from partnership firm** Tk. 10,000

f. **Income of spouse and minor children dependent on him** Tk. 40,000

g. He won a lottery of Tk. 3,00,000 (tax deducted at source @ 20% - Tk. 60,000 from it)

h. During the year Mr. Abedin visited South Korea as a consultant and generated income of Tk. 5,00,000 and he paid income tax @ 25% in South Korea. He brought 2,50,000 to Bangladesh through bank. From another visit to Russia, he generated income of Tk. 3,00,000 and paid income tax there @ 20%.

i. **Income from business**

Profit from sole-proprietorship business Tk. 4,000. Last year's loss carried forwarded Tk. 1,000.

j. **Income from other sources:**

1. Interest income from FDR Tk. 4,500
2. Profit from Islami bank Tk. 900
3. Dividend from ICB Mutual Fund Tk. 31,500
4. Cash dividend from a listed company shares Tk. 1,800
5. Sale of forest timber Tk. 2,000

Investment claimed by Mr. Abedin:

1. Payment of life insurance premium Tk. 8,000 (Policy value Tk. 100,000)
2. Purchase of a listed company's primary share Tk. 5,000
3. Purchase of books and magazines Tk. 1,000
4. Purchase of a share of co-operative society Tk. 2,000
5. Contribution to President's Relief Fund Tk. 3,000
6. Contribution to Govt. Zakat Fund Tk. 2,500
7. Purchase of Furniture Tk. 15,000

Based on the above information, compute Mr. Abedin's total income and tax liability for the assessment year 2023-24.

Solution 4:

Mr. Joynal Abedin
Income year: 2022-23
Assessment year: 2023-24
Computation of total income

Heads of income	Amount	Amount	Amount
1. Income from employment (section: 32):			
Basic salary (15,000 X 12)		1,80,000	
Dearness allowance (1,80,000 × 10%)		18,000	
Bonus (15,000 × 2)		30,000	
Medical allowance (1,000 × 12)		12,000	
Entertainment allowance (200 X 12)		2,400	
Car facility [2500 CC] (10,000 x 12)		1,20,000	
Rent free accommodation: annual rental value		80,000	
Travelling allowance	1,00,000		
Less: Exempted – up to actual expense (Para 14, Part A of 6th Schedule)	90,000	10,000	
Advance salary		21,500	
Employer's contribution to RPF (10% of Tk. 180,000)		18,000	
		4,91,900	
Interest on RPF	1,800		
Less: exempted – up to:			
33% of total salary from employment	1,62,327	-	
(491,900 x 33%) (Para 5, Part 3 of 2nd Schedule)			
		4,91,900	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		1,63,967	
			3,27,933
2. Income from rent (section: 35):			
Actual rental value (9,000 × 12)	1,08,000		
Municipal value (2,00,000 / 2)	1,00,000		
Annual value (whichever is higher)	108000		
Less : Vacancy allowance (9,000× 2)	18,000	90,000	
Less: Admissible expenses –			
Repair and maintenance (25% × 90,000)	22,500		
Fire Insurance premium (4,000 / 2)	2,000		
Land development tax (1,500 / 2)	750		
Interest on loan (500 / 2)	250	25,500	64,500
3. Agricultural income (section: 40):			
Sale of crops	5,000		
Income from borga	2,000	7,000	

Less: Production cost (5,000 × 60%)		3,000	4,000
4. Income from business (section: 44):		4,000	
Profit from sole-proprietorship business			
Less: Set-off of previous year's loss		1,000	3,000
5. Income from interest on securities (Section – 62):			
Interest on government securities	1,00,000		
Less: collection charge charged by the bank	-400	-400	
Profit from Islami Bank (900 × 100/90)		1,000	
Interest on fixed deposit (4,500 × 100/90)		5,000	
Dividend from ICB Mutual Fund (31,500 × 100/90)		35,000	
Cash dividend of listed Co. (1,800 × 100/90)		2,000	42,600
6. Share of profit in a partnership firm (assuming untaxed being the figure is very low)			10,000
7. Income of spouse and minor children dependent on him			40,000
8. Income from other sources (section: 66):			
Sale of forest timber		2,000	
Prize Bond Lottery (TDS is minimum tax u/s 163)		3,00,000	3,02,000
9. Foreign income:			
[a] Income from South Korea (As there is DTAA between Korea and Bangladesh foreign tax credit will be allowed as per sec 244:	5,00,000		
Less: Brought to Bangladesh through official channel			
(exempted as per 6th schedule part-A para-17)	2,50,000	2,50,000	
[b] Income from Russia:(As there is no DTAA between Bangladesh and Russia, so no foreign tax credit will be allowed as per section 246. Because NBR not yet prescribed any rules in this behalf)		3,00,000	5,50,000
Total income			**13,44,033**

Heads of income	Amount	Amount	Amount
1. Income from employment (section: 32):			
Basic salary (15,000 X 12)		1,80,000	
Dearness allowance (1,80,000 × 10%)		18,000	

Bonus (15,000 × 2)		30,000	
Medical allowance (1,000 × 12)		12,000	
Entertainment allowance (200 X 12)		2,400	
Car facility [2500 CC] (10,000 x 12)		1,20,000	
Rent free accommodation: annual rental value		80,000	
Travelling allowance	1,00,000		
Less: Exempted – up to actual expense (Para 14, Part A of 6th Schedule)	90,000	10,000	
Advance salary		21,500	
Employer's contribution to RPF (10% of Tk. 180,000)		18,000	
		4,91,900	
Interest on RPF	1,800		
Less: exempted – up to:			
33% of total salary from employment	1,62,327	-	
(491,900 x 33%) (Para 5, Part 3 of 2nd Schedule)			
		4,91,900	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		1,63,967	
			3,27,933
2. Income from rent (section: 35):			
Actual rental value (9,000 × 12)	1,08,000		
Municipal value (2,00,000 / 2)	1,00,000		
Annual value (whichever is higher)	108000		
Less : Vacancy allowance (9,000× 2)	18,000	90,000	
Less: Admissible expenses –			
Repair and maintenance (25% × 90,000)	22,500		
Fire Insurance premium (4,000 / 2)	2,000		
Land development tax (1,500 / 2)	750		
Interest on loan (500 / 2)	250	25,500	64,500
3. Agricultural income (section: 40):			
Sale of crops	5,000		
Income from borga	2,000	7,000	
Less: Production cost (5,000 × 60%)		3,000	4,000
4. Income from business (section: 44):		4,000	
Profit from sole-proprietorship business			
Less: Set-off of previous year's loss		1,000	3,000
5. Income from interest on securities (Section – 62):			
Interest on government securities	1,00,000		

Less: collection charge charged by the bank	-400	-400	
Profit from Islami Bank (900 × 100/90)		1,000	
Interest on fixed deposit (4,500 × 100/90)		5,000	
Dividend from ICB Mutual Fund (31,500 × 100/90)		35,000	
Cash dividend of listed Co. (1,800 × 100/90)		2,000	42,600
6. Share of profit in a partnership firm (assuming untaxed being the figure is very low)			10,000
7. Income of spouse and minor children dependent on him			40,000
8. Income from other sources (section: 66):			
Sale of forest timber		2,000	
Prize Bond Lottery (TDS is minimum tax u/s 163)		3,00,000	3,02,000
9. Foreign income:			
[a] Income from South Korea (As there is DTAA between Korea and Bangladesh foreign tax credit will be allowed as per sec 244:	5,00,000		
Less: Brought to Bangladesh through official channel			
(exempted as per 6th schedule part-A para-17)	2,50,000	2,50,000	
[b] Income from Russia:(As there is no DTAA between Bangladesh and Russia, so no foreign tax credit will be allowed as per section 246. Because NBR not yet prescribed any rules in this behalf)		3,00,000	5,50,000
Total income			**13,44,033**

Calculation of eligible amount of investment	
	Amount
Life insurance premium	Tk. 8,000
Share of listed companies	5,000
Contribution to Govt. zakat fund	2,500
Contribution to RPF (18,000 ×2)	36,000
Actual investment	51,500
Maximum limit of allowable investment:	
15% of actual investment (51,500 x 15%)	7,725
3% (total income– income u/s 82C) = (13,44,033 – 3,00,000) X 3%	31,320
Or, 10,00,000	10,00,000
Thus, eligible amount of investment for tax rebate would be	**7,725**

Calculation of tax liability:	Income	Rates	Amount
On first Tk.	3,50,000	0%	-
On next Tk.	1,00,000	5%	5,000
On next Tk.	3,00,000	10%	30,000
On balance Tk.	294,033	15%	44,105
On lottery income Tk.	3,00,000	20%	60,000
Total	13,44,033		1,39,105
Less: Investment tax rebate			(7,725)
			1,31,380
No Tax credit for profit on partnership firm (assuming this small figure is untaxed)			nil
			1,31,380
Less: Double taxation relief [as per sec 244)] [note-5]			25,000
			1,06,380
Less: Tax deducted at source [note-1]			64,300
Net tax liability			**42,080**

Notes:

1. TDS includes Tk. 500 on interest on fixed deposit, Tk. 100 on profit from Islami Bank, Tk. 3,500 on dividend from ICB mutual fund, Tk. 200 on dividend of listed company and Tk. 60,000 on winning of lottery. Altogether it comes Tk. 64,300

2. Both contributions to RPF are eligible investment allowance.

3. Purchase of books, Contribution to President's Relief Fund, shares of co-operative society and furniture is not considered as investment allowance as these are not items of 6th schedule (Part-C)

4. Average rate of tax = (1,31,380/13,44,033) i.e., 10%

5. Double taxation relief: Tax relief –
[a] On income from **South Korea** (as per DTAA) 25% of 2,50,000 = Tk. 62,500
Maximum relief for DTAA country is at an average rate of the country – (2,50,000 X 10%) = Tk.25,000

[b] On income from **Russia** :(As there is no DTAA between Bangladesh and Russia, so no foreign tax credit will be allowed as per section 246)

Question No. 5:

The following are the particulars of income of Mr.Fazal for the year ended 30th June, 2023**.**

a) Salary Tk.12,000/- per month (basic)
b) Dearness Allowance 40% of basic pay but maximum of Tk.4,000 per month
c) Entertainment Allowance Tk.400 per month.
d) Bonus-equivalent to basic salary of two months.
e) Income from Commercial Securities Tk.6,098/-.
f) Honorarium as part time advisor Tk.20,000/-
g) Income from Partnership Business Tk.50,000/-(taxed).
h) Income from Agricultural Land (sale of crops) Tk.10,000/-

i) Royalty from books Tk.7,000.
j) Received birth day presentation Tk.5,000.
k) Interest on pensioner savings certificate Tk.10,000.

Mr. Fazal was provided with a free-furnished quarter annual rental value Tk. 36,000. He also owns a house which is let out at Tk.10,000 per month. The reasonable rent of the house is Tk.1,00,000. He spent Tk.7,500/- for repair and Tk.30,000 for alternation. He also paid Tk.4,000 for Municipal Tax, Tk.2,000 for fire insurance premium, Tk.3,000 for collection charges.

Other Particulars of Mr. Fazal are as follows:

i. He contributed 10% of his basic salary to a recognized provident fund to which his employer contributed equal amount.
ii. He insured his own life for Tk.75,000 and for the life of his wife for Tk.50,000. He paid insurance premiums on the above policies Tk.6,000 and Tk.4,000 respectively.
iii. Purchased Sanchay Patra for Tk.20,000.
iv. He spent Tk.8,000 on education for two college going children.

Required to calculate:

i) Total taxable income
ii) Investment tax rebate
iii) Tax to be paid.

Answer to question no.5:

Computation of Total income of Mr. Fazal
Income Year: 2022-23
Assessment Year: 2023-24

Particulars	Tk.	Tk.	Tk.	Tk.
1. **Income from employment: Sec 32**				
a) Basic Salary: Tk.12,000 Monthly	12,000x12	1,44,000		
b) Dearness allowance: 40% of Basic pay Maximum: 4,000x12		48,000		
c) Entertainment Allowance: 400X12		4,800		
d) Bonus (2 month's Basic Salary)	12,000X2	24,000		
e) Free Furnished Quarter: Annual rental value		36,000		
f) Employer's contribution to RPF: 10% of B. S.		14,400	271200	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower			90,400	180,800
2. **Income from rent: Sec.35**				
Wholly let out house:				
Annual Rental Value: 10,000x12	1,20,000			
Or, reasonable rent (Higher one is A.V.)	1,00,000	1,20,000		
Less: admissible deductions:				

i) Repair 25% th of A.V.(including collection charge)	30,000			
ii) Municipal tax	4,000			
iii) Insurance Premium	2,000	36,000	84,000	84,000
	-			
3. **Income from Agriculture: Sec. 40**				
Sale of crops	10,000			
Less Cost of production @ 60%	6,000			4,000
	-			
4. **Income from Business: Sec.44**				
Income from Partnership Business (taxed income)				50,000
5. **Income from financial assets (section 62**)				
Income from Commercial Securities				6,098
6. **Income from Other Sources: Sec. 66**				
a) Honorarium as advisor		20,000		
b) Royalty from books		7,000		27,000
c) Birth Day Gift (Non-taxable as gift is not income)	5,000			
Total Income				**3,51,898**

Investment Tax Rebate: Sec. 78

Particulars	**Tk.**	**Tk.**
a) Actual Investment:		
i) Employee and employer contribution to RPF: 14,400x2	28,800	
ii) Savings certificate purchase	20,000	
iii) Life Insurance Premium		
Self: 6,000 or, 10% of Policy amount 7,500 (i.e., 10% of Tk. 50,000) (Lower)	6,000	
Wife: 4,000 Or, 10% of Policy amount 5,000 (i.e., 10% of Tk. 50,000) (Lower)	4,000	
Total investment	**58,800**	
b) Investment tax rebate:		
(a) 3% of T.I. =3,51,898 X 3%	10,557	
(b) Tk. 10,00,000	10,00,000	
(c) Actual investment Tk. 58,800 X 15%	8,820	
Lower amount is the eligible for investment tax rebate		8,820

Tax calculation:	
Total Income	Tk. 351,898
Tax on 1st Tk. 3,50,000=	Nil
Tax on next Tk.1,898 x 5%	95
	95
Less: Investment tax rebate	8,820
Tax comes at Tk. 95 but minimum tax will be	5,000

Less: Rebate on income from partnership firm at average rate (50,000x5,000/351,898)	710
Net tax payable	**4,290**

Note:

1) Income from Commercial Securities needs not to be grossed-up assuming TDS was at upfront system during the year of purchase. Moreover TDS information is not given in the question.

2) Rebate would be calculated at the average rate of tax out of the "Income from Partnership Business" (taxed) to arrive at the Net tax calculation as per section 80 of ITA, 2023.

3) Royalty income from books is taxable u/s 66 of ITA, 2023.

4) Education expense for Children is not an item of investment allowance.

5) Interest on pensioner savings certificate is tax free up to investment of Tk. 5 lakh. As the interest income figure is only Tk.10,000, so I assume that investment was within that non-taxable ceiling.

Question No.6

Mr. A. Quader works as Manager Finance in a reputed financing company. The following are the details of income of Mr. A. Quader for the year ended June 30, 2023.

(a) Salary Income:

Basic Salary - Tk. 35,000 p.m., Bonus – 2 months basic salary, House rent allowance – 40% of basic salary, Medical allowance – Tk. 2,500 p.m., Conveyance allowance – Tk. 3,000 p.m., Concessional passage within Bangladesh – Tk. 1,30,000, Subscription to RPF – 10% (Employer's contribution is also the same), Interest accrued Tk. 85,000 on RPF balance calculated @ 16%.

(b) Income from Rent:

[1] Mr. Quader has one residential house-one half of which is let out at a monthly rent of Tk. 12,000 and the other half is self-occupied. Following expenditures were incurred by Mr. Quader: Municipal tax Tk.22,000; Repairs and maintenance Tk.55,000; Insurance premium Tk.16,000; Salary of caretaker Tk.36,000

[2] Income from shop rent Tk. 2,500 per month

(c) Income from Land:

[1] Sale of paddy from agricultural land given on Barga system – Tk.1,12,000.
[2] Sale proceeds from trees of spontaneous growth in Mr. Quader's land Tk. 12,000

(e) Income from Business:

[1] Share of profit from a partnership firm Tk. 67,000
[2] Business Income Tk. 70,000 (after allowing current year's depreciation Tk. 20,000)

The following sums have been brought forward from the preceding year:
(1) Unabsorbed depreciation Tk. 80,000
(2) Business loss Tk. 50,000

(d) Capital Gains:

i. Profit on sale of shares of MNC Ltd (A Private Ltd. Co.) Tk. 40,50,000
ii. Sale of Shop (Deed Value Tk. 1,82,500), Original cost Tk. 30,750 and tax deducted at source at the time of registration Tk. 5,650 to be assessed u/s. 163.
iii. Profit on sale of shares of ERZ Ltd. Tk. 23,30,500 (A Publicly Listed Co.)

(f) Interest income and dividend income (Net @ 10% tax deduction at source):

(1) From Leasing Company Tk. 8,33,500
(2) On Bank Fixed Deposit Tk. 1,25,250
(3) On Bank Savings Account Tk. 55,700
(4) On cash dividend Tk. 11,115

During the year Mr. Quader made the following investments –

(1) Life insurance premium Tk.65,000 (Policy Value Tk.500,000)
(2) Investment in shares of a listed company Tk. 120,000
(3) Donation to charitable institutions as approved by NBR Tk.33,000.

Requirement:

Compute Mr. Quader's total income and tax liability for the assessment year 2023-24.

Answer to question No. 6:

Name of the Assessee: Mr. A. Quader
Income Year: 2022-23
Assessment year: 2023-24

Computation Total Taxable Income			
	Tk.	**Tk.**	**Tk.**
Income from employment: (u/s 32)			
Basic salary (35,000 Tk. Per month)		4,20,000	
Bonus (2 months basic)		70,000	
House rent (40% of basic salary)		1,68,000	
Medical allowance		30,000	
Conveyance allowance		36,000	
Concessional passage within Bangladesh	1,30,000		
Less: Exempted (Assumed that it is as per employment contract and actually spent as per 6th schedule)	1,30,000	-	
Employer's contribution to RPF (10% of basic)		42,000	
		7,66,000	
Interest accrued on PF @16% p.a.	85,000		
Less: Exempted (766,000 x 33%) (Para 5, Part 3 of 2nd Schedule)	2,52,780	-	
		7,66,000	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		2,55,333	
Taxable income from salary			5,10,667
Income from rent: (u/s 35)			
Annual value (as it seems reasonable)	1,44,000		
Less: Admissible deductions			
Repair and maintenance (25% of annual value)	36,000		

Municipal tax (1/2 of Tk. 22,000)	11,000		
Insurance premium (1/2 of Tk. 16,000)	8,000	89,000	
Shop rent (as it seems reasonable)	30,000		
Less: Repair and maintenance (30% of annual value)	9,000		
		21,000	
Income from Rent			1,10,000
Income from agriculture: (u/s 40)			
Sale of paddy on Adhi system	1,12,000		1,12,000
(To be added direct as he did not cultivate)			
Income from business: (u/s 44)			
Share of profit of partnership firm		67,000	
(assumed that firm's income is below taxable so partner will have to pay tax on this income at regular tax rate)			
Business income	70,000		
Less: Business loss b/f (assuming loss from same business)	50,000	20,000	
		87,000	
Less: Unabsorbed depreciation (from Tk.80,000)		20,000	
Total income from business			67,000
Capital gains: (u/s 57)			
Profit on sale of shares of MNC Ltd (A Private Ltd. Co.)		40,50,000	
Profit on sale of shares of ERZ Ltd (Publicly listed Co.)	23,30,500		
Less: Exempted fully as per 6th Schedule	23,30,500	-	
Capital Gain on sale of shop [1,82,500 -30,750]		1,51,750	42,01,750
	Capital Gains		
Income from financial assets (u/s 62)			
Int. from leasing company (gross, TDS @ 10%)		9,26,111	
Int. on Bank Fixed deposit (gross, TDS @ 10%)		1,39,167	
Int. on savings bank a/c (gross, TDS @10%)		61,889	
Cash dividend (gross) assumed from listed co.		12,350	11,39,517
Income from other sources: (u/s 66)			
Sale proceeds from trees			12,000
Total income			**61,52,934**

Computation of Investment Tax Rebate	**Tk.**
Employee's and Employer's contribution to RPF	84,000
Life insurance premium actual Tk. 65,000 but allowed up to 10% of policy value Tk.	50,000

5,00,000)	
Investment in shares of listed companies	120,000
Donation approved by NBR	33,000
Total	**287,000**

Allowable limit of investment:

Lower of -	
3% of total income excluding income u/s 163	
Tk. (61,52,934 – 1,82,500) x 3%	1,80,035
15% of actual investment	43,050
Maximum limit	10,00,000

Tax rebate on investment (Lower one), Tk. 43,050

Computation of tax liability	**Total income**	**Tax rate**	**Tax**	
First up to Tk. 3,50,000	3,50,000	0%	-	
Next up to Tk. 1,00,000	1,00,000	5%	5,000	
Next up to Tk. 3,00,000	3,00,000	10%	30,000	
Next up to Tk. 4,00,000	4,00,000	15%	60,000	
Next up to Tk. 5,00,000	5,00,000	20%	100,000	
On balance Tk. 3,83,136	2,70,434	25%	67,608	262,608
Total except Profit on sale of shares of MNC Ltd. (A Private Ltd. Co.) Tk. 4,050,000 and sale of shop Tk. 1,82,500	19,20,434			
Add: Tax applied on shop sale	1,82,500			5,650
Add: Tax on Capital Gain on sale of shares of MNC Ltd. (A Private Ltd. Co.) assuming that it was sold after 5 years. So, tax rate will be 15% as per 7th schedule.)	4,050,000	15%		607,500
Less: TDS				
(1) From sale of land u/s 163			5,650	
(2) TDS from Interest from leasing company			92,611	
(3) TDS on Interest on Bank Fixed deposit			13,917	
(4) TDS on cash dividend			1,235	
			6,189	(119,602)
				756,156
Less: Investment tax rebate on investment				(43,050)
Tax payable				**713,106**

Question No.7

Mr. Samual Gomez works in Bangladesh as an officer in a Multinational Company, headquartered in the USA. His sources of income for the year ended on 30th June, 2023 were as follows:

a. Income from Employment:

(1) Basic Salary Tk.15,000 per month.

(2) Dearness allowance 10% of the basic salary
(3) Two bonuses equivalent to two months‟ basic salary
(4) Medical allowance Tk.20,000 per year (actual expense for the year Tk.10,000)
(5) Entertainment allowance Tk.200 per month
(6) He has been provided with a free car (2500 CC) both for official and personal uses.
(7) He has also been provided with a rent-free quarter, municipal value of which is Tk.80,000 p.a.
(8) Travel allowance as a part of his contract Tk.100,000 p.a. from where he saved Tk.10,000.
(9) He contributes 10% of his basic salary to RPF. His employer also contributed the same.
(10) During the year, he received interest of Tk. 1,800 @ 12% on RPF.
(11) He has taken one month's basic salary as advance in the month of June to meet up some of his financial difficulties.

b. Income from financial assets:
(1) Interest on government securities Tk.3,000.
(2) Interest on less-tax government securities Tk.2,700.
(3) Interest on approved debentures Tk.27,300. He has borrowed Tk.20,000 @ 10% interest to purchase it. Bank also charged Tk.400 to collect the interest.
(4) Interest income from FDR Tk.4,500 (net of TDS @ 10%)
(5) Profit from Islami bank Tk.900 (net of TDS @ 10%)
(6) Cash Dividend from ICB Mutual Fund Tk.31,500 (net of TDS @ 10%)
(7) Cash Dividend from a listed company shares Tk.1,800 (net of TDS @ 10%)

c. Income from House Properties:
He owns a two-storied house in Dhanmondi. He stays in one floor with his family and another floor is let out for residential purpose at a rate of Tk.9,000 per month. The municipal value of the house is Tk.200,000 per annum. During the year he spent the following expenses for the whole house:

Repair expense Tk.2,000, Insurance expense Tk.4,000, Land development tax Tk.1,500
Sewerage and utilities expense Tk.1,000, Payment of DBH Loan Installment Tk.5,000 (including interest of Tk.500).
During the year, the house has remained vacant for two months.

d. Agricultural income: Sale of crops Tk.5,000 and Income from barga Tk.2,000
e. Share of profit from a partnership firm Tk.10,000 (firm paid no tax thereon)
f. Income of spouse and minor child Tk.40,000
g. He won Prize Bond lottery of Tk.300,000 [tax deducted at source @ 20% from it]

Foreign Income
During the year Mr. Gomez visited South Korea as a consultant and generated income of Tk.500,000 and he paid income tax @ 25% in South Korea. He brought Tk.250,000 to Bangladesh through bank. From another visit to Uganda, he generated income of Tk.300,000 and paid income tax there @ 20%. Bangladesh has DTAA (Double Taxation Avoidance Agreement) with South Korea, but not with Uganda.
h. Income from business: Profit from sole-proprietorship business Tk.4,000; last year's loss carried forwarded Tk.1,000.
i. Income from other sources:
(1) Sale of forest timber Tk.2,000

Investment claimed by Mr. Gomez:
(1) Payment of life insurance premium Tk. 8,000 (Policy value Tk.100,000)
(2) Purchase of a listed company's primary share Tk.5,000
(3) Purchase of books and magazines Tk.1,000
(4) Purchase of a share of co-operative society Tk.2,000

(5) Contribution to Government Zakat Fund Tk.2,500
(6) Purchase of Furniture Tk.15,000

Requirement: Based on the above information, calculate Mr. Samual Gomez's total income and tax liability for the assessment year 2023-24

Answer to question No. 7:

Mr. Samual Gomez
Income Year: 2022–23
Assessment Year: 2023–24
Computation of Total Income

Heads of Income	Amount	Amount	Amount
1. Income from Salary (Section: 32):			
Basic salary (15,000 X 12)		1,80,000	
Dearness allowance (1,80,000 × 10%)		18,000	
Bonus (15,000 × 2)		30,000	
Medical allowance		20,000	
Entertainment allowance (200 X 12)	-	2,400	
Car facility (10,000 X 12)		1,20,000	
Rent Free Accommodation: Rental value		80,000	
Travel allowance	1,00,000		
Less: Exempted – up to actual expense	90,000	10,000	
Advance salary		15000	
Employer's contribution to RPF (10% of Tk.180,000)		18000	
		4,93,400	
Interest from RPF	1,800		
Less: exempted – up to: 33% of total salary from employment	1,62,822	-	
	-	4,93,400	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower	-	1,64,467	**3,28,933**
	-		
2. Income from rent (Section: 35):			
Actual rental value (9,000 × 12)	1,08,000		
Municipal value (2,00,000 / 2)	1,00,000		
Annual value (whichever is higher)	1,08,000		
Less: Vacancy allowance (9,000× 2)	18,000	90,000	
Less: Allowable deductions			
Repair and maintenance (25% × 1,08,000)	27,000		
Insurance (4,000 / 2)	2,000		
Land development tax (1,500 / 2)	750		
Interest on loan (500 / 2) 250	250	30,000	60,000

3. Agricultural Income (Section: 40):	-		
Sale of crops	5,000		
Less: Allowable deductions: Production cost 60%	3,000	2,000	
Income from barga		2,000	
			4,000
4. Income from Business (Sec:44):			
Profit from sole-proprietorship business			
Less: Carry forward of previous year's loss		4,000	
		1,000	3000
Share of profit from partnership firm (below taxable)			10,000
5. Income from financial assets (Sec.62):			
Interest on government securities		3,000	
Int. on less-tax Govt. securities (2,700 × 100/95)		2,842	
Interest on approved debentures	27,300		
Less: Allowable expenses:			
Bank Charge	-400		
Interest on loan	-2,000	26,900	
	-	-	
Interest on FDR (4,500 × 100/90)		5,000	
Profit from Islami Bank (900 × 100/90)		1,000	
Dividend from ICB Mutual Fund (31,500 × 100/90)		35,000	
Dividend of listed Public Ltd. Co. (1,800 × 100/90)		2,000	
			75,742
6. Income of spouse or minor child			40,000
7. Income from other sources (Section: 66):			
Sale of forest timber		2,000	
Prize Bond Lottery [income u/s 163]		3,00,000	
			3,02,000
8. Foreign Income:			
Income from South Korea	5,00,000		
Less: Brought to Bangladesh through official channel			
(exempted as per 6th schedule (part-A) para-17 of ITA,2023). On remaining Tk.2,50,000 foreign tax credit will be applicable as per sec.244			
	2,50,000	2,50,000	
Income from Uganda:(As there is no DTAA between Bangladesh and Uganda, so no foreign tax credit will be allowed as per section 246 as NBR not yet prescribed any rules in this behalf)		3,00,000	
		-	5,50,000

Total Income			**13,73,675**

Calculation of Allowable investment allowance

Particulars	**Amount**
Life insurance premium	8,000
Share purchase	5,000
Contribution to Govt. Zakat Fund	2,500
Contribution to RPF (18,000 ×2)	36,000
Actual investment	**51,500**
Maximum limit of allowable investment:	
3% (total income –income under 82C) = (1373,675 – 3,00,000) X 3%	10,73,675
15% of actual investment	7,725
or 10,00,000	10,00,000
Thus, allowable investment allowance for tax rebate would be	7,725

Calculation of Tax liability:

Particulars	**Rate**	**Amount**
On first Tk. 3,50,000	0%	0
On next Tk. 1,00,000	5%	5,000
On next Tk. 3,00,000	10%	30,000
On balance Tk. 323,675	15%	48,551
Total 10,73,675		83,551
+ tax on prize bond lottery @ 20% on Tk.3,00,000[163 income]		60,000
		1,43,551
Less: Investment tax rebate		7,725
		1,35,826
No Tax credit as firm's income was below taxable		Nil
		1,35,826
Less: Double taxation relief (foreign tax credit as per sec 244 Average tax rate in Bangladesh is (1,35,826/13,73,675) i.e., 10%. Tax relief on income from South Korea (as per DTAA) 30% of 2,50,000 = Tk. 75,000 but maximum relief is at an average rate of the country (2,50,000 X 10%) = Tk. 25,000		25,000
		1,10,826
Less: TDS [142+500+100+3,500+200+60,000]		64,442
Net tax payable		**46,384**
		-

Question No.8

Mr. Rafiq is a Finance Manager of a multi-national company. His income for the Assessment Year 2023-24 were as under:

[1] Basic Salary- Tk. 60,000 per month.
[2] House Rent Allowance- 60% of the Basic Salary.
[3] Medical Allowance- 10% of the Basic Pay.
[4] Entertainment Allowance- 10% of the Basic Salary.
[5] Employer's Contribution to Recognized Provident Fund- 10% of the Basic Salary.
[6] Bonus- equivalent to 2 month's Basic Salary.
[7] Mr. Rafiq was provided with a servant at monthly salary of Tk.8,000 each.
[8] He is entitled to two months' Basic Salary as a Gratuity at the time of retirement.
[9] He is also entitled to a full-time 2500 CC car. Car related expenses are borne by the company.

His other incomes were as follows:

[1] Dividend from a company listed in the Dhaka Stock Exchange Tk.150,000.
[2] Dividend from Private limited company Tk.60,000.
[3] Interest from 5 years' Bangladesh Sanchaya Patra Tk.75,000.
[4] Interest from Savings Bank A/c. Tk.40,000 (Gross) from which 10% tax was deducted.

He has a house from which he earns monthly rental income of Tk.60,000. He paid Municipal Tax of Tk.4,000 per quarter. Interest paid on the Bank Loan was Tk.180,000 per annum.

Mr. Rafiq contributed Tk.72,000 to Provident Fund. Interest accrued on the P.F. Balance was Tk.40,000. He paid Life Insurance Premium of Tk.56,000. He purchased 5 years' Bangladesh Sanchaya Patra Tk.190,000.

Compute Total Income and Tax Liability thereon of Mr. Rafiq for the Assessment Year 2023-24

Answer to question No. 8:

Mr. Rafiq

Computation of Total Income
Assessment year 2023-24

Income from employment	**Amount**
Basic Salary - Tk.60,000 per month (60,000 x 12)	7,20,000
Bonus - 2 months' Basic (60,000 x 2)	1,20,000
House Rent - 60% of Basic (60% x 60,000 x 12)	4,32,000
Entertainment - 10% of Basic (10% x 720,000)	72,000
Medical Allowance - 10% of Basic	72,000
Employer's Contribution to P.F - (10% x 720,000)	72,000

Full Time Car Entitlement	1,20,000	
Salary of Servant (8,000 x 12)	96,000	
	17,04,000	
Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower	4,50,000	**12,54,000**
(ii) Income from Rent		
Annual Value - 60,000 per month (60,000 x 12)	7,20,000	
Less: (1) Repairs & Maintenance is 25% of Annual value	1,80,000	
(2) Municipal Tax 4,000 per quarter= 4,000 x 4	16,000	
(3) Interest on Bank Loan	1,80,000	**3,44,000**
(iii) Income from financial asset		
Interest from 5 years' Bangladesh Sanchaya Patra	75,000	
Dividend from Listed Company	1,50,000	
Dividend from Private Ltd. Company	60,000	
Int. on Savings Bank Account	40,000	**3,25,000**
Total Income		**19,23,000**

Tax calculation:

Total Income	**Tax Rate**		**Income Tax**
On income	3,50,000	0%	NIL
On the next Tk.	1,00,000	5%	5,000
On the next Tk.	3,00,000	10%	30,000
On the next Tk.	4,00,000	15%	60,000
On the next Tk	5,00,000	20%	1,00,000
On the balance	2,73,000	25%	68,250
	19,23,000		2,63,250
Less: Tax rebate on Investment (Note)			57,690
			2,05,560
Less: [1] 10% TDS on Tk. 40,000 int. on Saving Bank Account			-4,000
[2] 10% tax deducted on Sanchaya Patra			-7,500

[3] 10% tax deducted on cash dividend	- 15,000
Net tax payable	**1,79,060**

1. The salary of servant will be included to his income from employment.

2. Investment allowance is limited to Tk. 10,00,000 or 3% of total income or 15% of actual investment, whichever is less. Here, his total income is Tk. 19,23,000 and 3% of this amount will be Tk. 57,690. But his investment is as follows:

(i) P. F. Contribution (Tk. 72,000 x 2)	144,000
(ii) L.I.P.	56,000
(iii) 5 years Sanchaya Patra	190,000
	390,000

15% of actual investment 390,000 x 15% = 58,500. Thus, lower one 57,690 allowable tax rebate on investment

3. Gratuity will be considered when it is received. Any amount up to taka two crore fifty lac received by an assessee as gratuity is exempted from payment of tax.

4. Interest accruing to or derived by a recognized provident fund is tax free up to a certain limit. I assume that it is within the limit. So, it is exempted.

Question No.9

Mr. Abedin's salary during the financial year 2022-23 is as follows:

Particular	Amount in Taka
Basic salary	15,00,000/-
Bonus	300,000/-
House rent	750,000/-
Medical allowance	150,000/-
Conveyance allowance	100,000/-

Mr. Abedin is also the owner of a 3 storied residential building in Dhaka. During the financial year 2022-23, he received total rent Tk. 10,80,000/-, and paid city corporation tax Tk.50,000/, land tax TK.500/-.

Mr. Abedin also received FDR interest Tk.200,000/-, Tk.250,000/- as interest from savings certificate and Tk.100,000/- as dividend from listed companies.

Mr. Abedin purchased savings certificate of Tk.500,000/- during the year.

Tax of Tk.180,000/- has been deducted from Mr. Abedin's salary during the year and other deduction of tax at sources has been made properly.

Mr. Abedin's net asset as on 30/06/2023 is Tk.3,53,78,960/-. As per life style form, Mr. Abedin's family expenditure other than taxes is Tk.11,46,537/-. He paid advance tax Tk.3,50,000/- u/s 154 for the assessment year 2023-24 and Tk.30,000/- to pay off the tax liability u/s 173 at the time of submitting return for the assessment year 2023-24.

For the assessment year 2023-24 compute the following with regard to Mr. Abedin:

(1) Salary income;
(2) House property income;
(3) Income from other sources;
(4) Income u/s 163;
(5) Total Income and tax payable;
(6) Investment allowance and investment tax credit;
(7) Amount of tax deducted at sources;
(8) Net tax payable including surcharge, if any.
(9) Keeping in view the provision of Income Tax Act, 2023, compute the maximum amount of net asset that Mr. Abedin may have as on 30/06/2022.

Solution to the Q. No. 9

Salary Income

Pay and Allowance	**Amount (taka)**	**Exempted portion**	**Taxable salary**
Basic salary	15,00,000	1/3 of income from total employment or 450,000, whichever is lower	**23,50,000**
Bonus	300,000		
House Rent Allowance	750,000		
Medical Allowance	150,000		
Conveyance Allowance	100,000		
Taxable Income from Salary	**28,00,000**	**450,000**	**23,50,000**

House Property Income

► Annual Value	10,80,000
Less: Repair & Maintenance (1/4th of annual value)	2,70,000
City corporation tax	50,000
Land tax	500
	3,20,500
Net House property income	7,59,500

Income from Other Sources

► FDR interest	2,00,000
► Cash dividend	1,00,000
	3,00,000
Income from other sources	3,00,000

Income from financial assets u/s 163

► Interest on savings certificate	250,000
Tax deducted @ 10%	25,000

Total Income of Mr. Abedin

Source of Income	**Amount (Tk.)**
Income from employment	23,50,000
Income from financial assets u/s 163	2,50,000

House Property Income	7,59,500
Income from Other Sources	3,00,000
Total Income	36,59,500

Tax Calculation

Income	Tax Rate	Amount of Tax
On the first tk. 3,50,000	0%	0
Next tk. 1,00,000	5%	5,000
Next tk. 3,00,000	10%	30,000
Next tk. 4,00,000	15%	60,000
Next tk. 5,00,000	20%	1,00,000
Next tk. 17,59,500	25%	4,37,875
Interest on securities u/s 163 tk. 250,000	10%	25,000
Tax chargeable on total Income		6,59,875

Calculation of Investment Tax Credit:

Investment	Amount (Tk.)
Purchase of savings certificate	500,000
Total Investment	**500,000**
Investment Allowed for tax credit (Actual Investment Tk. 500,000 X 15% = 75000 or 3% of TK. 34,09,500 i.e., 1,02,285 or Tk. 10,00,000 (whichever is lower)	75,000
Investment Tax credit	75,000

Tax Calculation	**Tk.**	**Tk.**
Tax chargeable on Total Income:	659,875	
Less: Investment tax credit	75,000	
Tax payable		584,875
Add: Surcharge: 10%		58,488
Less :Tax credit (TDS & AIT):		
(1) Advance Income Tax paid	350,000	
(2) TDS on salaries	180,000	
(3) TDS on FDR interest	20,000	
(4) TDS on dividend	15,000	
(5) TDS on Interest on S/C	25,000	590,000
Net tax payable /(refund)		**53,363**

Reconciliation of Wealth Statement

Particular	Amount (Tk.)
Net assets as on 30/06/2023	3,77,84,423
Net assets as on 30/06/2022	3,53,78,960
Apparent Wealth Accretion	24,05,463
Tax deducted at source	2,35,000
Tax paid u/s 173 during the previous year	30,000

Advance tax paid	350,000
Family expenditure	11,46,537
Real wealth Accretion	**41,67,000**

Source of Fund

Source of fund		Amount (Tk.)
Taxable income		36,59,500
Non-taxable income		
House Rent allowance	300,000	
Medical allowance	120,000	
Conveyance allowance	30,000	
Total		4,50,000
Total sources of fund		41,59,500

Reconciliation of Wealth Statement

Total Accretion + Family Expenses + Tax Payment	41,59,500
Total Sources of Fund	41,59,500
Deemed income as income from other sources	-0-

Wealth Surcharge

Tax Payable	TK. 5,84,875
Net assets as on 30/06/2023	TK. 3,77,84,423
Surcharge payable: 5,84,875 @ 10%)	TK 58,488

Question No.10:

Mr. Faizan is the Head of Taxation of RX Limited. During the financial year 2022-23 he earned following income:

Income from Employment:

[1] Mr. Faizan received Taka 12,00,000 as cash salary out of which basic pay was 60%, medical allowance was 20%, transport allowance was 15% and education allowance for children was 5%.
[2] The company provided him with a 2500 CC car for official and his family use.
[3] He was also provided with a residential house against which the company incurred rental expense of Taka 3,10,000.
[4] Though the company has a Recognized Provident Fund, Mr. Faizan did not apply for becoming the member of that Fund. As per the Provident Fund Rules, the contribution to the Fund by the employer is 8% of basic pay.

Income from Rent:

He leased out a house with an annual rent of Taka 1,20,000. He spent Taka 15,000 as repair and maintenance, Taka 5,000 as municipal tax and Taka 2,500 as fire insurance premium.

Income from Agriculture:

Mr. Faizan owned 25 bigha agricultural land in his village. By cultivating paddy in 10 bigha land, he generated income of Taka 1,20,000. The rest of the land he rented out for a cash consideration of Taka 1,60,000. He owned a power tiller to cultivate the land, the tax depreciation of which was Taka 12,000 and maintenance cost was Taka 6,000. He paid land development tax Taka 25,000 and interest Taka 2,00,000 against the bank loan taken for the purpose of buying land.

Income from Financial Assets:

He received interest from Coupon Bond and FDR Taka 10,000 (Gross) and Taka 98,100 (net) respectively. He also received dividend Taka 22,500 (net) by purchasing share from secondary market at a value of Taka 1,00,000 on 1 January 2023.

In addition, he made the following transactions relating to financial year 2022-2023:

[1] Donation made to the Zakat Fund Taka 10,000,
[2] Purchased share of a private limited company Taka 20,000
[3] Life Insurance Premium paid Taka 15,000.

The company also deducted Taka 1,28,000 from his salary in the last 12 months as withholding tax against salary income.

Please compute total income and tax liability of Mr. Faizan for the assessment year 2023-24 considering the above information.

Solution to the question no.10:

Computation of total income and tax liability of Mr. Faizan for the assessment year 2023-24:

Name of the Assessee: Mr. Faizan
Computation of total income and tax liability
For the Income year 2022-23 [Assessment year 2023-24]

[A]	**Computation of total income**	**Tk.**	**Tk.**	**Tk.**
a)	a) **Income from employment:**			
	[1] Basic pay- (Taka 12,00,000 x 60%)		7,20,000	
	[2] Medical allowance (Taka 12,00,000 x 20%) =		2,40,000	
	[3] Transport allowance in cash- (Tk 12,00,000 X 15%)		1,80,000	
	[4] Education allowance- (Taka 12,00,000 X 5%)		60,000.00	
	[5] Rent free house facility: Annual Rental value		3,10,000	
	[6] Deemed income against full time car facility		1,20,000	
			16,30,000	

	Less: Exempted - 1/3 of income from total employment or 450,000, whichever is lower		4,50,000	
				11,80,000
	[B] Income from house property:			
	Annual value of the house:			
	Rental value or reasonable rent – higher one (In absence of information about reasonable rent, it is assumed that rental value is higher than reasonable rent)		1,20,000	
	Less: Admissible expenses			
	Repair and maintenance – 25% of annual value	(30,000.00)		
	Municipal tax	(5,000.00)		
	Fire Insurance premium	(2,500.00)		
	Total allowable expenses		(37,500.00)	
				82,500.00
	[C] Income from Agriculture:			
	Sale proceeds of crops	1,20,000		
	Cash consideration against granting right to use land	1,60,000		
			2,80,000	
	Less: Admissible expenses			
	Production cost – 60% of income from cultivation	(72,000.00)		
	Depreciation of power tiller	(12,000.00)		
	Land development tax	(25,000.00)		
	Interest on borrowed capital	-2,00,000		
	Total allowable expenses		-3,09,000	
	Taxable income under the head of agricultural income (This loss is eligible to be set off as per section 70)			**(29,000.00)**
			Nil	
	[D]Income from financial assets			
	i) Interest on Zero Coupon Bond [Fully tax-free as per 6th Schedule (Part-A) para 25]			
	ii) Interest on FDR (Taka 98,100/90 X 100)		1,09,000	
	ii) Cash Dividend from a publicly listed company (Taka 22,500/90 X 100)		25,000.00	
	Taxable income from other sources of income			**1,34,000**
	Total income (a+b+c+d)			**13,67,500**
B]	**Eligible investment allowance for tax credit:**			

	Investment in shares of listed company on 01/01/2023			1,00,000
	Life Insurance premium			15,000.00
	Donation to Zakat Fund assuming Govt. Zakat Fund			10,000.00
	Actual investment			**1,25,000**
	15% of actual investment			**18,750.00**
	3 % of total income			**41,025.00**
	Eligible investment allowance is lower of 15% of actual investment, 20% of total income and Taka 1 million.			**10,00,000**
	Therefore, allowable investment allowance			**18,750.00**
C]	**Tax liability**			
	Tax on total income:			
	On first Taka 3,50,000 @ 0%			-nil
	On next Taka 1,00,000 @ 5%			5,000.00
	On next Taka 3,00,000 @ 10%			30,000.00
	On next Taka 400,000 @ 15%			60,000.00
	On next Taka 2,17,500 @ 20%			43,500.00
	Gross tax liability			**1,38,500**
	Less: Investment tax credit (1,25,000 X 15%)			(18,750.00)
	Tax liability			**1,19,750**
	Less: Tax deducted at sources:			
	[1] From salary		1,28,000	
	[2] From FDR interest		10,900.00	
	[3] From cash dividend		2,500.00	1,41,400
	Balance tax payable/(refund)			**(21,650.00)**

Note:

[1] Since, Mr Faizan was not the member of the RPF, his employer did not contribute anything for this purpose. So employer's contribution to RPF is not added with salary income. Similarly, investment tax credit is also not given because there is no contribution.

[2] Investment in shares in private limited companies is not eligible for investment tax rebate as per 6th Schedule (Part-C) of ITA, 2023. So, it is not considered in calculating investment tax rebate.

[3] There is no bar to set-off agricultural loss against income other than capital gain. So, loss from agriculture is set-off accordingly as per section 70 of ITA, 2023.

[4] In computing agricultural income maintenance cost of Tk. 6,000 is not deducted because it is already considered within 60% cost of production.





Chapter 19

Assessment of partnership firms

Contents

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Examination context

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19.1	Assessment of partnership firm
19.2	Special provisions regarding assessment of firms
19.3	Procedure of assessment of firms
19.4	Rate of tax applicable to firm
19.5	Set-off and carry forward of firm's losses
19.6	Computation of partners' share in the firm's profit or loss
19.7	Liability of a firm for unrecoverable tax due from partners

Worked examples

Introduction

- Illustrate the assessment of partnership firm.
- Identify the scope of income of a firm.
- Specify major provisions regarding the assessment of firm.
- Identify rates for taxing income of a firm.
- State the procedure of assessment of income of firm and its partner.

Practical significance

Assessment of firm and tax liability computation is very significant for every assessee firm. Assessing the income of firm and tax liability thereof is important for persons owning partnership firm and managing it. This chapter recapitulates the scope of total income, non-assessable income, tax credit income, grossing up of income, applicable tax rates and related issues required for

completing the assessment of firms. Application of tax rebate by partners on income from partnership firm is exemplified. Professional accountants are required to have sufficient expertise on all of these issues.

Stop and think

Did you realize how important is the assessment for firms? Can you do the assessment of firms independently?

Working context

Assessment of tax is very important for every assessee firm. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of taxable income and tax liability thereof for individual assessee is very important in case of required support for clients' tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of firms and partners as well.
- Identify total income of a firm after deducting allowable expenses.
- Computing investment allowance and tax credit.
- Identify non-assessable income and its application in computing total income.
- Identify the procedure of assessment
- Compute net tax liability after tax rebate due to investment allowance,
- Tax rebate at average rate on income from firm at the time of computing total income of partners.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

19.0 ASSESSMENT OF PARTNERSHIP FIRMS

Section overview

➔ Scope of income of firm is different from other assessee.

➔ Applicable tax rate of firm is different from companies.

➔ On some investments, the firm enjoys investment tax rebate.

➔ For TDS, the firm will get full credit at the time of computing net tax liability.

➔ With certain terms and conditions, loss under one head can be set off against income under another head/heads

➔ If loss under one head cannot be set off completely, it can be carried forward to succeeding 6 years to set off against the income under the same head.

19.1 Assessment of partnership firms

The word firm includes a partnership firm. Like individuals, firm's income is also assessed to compute tax payable by the firm. One point is very important to remember that assessment of partnership firm and partners are done separately. In tax law, partnership firm and partners are totally different, have different income though the tax rates are same with some exceptions.

19.2 Special provisions regarding assessment of firms

A firm can be assessed –

- Under section 183: Determination of tax by DCT on the basis of return
- Under section 184: Best judgment assessment
- Under section 187: Taxation of firms and individuals
- A firm can also be assessed in special cases –
- Under section 188: Assessment in case of change in the constitution of a firm
- Under section 189: Assessment in case of constitution of new successor firm
- Under section 190: Assessment in case of succession of business otherwise death
- Under section 191: Assessment in case of discontinued business

19.3 Procedure of assessment of firms

As the assessment of firm and its partners are sometimes non-detachable, it is important to remember to assess their income separately. Otherwise, there is a strong possibility of integrating partners' income with that of the partnership firm to whom they are the partners. It is advised to follow the procedures as mentioned below to avoid possible mistakes.

For the firm

(1) Start with the accounting profit as computed in partnership Profit and Loss Account.
(2) Adjust the profit in line with –

Section 45: Income from business or profession
Section 49: Deductions from income from business or profession
Section 55: Deduction not admissible in certain circumstances specially section 56

(3) The profit so computed will be taxable profit of the firm and taxable in the hand of the firm. However, such profit (obviously before tax) will be distributed among the partners as per their respective profit and loss sharing ratio.
(4) The profit as calculated above is taxable provided that the total income exceeds the present exemption limit, i.e., Taka 3,50,000. (assessment year 2023-24)
(5) The firm may also claim tax rebate on lower of 3% of total income or 15% of allowable investment (if any) or Tk 10 lakhs like individual.

For partners

(6) Partners' taxable income will be share of profit or loss as computed in step 3. The total income will be taxed as per the individual tax rates. Income from firm is to be considered as tax free income because tax on this part is already paid by the firm, and partners will get rebate at average rate on their partnership income from tax so computed as per section 80 of ITA, 2023. They may also claim rebate for qualifying amount of investment allowance, if any, in normal way.

Note: Firms may not be required to pay tax if income is less than Taka 3,50,000 or carry forward and set-off previous years' losses. In such a situation, partners will pay tax in a normal way but cannot claim any rebate on share of profit received from firm, as firm has not paid any tax on such profit.

19.4 Rate of tax applicable to firm

Income of a firm is taxable at the same rate applicable to individuals which are as follows:

Income slab		Applicable tax rates
On first	Tk. 3,50,000	Nil
On next	Tk. 1,00,000	5%
On next	Tk. 3,00,000	10%
On next	Tk. 4,00,000	15%
On next	Tk. 5,00,000	20%
On balance		25%

It is to be mentioned here that the minimum amount of tax should not be less than Taka 5,000 or 4,000 or 3,000 depending on the location if income exceeds Tk.3,50,000.

19.5 Set-off and carry forward of firm's losses

(1) In case of losses sustained by a firm under any head of income shall be set off only against the income of the firm under any other head and not against the income of any of the partners of the firm [U/s70(4))].
(2) Any loss from business can be carried forward for setting of against such income, if any, for 6 consecutive years (U/s - 70).
(3) If there is any loss from any speculation business, it should be set off in the same year against income from other speculative businesses, it can be carried forward for 6 consecutive years to set off only against the income from such speculative business (U/s - 70).
(4) If there is any loss under the head 'capital gain' can be carried forward for 6 consecutive years (U/s - 70).
(5) If there is any loss under the head 'agricultural income' can also be carried forward for setting off against income from this head for 6 consecutive years (U/s - 70).

19.6 Computation of partners' share in the firm's profit or loss [section 31(2)]

To compute partner's share in the firm's profit or loss, we need to adjust any interest, salary, commission or remuneration. Then the balance will be distributed among the partners as per the respective profit and loss sharing ratio. So, the share of a partner in a firm will be taken to be any salary, interest, commission or other remuneration payable to him by the firm in the income year increased or decreased respectively by his share in the balance of the profit or loss of the firm.

As per section 31(2) of ITA, 2023, if a person is a partner in a firm or a member of an AOP, his share of income of the said firm or AOP shall be determined by the following formula, namely -

A = B + (C – D) x E%, where –

A = part of the person's income from the firm or AOP,
B = salary, interest, commission or other remuneration received by the said person from the said firm or AOP,
C = total income of the said firm or AOP,
D = the sum of salary, interest, commission or other remuneration payable by the said firm or AOP to all partners or members,
E = the percentage of shares of the person in the said firm or AOP.

If the partners have their individual income with the shared income from the firm, such shared income should be added with other individual income to compute the partners' total taxable income. If the firm has already been taxed, partners will not pay tax on such shared income (Section 80 of ITA, 2023). But, this addition of shared income to the partners' other income may enhance the rate of tax for such other income or may bring the partners within the ambit of taxation where such partners' individual income was below the taxable limit.

19.7 Liability of a firm for unrecoverable tax due from partners (section 255):

Where any tax payable by partner of a firm in respect of his share of the income from the firm cannot be recovered from him, the Deputy Commissioner of Taxes shall notify such amount of the tax to the firm. Upon notification, the firm so notified shall be liable to pay the said tax and, for the purposes of recovery thereof, shall be deemed to be an assessee in respect of such tax.

Worked examples

Example 1:

Ronob, Sanob and Manob are the three equal partners of Ronob & Brothers. The profit and loss account for the year ended on June 30, 2023 was given below:

Ronob & Brothers
Profit and Loss Account
For the year ended on June 30, 2023

Particulars	Amount (Tk.)	Particulars	Amount (Tk.)
Office Rent	72,000	Gross profit	8,00,000
Utilities	48,000		
Commission [including commission paid to Partner Manob Tk.25,000]	88,000		
Advertisements	22,000		
Income Tax	20,000		
Interest on capital:			
Ronob – 30,000			
Sanob – 20,000			
Manob – 30,000	80,000		
Salaries:			
Ronob – 26,000			
Manob – 24,000	50,000		
Net Profit	4,20,000		
	8,00,000		8,00,000

Other information:

1. Tax @5% was deducted at source from office rent.
2. Tk. 25,000 of commission is given to Mr. Manob for his special assignment.
3. Partners have income from different sources as follows:

Sources	Mr. Ranob	Mr. Sanob	Mr. Manob
Income from house property	1,60,000	-	1,40,000
Income from interest on securities	50,000	1,80,000	-
Agricultural income	-	-	50,000
Income from other sources	25,000	25,000	25,000

Required:

1. Compute total income of the firm
2. Compute tax liability of the firm.
3. Distribute firm's income among the partners.
4. Compute total income of the partners.
5. Compute net tax liability of the partners.

Solution 1:

Requirement 1: Total income of the firm

Particulars	Amount (Tk.)	Amount (Tk.)
Net profit as per Profit and Loss A/C		4,20,000
Add: Inadmissible exp:		
Distribution to the partners violating section 56:		
Interest on capital:		
Ronob – 30,000		
Sanob – 20,000		
Manob – 30,000	80,000	
Salaries:		
Ronob – 26,000	50,000	
Manob – 24,000		
Commission:	25,000	1,55,000
Manob – 25,000		
Income tax (as it is not an expense rather appropriation of profit and not allowed as expense under section 50)		20,000
Total income of the firm		**5,95,000**

Requirement 2: Tax liability of the firm

Income Slabs	Tax rate	Amount (Tk.)
On first Tk. 3,50,000	0%	Nil
On next Tk. 1,00,000	5%	5,000
On next Tk. 1,45,000	10%	14,500
		19,500

Requirement 3: Distribution of firm's income among the Partners

Particulars	Partners			Total	Amount left to be distributed
	Ronob	Sanob	Manob		
Amounts to be distributed					5,95,000
Interest on capital	30,000	20,000	30,000	80,000	5,15,000
Salaries	26,000	24,000	-	50,000	4,65,000
Commission	-	-	25,000	25,000	4,40,000
Profit (allocated on 1:1:1 ratio)	1,46,666	1,46,666	1,46,667	4,40,000	
Total amount allocated	**2,02,666**	**1,90,666**	**2,01,667**	**5,95,000**	

Requirement 4: Total income of the partners

Heads of Income	Ronob	Sanob	Manob
1. ncome from interest on securities	50,000	1,80,000	-
2. ncome from house property (less repairs @ 25%) assuming it was let out for residential purpose.	1,20,000		1,05,000
3. gricultural income (less cost of cultivation @ 60%)	2,02,666	1,90,666	20,000
4. ncome from partnership firm	25,000	25,000	2,01,667
5. ncome from other sources			25,000
Total income	**3,97,666**	**3,95,666**	**3,51,667**

Requirement 5: Net tax liability of the partners

Income slab	Rate	Amount of tax		
		Ronob	Sanob	Manob
On first Tk. 3,50,000	0%	Nil	Nil	Nil
On next Tk. 47,666	5%	2,383		
Tk. 45,666	5%		2,283	
Tk. 1,667	5%			83
		2,383	2,283	83
Less: Tax rebate on firm's income at average rate				
Ronob (2,02,666/3,97,666 x 2,383)		1,214		
Sanob (1,90,666/3,95,666 x 2,283)			1,100	
Manob (2,01,667/3,51,667 x 83)				48
Net tax liability		1169	1183	36

[1] All partners will have to pay minimum tax as their income exceeds the minimum taxable ceiling depending on the location.

[2] Section 55 will not be applicable for non-deduction of tax at source from office rent, as partnership firm was deducted tax properly.

Worked example 2

Asha, Pasha, and Rasha are three equal partners of a firm, **Asha, Pasha & Rasha Associates**. For the income year ended June 30, 2023, the firm produces the following information for the purpose of computing total income and tax liability of the firm as well as its partners.

(a) The firm owns a commercial building partly (one half) occupied by the firm to operate its own business and partly (another half) let out at a monthly rent of TK 35,000. Reasonable rent of the building is TK 800,000. During the year, the firm has also earned TK 40,000 as advance and TK 10,000 as first year's rent from a company by letting its top floor to hoard a commercial advertisement.

(b) The firm is engaged with trading of garments supplies which resulted following gross margin amount for the year:

Particulars	**Amount (TK)**	**Amount (TK)**
Sales		5,000,000
: Cost of goods sold Beginning inventory		
	800,000	
+ Purchase	4,200,000	
Cost of Goods available for sale	5,000,000	
- Ending inventory	1,000,000	
Cost of goods sold		4,000,000
Gross margin		1,000,000

(c) Other relevant information is given below:
Stocks are always valued at 2% above cost. Analysis also reveals that purchase amount is overstated by TK 200,000 for the year. Total operating expenses charged during the period amounted to TK 450,000 which included following items among other things: (i) Maintenance to building:

	Amount (TK)	**Amount (TK)**
Let –out portion	30,000	
Portion used for business		50,000

(ii) Municipal Taxes: Total amount of municipal taxes paid for the year was TK 40,000 out of which the tenant bears TK 10,000.
(iii) Annual contribution to Cotton Dealers Association, a trade association is TK 10,000.
(iv) Donation to charitable hospital was TK 50,000.
(v) All the partners were active and took part in running business. Salaries paid to the partners were TK 40,000 to Asha, TK 50,000 to Pasha and TK 30,000 to Rasha.
(vi) Legal charges amount to a total of TK 50,000 including a fine of TK 10,000 charged due to its attachment with illegal form of business.
(vii) The firm charged TK 15,000 against profit to write-off uncollectible amount of receivable which is not allowed by the DCT.
(viii) The firm incurred a loss of TK 50,000 from speculative business.
(ix) Accounting depreciation charged was TK 38,000 which was TK 3,000 higher than tax depreciation.

(d) Asha had no other income during the year; however, Pasha and Rasha were also partners of another firm. The respective income of Pasha and Rasha from the firm for the year ended 30th June 2023 are as under:

Partners	Salary	Interest	Profit/ (Loss)
Pasha	TK 40,000	TK 10,000	TK (50,000)
Rasha	TK 60,000	TK 20,000	TK 20,000

(e) Rasha had income from interest on approved commercial securities of TK 30,000. Bank charged TK 300 as collection fee and TK 3,000 as interest on money borrowed from the bank for investment in approved commercial securities.

Compute tax liability of 'Asha, Pasha & Rasha Associates' for the assessment year 2023-24 and total income in the hands of partners from all sources.

Solution 2

(a) Computation of total income of the firm:

Particulars	Taka	Taka	Taka
(1) Income from house property (U/s - 36)			
Annual value			
Actual rent (12 months @ TK 35,000)	420,000		
orne by the tenants or	10,000		
Reasonable rent (800,000/2)	430,000		
Whichever is higher	400,000		
Less:		430,000	
repairs and maintenance (30% of annual value)	129,000		
municipal tax for let-out portion (1/2 of 40,000)	20,000		
		149,000	
Net income from house property			281,000

) Income from business (u/s - 45) Gross profit as per Trading Account		1,000,000	
Add: Overstatement of opening stock (TK 800,000/1.02*0.02)	15,686		
Overstatement of purchase	200,000		
	215,686		
Less: Overstatement of Closing Stock (TK 1,000,000/1.02*0.02)	19,608		
		196,078	
		1,196,078	
Less: Operating expenses		450,000	
		746,078	
Add: Inadmissible Expenses			
1.Contribution to Aga Khan Dev. Network	50,000		
2.Municipal tax– ½	20,000		
3.Salaries to partners u/s 56	1,20,000		
4.Legal charges	10,000		
5.Bad debt Write-off which is not allowed	15,000		
6.Loss on speculative transactions	50,000		
7.Accounting depreciation	38,000	3,03,000	
Less: Admissible expenses		10,49,078	
Tax depreciation		35,000	
Net income from business			10,14,078
(3) Income from other sources (U/s - 66)			
From display of advertisement			50,000
Total income of the firm			**13,45,078**

Computation of investment allowance:

Actual:

Donation to Charitable hospital (50,000 x 15%) Tk. 7,500

Maximum limit:

3% of total income, i.e., 3% of 13,45,078 = Tk. 40,352

Or Tk. 10,00,000 whichever is less

Qualifying amount for investment allowance Tk. 40,352

Computation of tax liability of the firm:

Income slabs	Tax rate	Amount (Tk..)
On first Tk. 3,50,000	0%	Nil
On next Tk. 1,00,000	5%	5,000
On next Tk. 3,00,000	10%	30,000
On next Tk. 4,00,000	15%	60,000
On next Tk. 1,95,078	20%	48,769
On total Tk. 13,45,078		1,43,769
Less: tax rebate on investment allowance		40,352
Net tax liability		**1,03,417**

Allocation of profit among the partners

Particulars	Partners			Total	Amount left to be distributed
	Asha	Pasha	Rasha		
Amounts to be distributed					
Salaries	40,000	50,000	30,000	1,20,000	13,45,078
Profit (allocated on 1:1:1 ratio)	4,08,359	4,08,359	4,08,359	12,25,078	12,25,078
Total amount allocated					
	4,48,359	**4,58,359**	**4,38,359**	**13,45,078**	

Total Income in the hands of the partners:

Heads of income	Asha	Pasha	Rasha
1. Income from this firm			4,38,359
2. Income from another firm	4,48,359	4,58,359	1,00,000
3. Income from interest on securities			26,700
Total income	**4,48,359**	**4,58,359**	**5,65,059**





Chapter 20

Assessment of companies

Contents

Introduction

Examination context

Topic list

20.1	Companies
20.2	Method of accounting
20.3	Residential status of companies
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Worked examples

Introduction

- Define different type of companies.
- Illustrate the assessment of companies.
- Identify the scope of income of companies.
- Specify major provisions regarding the assessment of companies.
- Identify rate for tax on varieties of income of a company.
- State the procedure of assessment of company's income.
- Specify the special provisions of assessing income of bank, insurance and leasing companies.

Practical significance

Corporate assessment is full of complexities that require special skill to handle. Understanding corporate accounting and converting it in line with the requirements of tax authorities is the first hurdle. Assessable income, non-assessable income, rebate, application of CSR, applying different rates for capital gain, dividend income and other income are some of the complexities.

As professional accountants mostly serve corporate houses, this chapter becomes mostly significant for them. Again, corporate tax planning, now-a-days, becomes a norm which necessitates extra skill on part of the qualified accountants. Government also requires this type of services from professional accountants due to the reasoning of maximizing its income.

Other common requirements like TDS, set-off and carry forward of losses, DTAA, grossing up of income are also applied in this chapter.

Stop and think

Did you realize that the assessment of companies is very important from every perspective? Are you confident enough to do the assessment of companies independently?

Working context

Assessment of tax is very important for every classes of assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients. In case of corporate client, this chapter becomes very significant.

Many companies are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of total income and tax liability thereof for corporate assessee is important in case of required support for tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of corporate house.
- Identify total income of a company after adjusting expenses.
- Computing tax rebate in different scenario.
- Identify non-assessable income and its application in computing total income.
- Identify the procedure of assessment.
- Compute net tax liability after giving tax credit.
- Do the specialized assessment of bank, insurance and leasing companies.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

20.0 ASSESSMENT OF COMPANIES

Section overview

➔ Scope of income for company is different from other assessee.

➔ Applicable tax rates for company are different from other assessee.

➔ Capital gain and dividend income of companies are taxable at different rates.

➔ Assessment of banks, insurance and leasing companies are to some extent different.

➔ Companies will enjoy tax rebate for CSR activities in specific areas.

➔ Company assessee will enjoy some common benefits like set-off and carry forward of losses, tax rebate, TDS adjustments, credit of advance tax etc.

20.1 Companies

Assessment of companies means applying the assessment procedures on the income of companies. Company has a definite meaning in the Income Tax Act, 2023. For the purpose of company tax assessment, some related definitions are produced below:

"Company" means a company as defined in the Companies Act, 1994 and includes -

(a) liaison office, representative office or branch office of a foreign company;
(b) fixed establishment of a foreign entity or person;
(c) any association or body incorporated by or under the laws of a country outside Bangladesh;
(d) any bank, insurance or financial institutions;
(e) any industry and trade organization, foundation, society, cooperative society and any educational institution;
(f) any organization registered with NGO Bureau or Micro Credit Regulatory Authority;
(g) any firm, association of persons, joint venture, or combination of persons, called by whatever name, if any of such persons is a company as defined in the Companies Act, 1994 or a foreign entity;
(h) statutory government authority, local authority, autonomous body;
(i) a body corporate established or constituted by or under any law for the time being in force;
(j) all entities other than natural person, firm, association of persons, trust, hindu undivided family, and funds;
(k) any foreign association or body, not incorporated by or under any law, which the Board may, by general or special order, declare to be a company for the purposes of this Act.

Companies Act 1994 defines ‘company’ to mean a company formed and registered under the act or an existing company [U/s – 2(c) of Companies Act, 1994]. Again, ‘existing company’ means a company formed and registered under any law relating to companies in force at any time before the commencement of the act, and is in operation after commencement of the act [U/s – 2(h) of Companies Act, 1994].

However, at the time of prescribing the rate of taxes, companies are classified as –

1) Bank, Insurance, Financial Institutions
2) Merchant Bank
3) Mobile Phone Operator Company
4) Publicly traded company
5) Non-publicly traded company
6) Tobacco Manufacturing Company
7) One Person Company (OPC)

As per the provision of Income Tax Act, computing profit and loss for some specialized business shall be as follows:

- 4th Schedule - Computation of the profits and gains of insurance business
- 5th Schedule–Part 1 Computation of profits and gains from the exploration and production of petroleum and the determination of the tax thereon
- 5th Schedule–Part 2 Computation of profits and gains from the exploration and extraction of mineral deposits (other than oil and gas) in Bangladesh

Due to the typical nature of business, Income Tax Act prescribes different methods of computation of profit and loss from these businesses.

Whatever the definitions or classifications made, profits or gains from any type of companies are taxable at specified rates.

20.2 Method of accounting

Section 73 of ITA, 2023 requires every company, any firm, association of persons, fund having turnover exceeding Tk. 3 crore and person having income form long term contract shall submit income statement and balance sheet for the income year, and certified by a chartered accountant to the effect that the accounts are maintained and the statements are prepared and reported in accordance with International Accounting Standards, the International Financial Reporting Standards, related laws of Bangladesh for the time being in force and in accordance with the specific standards set out be the Board time to time, and are audited by in accordance with the Bangladesh Standards on Auditing.

As per Section 75(2), where accounts of a taxpayer have not prepared and maintained in accordance with the provision of section 73, DCT can compute tax on such basis and such manner he/she thing fit.

So it is very important that before taking any action under Section 75(2) the DCT need to demonstrate that a non-compliance of Section 73 has actually occurred.

20.3 Residential status of companies

Residential status of companies is different from an individual and Income Tax Act prescribes different rules for that. On the basis of residential status applicable for companies, there may be Bangladeshi or foreign companies. The provisions for deciding the residential status of companies are given below:

"Resident", in respect of any income year, means a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year [section–

2(45)(c)]. And, "non-resident" means a person who is not a resident [section – 2(4)]. Thus, to be resident:

1. The company should be a Bangladeshi company, i.e., formed and registered under the Companies Act, 1994 and includes a body corporate established or constituted by or under any law for the time being in force in Bangladesh having in either case its registered office in Bangladesh; or

2. Any other company the control and management of whose affairs are situated wholly in Bangladesh in that year.

If any of the two conditions have not been fulfilled, the status of such a company will be non-resident.

20.4 Submission of return

A company assessee shall have to file return of income setting forth therein its total income by the 15th day of the 7th month following the end of the income year, or the 15th day of September following the end of income year where the said 15th day falls before the 15th day of September.

The return should be prepared in a prescribed form by inserting necessary descriptions and information, attaching schedules, statements, accounts, annexures, and documents, and signed by the principal officer as defined in section 2(54) of ITA, 2023.

20.5 Set-off and carry forward of losses and unabsorbed depreciation

Where a loss is assessed under any specific head of income, the company is permitted to set-off the loss against its income assessed under different heads in the same year. However, losses incurred under the categories of capital gains, business, speculative business, or losses related to the business of tobacco products cannot be set-off against any income from other heads. In cases where the loss cannot be entirely set-off, the remaining unabsorbed loss will be carried forward and set-off against income under the same heads over six consecutive assessment years.

Moreover, losses from any sources or heads where tax is exempted, or where tax is applied at a reduced rate, or where they are subject to a minimum tax requirement, cannot be set-off or carried forward.

Unabsorbed depreciation can be carried forward for an unlimited period. It is important to note that losses shall be carried forward and set off first; subsequently, unabsorbed depreciation needs to be utilized for set-off until it is fully absorbed.

20.6 Return of tax deducted at source

In accordance with the section 177 of the ITA, 2023, every company including other withholding entities, shall file a return of tax deducted or collected at source (also called as withholding tax) to the DCT where the company is being assessed. Such return shall be prepared in the prescribed form and signed and verified by the principal officer of the company. Such return shall be filed by 15th day of the next month following the month of deduction.

However, the last date for the submission of return may be extended by the DCT for up to 15 days.

20.7 Advance payment of tax

Every company shall have to pay advance tax in four equal installments falling on 15th September; 15th December.; 15th March and 15th June of each financial year if the latest assessed income exceeds Tk. 6,00,000. However, cigarette manufacturing company will pay advance tax monthly @ 3% on net sale.

On failure of payment of any installment, the company will be deemed to be an assessee in default. Penalty may be imposed for such default. If a company estimates that its income during any financial year will be less than the last assessed income, it may submit an estimate of income and pay the advance tax accordingly.

If the amount of advance tax together with the tax deducted at source, if any, is less than 75% of the tax payable on the basis of regular assessment, simple interest @10% per annum is leviable on the amount by which the tax so paid and deducted falls short of 75% of the assessed tax. On the other hand, the company is entitled to receive interest @10% on the amount by which the aggregate sum of advance tax paid during a financial year exceeds the amount of the tax payable on the basis of regular assessment. However, interest will be 50% higher if the person failed to submit return on or before the Tax Day.

20.8 Applicable tax rates for companies

Charge of minimum tax: section 163(5)

Notwithstanding anything contained in any other provisions of ITA, 2023, every company including person having minimum Tk. 3 crore gross receipt and firm or association of person having minimum Tk. 50,00,000 gross receipt, shall, irrespective of its profits or loss in an assessment year for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of earlier year or years or the claiming of allowances or deductions (including depreciation) allowed under this Act, be liable to pay minimum tax @ 0.60% of the amount representing gross receipts from all sources for that year. However, the rate of minimum tax for tobacco manufacturing company is 3%, carbonated beverage 3% and for mobile phone operator 2%.

Moreover, if any new industry engaged in manufacturing of goods, then the rate will be 0.10% instead of 0.60% which would be effective for first 3 years.

For the purposes of this section, **'gross receipts'** means-

(a) all receipts derived from the sale of goods;
(b) all fees or charges for rendering services or giving benefits including commissions or discounts;
(c) all receipts derived from any heads of income.

Illustration

Xerox Machine Ltd. is a Private Limited Company registered in Bangladesh. Following information are related to the income year 2022-23:

Net operating income	Tk. 12,50,000
Interest income	Tk. 2,50,000
Total income	Tk. 15,00,000

Sales revenue / turnover for the year is reported at Tk. 2,00,00,000. Applicable income tax rate is 27.5%. Calculate tax liability of Xerox Machine Ltd. for the assessment year 2023-24.

Solution:

Income tax at regular rate i.e., 27.5% is Tk. 4,12,500 (15,00,000 X 27.5%).
Gross receipts of the company: (Tk. 2,00,00,000 + Tk. 250,000) = Tk. 2,02,50,000
Minimum tax = (Tk. 2,02,50,000 X 0.60%) = Tk. 1,21,500.

Since, the regular tax is greater than the minimum tax; the tax liability of Xerox Machine Ltd. will be Tk. 4,12,500.

Corporate tax rate at a glance

Conditional Listed company tax rate 20% for the assessment year 2023-24: [1] More than 10% paid-up capital through IPO [2] All sales/receipts must be through banking channel [3] In case of investment and expenditure, per transection exceeding Tk. 5,00,000 must be through banking channel and altogether yearly transection exceeding Tk.36,00,000 must be through banking channel. Violation of serial number 2 & 3 will lead to tax rate 22.5% **Conditional Listed company tax rate 22.5% for the assessment year 2023-24:** [1]10% or less than 10% paid-up capital through IPO [2] All sales/receipts must be through banking channel [3] In case of investment and expenditure, per transection exceeding Tk. 5,00,000 must be through banking channel and altogether yearly transection exceeding Tk.36,00,000 must be through banking channel. Violation of serial number 2 & 3 will lead to tax rate 25%	20% 22.5%
Conditional One Person Company tax rate 22.5% for the assessment year 2023-24: [1] All sales/receipts must be through banking channel [2] In case of investment and expenditure, per transection exceeding Tk. 5,00,000 must be through banking channel and altogether yearly transection exceeding Tk.36,00,000 must be through banking channel. Violation of serial number 1 & 2 will lead to tax rate 25%	22.5%
Conditional tax rate of non-listed companies for the assessment year 2023-24 [1] All sales/receipts must be through banking channel [2] In case of investment and expenditure, per transection exceeding Tk. 5,00,000 must be through banking channel and altogether yearly transection exceeding Tk.36,00,000 must be through banking channel Violation of the above conditions will lead to tax rate 30%	27.5%

Banks, insurance and other financial institutions (except merchant banks) if not publicly listed	40%
Banks, insurance and other financial institutions (except merchant banks) if publicly listed	37.5%
Merchant banks	37.5%
Cigarette, zarda, bidi, gul or any other tobacco product manufacturing companies (companies, firms and individuals) irrespective of listing status Income surcharge in addition to above tax is applicable on business income.	45% 2.5%
Mobile phone operator companies if not publicly listed	45%
Mobile phone operator companies that convert themselves into a publicly traded company by transfer of at least 10% shares through stock exchanges, of which maximum 5% may be through Pre-Initial Public Offering Placement [If mobile phone operator companies list at least 20% of their paid up capital through IPO, they shall receive a rebate of 10% in the year of listing.	40%
Association of persons	27.5%
Cooperative societies registered under Cooperative Society Act, 2001	15%
Private universities, Private medical college, Private dental college, Private engineering college or Private college engaged in imparting education on information technology	15%

If any assessee owned any small and medium industry engaged in the production of goods at less developed area or least developed area, it will enjoy tax rebate at a rate as mentioned below:

Particulars	Rate of rebate
If production in volume exceeds 15% but does not exceed 25% as compared with preceding year.	5% of tax on such income
If production in volume exceeds 25% as compared with preceding year.	10% of tax on such income

20.9 Corporate Social Responsibility [SRO 229- dated 04-07-2011, SRO.223 dated 27/06/2012 and SRO 186- dated 01-07-2014]

Allowable limit: Maximum limit of allowable expenditure under the head Corporate Social Responsibility (CSR) is 20% of total income or Tk. 12,00,00,000; or actual CSR whichever is lower. If actual expenditure exceeds this limit, such amount exceeding the limit cannot be used to compute tax rebate.

Tax rebate: Tax rebate will be computed @ 10% on such expenditure for CSR within the maximum limit.

Conditions: To claim tax rebate against CSR, the company must fulfill the following conditions:

1. Must pay salaries and allowances to its worker regularly and must have waste treatment plant if it involves with the production of industrial goods;
2. Must pay income tax, VAT and duty timely and must repay institutional loans;
3. Can only donate money to the institutions recognized by the government for the purpose of CSR;
4. Must fulfill all rules as per Bangladesh Labour Law, 2006.
5. Amount spent for CSR will not be considered as business expenditure.
6. Documents in support of actual CSR expenditure to be submitted to the concerned DCT.
7. Submit CSR plan to NBR and obtain exemption certificate.

However, no company can charge such expenditure on account of CSR in manufacturing or profit and loss account. Such company shall also submit sufficient documents with DCT to prove whether the expenditure claimed as CSR is really spent.

Areas of CSR

To encourage the companies to contribute towards the society, a new provision has been introduced in 2009 through an SRO and thereafter the area has been expanded in 2010 and further modified in 2011.In the year 2012 two new areas have been included and one area shifted to 6th Schedule (Part-A) Para-47. In 2014 one new area has been added. The present areas are:

1. Donation through any government bodies to reduce the misery of people of areas affected by natural calamities like Cyclone, Earthquake, Hurricane, Flood etc.;
2. Donation to the institutions engaged in the establishment of old home and its management;
3. Donation to any social organization engaged in the Welfare of mentally or physically disable people;
4. Donation to the educational institutions engaged in educating street / homeless children;
5. Donation to such institutions engaged in housing projects for people living in slums;
6. Donation to social organizations involved in building public awareness on women-right and against dowry system;
7. Donation to organizations involved in feeding and rehabilitating orphan / homeless children;
8. Donation to organizations involved in research on liberation war, campaign to uphold the spirit of liberation war and welfare of freedom fighters;
9. Donation to organizations engaged in maintaining healthy sewerage systems in Chittagong hill tract, alluvial land, river breakage areas;
10. Donation to organizations engaged in the treatment of hare-lipped, cataract; cancer, leprosy;
11. Donation to individuals and organizations engaged in providing Medicare services to the Acid Victims
12. Donation to specialized hospital providing free medical services to poor patients and work for improving the quality of treatment e. g., hospitals for Cancer, Lever, Kidney, Thalassemia, Eye and Cardio.
13. Donation to public universities;
14. Donation to any government recognized educational institution established for providing educational scholarship and financial assistance to poor freedom fighters' children along with promoting technical and vocational education to the poor merITArious students;
15. Donation to government or MPO included private educational institution engaged in establishing lab for training computer or IT or implementing English education programs;
16. Donation to organizations engaged in providing technical and vocational training to unskilled or semi-skilled workers for exporting manpower;
17. Donation to organizations engaged in the development of infrastructure and training for sports at national level;
18. Donation to national level museum established or to be established for preserving the memory of education war;
19. Donation to national level institutions engaged in protecting the memory of the father of the nation; and
20. Donations made to non-profit voluntary social welfare organizations engaged for running rehabilitation center, creation of awareness and treatment of HIV, AIDS and Drug addicted
21. Donations made to non-profit voluntary social welfare organizations engaged for running rehabilitation center for recovered children/women of cross boarder trafficking.
22. Donation to Govt. approved fund for helping victims of natural disaster or for any tournament or for any national level program.

20.11 Scope of income of a company

Income of a company should be computed with reference to the following sections:

Section 45: Income from business
Section 46: Special areas of business income
Section 49: General allowable deductions in computation of income from business
Section 50: Special allowable deduction in computation of income from business
Section 55: Deduction not admissible in certain circumstances

However, company may have income from following sources with respect to application of tax:

b) Dividend income
c) Capital gain
d) Other income

Worked examples and solutions

Example 1

M/s. John Morris Inc. is a multinational company doing business in Bangladesh. The company filed return of income for the assessment year 2023-24 showing net income of Tk. 30,00,000. Examination of the audited statement of accounts filed with the return of income revealed the following:

(a) Salary includes Tk. 3,30,000 paid to one Director working at the head office at California. He never visited Bangladesh and no tax, as such, has been deducted at the time of making the payment.

(b) Head office expenses charged Tk. 11,00,000. No evidence could be produced other than HO audITArs' certificate.

(c) Fine of Tk.11,000 paid for violation of customs law charged to P & L Account.

(d) Two Nissan Petrol Jeep purchased for Tk. 55,00,000 each during the year. Depreciation @ 10% charged on the full cost of the vehicles.

(e) To procure business Tk.10,00,000 has been paid as commission to a local agent. In making the payment, the provision of section 94 of the Income Tax Act, 2023 has not been complied with.

(f) The company sold a motor vehicle for Tk. 4,65,000. Original cost of the vehicle was Tk. 5,25,000 and the WDV was Tk. 3,25,000. This has not been reflected in the accounts.

(g) Tk.15,000 donated to an un-recognized school.

(h) Miscellaneous expenses include Tk. 7,22,000 paid as salaries to three servants who are working at the residence of the Managing Director.

(i) Conveyance expenses include Tk. 3,20,000 paid for air ticket of wife and son of the Managing Director for the visit of the neighboring countries.

(j) Interest expense claimed at Tk. 33,50,000. The company has outstanding bank loan of Tk. 2.10 crore. The company advanced Tk. 75,00,000 interest-free loan to a sister-concern in Bangladesh.

From the above information compute the total income of the company for tax purpose.

Solution 1

M/s John Morris Inc.

Computation of total income

Assessment year 2023-24

Particulars: -	Amount (Tk.)	Amount (Tk.)
Net income		**3,000,000**
Add: Inadmissible expenses		
Director's salary {55(a)} [note-1]	330,000	
Excess depreciation charged on motor vehicle [note-6]	500,000	
Donation to an un-recognized school	15,000	
Excess perquisites {55(f)} [note-7]	42,000	
Revenue gain on sale of motor car [note-5]	140,000	
Fine for violation of customs law [note-2]	11,000	
Interest on bank loan [note-3]	1,196,429	
Head office expense [note-8]	1,100,000	3,334,429
Adjusted profit		6,334,429
Deduct: head office expense – 10% of disclosed net profit		3,00,000
Total income		**6,034,429**

Notes:

(1) Salary paid to a non-resident director without TDS is inadmissible expense u/s 55(a) with reference to section 119.

(2) Fine or penalty for breach of law is not allowable expenditure u/s 49 and 54 of ITA,2023.

(3) Interest on borrowed capital is allowed when taken for business purposes. But borrowed fund was given to the sister concern which is not used for the company's business and therefore, proportionate interest has been disallowed as per section 52 of ITA,2023.

(4) Section 94 of ITA, 2023 requires deduction of tax at source on the payment of commission for product distribution, not for procurement of business for the company. So as there is nothing wrong in this case, nothing to be disallowed.

(5) Difference between sale proceeds of the motor vehicle and its WDV of Tk. 1,40,000 is business gain.

(6) Under the Third Schedule for depreciation purpose cost of each motor vehicle is restricted to Tk. 30,00,000 each and 10% depreciation on two cars therefore should be Tk. 6,00,000 whereas on Tk. 55,00,000 the company claimed depreciation of Tk. 11,00,000. So excess depreciation of Tk. 5,00,000 has been added back.

(7) Servant's salary and travel ticket fare are perquisites to the managing director of a total sum of Tk.7,22,000+Tk.3,20,000= 10,42,000. As per section 55(d) perquisites are allowable up to Tk.10,00,000 per employee per year. Therefore, the excess perquisites of Tk. 42,000 has been added back.

(8) Head office expense is allowed up to 10% of the disclosed net profit u/s 55(f).

Worked example 2

The profit and loss account of Care Pharmaceuticals for the year ended on June 30, 2023 reports net income of taka 20,00,000. A scrutiny of accounts and supporting documents revealed the following facts:

(a) During the year the company sold some of its pharmaceutical supplies that remained unused for a long time in the storeroom. The company sold the supplies at a loss of taka 150,000 as the expiry period is very close and charged such loss against current year's profit.

(b) The company recovered taka 20,000 from bad debt which was written off in earlier year and was allowed by the tax authority. The amount so recovered is credited to sundry debtors account.
(c) Unpaid bank interest of Tk.80,000 to Bangladesh Development Bank Ltd. since income year 2017-2018 and such interest was allowed as allowable deduction during that year. Still, such interest remains unpaid.
(d) The company has a trading liability with one overseas company to the tune of taka 1,50,000 which has been totally waived by the overseas company under special agreement during this year.
(e) During the year, the company sold one equipment for taka 1,80,000 which was purchased at a total cost of taka 1,30,000 and had a WDV of taka 90,000 on the date of sale. The company reports taka 90,000 as gain on sale of equipment in the credit side of profit and loss account.
(f) Due to a sudden fire on the factory building, the extended portion of the building is totally destroyed and compensation received from the insurance company total taka 2,50,000. In addition, the company realized an additional sum of taka 30,000 by selling the scrap. The extension of the building was constructed at a total cost of taka 4,00,000 and depreciation charged to date amounts to taka 50,000.
(g) The company sold a scientific apparatus used for scientific research for taka 80,000 which was originally purchased at taka 1,50,000 and fully depreciated. The sale proceed is not recorded at all.
(h) The company had export quota for exporting garments to EU countries. As the company has recently changed the line of operation (switched from garments manufacturing to pharmaceuticals), it transferred the export quota to another garment manufacturer for a sum of taka 70,000. This income is not reported at all.
(i) The company is entitled initial depreciation taka 5,00,000 for new machinery installed and run commercial production during the year but they did not claim any initial depreciation.
(j) Incentive bonus paid to the field representatives at the rate of 4 month's pay taka 3,00,000. But the general practice of giving incentive bonus for the similar business is two month's pay.
(k) Sum of taka 1,20,000 donated to an institution for scientific research which is not approved by NBR.
(l) Sum of taka 5,00,000 expended for establishing a hospital for the benefit of employees. The health benefit was provided by the company without taking any charge from the employees.
(m) Salary of taka 5,00,000 and rent of taka 80,000 were paid without deducting tax at source.
(n) Payment of brokerage and commission of taka 60,000 made to a non-resident without deducting tax at source.
(o) Annual perquisites enjoyed by MD, Chairman and 5 members of Board of Directors amounted to taka 74,50,000.
(p) Normal accounting depreciation charged taka 2,50,000 but tax depreciation amounts to taka 3,00,000 excluding the amount of initial depreciation on machinery.
(q) Value of the free sample distributed claimed taka 2,00,000. Annual turnover during the year was taka 80,00,000.
(r) Cash salary & rent paid Tk. 100,000
(s) Sum of taka 50,000 expended to train employees (Bangladeshi citizen) in connection with a scheme approved by the Board.
(t) The company expended a sum of taka 2,00,000 for visits abroad as a member of trade delegation sponsored by the government.
(u) Annual membership fee of taka 1,50,000 is paid to Bangladesh Pharmaceutical Society which is a professional body recognized by the Board.
(v) Expenditure on publicity and advertisement during the year taka 3,00,000.
(w) Entertainment claimed taka 1,50,000.

Required: Compute the total income of the company for the assessment year 2023-24.

Solution 2:

Care Pharmaceuticals
Status: Resident Company
Income year: 2022-23 [Assessment year: 2023-24]

Particulars		Tk.	Tk.
Income from business :			
Net profit as per Profit & Loss Account			2,000,000
Add:	Inadmissible expenses		
	Excess bonus paid to field representatives [note-9]	100,000	
	Payment for scientific research not approved by NBR	120,000	
	Salary and rent paid without TDS	580,000	
	Payment to non-resident without TDS	60,000	
	Excess perquisites [note-11]	450,000	
	Accounting depreciation for separate consideration	250,000	
	Excess amount of free sample ceiling [note-12]	40,000	
	Cash salary & rent [note-13]	100,000	1,700,000
			3,700,000
Less:	Expenses admissible		
	Initial depreciation on machinery (1st year)	500,000	
	Tax depreciation (normal)	300,000	
	Loss on fire [3,50,000-2,80,000] [note-6]	70,000	870,000
			2,830,000
Add:	Income not credited to P/L Account		
	Bad debt recovered [note-2]	20,000	
	BDBL interest due but not paid within 3 years [note-3]	80,000	
	Waiver of a trading liability [note-4]	150,000	
	Sale proceeds of scientific apparatus [note-7]	80,000	
	Income from transferring export quota [note-8]	70,000	400,000
			3,230,000
Add:	Revenue profit on sale of equipment		40,000
Less:	Gain on sale of equipment [note-5]		(90,000)
Add:	Entertainment to be considered separately		150,000
Less:	Admissible entertainment [note-14]		(86,600)
Taxable income under the head business			**3,243,400**
Capital gain			50,000
Total income			**3,293,400**

Notes:

1. Loss on sale of supplies is an allowable deduction because supplies does not fall under the definition of capital asset as per section 2(77).
2. Amount of bad debt recovered will be treated as current year's income and should be credited to the profit and loss account, because bad debt was allowed earlier as expense.
3. As the interest due to Bangladesh Development Bank Ltd. is not paid within 3 years, such interest will be deemed to be current year's income u/s 46(7).
4. As the company received waiver of a trading liability during this year, it should be treated as deemed income u/s 46(8).
5. Computation of total gain, Capital Gain and Revenue Gain from the sale of equipment:

	Particulars	Tk.	Tk.
1.	Sale proceeds		180,000
2.	Initial costs		130,000
3.	Capital gain (1-2)		50,000
4.	Written down value (cost less depreciation)	90,000	90,000
5.	Revenue gain (2-4)		40,000
	Gain on sale of equipment as shown in P/L Account (1-4)		**90,000**

6. As the insurance compensation received taka 2,50,000 plus scrap value Tk. 30,000 is less than the amount of written down value of the building taka 3,50,000, the difference Tk.70,000 will be deducted from business income as per provision of Para 10(c) of 3rd schedule.

7. Sale proceeds of the asset used for scientific research shall be the deemed income in the year of sale under section 19(20).

8. As export value is not given in the question, so 3% of export value is not possible to be taken as income as per Rule-30A. There is no way to take different amount as income other than income shown by the company and that's why shown income is accepted.

9. After allowing 10% of disclosed net profit Tk. 2,00,000, the rest Tk.1,00,000 disallowed as excess incentive bonus as per section 30(j)

10. The amount spent for hospital is allowable deduction as it charges nothing after giving services to the employees.

11. Allowable amount of perquisites to MD, Chairman and 5 Directors will be taka 70,00,000 (taka 10,00,000 × 7). Thus, excess amount of perquisite taka 4,50,000 (taka 74,50,000 – taka 70,00,000) to be disallowed.

12. The allowable rate of free sample for a pharmaceutical industry is 2% for annual turnover up to taka 5 crore. The turnover of the company was taka 80,00,000 and free sample allowed is taka 1,60,000 (2% of taka 80,00,000). Thus, excess amount of taka 40,000 (taka 2,00,000 – taka 1,60,000) is disallowed.

13. Inadmissible expenses as salary and rent paid without bank transfer u/s 55.

14**:** Amount of admissible entertainment allowance**:**

On the first	10,00,000	At 4%	40,000
On the balance	23,30,000	At 2%	46,600
Total			**86,600**

Worked example 3

The profit and loss account of Star Ltd. a listed Public Limited Company is given below for the income year 2022-23.

Star Ltd.
Profit and Loss Account
For the year ended on June 30, 2023

Particulars	Tk.	Particulars	Tk.
Cost of goods sold	1,500,000	Sales	3,500,000
Salaries **[Note-1]**	700,000	Dividend	120,000
Rent	150,000	Interest	30,000
Advertisement	200,000	Gain on sale of Asset **[Note-4]**	40,000
Interest on Loan	80,000	Interest on Tax-Free Securities	15,000
Utility Expenses	60,000	Interest on Foreign Investment	20,000
Donation	150,000		

Transportation	110,000		
Audit Fee	200,000		
Bad Debt	90,000		
Contribution to RPF	70,000		
Income Tax paid in Advance	30,000		
Fines paid to Customs	20,000		
Annual Membership	15,000		
Legal Expenses **[Note-3]**	25,000		
Insurance Premium	35,000		
Sundry Expenses	12,000		
Depreciation **[Note-2]**	65,000		
Net Profit	2,13,000		
Total	**37,25,000**	**Total**	**37,25,000**

Determine the taxable income of the company and net tax liability thereof. Consider the given data below and assume that:

[1] Salaries are paid in cash without any cheque or bank transfer. Tk.4,50,000 of salaries fromTk.7,00,000.

[2] Tax depreciation amounts to Tk. 50,000

[3] Legal expenses are paid due to the infringement of trademarks

[4] The company has sold an asset for Tk.1,00,000 that the company has purchased 4 years back at a cost of Tk.80,000 with a written down value of Tk.60,000 till date.

Solution:

Star Ltd. [Status: Resident Company]

Income year: 2022-23 [Assessment Year: 2023-24]

Income from Business or profession:		**Tk.**
Net Profit as per Profit and Loss Account		**213,000**
Less: Non-business income for consideration at respective head:		
[1] Dividend	120,000	
[2] Interest	30,000	
[3] Interest on tax-free securities	15,000	
[4] Interest on foreign investment	20,000	
[5] Capital gain on sale of asset (1,00,000-80,000)	20,000	205,000
		8,000
Add: Inadmissible Expenses		
[1] Salaries (for violation of section 55(a)	450,000	
[2] Donation (Condition to get CSR also not fulfilled)	150,000	
[3] Income Tax (as income tax is not an expense)	30,000	
[4] Fine (inadmissible expense due to violation of law)	20,000	
[5] Legal expense (due to infringement of other's trademark)	25,000	
[6] Accounting Depreciation	65,000	740,000
		748,000
Less: Tax Depreciation as per 3rd schedule		50,000

Income from business		**698,000**
Capital Gain (1,00,000-80,000)		20,000
Income from financial assets:		
[1] Cash Dividend [no exemption]	120,000	
[2] Interest	30,000	
[3] Interest on foreign investment	20,000	170,000
Total Income		**888,000**

Tax calculation:

Tax on total income excluding cash dividend & capital gain (22.5% of Tk. 7,48,000) (assuming conditions to avail 20% tax rate not fulfilled)		168300
Tax on dividend (20% of Taka 1,20,000)		24,000
Tax on capital gain (15% of Tk.20,000)		3,000
Total tax		195,300
Minimum tax on gross receipts @0.60%		
On sales Tk.35,00,000 @0.60%	21,000	
On receipts from sale of assets Tk.1,00,000@0.60%=600x15/25	360	
On dividend receipts Tk.1,20,000 @0.60%= 720x20/25	576	
On interest receipts Tk. 50,000 @0.60%	300	
Total	22,236	
Tax liability, higher one.		195,300
Less: Advance tax paid		30,000
Less: TDS on cash dividend (1,20,000x20%)		24,000
Less: TDS on bank interest (30,000x10%)		3,000
Net tax liability		**138,300**

Note: (1) Due to lack of information foreign tax credit is not possible to allow on interest on foreign investment as per section 244 or 246

Note: (2) There is no separate implication of section 56 here because tax @ 22.5% already imposed on income including disallowances u/s 55.

Worked example 4

XYZ Pharmaceuticals Limited, a pharmaceutical manufacturing company, commenced its operations in 2016. The audited profit & loss statement of the company for the year ended 30 June,2022 is as follows:

Particulars	Tk.
Net sales	12,000,000
Cost of Sales	(10,200,000)
Gross Profit	**1,800,000**
Other Operating Income	1,600,000
Administrative Expenses	(14,500,000)
Selling and Marketing Expenses	(74,500,000)
Other Operating Expenses	(1,000,000)
Profit from Operations	**(86,600,000)**
Financial Expenses	(25,000,000)
Foreign exchange gain/ (loss)	(2,200,000)
Interest income	12,000
Profit/ (Loss) before Tax	**(113,788,000)**

Other information:

(i) Depreciation booked in the accounts during the year Tk. 30 million. As per tax law depreciation for the year would be Tk. 50 million.

(ii) Royalty charged to expense during the year was Tk. 9.60 million (8% of net sales).

(iii) Expense incurred for free sample distribution was Tk. 5 million.

(iv) Out of the total employees of the company 10 employees' salaries include perquisites on an average Tk. 10,50,000 each, 10 employees' salaries include perquisites on an average Tk. 800,000 each. No other employee's salaries have perquisites more than Tk. 10,00,000.

(v) Provision for gratuity charged during the year Tk. 1,000,000, whereas gratuity paid during the year Tk. 900,000.

(vi) The company contributed to the employees' provident fund during the year Tk. 1,500,000. The provident fund is duly recognized by concerned Commissioner of Taxes.

(vii) There was entertainment expense of Tk. 250,000 charged during the year.

(viii) Financial expense includes Tk. 2 million for the interest paid on the foreign loan received from its overseas parent company. The rate of interest is LIBOR+4.50. The transfer pricing officers of NBR have assessed that the arm's length rate of interest of the similar loan should LIBOR+3.0 [Assume the LIBOR rate was 0.50]

Required:

(i) Compute total income of the company.

(ii) Compute net tax liability of the company for the year.

Solution:

Computation of total income of XYZ Pharmaceuticals Ltd. for the assessment year 2023-24:

	Taka	Taka
Net profit (loss) before tax as per accounts		(113,788,000)
Add:		
Accounting depreciation	30,000,000	
Royalty expenses	9,600,000	
Free samples for consideration as per section 55(jha)	5,000,000	
Excess perquisites (10,50,000-10,00,000) X 10	500,000	
Provision for gratuity made during the year	1,000,000	
Entertainment expenses	250,000	
Interest on foreign loan as per accounts	2,000,000	
		48,350,000
Less:		
Tax depreciation	50,000,000	
Samples expenses (Note-1)	1,600,000	
Gratuity paid during the year	900,000	
Interest on foreign loan allowed (2000/5% X 3.5%)	1,400,000	
Entertainment expenses (Note 2)	Nil	
Royalty expenses (Note-3)	Nil	
		(53,900,000)
Total income		(108,238,000)

Notes:

1. Free sample expenses computed @ 2% on 5 crore, 1% on next 5 crores and 0.5% on balance Tk. 2 crore of turnover [Section 55(jha)]
2. As there is no taxable profit, no entertainment will be allowed as per Section 55(ja)
3. Royalty is allowed up to 8% of disclosed net profit. As disclosed net profit is negative so royalty also not allowed (Sec 55uma).
4. Though the company suffered loss but tax @ 30% (assuming conditions to avail 27.5% tax rate not fulfilled) to be paid on disallowances u/s 55 as per section 56. Total disallowances u/s 55 are:

[1] Royalty Tk. 96,00,000
[2] Free samples Tk. 34,00,000
[3] Excess perquisites Tk. 5,00,000
[4] Entertainment Tk. 2,50,000

Total Tk. 1,37,50,000. Tax@ 30% comes at Tk.41,25,000 u/s 56

Computation of tax liability of the company

Tax on calculated loss	Nil
But tax @ 30% as per sec. 56 on disallowances u/s 55	Tk. 41,25,000
Tax on gross receipts as per section 163(5) (12 crore X 0.60%)	Tk. 7,20,000
Therefore, the net tax liability of the company for the AY 2023-24 will be	**Tk. 48,45,000**

Worked example 5

The Statement of Profit or Loss and Other Comprehensive income of ABC Ltd. is given below for the income year 2022-23:

ABC Limited

Statement of Profit or Loss and Other Comprehensive income for the year ended on June 30, 2023

Particulars	**Taka**	**Particulars**	**Taka**
Cost of goods sold	2,100,000	Turnover	4,800,000
Salary and allowances	850,000	Dividend income	160,000
Publicity	300,000	Interest	40,000
Interest on Bank Loan	90,000	Gain on sale of Asset	60,000
Electricity, Gas and Water	72,000	Interest on Tax-Free Securities	20,000
Donation and Subscription	160,000	Interest on Foreign Investment	30,000
Conveyance	140,000		
Audit Fee	220,000		
Rent	457,000		
Bad Debt	100,000		
Contribution to Provident Fund	80,000		
Income Tax paid in Advance	40,000		
Fines paid to Customs	28,000		
Annual Membership Fee	20,000		
Legal Expenses	30,000		
Insurance Premium	36,000		
Miscellaneous Expenses	18,000		
Depreciation	75,000		
Net Profit	294,000		
Total	**5,110,000**	**Total**	**5,110,000**

ABC Ltd. is a Public Limited Company. Salaries are paid in cash without any cheque or bank transfer. Tk. 600,000 of salaries from Tk.8,50,000 falls under the category of gross salary more than Tk.10,000; tax depreciation amounts to Tk.60,000; legal expenses are paid due to the infringement of trademarks and the company has sold an asset for Tk.120,000 that the company has purchased 3 years back at a cost of Tk.100,000 with a written down value of Tk.70,000 to date. Determine the taxable income and tax liability thereof of ABC Ltd.

Answer to the question no 5:

ABC Limited
Status: Resident Company
Computation of total income
Income Year: 2022-23; Assessment Year: 2023-24

Particulars	**Tk.**	**Tk.**
Net Profit as per Profit and Loss Account		294,000
Less: Items to consider seperately:		
[1] Dividend income	160,000	
[2] Interest income	40,000	
[3] Gain on sale of fixed asset	60,000	
[4] Interest on tax-free securities	20,000	
[5] Interest on foreign investment	30,000	310,000
		(16,000)
Add: Inadmissible Expenses		
[1] Salary and allowances u/s 55(tha) being paid in cash	600,000	
[2] Donation (assuming not paid to Govt. approved institution)	160,000	
[3] Fine paid to Customs (as fine is not allowable exp. u/s 54)	28,000	
[4] Legal Expenses (as it was incurred for law violation)	30,000	
[5] Advance Income Tax (because tax is not expenditure)	40,000	
[6] Depreciation (for consideration as per 3rd schedule)	75,000	933,000
		917,000
Add: Revenue gain from sale of fixed asset (100,000-70,000)	30,000	30,000
Less: Tax Depreciation (as per 3rd schedule)		60,000
Taxable income from Business		**887,000**
Capital Gain on sale of Asset (120,000-100,000)		20,000
Income from financial assets :		
[1] Cash Dividend	160,000	
[2] Interest	40,000	
[3] Interest on foreign investment	30,000	230,000
Total Income		**1,137,000**

Computation of Tax Liability:

Tax on total income excluding dividend and capital gain

	Tk.	**Tk.**
[1] (22.5% of Tk. 9,57,000 assuming publicly traded company)		215,325
[2] Tax on dividend (20% of Taka 160,000)		32,000
[3] Tax on Capital Gain (15% of taka 20,000)		3,000
Gross tax liability		250,325
Less:		
[1] AIT	40,000	
[2] TDS on bank interest @10%	4,000	
[3] TDS on cash dividend @20%	32,000	76,000
		174,325

Note: There is no separate implication of section 56 here because tax @ 22.5% already imposed on business income including disallowances u/s 55.

Worked example 6

Star Consumer Limited is a private limited company engaged in manufacturing and marketing of cosmetic products. The income statement of the company for the income year 2022-23 is as follows:

Debit	Taka	Credit	Taka
Opening stock	80,00,000	Revenue	7,50,00,000
Purchase	4,30,00,000	Closing stock	60,00,000
Factory overhead	30,00,000		
Depreciation	20,00,000		
Gross profit (c/d)	2,50,00,000		
	8,10,00,000		8,10,00,000
Salaries and wages	69,70,000	Gross profit (b/d)	2,50,00,000
Office rent	11,00,000	Interest on FDR (Gross)	3,00,000
Legal expenses	3,20,000	Dividend (Net of tax)	40,000
Sample expenses	1,80,000	Bad debt recovery	95,000
Bad debt	1,20,000	Gain from sale of old machine	2,75,000
Head office expenses	8,00,000		
General expenses	1,20,000		
Research cost	2,60,000		
Interest paid	1,30,000		
Annual subscription to MCCI	20,000		
Tax expenses	36,27,500		
Net profit	1,20,62,500		
Total	2,57,10,000		2,57,10,000

Other information:

a. Raw materials costing Taka 1,70,000 was purchased from Mr. X by making payment through cash.
b. Depreciation allowance as per 3rd Schedule of the ITA, 2023 is Taka 18,00,000.
c. Office rent was paid in cash after deducting tax at source.
d. Legal expenses included Taka 1,00,000 paid to a consultant without deducting tax at source.
e. Salaries included excess perquisite of Taka 2,10,000.
f. General expenses included Taka 60,000 paid for Director's family expenses.
g. A five years old machine having cost of Taka 5,00,000 and book value of Taka 3,00,000 was sold for Taka 5,75,000.
h. A sum of Taka 1,70,000 included in salary was related with gratuity provision.
i. A business loss of Taka 1,67,00,000 was carried forward from previous year for setting off against current year profit, if any.

Based on these information, compute total income and tax liability of the company as per Income Tax Act, 2023, for the income year 2022-23.

Answer to the question no 6:

Star Consumer Limited
Computation of total income and tax liability
Income year: 2022-23 [Assessment year: 2023-24]

A] Computation of total income

	Tk.	Tk.
1. Income from Business or Profession (under Sec-44)		
N.P. before tax as per accounts (Taka 1,20,62,500 + 36,27,500)		15,690,000
Less: Non-business income to be considered in appropriate heads:		
[1] Interest on FDR	300,000	
[2] Dividend income (net)	40,000	
[3] Capital Gain from sale of old machine	75,000	(415,000)
		15,275,000
Add: Expenses to be considered separately:		
[1] Provision for gratuity (Note-3)	170,000	
[2] Accounting Depreciation	2,000,000	
[3] Sample expenses	180,000	
[4] Staff incentive	800,000	3,150,000
Add: Inadmissible expenses:		
[1] Rent paid in cash- section 55(ta)	1,100,000	
[2] Consultancy fee – section 55(ka)	100,000	
[3] Excess Perquisites-section 30(gh)	210,000	
[4] Director's family expenses [being personal] as per sec. 54	60,000	1,470,000
		19,895,000
Less: Admissible expenses as per law:		
[1] Tax depreciation	1,800,000	
[2] Sample expenses (Note-1)	180,000	
[3] Head office expenses (10% of disclosed net profit or actual expense whichever is lower)	800,000	(2,780,000)
		17,115,000
Less: Loss carried forward from previous year [as per sec. 70]		(16,700,000)
Taxable Income from business		**415,000**
2. Capital gain		
Capital gain on sale of old machine (Note-2)		75,000
3. Income from other sources under section-62		
[1] Interest on FDR		300,000
[2] Cash Dividend income [Gross]		50,000
		840,000

B] Calculation of Tax liability

[1] On business income Taka 4,15,000 X 30% (assuming conditions to avail 27.5% tax rate not fulfilled) =1,24,500 or	124,000	
Alternative minimum tax on gross receipts @ 0.60%	453,570	
[7,50,00,000+95,000+5,00,000] = 7,55,95,000 x 0.60%		
Higher one-	453,570	
Add: Tax u/s 56 on disallowances u/s 55 = 14,10,000 X 30	423,000	876,570
[2] On capital gain @ 15% (Taka 75,000 X 15%) [note-4]		11,250
[3] On interest income @ 30% (Tk. 3,00,000 x 30%) [note-5]		90,000
[4] On dividend income @ 20% (Taka 50,000 X 20%) [note-6]		10,000
Total tax liability		**987,820**

Notes:

1) Sample Expenses:

On Turnover up to Taka 5,00,00,000 @ 1%	5,00,000
On Turnover Taka 2,50,00,000 @ 0.5%	1,25,000
Maximum limit of sample cost	6,25,000
[As claim is less than Tk. 6,25,000, so actual claim is allowed]	

2) Business profit and capital gain from sale of old machine:

Selling price	5, 75,000
Less: Written down value	(3,00,000)
Total gain or profit	275,000
Capital gain- difference between selling price and original cost	75,000
Business profit- difference between original cost and book value	2,00,000

3) Provision for gratuity is not allowed as expenses in the year when provision is made; rather it is allowed when actual payment is made.

4) Alternative minimum tax on capital gain comes at Tk. 75,000 x 0.60%=450 x 15/30=225 whereas regular tax on capital gain comes at Tk.11,250. So regular tax will be applicable as it is higher.

5) Alternative minimum tax on interest income comes at Tk. 3,00,000 x 0.60%=1,800/ whereas regular tax on bank interest comes at Tk.1,05,000. So regular tax will be applicable as it is higher.

6) Alternative minimum tax on cash dividend comes at Tk. 50,000 x 0.60%=300 x 20/30=200 whereas regular tax on capital gain comes at Tk.10,000. So regular tax will be applicable as it is higher.

Worked example 7

From the following profit & loss account of Oman Bank Ltd., a non-resident bank, for the year ended on 31/12/2022, compute total income and tax liability

Salaries and allowances -	22,00,000/-	Interest and commission-	1,20,00,000/
Interest on deposit-	40,00,000/-	Capital Gain from sale of shares of listed companies-	10,00,000/-
Royalty	3,00,000/-		
Head office exp. (as per allocation by head office)	3,00,000/-		
Bad debt-	6,00,000/-		
Provision for bad debt-	4,00,000/-		
Audit fee -	2,00,000/-		
Depreciation -	15,00,000/-		
Technical fee -	1,00,000/-		
Scholarship to poor students-	8,00,000/-		
Special reserve-	2,00,000/-		
Advertisement -	7,00,000/-		
Entertainment -	8,00,000/-		
Travelling expense: - (a) ithin the country – (b) utside the country (including head office tour) -	50,000/- 4,50,000/-		
Net profit-	4,00,000/-		
	1,30,00,000/		1,30,00,000/

Additional information:

(1) Royalty paid TK. 3,00,000/- parent company.

(2) Tax at source was not deducted from car workshop bill of TK. 2,00,000/-

(3) Provision for bad debt is within 1% of classified loan.

(4) Tax depreciation as per tax law is TK. 10,00,000/-

(5) Advertisement bill paid to advertisement agency for periodic advertisement to private TV channel. No VAT was deducted therefrom though tax at source was deducted properly.

Solution 7:

Oman Bank
Computation of total income
For the year ended on 31st Dec.2021
(Assessment year: 2023-24)

	Tk.	Tk.
A. Income from business:		
Net profit as per Profit and Loss a/c: -		400,000
Less: Capital gain from sale of shares of listed companies		(1,000,000)
Business loss:		(600,000)
Less: - Disallowances of expenditure for separate consideration:		
(1) Depreciation (for consideration as per 3rd Schedule)	1,500,000	
(2) Entertainment (for consideration as per Section 55ja)	800,000	
(3) Head office exp. (allowable up to 10% of disclosed net profit)	260,000	
(4) Technical fee (allowable up to 10% of disclosed net profit)	60,000	
(5) Overseas travelling (for consideration as per 30(k))	450,000	
(6) Royalty (for consideration as per 55uma))	300,000	(3,370,000)
Income:		**2,770,000**
Add: - Inadmissible expenditure:		
(1) Car workshop bill payment Tk. 2,00,000		
Out of total car maintenance of Tk.5,00,000, car workshop bill payment was Tk. 2,00,000 where from no tax at source was deducted. So, for non-deduction of tax at source, car workshop bill payment is disallowed as per provision of section 55 of ITA:	200,000	
(2) Provision for bad debt Tk. 4,00,000/-		
Provision for bad debt was allowable expenditure for banking companies up to assessment year 2006-07. As there is no such provision is allowable deduction u/s 49, so disallowed such provision fully–	400,000	
(3) Scholarship to poor students Tk. 8,00,000		
As it is not business-related expenditure so disallowed fully. 10% rebate facility is applicable in case of CSR if it is disbursed through Govt. approved educational institution and after fulfillment of other conditions. As there is no such information in the question so the bank will not be entitled to get 10% CSR rebate facility.	800,000	
(4) Special reserve: - Tk. 2,00,000		
Reserve is not an item of P & L. Moreover, there is no information about the nature of such reserve and whether it is Govt. approved or not. So, disallowed fully -	200,000	
(5) Advertisement Tk. 7,00,000		
Allowable fully	-	
		1,600,000
Less:		
(1) Tax depreciation (as per 3rd schedule)	1,000,000	
(2) Royalty	40,000	
(3) Overseas travelling 0.50% of disclosed turnover	60000	(1,100,000)
Income base on which entertainment will be allowed		**3,270,000**
Less: Entertainment (as per section 55)		
on 1st the 10,00,000@ 4%	40,000	
on balance 22,70,000@ 2%	45,400	(85,400)
Income from banking business		**3,184,600**

B. **Capital gain**:	
Capital gain from sale of listed companies shares	1,000,000
Total income	**4,184,600**

The calculation of tax liability	
On Tk 31,84,600 Tax @ 40%	1,273,840
On Tk.10,00,000 tax @ 10%	100,000
	1,373,840

Note: There is no separate implication of section 56 here because tax @ 40% already imposed on disallowances u/s 55.

Worked example 8:

Prime Leasing is a public limited company listed with Dhaka Stock Exchange. It has recently submitted its income tax return for the accounting year ending on 31 December 2023 showing net profit before tax of Tk. 11,37,25,000.

Further examination of the file, records and documents revealed the following:

(a) Depreciation on leased assets charged in the accounts of Tk. 3,80,50,000 and loss on disposal of leased assets was Tk. 29,88,000 this arose out of the shortage of residual value of returned or repossessed assets plus rentals received on the lease of these assets over the original cost of the assets.

(b) Provision for used assets and term finance has been made in the accounts at Tk. 51,35,500 and Tk.19,13,900 respectively. This has been provided in accordance with FID Circular No. 8 issued by the Bangladesh Bank.

(c) Tax depreciation for the relevant year is 5,85,00,000.

(d) Balances of statutory reserve and paid-up share capital on 1.1.2021 were Tk. 1,86,00,000 and Tk.12,00,00,000 respectively.

(e) Excess perquisites amounted to Tk. 6,95,000

(f) Legal expenses included Tk. 80,000 for professional fees for the acquisition of company's new office at Dhanmondi.

(g) Net profit included dividend received on investments of Tk. 19,98,000.

You are required to compute

(a) total income
(b) tax liability of the company for the relevant assessment year.

Solution 8

Prime Leasing
Assessment year: 2023-24
Computation of total income and tax liability

Particulars	**Tk.**	**Tk.**
Net income		113,725,000
Less: Dividend income (to be considered separately)		(1,998,000)
		111,727,000
Add: Inadmissible expenses		
Accounting depreciation on leased assets	38,050,000	
Disallowed loss on disposal of leased assets	2,988,000	
Provision for used assets	5,135,500	
Provision for term finance	1,913,900	
Excess perquisites as per section 55ga	695,000	
Legal fee for capital asset	80,000	48,862,400
		160,589,400
Less: Tax depreciation		(58,500,000)
Business income		102,089,400
Income from financial assets [cash dividend]		1,998,000
Total income		**104,087,400**

Tax liability computation	
Tax on dividend income (20% on 1,998,000)	399,600
Tax on balance income, Tk. 102,089,400 @37.5%	38,283,525
Total	**38,683,125**

Notes:

1. Loss on disposal of leased assets is not allowable.
2. No provision for bad or doubtful lease or finance is allowed.
3. There is no separate implication of section 56 here because tax @ 37.5% already imposed on disallowances u/s 55.

Assessment of insurance companies

It is a common knowledge that the true profit of life insurance business cannot correctly be determined under the ordinary method of accounting. Hence the Act has provided for a special method of computing the profits of a company doing insurance business. By virtue of section 47, the assessment of insurance company is completely governed by the rules contained in the Fourth Schedule of the Act. Therefore, the following provisions are implicitly excluded while computing the profits of an insurance company:

a. Sections 35 to 39 relating to the computation of income chargeable under the head "income from rent".

b. Sections 44 to 56 relating to the computation of profits and gains from business or profession.

c. Sections 57 to 61 relating to the computation of income chargeable under the head “capital gains".

d. Sections 62 to 65 relating to the computing of income chargeable under the head "income from financial assets".

e. Section 66 to 69 relating to the computation of income under the head "income from other sources".

f. Section 150 relating to the giving of credit of tax deducted at source.

Thus, the profits and gains of insurance business from all sources are to be computed artificially under one income in accordance with the provisions in the Fourth Schedule and not under different heads of income.
In the Schedule assessment of insurance business has been discussed under 3 different heads:

Para 2 : Computation of profits and gains of life insurance business
Para 6: Computation of profits and gains of other insurance business
Para 7: Profits and gains of non-resident person

Assessment of life insurance business:

The profits and gains of life insurance business are to be taken as the greater of the following:

(a) Net external incomings i.e., gross external incomings of the income year from that business less the management expenses of that year;

(b) Annual average surplus, i.e., the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation in respect of the last inter valuation period ending before the commencement of the assessment year subject to the following exclusions.

(i) any surplus or deficit included therein which was made in any earlier inter valuation period and

(ii) any expenditure or allowance which is not deductible under the provisions of sections 39to 54 in computing income chargeable under the head 'Income from business or profession'.

Thus, the assessable profits under the first method would vary from year to year. The annual average actuarial surplus under the 2nd method would be constant during the inter-valuation period.

Gross external incomings:

The expression 'gross external incomings' is defined in Para 9 of the Schedule as meaning the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived including profits from revisions and on the sale or granting of annuities but excluding the following:

(a) premium received on policy;

(b) interest and dividends in any annuity funds; and

(c) profits on the realization of investments

Management expenses:

The expression "management expenses" has been defined in Para 9 of the Schedule as meaning the full amount of the expenses including commissions, incurred exclusively for the purpose of life insurance business plus a fair proportion of the expenses incurred in the general management of the whole business. The following expenses are excluded from the above definition:

(a) bonuses or other sums paid to or reserved on behalf of policyholders

(b) depreciation of and losses on the realization of investments and

(c) any other expenditure or allowance other than those allowed U/S 50.

However, the maximum limit of such management expense is prescribed in Para 2:

(a) 7.5 percent of the premium on single premium life insurance policies,	Plus
(b) 7.5 percent of the first year's premiums on policies under which less than 12 annual premiums are payable,	Plus
(c) 90 percent of the first year's premium in respect of all other life insurance policies,	Plus
(d) 12 percent of all renewal premiums received during the income year.	

Annual average surplus:

The other alternative method of computing profits of a life insurance business is based on annual average surplus determined by the actuarial valuation. Subject to certain adjustments the actuarial valuation forms the basis of computation of profits or gains.

(a) Amount paid to or reserved for or expended on behalf of the policyholders:

The first adjustment to be made to the surplus is to allow 75% of the amounts paid to or reserved for or expended on behalf of policyholders as a deduction there from. If the amount so kept for policyholders which was allowed as a deduction in the past is not actually so paid, the amount so allowed in the past will be added back to the profits for the period in which the amount ceases to be so reserved.

(b) Appreciation or depreciation of investments:

Any amount either written off or reserved by the insurance company in the accounts or through the actuarial valuation balance to meet depreciation or loss on the realization of investments should be allowed if the same is wiped out by a rise in a subsequent year either within or after the same inter-valuation period.

(c) Interest on tax free Government securities

Interest received in respect of any securities of the Government which have been issued with the condition that interest thereon shall not be liable to tax.

Credit for tax deducted at source:

Where for any year an assessment of the profits and gains of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding 12 months, then in computing the tax payable for that year, credit for tax deducted at source shall not be given u/s 150 for the tax paid in the income year, but credit shall be given for the annual average of the tax paid from interest on securities or otherwise during such period.

Worked example 9

According to the last actuarial valuation at 31 December 2022, the Pioneer Life Insurance Co. Ltd. had a surplus of Tk. 10,00,000. There was a deficit of Tk. 3,00,000 in the preceding actuarial valuation. 60% of the surplus was reserved for bonus to the policyholders. The company had the following income in the income year 2022:

1.Premium Tk. 20,00,000

2.Interest on tax free government securities Tk. 1,00,000

3.Dividend Tk. 1,50,000

4.Fines and fees Tk. 80,000

5.Profits on sale of shares Tk. 90,000

6.Profits on granting annuities and reversion Tk. 1,50,000

Management expenses claimed and admitted by the DCT are Tk. 2,50,000. During the undervaluation period, the company paid income tax at source of Tk. 3,00,000. Some of the share investments have depreciated in value during the year by Tk. 60,000. Determine the income of life insurance business of the company for the income year 2022.

Solution 9

Pioneer Life Insurance Co. Ltd.
Assessment year: 2023-24

Actuarial surplus:	Amount (Tk.)
Surplus as per 2022 valuation	10,00,000
Add: Deficit on earlier valuation	3,00,000
	13,00,000
Add: Income tax deducted at source	3,00,000
	16,00,000
Less: Reserve for bonus (75% x 10,00,000 x 60%)	4,50,000
Adjusted surplus	11,50,000
Annual average surplus	2,30,000
Add: Profit on sale of shares	90,000
	3,20,000
Less: Depreciation of share investment	60,000
Adjusted annual average	2,60,000

Gross external earnings

Interest on securities	1,00,000
Dividend	1,50,000
Fines and fees	80,000
Profit on annuities and reversions	1,50,000
	4,80,000
Less: Management expenses	2,50,000
Net external earnings	2,30,000

For income tax purpose for the assessment year 2023-24, adjusted annual average of Tk. 2,60,000 being higher of the two would be the assessed amount.

Assessment of General Insurance Company

(1) Forth Schedule governs the computation of income of insurance business both life and general.

(2) Admissibility of business expenditure under section 50 and inadmissibility/ceiling of admissibility under section 55 apply in general insurance business too.

(3) Para 6(2) of Forth Schedule permits a general insurance company to transfer 10% of the net premium income of that year to a fund created to meet exceptional losses and such transfer is an admissible deduction.

(4) Para 6(3) of Forth Schedule sets the mechanism for the upper limit of the fund which is, the amount of the fund should be equal to the premium income of the year or average premium of the immediate 3 years preceding whichever is higher.

Worked example 10

Following is the profit and loss account of Sonar Bangla Insurance Co. Ltd. for the year ended on 31 December 2022:

	Amount		**Amount**
Directors' fee	48,000	Interest, dividend, rent	1,97,26,029
Audit fees	1,35,000		
		Profit transferred from other revenue accounts	1,72,73,952
Registration, renewal etc.	2,05,331		
Advertisement	32,40,251		
		Other Income	9,832
Depreciation	7,92,127		
Interest on overdraft	1,81,198		
Balance transferred to Appropriation Account	3,23,57,906		
	3,70,09,813		3,70,09,813

Further scrutiny of the relevant papers, files and documents revealed the following:

(1) Gross premium received during the year was Tk.12,56,07,426 and in three years immediately preceding were Tk. 13,12,12,308, Tk. 13,68,87,085 and Tk. 13,55,80,109 respectively.

(2) Net premium income of the year was Tk. 64441296 and the balance brought forward on reserve for exceptional loss was Tk.10,19,45,720.

(3) Accounting depreciation Tk. 7,92,127 whereas as per tax law this has been computed at Tk. 9,19,029.

(4) Gratuity charged in the accounts Tk. 7,79,845 but actually paid Tk. 6,25,860.

(5) Analysis of the dividend, rent etc. revealed that an amount of Tk. 6488284 being interests on various bank deposits has been included therein.

Calculate taxable profit and tax liability of the company for the relevant assessment year:

Solution 10

Sonar Bangla Insurance Co. Ltd.
Assessment year: 2023-24

Particulars	Amount (Tk.)	Amount (Tk.)
Net profit as per accounts		3,23,57,906
Less: Income for separate treatment		
Dividend	1,32,37,745	
Interest	64,88,284	1,97,26,029
		1,26,31,877
Add: Inadmissible deductions		
Accounting depreciation	7,92,127	
Gratuity provision	7,79,845	15,72,022
		1,42,03,899
Less: Admissible expenses		
Tax depreciation	9,19,029	
Gratuity actually paid	6,25,860	
Reserve for exception	64,44,130	
losses		79,89,019
Business income		62,14,880
Dividend income		1,32,37,745
Income from financial assets		64,88,284
Total income		2,59,40,909

Computation of tax liability

Tax on dividend income	1,32,37,745	@ 20%	26,47,549
Tax on business income	62,14,880	@ 37.5%	23,30,580
Tax on financial assets	64,88,284	@ 37.5%	24,33,107
Total tax liability			**74,11,236**

Notes:

(1) Dividend is taxable @20%

(2) Gratuity actually paid is allowed.

(3) Reserve for exceptional losses: -

	Current year	Preceding three years		
		2020	2019	2018
Gross premium income Average of 3 years	12,56,07,426	13,55,80,109	13,68,87,085	13,12,12,308
		Tk.13,45,59,834		

Since average of three years premium income is higher than the premium of Tk.12,56,07,426 (current year's gross premium), the reserve for exceptional losses can be built up to that amount.

Opening balance in exceptional loss reserve TK. 10,19,45,720

Transfer admissible - l0% of net premium income of Tk. 6,44,41,296	64,44,130
Balance carried forward	10,83,89,850

Non-resident carrying insurance business in Bangladesh: (Para 7) the profits and gains of the branches in Bangladesh of a nonresident insurance company may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its premium income derived from Bangladesh bears to its total premium income. The total world income of nonresident life insurance companies whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these paragraphs for the computation of profits and gains of the life insurance business carried on in Bangladesh.

For example, ALICO Bangladesh Ltd. is incorporated in USA and it carries on insurance business in Bangladesh for several years through branches. For the year ended 31 March 2019 its audited world income has been taka 950 million against a total premium income for the same year of taka 3,250 million. In Bangladesh it earned premium income of taka 60 million. Therefore, profits earned in Bangladesh is computed as taka 17.54 million (950/3250×60).

Worked example 11

ABC Ltd., a publicly traded company incorporated and operating in Bangladesh, is 70% Bangladeshi owned and is a manufacturer of refrigerators, freezers and air-conditioners under the brand name ABC which is registered as a trade mark in Bangladesh. The company is the owner of the brand. The profit and loss account for the year ended 31 December 2022 is as follows:

Particulars	**Notes**	**Tk.**
Turnover		161,596,000
Add: Interest income	(1)	308,000
		161,904,000
Less: Cost of sales	(2)	115,416,000
		46,488,000
Less:		
Salaries, wages, and bonuses	(3)	7,040,000
Employees Provident fund	(4)	1,536,000
Donation	(5)	20,000
Advertising	(6)	7,398,000
Rental of premises	(7)	1,858,000
Travelling	(8)	1,500,000
Foreign exchange loss	(9)	280,000
Maintenance of plant and machinery	(10)	232,000
Bad and doubtful debts	(11)	2,038,000
Freight and insurance		3,044,000
Depreciation		1,880,000
Motor vehicles expenses		582,000
		27,408,000
Net profit before tax		**19,080,000**

Notes:

(1) Interest income is from a fixed deposit placed with a bank in Bangladesh. The interest was received during the year and has been grossed-up in the accounts. Interest income includes Tk.28,000 (gross) earned but received by ABC Ltd. after 31 December 2022.

(2) Cost of sales is arrived at after crediting Tk.80,000 in respect of the cost of goods manufactured by the company, which were withdrawn from stock for use of fixed assets by the company. The normal selling price was Tk.120,000.

(3) Salaries, wages, and bonuses include basic salary of Tk.64,000 paid to CFO in cash for the month of January 2022, pension of Tk.20,000 and contribution to the Gratuity Fund(unapproved).

(4) The Employees Provident Fund contributions by the employer and employee each are @10% for staff and 12% for executives.

(5) Donation is in respect of contributions made to a fund-raising campaign organized by a distributor of the ABC brand of goods.

(6) **Advertising i**ncluded is a sum of Tk.54,000 incurred on advertising the ABC brand of goods on the internet via a host website located in Dhaka. The goods are of export quality standard. No income tax and VAT were deducted from the payment, as the company was not sure about the requirements of such deduction.

(7) **Rental of premises i**ncluded in the rental is a sum Tk.50,000 paid in respect of the early termination of the lease of a building which the company vacated in September 2022. The lease was to have run for another 5 years. The building was no longer suitable as a showroom for the company's goods due to the construction of a toll plaza.

(8) **Travelling includes:**
(i) Vacation airfare and hotel accommodation costing Tk.36,000 for important overseas customers.
(ii) Reimbursement to the directors of the company of salaries of Tk.200,000 and Employees Provident Fund contributions of Tk.25,000 in respect of drivers employed by the directors.

(9) The foreign exchange loss is in respect of the purchase of component parts for manufacture. The realized loss amounts to Tk.14,000 only.

(10) Maintenance of plant & machinery includes installation cost amounting to Tk.34,000.

(11) Bad and doubtful debts comprise:

Bad debts recovered (238,000) Specific provision brought forward (1,902,000) General provision brought forward (2,410,000) Bad debts written off 240,000 Specific provisions carried forward 2,750,000 General provisions carried forward 3,598,000 2,038,000 The specific provision carried forward includes a sum of Tk.26,000, being the balance of a personal loan granted to a director who has now resigned from the Board.

(12) Depreciation allowances have been computed at Tk.1,644,000 for the assessment year 2023-24, but without considering the following acquisitions:

Machine:

On 14 August 2022 the company purchased a machine at a cost of Tk.366,000. The sum of Tk.34,000 mentioned in note (10) was incurred on preparing the site for installation of this machine. The machine commenced to be used for the business two weeks after acquisition.

Motor car: A new car costing Tk.44,00,000 was purchased on 9 July 2022 for the general manager.

(13) Dividend has been paid @ 30% (20% cash, 10% bonus) for the year ended 31 December 2022

(14) Capital loss of Tk.1,000,000 carried forward from the assessment years as follows:

2015-16 Tk. 200,000
2016-17 Tk. 300,000
2017-18 Tk. 400,000
2018-19 Tk.100,000
Total Tk.10,00,000

The loss carried forward from the assessment years includes:

(i) 2015-16: Tk.100,000 depreciation allowance.

(ii) 2018-19: Tk.50,000 loss under the head “Capital gains”.

All other losses carried forward relate to business income.

Requirements:

a) Compute total income for the assessment year 2023-24.
b) Compute total tax liability for the year.

Solution 11

ABC Ltd.
Accounting Year ended on 31 December 2022
[Assessment Year: 2023-24]

Particulars	**Taka**	**Taka**
Net Profit before tax		1,90,80,000
Less: Interest Income for consideration under appropriate head:		-3,08,000
Net Profit from business as per audited statement of accounts		1,87,72,000
Add: Items of expenditure for separate consideration:		
Accounting Depreciation	18,80,000	
Foreign exchange loss	2,80,000	21,60,000
Add: Inadmissible expenses:		

Salary due to paid in cash u/s 55ka	64,000	
Donation to unapproved sector	20,000	
Advertising without TDS u/s 55ka	54,000	
Contributions to unrecognized provident fund [note-4]	15,36,000	
Reimbursement of director's driver salary and P.F.	2,25,000	
Installation cost of machinery (being capital nature)	34,000	
Provision for bad and doubtful debts [note-5]	22,76,000	42,09,000
		2,51,41,000
Bad debts recovered		2,38,000
Admissible income/(expenses):		2,53,79,000
Written off provision for doubtful debts	-2,40,000	
Realized foreign exchange loss	-14,000	-2,54,000
Income from business or profession before considering depreciation, unabsorbed business loss and unabsorbed tax depreciation loss		2,51,25,000
Tax depreciation [note-6]		-20,84,000
Profit after depreciation		**2,30,41,000**
Set-off unabsorbed depreciation loss [note-7]		-1,00,000
Set-off unabsorbed business loss [note-8]		-4,50,000
Income from business or profession		**2,24,91,000**
Income from financial assets		
Interest income		3,08,000
Total income		**2,27,99,000**
Income tax payable on total income @20%		45,59,800
Income tax deducted at source [note-10]		-28,000
Net tax payable		**45,31,800**

Worked example 12

AR Ltd. (petitioner# 1) and BA Ltd. (petitioner# 2), being PLC (non-publicly traded), carrying on business as mobile phone operators, obtained court order for a horizontal amalgamation" **Exhibit 1** for further details on ownership structure and other briefs on scheme. As per approved amalgamation scheme, petitioner 2(transferor, BA Ltd.) shall be amalgamated into petitioner# 1(transferee, AR Ltd.) to enhance scale of operations and optimize resource utilization. Cut-off for both is Dec 31. Extracts:

AR Ltd. **BA Ltd.**

Income Statement **For the year ended 31-12-2022**	**Tk. In '000**	**Income Statement** **for the year ended 31-12-2022**	**Tk. In '000**
Revenue	51,000,000	Revenue	13,000,000
Cost of revenue	(29,000,000)	Depreciation (network)	(5,000,000)
Gross profit	**22,000,000**	Other Network Ops cost	(10,000,000)
Admin expense	(4,000,000)	**Gross Profit/ (Loss)**	**(2,000,000)**
S&D expense	(6,000,000)	Other Income, net	100,000
Operating expense	(4,000,000)	G&A expense	(2,000,000)
Profit from Ops	**8,000,000**	S&D expense	(2,000,000)
Net finance expense	(100,000)	**Operating profit/ (loss)**	**(5,900,000)**
Non-ops income	400,000	Finance income	50,000
		Finance expense	(2,000,000)
		Foreign exch. gain/ (loss)	(300,000)
Profit before tax	**8,300,000**	**Profit before tax**	**(8,150,000)**

Statement of Financial position (31-12-2022) reflect BA Ltd. (in 000) R/E (taka 60,000,000), equity (taka 14,000,000).

Further Findings from the records of the income year of AR LTD.:

i) Operating expense includes Tk. 500,000 paid to a lawyer for services involved in acquisition of Khulna office.
ii) Representative of 2 shareholding companies (AR (Pvt.) Ltd. and DNT) visited Dhaka when the talk of merger was brewed. Company paid Tk. 2,500,000 to Radisson on a/c of visITArs, charged to admin expense.
iii) Non-ops income includes amount after TDS Tk. 100,000 paid to a valuer for valuation of assets disposed.
iv) Admin expense includes taka 150,000 interest levied for late filing of tax return and non-payment of advance tax.
v) Net finance expense includes taka 500,000 paid as interest on a/c of a deferred payment scheme for acquiring imported cellular equipment which are already received and installed.
vi) Cost of revenue includes accrual taka 5,000,000 BTRC annual license fee, without TDS, payment due by Jan/2021.
vii) Operating expense includes taka 150,000 paid to a stationery goods supplier, without TDS.
viii) Operating expense includes Tk. 500,000 paid to a vendor without deducting/paying VAT thereon.
ix) Company missed to write-off a loss of taka 500,000/= on capital assets sold during the income year. An amount of depreciation taka 300,000/= was charged in income year on the same capital asset sold.

Further findings from the records of the income year of BA Ltd.:

i) Finance expense includes Tk. 700,000/= interest on O/D taken to pay income tax
ii) Foreign exchange loss represents loss due to rate slump between time gap of approved foreign loan and receipt.
iii) Company changed stock valuation method for mobile set stock. AudITAr did not agree and qualified the report quantifying the resulting missed revenue Tk. 2,500,000.

iv) Tk. 1,000,000 incurred for renovation of rented site offices in the country and charged to S&D expense.

v) Included in G&A expense, fees Tk. 500,000 paid to audITAr for valuation of fixed assets in connection with the preparation leading to primary meeting of the merger.

vi) G&A expense includes taka 2,500,000 on a/c of transfer of overdue accumulated contribution to RPF (both employer and employee). Company could not transfer contribution timely for cash strain overriding the PF Rules.

vii) Other network operating expense includes taka 500,000 forfeited advance paid for acquiring a new office floor.

viii) Tk. 200,000 accrued as car rent from car rental company reported under S&D expense, without TDS.

ix) During the income year, company disposed of a capital asset for taka 2,500,000. Carrying value and the tax WDV (@ 10%) of the asset at disposal were taka 1,000,000 and taka 800,000 respectively. A new asset was purchased for taka 5,000,000 to replace the old asset in the same year. Depreciation on new asset was provided wrongly at 20%.

x) G&A expense includes taka 1,000,000 for directors traveling to Singapore on a new business negotiation, lump sum payment of taka 1,000,000 as inducement to hunt a prospective employee from a competITAr.

xi) Fees Tk. 500,000 paid to a lawyer to increase authorized capital before merger scheme.

Requirements:

a) Calculate total income and tax payable of AR Ltd. for the income year ended 31.12.2022. Explanations/assumptions/relevant sections/case ref, if any, in support of your adjustments should be given.

b) Calculate total income of BA Ltd. for income year ended 31.12.2022. Explanations/assumptions/relevant sections/case ref, if any, in support of your adjustments should be given.

c) Consider relevant information above and in **Exhibit 2** relating to 'Slump Sale' of 'S' unit of BA Ltd. to MP Ltd. before the 'Effective Date' of amalgamation. Compute capital gain and tax liability on 'S' unit sales.

d) Consider **Exhibit 1.** Write your views in the light of the I.T. Act:

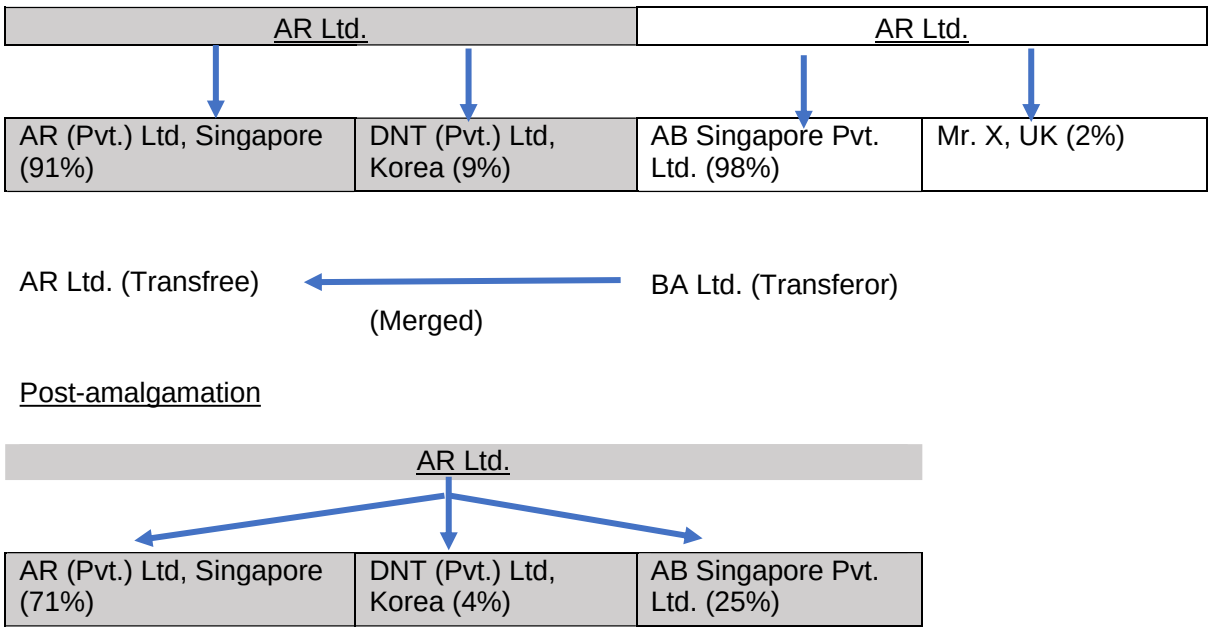
(i) Whether difference shall attract tax if value of shares received from AR Ltd. by shareholders of BA Ltd. is more than the value of net assets of BA Ltd. amalgamated with AR Ltd.

(ii) Whether AR Ltd. is entitled to carry forward losses/unabsorbed depreciation of BA Ltd. for set-off against taxable profit of the transferee after amalgamation.

EXHIBIT 1 (In connection with Question No. 1)

Court approved a scheme of amalgamation under Companies Act 1994 between AR Ltd. (Petitioner 1) and BA Ltd. (Petitioner 2). Currently, AR Ltd. (Petitioner 1) is owned by a Singapore-based company, AR (Pvt.) Ltd. (91%) and a Korean company, DNT (9%). BA Ltd.

(Petitioner 2) is owned by AB Singapore (Pvt.) Ltd. (98%) and Mr. X of UK (2%). Petitioner 2(transferor) shall be merged into Petitioner 1(transferee). Pre-merger and post-merger ownership structure are as follows:



Relevant two extracts from approved Amalgamation Scheme:
i) All Assets and liabilities of amalgamating company (Transferor) shall be vested on amalgamated company (Transferee). As part of capital reorganization, 1,300,000,000 Ordinary BDT 10 shares in transferee company shall be issued to shareholders of transferor; resulting 25% holding for transferor company's shareholders in transferee company's reorganized capital. Assume, shareholders of transferor company with >9/10th in value of shares in transferor company become shareholders of the amalgamated company. Difference of net assets of transferor company and value of agreed issue in transferee company to shareholders of the transferor company shall be transferred to Capital Reserve/Goodwill. ii) Transferee company shall be entitled to claim benefit of brought forward losses or/and unabsorbed depreciation, as admissible under the provisions of Income Tax Act to the extent applicable, of the transferor company and to set off against the taxable profit of the transferee company after official amalgamation.

EXHIBIT 2

SIM Kitting service unit 'S' of BA Ltd.:
BA Ltd. (transferor) has a small warehouse SIM kitting unit 'S' within its operation. Amalgamation deal agreed not to carry on such non-core operation with the merged entity and concluded that the deal steering committee would sell 'S' unit and the resulting tax, if any, shall be settled by transferee company. Within BA Ltd. Balance Sheet, assets and liabilities on a/c of 'S' unit are (BDT): Non-current liability 1,500,000, Fixed Assets 4,000,000 which includes 1,000 sft. Warehouse land space bought for BDT 1,000,000 in January 2015 (revalued BDT
1,500,000 in Jan/2016), furniture & fixture net 300,000 (gross 500,000), electrical appliance net 320,000 (gross 400,000) and balance is other fixed assets WDV. Current assets: Inventory of SIM and kitting materials BDT 250,000, Bank balance (150,000). Merger steering committee has done a slump sale deal (lock, stock & barrel) with MP Ltd. to sell Unit 'S' operations of BA Ltd. in April 2022 (before 'Effective Date' of Amalgamation). Consideration is BDT 5,000,000/=. 'S' unit capital assets are depreciated under section 55. Committee paid a lawyer net-of-tax fee BDT 50,000 for deal advice.

Solution 12(a)

Computation of total income and tax liability AR Ltd.
Income year ended 31.12.2022. A/Y: 2023-24

Net profit before tax		8,300,000
ADD: Inadmissible expenses:		
Lawyer payment for acquisition of Khulna office [Legal exp. is allowable exp. as per sec.55 of ITA, 2023]	-	
Payments to Radisson for Shareholders' reps [Allowable as the exp. is not personal, not capital rather related to business]	-	
Payment to valuer of assets disposal [Payments linked to capital assets sold]	100	
Interest for late return filing and default in advance tax payment [Any exp. for violation of law is not allowable exp.]	150	
Interest on assets acquired under deferred scheme [To be disallowed being capital exp.]	500	
BTRC annual license fee [Cannot be disallowed on the ground that tax was not deducted as it would be deducted at the time of payment]	-	

Stationery purchase through supply [To be disallowed u/s 55ka for non-TDS]	150	
Vendor payment without VAT deduction [Not to be disallowed u/s 55ka for non VDS wef the AY: 16-17]	-	
Depreciation of sold assets [Depreciation not allowed in the year of disposal]	300	1,200
		8,301,200

Note:
There is no scope to consider loss on sale of assets Tk. 500,000 due to lack of information relating to written down value and sales price of assets already sold.

Tax calculation

Tax @ 45% (non-listed mobile phone Operator Company)	**3,735,540**

Solution 12(b)

Computation of total income and tax liability BA Ltd
Income year ended 31.12.2022. A/Y: 2023-24

		Tk. '000
Net profit before tax		(8,150,000)
ADD: Inadmissible expenses:		
Interest on O/D [In case of cash shortage, company can borrow money to run business including tax payment etc. As it is business related exp. so it is allowable. Tax is not allowable exp. but interest on loan to pay tax is allowable exp.]	-	
Exchange loss [Bonafide and actual and as such allowable u/s 55]	-	
Missed revenue for stock valuation method change [Assumed that stock valuation method has been changed & Recognized as per BAS]	-	
Renovation of site office. [To be added as it is capital exp.]	1,000	

Valuation fee paid to auditor in connection with merger [Not connected with day to day business of the company]	500	
RPF overdue contribution payment [Action of overdue payment lies under separate PF Rules, Actual amount whenever paid is admissible]	-	
Forfeited advance for cancellation of agreement [Not to be allowed as business exp. as it was incurred for violation of terms and conditions]	500	
Car rent payment accrued [To be allowed as business exp. because tax to be deducted at the time of payment not based on accrual]	-	
Depreciation on new asset [Dep. Claimed Tk.50,00,000x20%=10,00,000. Assumed that purchased price of the old machine was Tk.20,00,000 (as it was not given in the question). So actual tax dep. to be allowed (Tk.50,00,000-5,00,000=45,00,000x20%=9,00,000). So excess claim Tk.10,00,000-9,00,000=1,00,000 to be disallowed.	100	
Inducement payment to hunt staff	1,000	
[Illegal exp. not allowable at legal business]		3,100
Total income		**(8,153,100)**

Solution 2(c)

Computation of Gain and Tax Liability on 'S' Unit Slump Sale to MP Ltd.

Sales proceeds			5,000,000
Less: Net worth of 'S' unit		1,000,000	
Floor space value (ignoring revaluation)			
WDV of other assets:			
Furniture & Fixture (gross 500,000)		300,000	
Electric appliance (gross 400,000)		320,000	
Other fixed assets (40,00,000-15,00,000-3,00,000-3,20,000)		1,880,000	
Inventory		250,000	
Bank balance		(150,000)	
Value of total assets		**3,600,000**	
Less: Liabilities			
Liability of 'S' unit	1,500,000		

Legal expense gross [50,000x100/90]	55,555	1,555,555	(2,044,445)
Capital gain			2,955,555
Tax @15%			**443,333**

Amalgamation of BA Ltd. with AR Ltd. under the approved scheme meets condition of amalgamation as per section 2(18) of IT Act. Although all assets and liabilities of BA Ltd. get vested on the AR Ltd., such amalgamation does not meet definition of 'transfer' u/s 2(93) of the law. There is no sale of assets in amalgamation, nor any price paid by AR Ltd. for the assets vested. So, there will be no capital gain tax on such transfer or even if the value of the shares issued to the shareholders of BA Ltd. is more than the net value of assets vested in the merged transferee.

AR Ltd. is entitled to carry forward the losses and unabsorbed depreciation of BA Ltd in the income year in which the amalgamation took place as per schedule 8 of the Act.

Worked example 13

XYZ Ltd., a private company, is engaged in business segments that cover

(i) mfg/trading of ceramic tiles,
(ii) mfg/export of leather products and
(iii) International trading.

Net profit of the company for the year ended 30.06.2023 is taka 50,00,000 after giving effect of the following items as appropriate in the books:

i) License fee taka five lacs incurred for obtaining five-year franchise on 15 July 2022
ii) Paid cash Taka 50,000 to transport operator, Taka 150,000 to chemical supplier used in tiles mfg.

iii) Rent taka five lacs received from letting out a part of its office premises. Municipal tax, in respect of the said part of the building, amounting to taka 10,000.

iv) Taka three lacs, being loss due to destruction of machinery caused by a fire. The insurance company compensated taka two lacs against the fire loss claim.

v) Taka 4 lacs and 1 lac being amounts waived by Janata Bank Ltd. out of principal and arrear interest respectively in one-time settlement. Loan was obtained for working capital need five years back.

vi) Dividend of Tk. 10,000 from Dell Ltd. on 1,000 equity shares of Tk. 10 each purchased at Tk. 100 per share on 10th October 2020. Dividend declared is 100%, the record date being 01.12.2022. Shares were sold on 01.03. 2023 at Tk. 80 per share. Loss of Tk. 20,000 has been debited to PL a/c.
vii) Taka 50,000 paid to vendor of office supplies on which VAT was not deducted.
viii) Depreciation on tangible fixed assets taka one lac including taka 50,000 on assets revaluation.
ix) Tk 50,000 compensation paid to UK supplier for cancellation of machinery import contract from UK.
x) Provision for deferred tax taka 1,00,000.

Additional Information for the accounting year ended on 30.06.2023:

a. Depreciation on tangible fixed assets for the income year (relating to units other than trading unit) as per income tax rules taka 1.75 lac.

b. Company obtained a loan of taka two lacs from ZXY Pvt. Ltd. in which it holds 30% voting rights. Accumulated profits of ZXY Pvt. Ltd. on the date of receipt of loan was taka 50,000.

c. Company exports leather products to Spain. Balance Sheet (General Reserve: Surplus on Devaluation) shows a credit of taka 1,75,000, amount realized and brought in the income year from a Spanish customer as surplus on a/c of the devaluation of BDT in 2023.

d. Company suffered heavy loss in its international trading segment. It was closed and the fixed assets linked to this trading unit were sold out. Company claimed unabsorbed depreciation (on a/c of trading unit assets) of taka 50,000 in the Return of income. It's not debited to PL a/c.

e. Under a debt restructuring with Agrani bank, the company converted arrear interest taka 3,00,000 on term loan into a new term loan with a revised repayment schedule. Company paid taka 50,000 towards such funded interest during the year. Entire taka 3,00,000 debited to PL a/c.

f. Provision for bonus for the income year ended 30.06.2023, disallowed in same income year, paid during the year ended 30.06.2023 taka 1,00,000.

g. Assessed brought-forward losses and unabsorbed depreciation as follows:

Income Year	**Losses Brought Forward**	**Unabsorbed Depreciation**
2019-20	2 lacs	1 lacs
2020-21	----	3 lacs
2021-22	4 lacs	1.5 lacs
Total taka	**6 lacs**	**5.5 lacs**

h. **Tannery at Hazaribag:** In connection with its leather manufacturing unit, XYZ Pvt. Ltd. operates a tannery at Hazaribag. Complying the court decree involving a case with the Government, Company transferred its tannery unit to Savar in which it incurred an expenditure approx. taka 25,00,000 for transfer of entire unit that includes sheds, machineries, equipment, raw material and finished leather.

Company also incurred taka 5,00,000 as legal fees as a member of Tannery association to contest the court case which it lost. These payments shall hit accounts of the current income year.

Planned Expansion on a Retailing unit:

Company's ceramic tiles are not selling that well through its dealers. Management of XYZ Pvt. Ltd. identified the probable causes to such slide in business. Management considers that a watertight retailing entity with selling focus may make a turnaround. Being tax manager of XYZ Ltd, you are tasked to bottom up a report to management on '**optimum capital structure'** for a new retailing unit which maximizes the wealth and minimizes the cost of capital. Your look out is to strike a balance among risk, cost, control and tax consideration arriving at a most tax-efficient model. Estimated initial fund required is taka One crore.

You are aware that BSEC introduced BSEC (Alternative Investment) Rules 2015 to open up Private Equity and Venture Capital (VC) Firm operations. Management spoke to a VC firm who agreed to provide equity-linked debt. Available sources are 100% equity, or a tax-efficient mixture of equity, VC Firm borrowing (interest 8%) and bank loan (interest 10%). Expected ROI (EBIT basis) is 20%. Dividend trend in the same sector is 15%, assume tax rate 35%.

Requirements:

a. Compute total income of XYZ Ltd. for Assessment Year 2023-24. Show reasons for treatment.

b. With respect to tannery unit transfer, give your comment with explanations on whether company can claim deductions of taka 25,00,000 and taka 5,00,000 in the current income year tax return.

c. Suggest as a tax planner most tax-efficient and above-the-dividend-trend alternative for new retail entity supported by detailed computations. Work out on three given alternatives (A: 100% equity, B: 40% equity+40% VC Debt+20% loan, C: 20% equity+30% VC Debt+50% loan).

Solution 13[a]

ASSESSEE: XYZ Pvt. Limited
Computation of Total Income
Income Year Ended on 30.06.2022. [Assessment Year: 2023-24]

A. **Income from Rent:**			
Annual Value from premises rental (assumed reasonable)		500,000	
Less:			
[1] Repairs & maintenance 30% of A.V.	150,000		
[2] Municipal tax	10,000	160,000	**340,000**
[Being permissible allowance without proof of actual payment]			
B. **Income from Business:**			
Net Profit as per PL a/c		5,000,000	
LESS: Income for consideration at separate head:			
[1] Rental income (for consideration at HP income head)	500,000		
[2] Interest waiver by bank (as it is not income)	100,000		
[3] Cash dividend (for consideration at other income head)	10,000	(610,000)	
ADD: Inadmissible expenses			
[1] 5 year's License fees paid for franchise	500,000		
(Amortization will be allowed as per 3rd Schedule)			
[2] Loss on destruction of machinery (section 50)	200,000		

(Being actual loss Tk.100,000 but claimed Tk.3,00,000)			
[3] Accounting dep. (For separate consideration)	100,000		
[4] Compensation paid to UK suppliers (for violation of contract)	50,000		
[5] Provision for deferred tax (no such provision is allowable u/s 50)	100,000		
[6] Capital expenditure for shifting tannery to Savar	2,500,000		
[7] Municipal tax (for consideration at HP income head)	10,000		
[8] Capital loss on sale of shares (as not related to business)	20,000		
[9] Interest under debt reconstruction of Agrani Bank [note-5]	300,000	3,780,000	
LESS: Items to be allowed:			
[1] Amortization on License Fee (3rd Sch)	100,000		
[2] Tax depreciation as per 3rd schedule	175,000	(275,000)	
Income from Business		**7,895,000**	
Less: Carried forward of business loss and depreciation loss		(1,150,000)	**6,745,000**
C. Capital Gain :			
Share transfer			
Proceeds from share sale		80,000	
Less: Cost of acquisition		(100,000)	
Loss on sale of share (not to be set-off)		(20,000)	-
D. Income from financial assets			
[1] Cash dividend income from Dell Ltd.		10,000	
Less: Exempted		(10,000)	-
[2] Deemed dividend u/s 2(81) for taking loan from ZXY Ltd. (Maximum up to accumulated profit of Tk. 50,000)			**50,000**

Total income	**7,135,000**

Note:

[1] There is no violation of section 55(da) of ITA, 2023 for cash payment of Taka 50,000 to transport operator and Taka 150,000 to chemical (raw material) supplier used in tiles mfg. and accordingly not disallowed u/s 55(da).

[2] There is no violation of section 55(ka) of ITA, 2023 for non-deduction of VAT at source Tk. 50,000 paid to vendor of office supplies and accordingly not disallowed u/s 50(ka).

[3] Provision for bonus taka 1,00,000 was disallowed earlier year. This year though paid but not reflected in this year's accounts as it is earlier year's expense. There is no provision to allow it as this year's expense u/s 50 of ITA, 2023. So, no tax treatment needed this year.

[4] Company claimed unabsorbed depreciation (on a/c of trading unit assets) of taka 50,000 in the Return of income but not debited to PL a/c. No action is required as it is not allowable as per 3rd schedule.

[5] Under a debt restructuring with Agrani bank, the company converted arrear interest taka 3,00,000 on term loan into a new term loan with a revised repayment schedule. Company paid taka 50,000 towards such funded interest during the year. Entire taka 3,00,000 debited to PL a/c.
Nothing will be allowed further as it was allowed in the relevant income year u/s 49 on payable basis.

[6] Legal fee against Govt. decision to move tannery to Savar is allowable expenditure assuming that the cost of the case was borne by the tannery association as per verdict of the honorable court. So, it will not matter whether they win or lose. The expenditure is fully related to business and accordingly allowable expenditure.

[7] There is no tax implication of Tk.1,75,000 brought in the income year from a Spanish customer as per 6th Schedule (Part-A) para-17 assuming that it was brought through official channel.

Solution 13[b]

[1] Expenditure relating to shifting/relocating tannery to Savar is capital in nature. So, it is not allowable expenditure as per section 49 of ITA, 2023

[2] Legal fees against Govt. decision to move tannery to Savar is allowable expenditure assuming that the cost of the case was borne by the tannery association as per verdict of the honorable court. So, it will not matter whether they win or lose. The expenditure is related to business and accordingly allowable expenditure.

Solution 13[c]

PARTICULARS		ernative A Taka	ternative B Taka	ternative C Taka
Share Capital		10,000,000	4,000,000	2,000,000
Bank Loan			2,000,000	5,000,000
VC Firm Debt			4,000,000	3,000,000
Total investment		10,000,000	10,000,000	10,000,000
Debt-Equity ratio				

Return on Investment (EBIT basis)	20%	2,000,000	2,000,000	2,000,000
LESS:				
Bank loan interest	10%	-	200,000	500,000
VC Firm Debt	8%	-	320,000	240,000
Total		-	520,000	740,000
Net Income		2,000,000	1,480,000	1,260,000
Income tax	30%	600,000	444,000	3,78,000
Return on Equity Share Capital		1,300,000	962,000	819,000
Rate of Return on Equity (before dividend tax)		**13%**	**24%**	**41%**

So, Alternative C is the most tax-beneficial Capital Structure (least tax, highest ROI).

Question No.14:

Expo Ltd. is a foreign subsidiary company of BGD Ltd. The Company sells air conditioners to Expo Ltd. at a price of Tk. 40,000 each for sale to its dealers in Vietnam. In other States, BGD Ltd. is directly selling to their dealers at Tk. 45,000 with a warranty of two year (Tk. 3,500 for each air conditioner). Expo Ltd. does not offer such warranty. Quantity sold to Expo Ltd. is 10,000 units and to dealers of BGD Ltd. is 5,000 units. Discuss the method to be applied to arrive at the Arm's Length Price (ALP) and compute the ALP. How is the assessment of BGD Ltd. going to be affected?

Solution 12:

Expo Ltd. and BGD Ltd. are associated enterprise as Expo Ltd is subsidiary of BGD Ltd. Comparable product (Air Conditioner) is sold to dealers (Uncontrolled transactions). Hence, in given circumstances Comparable Uncontrolled Price (CUP) Method for determining arm's length price can be applied.

Particulars	**Amount (Tk.)**
Sale price charged to Dealers of BGD Ltd.	45,000
Less cost of warranty included in price	3,500
Arm's length price	41,500
Actual price paid by Expo Ltd. to BGD Ltd.	40,000
Difference per unit 1,500	1,500
Addition required to be made in the computations of the total income of BGD Ltd. (1500 x 10,000 units)	15,000,000

Tk. 15,000,000 is to be shown as adjustment for Arm's length price for international transaction u/s 235.



Chapter 21

Liability in special cases and assessment of non-residents

Contents

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Topic list

21.1	Liability of representative in certain cases
21.2	Persons to be treated as agent
21.3	Right of representative to recover tax paid
21.4	Liability of firm or association for unrecoverable tax due from partners or members
21.5	Liability of partners, etc., for discontinued business of a firm, etc.,
21.6	Liability of directors for unrecoverable tax of private companies
21.7	Liability of liquidator for tax of private companies under liquidation
21.8	Liability to tax in case of shipping business of non-residents
21.9	Liability to tax in case of air transport business of non-residents

Introduction

Learning objectives

- Define the liability of a representative in certain cases in respect of income.
- Recognize the persons to be treated as agent.
- Identify the right of representative to recover tax paid.
- Recognize the tax liabilities of different persons such as firms or association, partners, directors, liquidator in certain cases
- Define the liability to tax in case of shipping and air transport business of non-residents.

Practical significance

There is no option to avoid the liability for payment of tax. In certain cases, the representative of any person in respect of income is liable to take some responsibilities especially for assessment. There is a list of persons who shall be treated as agent in relation to a non-resident. Representative who paid tax on

account of his liability has some right to recover the sum so paid from the person on whose behalf it is paid.

There are different types of liabilities. Firm or association has liability for unrecoverable tax due from partners or members. Partners have liability for discontinued business of a firm. Directors have liability for unrecoverable tax of private limited companies. Liquidator has liability for tax of private companies under liquidation. The principal or the agent has liability to tax in case of air transport business of non-residents.

Stop and think

It is obvious that liability of tax cannot be ignored under tax law. The agents or representatives or other persons in certain cases are liable to pay tax on behalf of other persons.

Working context

The agents or representatives or other persons as defined in this chapter in relation to liabilities are sometime seeking expert opinion in this respect. Accountants can give support to their clients. As tax experts, accountants can also help in recovering tax liability from the representative or agent by providing his expertise in this regard.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the liability of a representative in certain cases in respect of income.
- Identify the persons to be treated as agent.
- Illustrate the right of representative to recover tax paid.
- Liability of firm or association for unrecoverable tax due from partners or members.
- Mention the liability of partners, etc., for discontinued business of a firm, etc.
- Define the liability of directors for unrecoverable tax of private companies.
- Identify the liability of liquidator for tax of private companies under liquidation.
- Define the liability to tax in case of shipping business of non-residents.
- Define the liability to tax in case of air transport business of non-residents.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have to remember to recognize the different types of liabilities of representative, agents and persons in different cases.

21.0 LIABILITY IN SPECIAL CASES AND ASSESSMENT OF NON-RESIDENTS

Section overview

- ➔ There is no option to avoid the liability for payment of tax under tax law.
- ➔ Liability shall be taken by the representative or agent in certain cases.
- ➔ There is a list of persons who shall be treated as agent of a non-resident.
- ➔ Representative may have the right to recover the tax he paid.

- ➔ There are some procedures to recover tax liabilities of different assessee.
- ➔ Non-residents doing shipping business in Bangladesh will pay tax @ 8% on gross fare, which is considered as the final discharge of tax liability.
- ➔ Non-residents doing air transport business in Bangladesh will pay tax @ 3% on gross receipt which is considered as the final discharge of tax liability.

21.1 Liability of representative in certain cases: Section 252

(1) Every person who is a representative of another person in respect of any income:

(a) be subject to the same duties, responsibilities and liabilities as if such income were received by, or accruing to, or in favour of, him beneficially;
(b) be liable to the assessment in his own name; and
(c) be deemed to be the assessee for all purposes of ITA, 2023.

(2) A person, who is assessed as a representative in respect of any income, shall not, in respect of the same income, be assessed under any other provision of ITA, 2023.

(3) Nothing shall prevent either the direct assessment of the person for whom, or on whose behalf or for whose benefit, the representative is entitled to receive any income or recovery from such person of the tax payable in respect of such income.

As per section 252 of Income Tax Act, 2023, the following categories of persons may act as the representative of persons as specified:

Represented by	Representative of
the guardian or manager or trustee	minor, lunatic or idiot
the Administrator-General, the Official Trustee, or any receiver, manager or other person appointed by or under any order of a Court,	Any person who earns
the trustee or trustees appointed under a trust	Any person who actually earns or recipient of benefits
Agent under section 253	Non-resident

21.2 Persons to be treated as agent: Section 253

(1) For the purposes of this Act, the following persons shall, subject to the provisions of sub-section (2) and (3) be treated as agent in relation to a non-resident, namely –

(a) any person in Bangladesh -
  i. who is employed by or on behalf of, the non-resident;
  ii. who has any business connection with the non-resident;
  iii. who holds, or controls the receipts or disposal of any money belonging to the non-resident;
  iv. who is a trustee of the non-resident; or
  v. from or through whom the non-resident is in receipt of any income, whether directly or indirectly;
(b) any person whether a resident or non-resident, who has acquired, by means of transfer, a capital asset in Bangladesh from a person residing outside Bangladesh; and
(c) any person who, for any other reasonable cause, is declared or treated as an agent of the non-resident.

(2) An independent broker in Bangladesh, who in respect of any transaction, does not deal directly with, or on behalf of, a non-resident principal but deals with, or through, a nonresident broker, shall not be treated as an agent in relation to a non-resident in respect of such transaction if -
(a) the transaction is carried on in the ordinary course of business through the nonresident broker; and
(b) the non-resident broker is carrying on such transaction in the ordinary course of business.

(3) No person shall be treated under this Act as an agent in relation to a nonresident unless he has been given by the Deputy Commissioner of Taxes an opportunity of being heard.

21.3 Right of representative to recover tax paid: Section 254

(1) A representative who, on account of his liability u/s 252, pays any sum, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his possession or may come to him in his capacity as a representative, an amount equivalent to the sum so paid.

(2) A representative, or any person who apprehends that he may be assessed as a representative, may retain, out of any money payable to the beneficiary on whose behalf he is liable to tax u/s 252, a sum not exceeding his estimated liability.

(3) In the event of any disagreement between the beneficiary and the representative or, as the case may be, the person apprehensive of being assessed as representative, as to the amount to be retained under sub-section (2), such representative or person may secure from the DCT a certificate stating the amount to be so retained pending the settlement of the liability and the certificate so obtained shall be the warrant for retaining that amount.

21.4 Liability of firm or AOP for unrecoverable tax due from partners or members: Section 255

(1) Where any tax payable by partner of a firm or a member of an AOP in respect of his share of the income from the firm or AOP, as the case may be, cannot be recovered from him, the DCT shall notify the amount of the tax to the firm or AOP.

(2) Upon notification of the amount of tax under sub-section (1), the firm or AOP so notified shall, notwithstanding anything contained in any other law for the time being in force, be liable to pay the said tax and shall, for the purposes of recovery thereof, be deemed to be an assessee in respect of such tax; and the provisions of ITA, 2023 shall apply accordingly.

21.5 Liability of partners for discontinued business: Section 256

(1) Where any business or profession carried on by a firm or an AOP has been discontinued, or where a firm or an AOP is dissolved, assessment of the total income of the firm or AOP may be made as if no such discontinuance or dissolution had taken place; and all the provisions of ITA, 2023 shall, so far as may be, apply accordingly.

(2) Where an assessment is made under sub-section (1) in respect of a firm or an AOP, every person who was a partner of the firm or member of the association at the time of discontinuance of business, or as the case may be, dissolution of the firm or association, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax found payable by the firm or association upon such assessment and shall, for the purpose of recovery of such tax, including penalty and other sum payable, be deemed to be an assessee; and the provisions of ITA, 2023 shall apply accordingly.

21.6 Liability of directors for unrecoverable tax of private companies: Section 257

(1) Where any private company is wound up and any tax assessed on the company, whether before, or in the course of, or after its liquidation, in respect of any income of any income year cannot be recovered, every person who was, at any time during the relevant income year, a director of that company, shall, notwithstanding anything contained in the Companies Act 1994, be jointly and severally liable to pay the said tax and shall, for the purposes of recovery thereof, be deemed to be an assessee in respect of such tax and the provisions of ITA, 2023 shall apply accordingly.

(2) Notwithstanding the provisions of sub-section (1), the liability of any person there under in respect of the income of a private company shall cease if he proves to the DCT that non-recovery of tax from the company cannot be attributed to any gross neglect, misfeasance or breach of any duty on his part in relation to affairs of the company.

21.7 Liability of liquidator for tax of private companies under liquidation: Section 258

(1) A liquidator of a private company which is wound up, whether under the orders of a court or otherwise, shall, within 30 days after he has become such liquidator, give notice of his appointment as such to the DCT having jurisdiction to assess the company.

(2) The DCT shall, after making such enquiries or, calling for such information as he may consider necessary, notify to the liquidator, within 3 months of the date of receipt of the notice under sub-section (1), the amount which, in his opinion, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) On being notified under sub-section (2), the liquidator shall set aside an amount equal to the amount so notified and shall not, before he sets aside such amount, part with any of the assets of the company except for the purpose of payment of tax payable by the company or for making payment to secure such credITArs as are entitled under the law to priority of payment over debts due to the Government on the date of liquidation.

(4) The liquidator shall be personally liable for payment of the tax on behalf of the company to the extent of the amount notified, if any, under sub-section (2), if he -
a) fails to give notice as required by sub-section (1): or
b) contravenes the provisions of sub-section (3)

(5) Where there are more liquidators than one, the obligations and liabilities of a liquidator shall attach to all the liquidators jointly and severally.

(6) This law shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

(7) In this section, “liquidator” includes any person who has been appointed to be the receiver of the assets of the company under liquidation.

21.8 Liability to tax in case of shipping business of non-resident: Section 259

(1) Where a non-resident carries on the business of operation of ships as the owner or charterer thereof (hereinafter in this section referred to as the principal) tax shall be levied and collected in respect of such business in accordance with the provisions of this section.

(2) Before departure from any port in Bangladesh of any ship, the master of the ship shall prepare and furnish to the DCT a return showing-

(a) the amount paid or payable whether in or out of Bangladesh to the principal, or to any person on his behalf, on account of the carriage of passengers, livestock, mail or goods shipped at the port since the last arrival of the ship; and
(b) the amount received, or deemed to be received in Bangladesh by, or on behalf of, the principal on account of the carriage of passengers, livestock, mail or goods shipped at any port outside Bangladesh.

(3) On receipt of the return, the DCT shall determine the aggregate of the amounts referred to in sub-section (2) and, for this purpose, may call for such particulars, accounts or documents, as he may require and the aggregate of the said amounts so determined, shall be deemed to be income received in Bangladesh by the principal from the said business chargeable to tax under ITA, 2023 under the head "Income from business or profession", and tax thereon shall be charged @ 8% of such income.

(4) Where the DCT is satisfied that it is not possible for the master of the ship or the principal to furnish the return required under subsection (2) before the departure of the ship from the port and the principal has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the DCT may, if the return is filed within 30 days of the departure of the ship, deem the filing of the return by the person so authorized by the principal as sufficient compliance with subsection (2).

(5) No port clearance shall be granted to the ship until the Commissioner of the Customs or any other officer duly authorized to grant the same, is satisfied that the tax payable under sub-section (3) has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(6) The tax paid shall be deemed to be the final discharge of the tax liability of the assessee under IT Act,1984 and the assessee shall not be required to file the return of total income under section 166 nor shall he be entitled to claim any refund or adjustment on the basis of such return.

21.9 Liability to tax in case of air transport business of non-residents: Section 260

(1) Notwithstanding anything contained in this Act, where a non-resident person carries on the business of operation of aircraft, as the owner or charterer thereof (hereinafter in this section referred to as "the principal"), and any aircraft owned or chartered by him calls on any airport in Bangladesh, the aggregate of the receipts arising from the carriage or passengers, livestock, mail or goods loaded at the said airport into that aircraft shall be deemed to be income received in Bangladesh by the principal from the said business chargeable to tax under the head "Income from business or profession", and tax thereon shall be charged at the rate of 3% of such income.

(2) The principal or an agent authorized by him in this behalf shall prepare and furnish to the DCT, within 45 days from the last day of each quarter of every financial year, that is to say, the thirtieth day of September, the thirty-first day December, the thirty-first day of March and the thirtieth day of June, respectively, return in respect of each quarter as aforesaid showing -

(a) the amount paid or payable whether in or out of Bangladesh to the principal, or to any person on his behalf, on account of the carriage of passengers, livestock, mail or goods loaded at the said airport; and
(c) the amount received, or deemed to be received, in Bangladesh by, or on behalf of, the principal on account of the carriage of passengers, livestock, mail or goods at any airport outside Bangladesh.

(3) On receipt of the return, the DCT may, after calling for such particulars, accounts or documents, as he may require, determine the aggregate of the amounts referred to in sub-section (2), and charge tax as laid down in sub-section (1).

(4) Where, the principal fails to pay the tax payable under sub-section (1) for more than 3 months, the Commissioner of Taxes may issue to the authority by whom clearance may be granted to that aircraft, a certificate containing the name of the principal and the amount of tax payable by him; and on receipt of such certificate, the said authority shall refuse clearance from any airport in Bangladesh to any aircraft owned or chartered by such person until the tax payable has been paid.

(5) The tax paid as per this section shall be deemed to be the final discharge of the tax liability of the assessee under ITA, 2023 and the assessee shall not be required to file the return of total income under section 166 nor shall he be entitled to claim any refund or adjustment on the basis of such return.

Thus, sections 259 and 260 of ITA, 2023, prescribe the tax rates on income of non-residents involved with shipping and air transport business which may be mentioned below:

Business	**Income tax rate**	**Return submitted by**	**Status**
Shipping	8%	Master of ship	Final discharge of tax liability
Air transport	3%	Principal or agent	Final discharge of tax liability



Chapter 22

Special provisions relating to avoidance of tax

Contents

Introduction

Examination context

Topic list

22.1	Avoidance of tax through transactions with non-residents
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22.7	Exemption from production of tax clearance certificate

Introduction

Learning objectives

- Identify the measure in case of avoidance of tax through transactions with nonresidents
- Define the avoidance of tax through transfer of assets and transaction in securities
- Recognize the conditions and rules for tax clearance certificate required for persons leaving Bangladesh.
- Demonstrate the different forms for tax clearance and tax exemption certificate.
- Mention the conditions for exemption from production of tax clearance certificate.

Practical significance

The tax authorities have some measures in case of avoidance of tax through transactions with non-residents, transfer of assets and transaction in securities. The tax authorities can determine the reasonable amount of income in certain cases of such avoidance.

Subject to some exceptions and conditions, a person who is not domiciled in Bangladesh, or a person who being domiciled in Bangladesh at the time of his departure is required to obtain a tax clearance certificate or tax exemption certificate as the case may be.

Stop and think

There are some measures with tax authorities in case of avoidance of tax in certain cases. Do you think that any person can still avoid tax by any means?

Working context

In case of avoidance of tax through transaction with non-resident or otherwise, either intentional or unintentional, the tax clients are facing many problems from tax authorities. Sometimes they think that the measures taken by tax authorities are not in line with justice. In such a case accountant can help them by providing the expert service in this regard.

The accountants also can support by giving advice to his client in case of tax clearance/exemption certificate required for him while leaving Bangladesh.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the measure in case of avoidance of tax through transactions with nonresidents
- Define the avoidance of tax through transfer of assets.
- Define the avoidance of tax through transaction in securities.
- Mention the conditions and rules for tax clearance certificate required for persons leaving Bangladesh.
- Exhibit the different forms of tax clearance and tax exemption certificates
- Recognize the conditions for exemption from production of tax clearance certificate.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

22.0 SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section overview

- ➔ The tax authorities have some measures against avoidance of tax.
- ➔ Tax authorities can determine the reasonable amount of income in certain cases of tax avoidance.
- ➔ Tax clearance or exemption certificate is required for some person leaving Bangladesh at the time of his departure.
- ➔ There are some conditions for exemption from production of tax clearance certificate.

22.1 Avoidance of tax through transactions with non-residents: Section 240

Where any business is carried on between a resident and a non-resident and it appears to the DCT that, owing to the close connection between them, the affairs of business is so arranged that the business transacted between them produces to the resident either no profits or profits less than the ordinary profits

which might be expected to yield in that business, the DCT shall determine the amount of income which may reasonably be considered to have accrued to the resident from such business and include such amount in the total income of the resident.

22.2 Avoidance of tax through transfer of assets: Section 241

(1) Any income which becomes payable to a non-resident by virtue, or in consequence, of any transfer of assets, whether alone or in conjunction with associated operation, shall be deemed to be the income of the person who-

(a) has acquired, by means of such transfer or associated operations, any right by virtue, or in consequence, of which he has the power to enjoy, whether forthwith or in future, the income which becomes so payable to the non-resident, or
(b) has received or is entitled to receive at any time, for reasons attributable to such transactions or associated operations, any sum paid or payable by way of loan or repayment of loan or any other sum, not being a sum paid or payable as income or for full consideration of money or money's worth.

(2) The income which becomes payable to a non-resident and is deemed under sub-section (1), to be the income of the person referred to therein shall be so deemed for all purposes of ITA, 2023 whether such income would or would not have been chargeable to tax apart from the provisions of this section.

(3) The provisions of this section shall not operate if it is shown to the satisfaction of the DCT-

(a) that neither the transfer nor any associated operation had for its purpose, or for one of its purposes, the avoidance of liability to taxation; or
(b) that the transfer and all associated operations were bona fide commercial transaction and were not designed for the purpose of avoiding liability to taxation.

(4) Where any person has been charged to tax on any income which is deemed under sub-section (1) to be his income, that income shall not again be deemed to form part of his income for the purpose of ITA, 2023 if it is subsequently received by him whether as income or in any other form.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy the income payable to a non-resident if-

(a) such income is in fact so dealt with as to be calculated to ensure at any time for the benefit of such person in any form; or
(b) the receipt or accrual of such income operates to increase the value of any assets held by such person or for his benefit; or
(c) such person receives or is entitled to receive at any time any benefit provided or to be provided-
(i) out of such income; or
(ii) out of money which is, or will be, available for the purpose by reason of the effect or successive effects of associated operations on such income and on any assets representing the income; or
(d) such person has, by means of the exercise of any power of appointment, revocation or otherwise, power to obtain for himself, with or without the consent of any other person, the beneficial enjoyment of such income; or
(e) such person is able to control, directly or indirectly, the application of such income, in any manner whatsoever.

(6) In determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operation, and to all benefits which may at any time accrue to such person as a result of the transfer and associated operations irrespective of the nature or form of the benefit.

Explanation: For the purposes of this section—

(a) **'assets'** includes property or rights of any kind and 'transfer' in relation to assets being rights, includes creation of those rights;
(b) **'Associated operation'**, in relation to any transfer, means an operation of any kind effected by any person in relation to-

(i) any of the assets transferred; or
(ii) any income arising from such assets; or
(iii) any assets representing, directly or indirectly, any of the assets transferred, or the accumulation of the income arising from such assets;

(c) **'benefit'** includes a payment of any kind;
(d) references to assets representing any assets transferred, or any income or accumulation of income arising there from, includes references to shares in or obligation of any company to which, or the obligation of any other person to whom, any such assets or that income or accumulation of income is or has been transferred, and
(e) anybody corporate incorporated outside Bangladesh shall be treated as if it were a non-resident.

22.3 Avoidance of tax by transactions in securities: Section 242

(1) Where the owner of any securities sells or transfers those securities and buys them back or re-acquires them, or buys or acquires similar securities, and the result of the transaction is that any interest becoming payable in respect of the original securities sold or transferred by the owner is not receivable by the owner, the interest payable as aforesaid shall be deemed, for all purposes of ITA, 2023 to be the income of such owner and not of any other person, whether the interest payable as aforesaid would or would not have been chargeable to tax apart from the provisions of this subsection.

(2) Where any person has had for any period during an income year any beneficial interest in any securities and the result of any transactions within that year relating to such securities or the income thereof is that no income is received by him, or that the income received by him is less than the sum which the income would have amounted to, had the income from such securities accrued from day to day, and been apportioned to the said period, then the income from such securities for the said period shall be deemed to be the income of such person.

(3) Where, any person carrying on a business which consists wholly or partly in dealing in securities buys or acquires any securities from any other person and either sells back or re-transfers those securities, or sells or similar securities, to such other person, and the result of the transactions is that the interest becoming payable in respect of the securities bought or acquired by him is receivable by him but is not deemed to be his income by reason of the provisions of section 242(1), no account shall be taken of the transactions in computing for any of the purposes of ITA, 2023 any income arising from, or loss sustained, in the business.

(4) The DCT may, by notice in writing, require any person to furnish him, within such time, not being less than 28 days, as may be specified in the notice, such particulars in respect of all securities of which such person was the owner, or in which he had beneficial interest at any time during the period specified in the notice, as the DCT may consider necessary for the purpose of ascertaining whether tax has been borne in respect of the interest on all those securities and also for other purposes of this section.

Explanation: For the purposes of this section-

(a) **'interest'** includes dividend;
(b) securities shall be deemed to be similar if they entitle their holders to the same right against the same persons as to capital and interest and the same remedies for the enforcement of these rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred.

22.4 Tax clearance certificate required for persons leaving Bangladesh: Section 243

(1) A person who is not domiciled in Bangladesh, or a person who being domiciled in Bangladesh at the time of his departure is not, in the opinion of an income tax authority likely to return to Bangladesh, shall not leave Bangladesh without obtaining from the DCT authorized in this behalf by the NBR-

(a) a tax clearance certificate, or
(b) if he has intention of returning to Bangladesh, an exemption certificate which shall be issued only if the DCT is satisfied that such person has such intention; and such exemption certificate may be either for a single journey or for all journeys within the period specified in the certificate [section 107(1)].

(2) The owner or charterer of any ship or aircraft, who issues any authority to any person referred to in sub-section (1) for travel by such ship or aircraft from any place in Bangladesh to any place outside Bangladesh unless such person has a certificate required by that section, shall-

(a) be liable to pay the amount of tax, if any, which has or may become due and payable by such person and also to a penalty which may extend to two thousand taka; and
(b) be deemed, for the purposes of recovery of such tax and penalty, to be an assessee in default, and all the provisions of this Act shall apply accordingly.

Explanation: For the purposes of section 243-

a) **'exemption certificate'**, in relation to any person, means a certificate to the effect that such person is exempt from the requirement of having a tax clearance certificate for the purpose of the journey or journeys specified therein;
b) **'owner'** or **'charterer'** includes any representative, agent or employee who may be empowered by the owner or charterer of a ship or aircraft to issue an authority to travel by the ship or aircraft; and
c) **'tax clearance certificate'**, in relation to a person, means a certificate to the effect that such person has no liability under ITA, 2023 and the Gift-tax Act, 1990, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by which person.

22.5 Form of tax clearance and tax exemption certificates [Rule 61]:

(1) Every application for a tax clearance certificate or an exemption certificate shall be made as per rule 61, in the following form:
Application for a certificate under section 243 of the Income Tax Act, 2023:

To
The Deputy Commissioner of Taxes.

…
……..
Sir,

I request that a tax clearance/exemption certificate be granted to me. Necessary particulars are given below.

1. Name of applicant ……
(in block letters).
2. Domicile……
3. Present address……..
4. Permanent address…….
5. Nature of Business or profession in Bangladesh ……...
(if the visit to Bangladesh was made only as a tourist and no income was earned during the period of stay in Bangladesh, it should be so stated).
6. Place(s) at which the business or profession is or was carried on
……

7. Name and address of employer(s) of the applicant…… (in case the applicant is representing a firm or a company, the name and address of the firm or company should be stated)
8. Name of the DCT, where last assessment of the applicant was made……
Date of arrival in Bangladesh……

10. Probable date of departure……

11. Destination……

12. Mode of travel (air/sea/land)……

Place: Yours faithfully,
Date: (Applicant)

N. B. Please see the certificate.
When the applicant is an existing assessee, the application should be addressed to the DCT who completed the last assessment.

***Strike out whichever is inapplicable.**

Form of certificate to be furnished by Employers/Associates/Agents/Head Office/Branch Office, etc.

Certified that……is our employee/ representative/ associate.

1.
(Name in block letters)

2. (i) Certified that ……(name) is leaving Bangladesh temporarily on leave/duty and will return by…… (Give approximate date).

*(ii) Certified that his/her income was less than the taxable minimum during the period(s).

(iii) A cheque for the amount of tax due along with the computation of income is enclosed.

(iv) We undertake to pay the tax liability, if any, when determined.

Signature ……
Designation…….
Name and address of the Employers/Associates/Agents/Head Office/Branch Office

***Strike out whichever is inapplicable**

Guarantee Certificate to be furnished by a tax payer in Bangladesh in the case of persons who are neither employees nor representatives of any firm.

We/I,……certify (name in block letters) that ……..is known to us/me and that we/I undertake to pay his/her tax liability, if any, when determined.
Signature of the guarantor……..……..
Name and address……..……..
…….....……
……
TIN
…….....…
Circle

……..……

Tax clearance certificate issued by the DCT shall be in the following form:-

Book No. Serial No.

Book No. Serial No.

Counterfoil of certificate unde section 243 of the
Income Tax Act, 2023 (XII o 2023)
Date _____
Name
_____
_____
Present address _____
_____
Permanent address
_____
_____
_____
Business of professior _____

Date of arrival in Bangladesh _____
Date of departure _____
(as stated in the application)
Date up to which the certificate is Valid
_____
_____
Challan No. and date of paymen of tax _____ Signature of left hand thumb impression of the Person named in the certificate
_____
___

_____
_____

Deputy Commissioner of Taxes _____ / Circle.

TAXES DEPARTMENT

Certificate under section 107 of The Income Tax Act, 2023 (XII of 2023)
Office of the DCT

_____ Circle _____

Place
–

Date

This is to certify that _____

of _____ (whose signature or thumb impression is affixed below) has no liability made satisfactory arrangements for his/her liabilities under the Income Tax Act, 2023 (XII of 2023) or the Gift Tax Act, 1990 (XLIV of 1990). This certificate is valid up to

Signature

Signature of the left-hand Deputy Commissioner of Taxes, Signature of left-hand /Circle
_____ / Circle. Thumb impression of the Person named In the Certificate

Exemption certificate issued by the DCT shall be in the following form:

Book No.	Serial No.	Book No.	Serial No.

Counterfoil of certificate under section 107 Of the Income Tax Act, 2023 (XII of 2023)
Date _____
Name
_____
_____
Present address
_____
Permanent Address
_____

_____
_____
Date of arrival in Bangladesh
_____
Date of application
_____
Date of departure
_____
(as stated in the application)

Deputy Commissioner of Taxes
_____ / Circle.

TAXES DEPARTMENT

Certificate under section 107 of The Income Tax Act, 2023 (XII of 2023)
Office of the Deputy Commissioner of Taxes

Place
_
Date

This is to certify that_____
of _____ (whose signature or thumb impression is affixed below) is exempted from producing evidence of payment of taxes in connection with his journey to al journey performed before.

Signature

Signature or left-hand thumb impression of the Person named in the certificate This certificate is valid up to

Deputy Commissioner of Taxes, _____ /Circle
Signature or left-hand Thumb impression of the Person named in the certificate_____

22.6 Production of certificate of tax clearance or exemption certificate before any officer of immigration or customs [Rule 62]:

(1) Subject to the provisions of rule 63, every person who is not domiciled in Bangladesh shall be required to produce a tax clearance certificate or exemption certificate to an officer of immigration or customs for examination before he leaves Bangladesh.
(2) In the case of a person who claims to be domiciled in Bangladesh, the officer of immigration or customs may accept any of the following evidences of nationality, namely:
-
a) a passport issued by the Government; or
b) a certificate of nationality or domicile issued by a District Magistrate or the Government.

22.7 Exemption from production of tax clearance certificate [Rule 63]: The following exceptions are made under section 243 of Income Tax Act, 2023 namely:

(1) all person below the age of 18 years [rule 63(a)];

(2) passengers who can show by the dates stamped on their passports or by other reliable evidence; that-

i they have not spent more than 90 days at a time in Bangladesh; and
ii they have not spent more than 90 days in any financial year in Bangladesh [rule 63(b)];

(3) all members of diplomatic, trade or commercial missions appointed by foreign Governments, trade commissioners and consul democratic and all full-time employees of such diplomatic missions, trade commissioners and consular officers [rule 63(f)];

(4) all officers and employees of foreign Government visiting Bangladesh on duty [rule 63(g)];

(5) the wives and dependents of persons covered by rules 63(f) and (h) [rule 63(h)];

(6) Woman who gives a declaration to the effect that she is wholly dependent upon her husband, parent or guardian and has no independent source of income [rule 63(i)].





Chapter 23

Powers of income tax authorities including search and seizure

Contents

Introduction
Examination context

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23.3	Power to inspect registers of companies
23.4	Power of survey
23.5	**Enquiries and inspection**
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23.7	Power to verify deduction or collection of tax
23.8	Retention of seized assets
23.9	Application of retained assets
23.10	Power of IJCT to revise orders of DCT
23.11	Revisional power of Commissioner
23.12	Power to take evidence on oath, etc.

Introduction

Learning objectives

- Identify the power of respective income tax authorities to call for information.
- Identify the power to inspect the registers of company
- Recognize the power of survey.
- Demonstrate the additional power of enquiry and requiring the production of documents.
- Power of search and seizure.
- Power to verify withholding taxes.
- Right to retain the seized assets and application thereof.
- Power of revision of orders.
- Power to take evidence on oath.

Practical significance

To carry out the responsibilities and ensure compliance in adopting different rules, respective income tax authorities have been given sufficient powers. Such powers may be to call for information, inspect the registers, conduct survey, require for documents, search and seizure, verify deduction and collection of taxes, retaining seized assets, revise orders and take evidence of oath.

For different assesses, it is very important as they require to know the power of authorities so that they can comply with the specific requirements.

Stop and think

Respective income tax authorities enjoy required powers to carry out their job smoothly. Do you think that you know all of such powers applicable to different income tax authorities?

Working context

Powers of income tax authorities are very important for both income tax authorities and assesses. Accountants can provide valuable advises to clients in case of non-compliance and any type of failures if they know the power of income tax authorities properly. It will be helpful for the client to avoid excessive penalty or other types of punishment. It is also an important part of tax planning.

The accountants can also support by giving advice to his client in case of powers already exercised by income tax authorities for non-compliance or failures.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Mention the power of income tax authorities to call for information
- Identify the power to inspect the registers of company
- Demonstrate the additional power of enquiry and requiring the production of documents
- Power of search and seizure
- Power to verify the deduction and collection of taxes.
- Right to retain the seized assets and application thereof.
- Power of revision of orders.
- Power to take evidence on oath.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

23.0 POWERS OF INCOME TAX AUTHORITIES INCLUDING SEARCH AND SEIZURE

Section overview

➔ The tax authorities enjoy powers to exercise required jobs and responsibilities.
➔ Tax authorities have powers to search and seize assets and retain them.
➔ Tax authorities may verify the documents of withholding taxes.
➔ Tax authorities may revise the orders already passed in respective cases.

23.1 Introduction

Income tax authorities enjoy the power of search and seizure of books of accounts, records, documents and moveable properties after searching through the business premises, residential building, vessel, aircraft, or any other places belonging to a person. This chapter covers required provisions under ITA, 2023 regarding such power of income tax authorities.

23.2 Power to call for information: Section 200

Officials holding a rank not lower than that of Deputy Commissioner of Taxes (DCT) are authorized to request information by issuing a notice in accordance with the prescribed manner and time stipulated in the notice, as part of their duties under this Act. Furthermore, any officer with a rank not lower than that of DCT is entitled to request information to facilitate the resolution of investigations pertaining to disputed matters or ongoing proceedings under this Act. Such requests should adhere to the manner and timeline specified in the written notice or communicated through electronic means.

However, officers operating under the Commissioner of Tax are prohibited from soliciting information from banks or financial institutions without obtaining the prior approval of the Commissioner of Taxes.

23.3 Power to inspect records of business: Section 202

Any income tax authority has the right to require an individual or business to furnish records or copies of records that are pertinent to any investigation or ongoing proceeding concerning unresolved matters under the Income Tax Act, 2023.

23.4 Power of survey: Section 205

Section 205 of the Income Tax Act, 2023, empowers the Board or the Commissioner of Taxes to grant authorization to income tax authorities for conducting surveys to evaluate the tax liability of person under the Act. This authorization allows income tax authorities to enter premises where business operations occur or rental income is generated. The entry is subject to specific conditions: during business hours for places of business activities and between sunrise and sunset for other cases. Within these premises, the income tax authority is authorized to undertake several actions, including collecting copies or summaries from income, assets, or liability records, securing and inventorying income-related records, documenting statements from relevant individuals, and making necessary inquiries.

Individuals associated with the business or residing in the premises are obligated to cooperate by providing access to records and documents, facilitating inspections, and offering information as required for the proceedings under the Act. Notably, while income tax authorities possess considerable powers for inspection and inquiry, they are restricted from removing cash, stock, or valuable items from the premises, except as specified under section 206 of the Act. No income tax authority without permission of Commissioner of Taxes shall hold the seized items for more than one month. Income tax authority except Tax Inspector, shall have same power vested under section 223(1) in case of non-cooperations in performing duties under this section.

23.5 Enquiries and inspection: Section 204

Inspecting income tax authority may make any enquiry which they consider necessary as respects any person liable, or believed by them to be liable, to assessment under ITA, 2023 or require any such person or any other person in relation to such enquiry to appear before him at the time and place as directed for providing any information or to produce or cause to be produced necessary documents.

Board will publish a manual in support of enquiries and inspections to fulfil the purpose of this section.

23.6 Power of search and seizure: Section 206

Section 206 of the Income Tax Act, 2023 lays out the provisions regarding the power of search and seizure. According to this section, when the inspecting income tax authority has reasonable belief based on information in the possession of the Board or inspecting income tax authority, he can exercise the powers mentioned in subsection (3). These powers include the authority to enter and search various locations, such as buildings, vessels, vehicles, and aircrafts, where there is suspicion that specific items like books of accounts, documents, electronic records, money, bullion, jewelry, or other valuables subject to the Income Tax Act have been concealed.

The authorized officer is empowered to break locks if necessary, search individuals, seize relevant items, place marks of identification on documents, and even access electronic records by bypassing password protection.

The authorized officer can also seek assistance from police officers, government officials, or professional experts. If seizure isn't possible, the officer can issue an order preventing the removal or disposal of the items. Statements made during the search can be used as evidence in proceedings under the Act, and the possession of items found during a search is considered evidence of ownership and accuracy. Procedures for copying seized documents, retaining them, and objections to retention are defined, with specific time limits. The Code of Criminal Procedure, 1898, applies to search and seizure processes, and the term "proceeding" includes pending and future actions under the Act.

23.7 Power to verify deduction or collection of tax: Section 147

Authority empowered in writing from the Commissioner of Taxes or Direct General, Tax Inspector or DG, Central Intelligence Cell for the purpose of verification of tax deducted and collected at source can:

(a) In relation to a person or entities, get access to any place, goods, accounts or record of economic activities kept in any means, any encrypted or formatted data kept in computer systems, electronic record or systems and extract them, break password to get access, analyze information, books of accounts, documents, image or inputs, mark or stamp on the books of accounts and other documents, get an extract or copy them, seize of kept in hold of the same, order someone to do or not to do activities;

(b) can accompany appropriate expertise or agencies;

(c) authorities are empowered to fine a person up to Tk. 50,00,000 in case any barrier, noncooperation caused in performing the above works;

(d) for failure to comply with this section, DCT may realize tax and penalty upon recording the person’s explanation, if available.

23.8 Retention of seized assets: Section 209

(1) When any money, bullion, jewelry, or other valuable article or item (referred to as 'assets') is seized under section 206 and handed over to the Deputy Commissioner of Taxes (DCT), the provisions of sub-section (2) shall be applied:

(2) The DCT shall, within 90 days of the seizure, provide the individual concerned with a fair opportunity to present their case and conduct an inquiry. Based on this, the DCT will make a decision using their best judgment to estimate undisclosed income or income from assets. They will then calculate the associated tax and other charges, including taxes in default.

(3) This 90-day period shall not include any time resulting from orders or sanctions.

(4) In cases where the income and related tax cannot be determined for the income year connected to the seized assets or any portion thereof, the DCT may consider the income year in which the assets were seized.

(5) Upon obtaining permission from the Commissioner of Taxes, the DCT may issue a notice to demand the amount determined under sub-section 2(b).

(6) If the person takes satisfactory measures to pay the demanded amount, the DCT shall release the seized assets. Otherwise, they may take appropriate actions as they deem fit.

(7) If satisfactory measures are not taken to settle the demanded amount, the person shall be deemed a defaulter for the unpaid sum. The DCT may retain a portion of the asset that is sufficient to cover the defaulted demand.

(8) If the person to whom the demand notice is served feels aggrieved, they have the right to submit written complaints. Upon being given a reasonable opportunity for a hearing, the DCT shall issue an appropriate order.

23.9 Application of retained assets: Section 210

(1) Where the assets retained under sub-section (7) of section 206 consist solely of money, or partly of money and partly of other assets, -

(a) the DCT shall first apply such money towards payment of the amount in respect of which the person concerned is deemed to be an assessee in default under that sub-section; and thereupon such person shall be discharged of his liability to the extent of the money so applied; and

(b) where, after application of the money under clause (a), any part of the amount referred to therein remains unpaid, the DCT may recover the amount remaining unpaid, by sale of such of the assets as do not consist of money in the manner movable property may be sold by a Tax Recovery Officer (TRO) for the recovery of tax; and for this purpose, he shall have all the powers of a TRO under ITA.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount referred to in section 206 (7) by any other mode provided in ITA for the recovery of any liability of an assessee in default.

(3) Any assets or proceeds thereof which remain after the discharge of the liability in respect of the amount referred to in section 206 (7) shall forthwith be made over or paid to the persons from whose custody the assets were seized.

23.10 Power of IJCT to revise order of DCT: Section 213

The IJCT may request information from the DCT (Deputy Commissioner of Taxes) and review the records of any proceeding under the Income Tax Act. If the IJCT believes that any order issued by the DCT is erroneous, to the extent that it adversely affects the interests of the revenue, the IJCT may, after giving the assessee an opportunity to be heard, and after conducting any necessary inquiry, issue an appropriate order. This order could involve enhancing or modifying the assessment, cancelling the assessment, or directing a fresh assessment to be conducted within four years from the date of the order that is being considered for revision.

Nothing in section 212 shall bar any proceeding under this section in applicable cases.
Here, return shall deem to be erroneous if:

(a) heads of income is wrong in the order;
(b) in developing order, provision of law have been wrongly interpreted;
(c) provide orders without verifications where it was necessary to verify;
(d) issue order upon accepting tax rebate without verifying that;
(e) provide order without complying with orders, instruction under section 10;
(f) it is certainly confirmed upon seeing the order that order was erroneous.

23.11 Revisional power of Commissioner: Section 285

(1) The Commissioner may on an application made by the assessee, call for the record of any proceeding under ITA in which an order has been passed by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of ITA, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The application for revision of an order under ITA passed by any authority subordinate to the Commissioner shall be made within 60 days of the date on which such order is communicated to the assessee or within such further period as the Commissioner may consider fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within the said 60 days.

(3) The Commissioner shall not exercise his power in respect of any order-

(a) where an appeal against the order lies to the AJCT or to the Commissioner (Appeals) or to the Appellate Tribunal and the time within which such appeal may be made has not expired or the assessee has not waived his right of appeal; or
(b) where the order is pending on an appeal before the AJCT or it has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

(4) No application under sub-section (1) shall be entertained unless-
(a) it is accompanied by a fee of two hundred taka; and
(b) the undisputed portion of the tax has been paid.

Explanation- The "undisputed portion of the tax" means the tax payable under section 173.

(5) For the purposes of this section, an order by the Commissioner declining to interfere shall not be construed as an order prejudicial to the assessee.

(6) Notwithstanding anything contained in IT Act, an application for revision made under sub-section (1) shall be deemed to have been allowed if the Commissioner fails to make an order thereon within a period of 60 days from the date of filing the application.

(7) For the purposes of this section, the AJCT shall be deemed to be an authority subordinate to the Commissioner to whom the DCT, whose order was the subject-matter of the appeal order under revision, is subordinate.

23.12 Power to take evidence on oath, etc.: Section 211

(1) The DCT, the IJCT, the Commissioner, the DG, Central Intelligence Cell, the Commissioner (Appeals) and the Taxes Appellate Tribunal shall, for the purposes of IT Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:

(a) discovery and inspection;
(b) enforcing the attendance of any person and examining him on oath or affirmation;
(c) compelling the production of accounts or documents (including accounts or documents relating to any period prior or subsequent to the income year); and
(d) issuing commissions for the examination of witness.

(2) The DCT shall not exercise his powers under this section for the purpose of enforcing the attendance of an employee of a scheduled bank as a witness or compelling the production of books of account of such a bank except with the prior approval of the Commissioner.

(3) Any authority mentioned in sub-section (1) may impound and retain in its custody for such period as it considers fit, any books of accounts or other documents produced before it in any proceeding under ITA.

(4) DCT shall not size any documents related to the income without record the reason, or without permission of chief commissioner or commissioner, he shall not retain income related document for more than 15 days excluding public holidays.

(5) Any proceeding under IT Act, before any authority mentioned in sub-section (1), shall be deemed to be a judicial proceeding within the meaning of section 193 and 128, and for the purposes of section 196, of the Penal Code (Act XLV of 1860).

(6) Proceeding or any order under this section shall be consider as the order of the civil court.





Chapter 24

Penalty

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24.13	Penalty to be without Prejudice to other liability
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Introduction

Learning objectives

- Mention the different non-compliances of tax law for which penalties are imposed.
- Identify the penalties due to non-compliance of tax law in certain cases.
- Define the measures against any order of penalty.

Practical significance

If any person without any reasonable cause failed to comply with tax law in certain cases the tax authorities may impose penalty on that person. There are requirements by tax law such as maintaining of accounts in the prescribed manner, filing of return, statements, accounts or information, payment of advance tax, compliance with notices, payment of tax on the basis of return etc. Non-compliance of these requirements may cause to penalties payable by the persons for such non-compliances. Concealment of income and default in payment of tax are also caused penalties.

No penalties mentioned here shall be made on any person unless such person has been heard or has been given a reasonable opportunity of being heard. The imposition of any penalty on any person shall be without prejudice to any other liability.

Stop and think

Did you realize how important it is to ensure the compliance of the requirements of tax law mentioned in this chapter for avoiding penalties? The penalties can be quite extensive in some cases.

Working context

You need to know the consequences for non-compliance of the requirements of tax law in this chapter. You must keep it in mind that the penalties may be massive and imposition of penalties for such non-compliance can also harm the reputation of the assessee and his financial sustainability.

The accountants can help the clients to comply with all the requirements of tax law in this regard so that the clients can avoid any such penalties and retain the esteem from tax authorities and stakeholders.

Syllabus links

The topics covered in this chapter are very important as it is dealt with the legal requirement of tax law.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the penalty for not maintaining accounts in the prescribed manner.
- Identify the penalty for failure to file return, statement, accounts or information.
- Identify the penalty for failure to pay advance tax and failure to pay tax on the basis of return.
- Identify the penalty for non-compliance with notice, concealment of income and default in payment of tax.
- Mention the bar to impose penalty.
- Demonstrate the authority and procedures for imposition of penalty.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates must remember the requirements of tax law in relation to imposition of penalty in case of non-compliance with the amount or rate of penalties.

24.0 IMPOSITION OF PENALTY

Section overview

- ➔ Penalties can be imposed on any person for non-compliance of certain tax law.
- ➔ The amount and rate of penalties can be varied in case to case.
- ➔ Unless giving reasonable opportunity of being heard, no penalties shall be imposed other than a few.

24.1 Introduction

Penalty is the outcome of non-compliance of any provisions of ITA in any manner. Such penalties are important to encourage compliance and establish equity at the time of imposing penalty. As per Part 19 of The Income Tax Act, 2023 a penalty may be imposed on following grounds:

a) for not maintaining accounts in the prescribed manner
b) for failure to file return, statement, accounts or information
c) for using fake Tax-payer's Identification Number (TIN)
d) for failure to pay advance tax
e) for non-compliance with notices
f) for failure to pay tax based on return
g) for concealment of income
h) for default in payment of tax

Each of the above-mentioned failures or non-compliances is offence and subject to specific penalty as per the provisions laid down in Part 19 of ITA, 2023 except penalty for default in payment of tax (h) above on which penalty is imposed as per the provisions laid down in section 275 of ITA, 2023.

24.2 Penalty for not maintaining accounts in the prescribed manner: Section 267

Where any person, who does not have income from tangible assets, has, without reasonable cause, failed to comply with the provisions of any order or rule made in pursuance of, or for the purposes of section 72(3), the DCT may impose on him a penalty—

(a) of a sum not exceeding one and a half times the amount of tax payable by him; and
(b) Where the total income of such person does not exceed the maximum amount on which tax is not chargeable, of a sum not exceeding Tk. 5,000.

Where any person who has the income from tangible assets, without reasonable cause, failed to comply with the provisions of any order or rule made in pursuance of, or for the purposes of section 72(3), the DCT may impose on him a penalty up to 50% of tax payable on the income of tangible assets or Tk. 5,000, whichever is higher.

24.3 Penalty for failure to file return, statement, accounts or information: Section 266

(1) Where any person has, without reasonable cause, failed to file a return of income required by or under sections 166, 172, 191, 193 and 212, the DCT may impose upon such person a penalty amounting to 10% of tax imposed on last assessed Income subject to a minimum of Tk. 1,000, and in the case of a continuing default a further penalty of Tk. 50 for every day during which the default continues.

However, total amount of such penalty will not exceed Tk. 5,000 in case an individual who was not previously assessed. And in case of existing individual assessee maximum penalty will not exceed 50% of last assessed tax or Tk.1,000 whichever is higher.

(2) For non-submission of statement or return u/s 177, DCT may impose penalty at 10% of last assessed tax or Tk. 5,000/ whichever is higher, and Tk. 1,000 per month or portion thereof for continuing default.

(3) For not providing certificate u/s 145, DCT may impose penalty for up to Tk. 5,000 and Tk. 1,000 per month or portion thereof for continuing default.

(4) For failure to provide information u/s 200, income tax authority who sougth such information may impose penalty up to Tk. 50, 000 and Tk. 500 per day for continuing default.

24.4 **Penalty for using fake TIN: Section 268**

Where a person has, without reasonable cause, used TIN of another person or used fake TIN on a return of income or any other documents where TIN is required under ITA, the DCT may impose a penalty not exceeding Tk. 20,000 on that person.

24.5 **Penalty for failure to pay advance tax: Section 269**

Where, during any proceeding in connection with the assessment of tax, the DCT is satisfied that any person has—

(a) without reasonable cause, failed to pay advance tax as required by section 154; or
(b) furnished under section 155 any estimate of tax payable by him which he knew, or had reason to believe, to be untrue, he may impose upon such person a penalty of a sum not exceeding the amount by which the tax actually paid by him falls short of the amount that should have been paid.

24.6 **Penalty for non-compliance of notice: Section 270**

Where any person has, without reasonable cause, failed to comply with any notice issued under section 167, 168, 179, 181 or 183, the DCT may impose on him a penalty not exceeding the amount of tax chargeable on the total income of such person.

24.7 **Penalty for failure to pay tax based on return: Section 271**

Where, in the course of any proceeding under the Act, the DCT is satisfied that any person has not paid tax as required by section 173, he may impose upon such person a penalty of a sum not exceeding 25% of such portion of the tax as has not been paid.

24.8 **Penalty for concealment of income: Section 272**

Where, in the course of any proceeding under the Act, any authority is satisfied that any person has, either in the said proceeding or in any earlier proceeding relating to an assessment in respect of the same income year, provide information in relation to his income, assets, liabilities, expenses or other important information regarding payable amount incorrect that led evasion of payable amount, may be penalized as:

a=evaded amount x 15%
b= evaded amount x 10% x c
c=period of false information commencing from the year of occurrence and the year on which it is discovered.

24.9 Penalty for default in payment of tax: Section 275

Where an assessee is in default or is deemed to be in default in making payment of tax, the DCT may direct that, in addition to the amount of tax in arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

24.10 **Bar to imposition of penalty without hearing: section 280**

No order imposing a penalty under this Part shall be made on any person unless such person has been heard or has been given a reasonable opportunity of being heard.

24.11 **Previous approval of IJCT for imposing penalty: Section 281**

The DCT shall not impose any penalty under this Chapter without the previous approval of the IJCT except in the cases referred to in section 266, 275, 276, 277, 278, and 279.

24.12 **Orders for penalty to be sent to DCT: Section 282**

The Taxes Appellate Tribunal or any income tax authority other than DCT himself making an order imposing any penalty under this Part shall forthwith send a copy of the order to the concerned DCT, and thereupon all the provisions of the Act relating to the recovery of penalty shall apply as if such order were made by the DCT.

24.13 **Penalty to be without Prejudice to other liability: Section 283**

The imposition on any person of any penalty under this Part shall be without prejudice to any other liability which such person may incur, or may have incurred, under the Act or under any other law for the time being in force.

24.14 **Revision of penalty based on revised income: Section 284**

DCT shall revise the penalty order during the process of income revision, as per the order issued under this Act. The amount of penalty cannot be increased without providing a reasonable opportunity for the assessee to be heard. If a revised penalty order is not issued and the taxpayer lodges an application requesting the DCT to revise the penalty amount, and if the revised order is not issued within 180 days from the date of the application, then the order will be deemed as revised.

Illustration-1

A client provided you with the following information on income year 2021-22:

Particulars	Tk.
Taxable income from business	500,000
Taxable income from house property	600,000
Taxable income from other sources	350,000

He has also informed that income from house property was derived from a residential flat owned by him and he has not maintained accounts as per direction of the tax authority.

Requirements:

Compute the amount of penalty to be imposed under section 267 of the ITA, 2023.

Solution of illustration-1

Name of Assessee: ABC
Income Year: 2021-22
Assessment Year: 2023-24
Income Tax Computation

Particulars	Tk.
Taxable income from business	500,000
Taxable income from house property	600,000
Taxable income from other sources	350,000
Total Taxable Income	**1,450,000**

Investment Allowance & Tax Credit:

Slab	Taxable Income (Tk.)	Rate	Tax (Tk.)
First	3,50,000	0%	-
Next	1,00,000	5%	5,000
Next	3,00,000	10%	30,000
Next	4,00,000	15%	60,000
Next	3,00,000	20 %	60,000
Total	**1,450,000**		**155,000**

	Tk.
Lower of:	
(a) 15% of the actual Investment	-
(b) 3% % of taxable income	4,650
(c) Tk. 10,00,000	1,000,000
Income Tax Payable	
(Tk. 155,000 – 4,650)	150,350

Tax Payable on Income from House Property
[1,50,350/1,450,000x600,000] = 62,214

Penalty u/s 267 for not maintaining books of accounts:

(a) 50% of tax payable on income from house property [50%X62,214], Tk. 31,107

(b) Tk. 5,000
Whichever is higher 31,107

Total Tax Payable Including Penalty (150,350+31,107) 181,457

24.15 Offences and prosecution

IT Act 1984 presents the rules for punishment through sections 164 to 168 due to specified types of offences committed by different classes of assessee. Such punishments in line with the offences are presented below:

No prosecution for an offence punishable under any provisions shall be instituted except with the previous sanction of the Board. The Board may compound such offence either before or after the institution of any proceedings or prosecution for a punishable offence.

Ref	Offence	Punishment
Sec 311	non-compliance of certain obligations	with imprisonment for a term which may extend to one year, or with fine, or both
312	Evade tax	with imprisonment for a term which may extend to 5 years, but shall not be less than 6 months, or with fine, or both
313	False statement upon verified	with imprisonment for a term which may extend to 5 years, but shall not be less than 6 months, or with fine, or both
314	False certificate	with imprisonment for a term not exceeding one year, but shall not be less than 3 months
315	Failed to deduct or collect tax at source and deposit to treasury	with imprisonment which may extend to one years, or with fine, or with both
316	False audited financial statements	with imprisonment for a term not exceeding 5 years, but shall not be less than 6 months
317	Misuse of TIN	with imprisonment for a term which may extend to 1 year, or with fine up to Tk. 100,000 or both
318	For distracting income tax authority	with imprisonment for a term which may extend to 1 year, or with fine or both





Chapter 25

Recovery of tax

Contents

Introduction

Examination context

Topic list

25.1	Notice of demand
25.2	Penalty for default in payment of tax
25.3	Certificate for recovery of tax
25.4	Method of recovery by Tax Recovery Officer (TRO)
25.5	Power of withdrawal of certificate and stay of proceeding
25.6	Validity of certificate for recovery not open to dispute
25.7	Recovery of tax through Collector of District
25.8	Other modes of recovery

Introduction

Learning objectives

- Define the notice of demand.
- Identify the penalty for default in payment of tax.
- Define the certificate for recovery of tax.
- Identify the different methods and modes of recovery of tax.

Practical significance

A notice of demand in the prescribed form shall be served upon the assessee specifying the sum payable and the time within which it is payable where any tax is payable in consequence of any assessment made or any order passed under or in pursuance of the Act.

An assessee in default or is deemed to be in default in making payment of tax may be directed to pay penalty in addition to tax in arrears. For recovery of tax from an assessee in default, a certificate for recovery of tax may be issued. The TRO upon receipt of that certificate can recover the tax in compliance with the method and mode of recovery as specified. Tax can also be recovered by the Collector of Districts or through Special Magistrates. There are other modes of recovery mentioned in this chapter.

Stop and think

Do you have the idea about the method and mode of recovery of tax by the tax authority? Do you know about notice of demand and penalty for default in payment of tax?

Working context

The tax authority has some procedures to recovery of taxes. They can serve notice of demand; they can issue certificate for tax recovery. They can recover tax even through Collector of District or Special Magistrate. They have also other modes of recovery. So, it is not easy for any assessee to get rid of from payment of tax. Besides an assessee in default or is deemed to be in default in making payment of tax may be penalized.

Accountants can suggest their clients to pay the tax on the basis of assessment in due time. They can aware the clients that making default in payment of tax may cause to penalty in addition to tax payable.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the notice of demand.
- Identify the penalty for default in making payment of tax.
- Define the certificate for recovery of tax.
- Identify the method of recovery by TRO.
- Define the power of withdrawal of certificate and stay of proceeding.
- Define the recovery of tax through Collector of District.
- Define the recovery of tax through Special Magistrates.
- Identify other modes of recovery.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

25.0 RECOVERY OF TAX

Section overview

- ➔ Notice of demand can be served upon the assessee for recovery of tax
- ➔ Default assessee may be directed to pay penalty in addition to tax in arrears.
- ➔ Certificate of recovery may be issued for tax recovery from default assessee.
- ➔ Tax can also be recovered by the Collector of Districts or through Special Magistrates.
- ➔ There are different methods and modes of recovery of tax.

25.1 Notice of demand: Section 214

(1) Where any tax is payable in consequence of any assessment made or any order passed under or in pursuance of the Act, the DCT shall serve upon the assessee a notice of demand in the prescribed form specifying therein the sum payable and the time within which, and the manner in which, it is payable, together with a copy of an assessment order.

(2) Where any tax is refundable in consequence of any assessment made or any order passed under this Act, the DCT shall inform the assessee about the amount refundable and process of refund in the notice so served under subsection (1) unless the refundable amount is adjusted with outstanding under section 225.

(3) No adjustment shall be made against any dues without giving the opportunity of hearing.

(4) Where the assessee upon whom a notice of demand has been issued under section 214(1) makes an application in this behalf before the expiry of the date of payment specified in the notice, the DCT may extend the time for payment or allow payment by installments subject to such conditions, including payment of interest on the amount payable, as he may think fit in the circumstances of the case.

(5) If the sum payable is not paid within the time specified in the notice of demand issued under sub-section (1) or, as the case may be, within the time as extended under sub-section (4), the assessee shall be deemed to be in default.

(6) Where the assessee has presented an appeal under this Act in respect of the assessment or imposition of the tax or of the amount thereof, the DCT shall treat the assessee as not being in default for so long as such appeal is not disposed of.

(7) If, in a case where payment by installment has been allowed under sub-section (4), the assessee commits default in paying any one of the installments within the time fixed thereof, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installments shall be deemed to have been due on the same date as the installment in respect of which default has actually been committed was due for payment.

(8) Where an assessee has been assessed in respect of income arising outside Bangladesh in a country the laws of which prohibit or restrict the remittance of money to Bangladesh, the DCT shall not treat the assessee as in default in respect of that part of the tax which is due in respect of such amount of income as cannot, by reason of the prohibition or restriction, be brought into Bangladesh, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

(9) For the purposes of this section, income shall be deemed to have been brought into Bangladesh if it has been or could have been utilized for the purposes of any expenditure actually incurred by the assessee outside Bangladesh or if the income, whether capitalized or not, has been brought into Bangladesh in any form.

25.2 Penalty for default in payment of tax: Section 275

Where an assessee is in default or is deemed to be in default in making payment of tax, the DCT may direct that, in addition to the amount of tax in arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

25.3 Certificate for recovery of tax: Section 216

1. When an assessee is in default or in deemed to be is default in making payment of tax, the DCT may forward to the TRO a certificate for recovery of the tax, under his signature specifying the amount of arrears due from the assessee; and such certificate may be issued notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

2. A certificate under sub-section (1) may be forwarded to—

(a) the TRO within whose jurisdiction the assessee carried on his business or profession, or the principal place of business or profession of the assessee is situate; or
(b) the TRO within whose jurisdiction the assessee resides, or any movable or immovable property of the assessee is situate; or

(c) the TRO who has jurisdiction in relation to the assessee whose income is assessable by the DCT forwarding the certificate.

25.4 Method of recovery by Tax Recovery Officer (TRO): Section 217

1. Upon receipt of certificate forwarded to him under section 216, the TRO shall proceed, in accordance with the rules made in this behalf by the Board, to recover from the assessee the amount specified in the certificate by one or more of the following modes, namely-

(a) attachment and sale, or sale without attachment, of any movable or immovable property of the assessee;
(b) arrest of the assessee and his detention in prison;
(c) appointment of a receiver for the management of the movable and immovable properties of the assessee.

2. While recovering under sub-section (1) the amount specified in the certificate forwarded to him, the TRO may also recover in the same manner from the assessee in default, in addition to such amount, any cost and charges, including expenses on the service of any notice or warrant, incurred in the proceedings for the recovery of the tax in arrears.

3. If the TRO to whom a certificate is forwarded under section 216 is not able to recover the entire amount by the sale of movable and immovable properties of the assessee within his jurisdiction, but has information that the assessee has property within the jurisdiction of another TRO, he may send the certificate to such other TRO or to the TRO within whose jurisdiction the assessee resides; and the TRO to whom the certificate has been so sent shall proceed to recover under Chapter XVI the amount remaining un-recovered as if the certificate was forwarded to him by the DCT.

25.5 Power of withdrawal of certificate and stay of proceeding: Section 218

1. The DCT shall have power to withdraw or correct any clerical or arithmetical error in the certificate by sending an intimation to that effect to the TRO.

2. Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act and, as a consequence thereof, the demand is reduced but the order is the subject matter of further proceedings under this Act, the DCT shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceedings remain pending.

3. Where a certificate for recovery has been issued and subsequently the amount of outstanding demand is reduced as a result of appeal or other proceedings under this Act, the DCT shall, when the order, which was the subject matter of such appeal or other proceeding, has become final and conclusive, amend the certificate or withdraw it, as the case may be.

4. The DCT shall communicate to the TRO any orders of cancellation, correction, stay of proceeding, withdrawal or amendment, as the case may be, of a certificate for recovery.

25.6 Validity of certificate for recovery not open to dispute: Section 219

When the DCT forwards a certificate for recovery under section 216 to a TRO, it shall not be open to the assessee to dispute before the TRO the correctness of the assessment, and the TRO shall not entertain any objection to the certificate on any ground whatsoever.

25.7 Recovery of tax through Collector of District: Section 220

1. The DCT may forward to the Collector of District in which the office of the DCT is situate or the district in which the assessee resides or owns property or carries on business or profession, a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipts of such certificate, shall proceed to recover, from such assessee the amount specified therein as if it were an arrear of land revenue.

2. Without prejudice to any other powers which the Collector of District may have in this behalf, he shall, for the purposes of recovery of the amount specified if the certificate for recovery forwarded to him under sub-section (1), have the powers which a Civil Court has under the Code of Civil Procedure, 1908, for the purposes of recovery of an amount due under a decree.

3. The DCT may, at any time, recall from the Collector of District a certificate forwarded to him under sub-section (1) and upon such recall, all proceeding commenced in pursuance of the certificate shall abate. However, the recall of a certificate shall not affect any recoveries made by the Collector before the recall as if the certificate had not, to the extent of such recovery, been recalled; nor shall the recall of a certificate issued at any time prevent the recovery, by issue of a fresh certificate, of any amount which was recoverable at the time the certificate so recalled was issued.

25.8 **Other modes of recovery: Section 221**

(1) Notwithstanding the issue of a certificate for recovery of tax under section 216 or section 220, the DCT may also recover the tax in the manner provided in sub-section (2) or (3).

(2) For the purpose of recovery of tax payable by an assessee which is not disputed in appeal to any appellate forum, the DCT may, with the previous approval of the Commissioner, after giving the assessee an opportunity of being heard, stop movement of any goods and services from the business premises of such assessee and also shutdown such business premises till the recovery of the tax referred to above or any satisfactory arrangement has been made for the recovery of such tax.

(3) For the purposes of recovery of any tax payable by an assessee, the DCT may, by notice in writing, require following person to deposit the amount or deduct tax and deposit to the treasury:

i. To whom any money or goods of the assessee is due or may become due;
ii. Who holds or controls the receipt or disposal of, or may subsequently hold, or control the receipt or disposal of, any money or goods of the assessee;
iii. Who hold, supervise or operate any assets of any kind of the assesses on his behalf;
iv. Who hold, supervise or operate any assets of a non-resident assessee as an agent or may subsequently hold, supervise or operate;
v. Who is responsible to disburse income from employment to the assessee;
vi. Who is responsible to pay rental income to the assessee.

(4) Person who has paid any sum as required by sub-section (3) shall be deemed to have paid such sum under the authority of the assessee and the receipt by the DCT shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the sum specified in the receipt.

(5) If the person to whom a notice under sub-section (3) is sent fails to make payment or to make deductions in pursuance of the notice, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and proceedings may be taken against him for realization of the amount as if it were an arrear of tax due from him; and the provisions of this Chapter shall apply accordingly.

(6) The DCT may at any time amend or revoke any notice issued under sub-section (3) or extend the time for making any payment in pursuance of such notice.

(7) DCT may direct respective authority to disconnect or stop providing gas, electricity, water, or other services for the purpose of recovering arear tax and authority shall stop or disconnect the services within 21 days upon receiving notice.

(8) Person shall be deemed to be the defaulter if he fails to comply with the notice and shall be personally liable.

(9) Person shall restore the connection as discussed in the sub-section (7) upon getting permission from DCT.

(10) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of Bangladesh, the DCT may proceed to recover the amount due by such process.

(11) Commissioner shall determine the process and responsibility of the concern authorities to recover tax as per statutory act or VAT and SD Act 2012, or Customs Act 1969 with the municipal tax, local tax, and other taxes under sub-section (10)

Self-assessment question

Discuss briefly the salient features of the various provisions of the Income Tax Act, 2023 relating to recovery of tax by the Tax Authorities.





Chapter 26

Double taxation relief

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Introduction

Learning objectives

- Define the agreement to avoid double taxation.
- Recognize the tax relief in respect of income arising outside Bangladesh.

Practical significance

The Government of Bangladesh may enter into an agreement with the Government of any other country for the avoidance of double taxation and the prevention of fiscal evasion with respect to income taxes. The agreement can provide some provisions for implementation such as relief from the tax payable, recovery of tax leviable under the Act and under the corresponding law in force in that country etc.

If any person who is resident in Bangladesh in any year proves that he has paid tax on any income for any income year outside Bangladesh in any country with which there is no reciprocal agreement for relief or avoidance of double taxation, tax shall be deducted from the tax payable by him under the Act, subject to such rules as the NBR may make in this behalf, a sum equal to the tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the said country, whichever is the lower.

Stop and think

Do you realize the impact of agreement to avoid double taxation? Do you know the list of countries with which Bangladesh has agreement to avoid double taxation? Do you know about the relief in respect of income arising outside Bangladesh?

Working context

Accountant can help their clients by giving advice with procedures to avoid double taxation. They should have the updated knowledge on various agreements for avoidance of double taxation with different countries. Based on the provisions of these agreements they can support their clients in this regard.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the agreement to avoid double taxation.
- Recognize the provision mentioned in agreement to avoid double taxation.
- Identify the relief in respect of income arising outside Bangladesh.
- List the name of countries with whom Bangladesh has agreement for avoidance of double taxation.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

26.0 DOUBLE TAXATION RELIEF INCLUDING TAX TREATIES

Section overview

➔ For the avoidance of double taxation, Bangladesh enters into agreement with many countries.
➔ Double taxation agreement also prevents the fiscal evasion with respect to income taxes.
➔ Under double taxation relief system, the payable tax will be the sum equal to the tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the foreign country, whichever is the lower.

26.1 Double taxation – some basic concepts

What is double taxation?

Double taxation means taxing the same income twice, once in the home country and again in the host country. For example, a Bangladeshi citizen may have income arose in India which is once taxed in India and again in Bangladesh.

How does double taxation arise?

Double taxation may arise in the following two ways:

(i) The jurisdictional connections used by different countries may overlap with each other. For example, Mr. Rolex, a resident under the Bangladesh Income Tax Act, 2023 must pay tax on his total world income in USA also as citizen of USA (Residential jurisdiction).

(ii) The taxpayer or his income may have connections with more than one country. For example, Mr. Rahamat, a Bangladeshi citizen, has income from Romania on investments and dividend income from

France in addition to income from Bangladesh. He has to pay tax on his total world income in Bangladesh and also on income earned in Romania and France (Source jurisdiction).

What are the broad objectives of Bangladesh DTAA?

The major objectives of Bangladesh DTAA are as follows:

(i) To obtain a more effective relief from double taxation compared to relief allowed under unilateral measures.
(ii) To create a favorable climate for the inflow of FDI in Bangladesh.
(iii) To make special tax incentives provided by Bangladesh fully effective for the taxpayers of the capital exporting countries.
(iv) To prevent tax evasion.
(v) To foster long term, mutually beneficial economic relationship with others specially the developed countries.

Which model of avoidance of double taxation agreement is followed in Bangladesh?

There are two models of avoidance of double taxation agreement viz., UN Model and OECD Model. Bangladesh generally follows UN model of avoidance of double taxation agreement which consists of the following 29 articles:

Article	Heading	Main Contents
1.	Scope of the convention	To whom applicable
2.	Taxes covered	Specific taxes covered
3.	General definitions	Person, company, enterprise, international traffic competent authority
4.	Resident	Resident of a contracting state
5.	Permanent establishment (PE)	What constitutes /does not constitute PE
6.	Income from immovable property	Immovable property and income there from
7.	Business profits	Determination and taxation of profits arising from business carried on through PE
8.	Shipping, inland waterways transport and air transport	Place of deemed accrual of profits and mode of taxation thereon
9.	Associated enterprises	Enterprises under common management and taxation o profits arising there from
10.	Dividends	Definition and taxation of dividends
II.	Interest	Definition and taxation of interest
12.	Royalties	Taxation of royalties, country where taxable
13.	Capital gains	Taxation of capital gains, country where taxable
14.	Independent personal services	Types of services, country where taxable
15.	Dependent personal services	Definition, country where taxable
16.	Directors' fees and remuneration for top level managerial officials	Definition, country where taxable
17.	Income earned by entertainers and athletes	Types of activities, mode and country where taxable
18.	Pension and social security payments	Country where taxable
19.	Remuneration and pensions in respect of Government servants	Type of remuneration, country where taxable

20.	Payment received by students and apprentices	Taxation and related exemptions
21.	Other income	Residual article to cover incomes not covered unde articles, mode of taxation and country where taxable
22.	Capital (tax on wealth)	Mode of taxation, country where taxable
24.	Non-discrimination	Equitable basis of taxing nationals and citizens of foreign state
25.	Mutual Agreement Procedure	Where taxation is not as per provisions of the convention a person may present his case to competent authority o respective states
26.	Exchange of information	Competent authorities to exchange information fo carrying out the provisions of the convention methodology for the same
27.	Diplomatic agents and consula officers	Privileges of this category to remain unaffected
28.	Entry into force	Effective date from which the convention comes into force,
29.	Termination of treaty	Time and notice period mode

Besides the above clauses, DTAAs normally contain a Protocol or Memorandum, which is like a supplement to the Treaty. This is attached normally at the end of the treaty, which clarifies borderline issues, and rectifies unintended omissions.

The other model, OECD model, is mostly followed amongst 29 OECD countries. The fundamental difference between these two is essentially one; UN model is based on taxing the income on source principle whereas OECD model is on resident principle. Since FDI flows from developed to developing countries, the latter tends to benefit the developed countries.

What impact double taxation in general, would have on global economic activities?

(a) It hampers free flow of capital and technology across borders and
(b) It becomes a prohibitive burden on concerned taxpayers leading to decline in foreign investments.

What are the effects of DTAA in Bangladesh?

The effects of an agreement entered by virtue of section 244 of Income Tax Act, 2023 would be:

1. If no tax liability is imposed under the Act, the question of resorting to DTAA would not arise. No provision of DTAA can possibly fasten a tax liability which is not imposed by the Act. The treaties with all intent and purpose, can lessen the vigor of double taxation cannot, however, enhance it.

2. In case of a difference in the provisions of the Act and those of the DTAA, to the extent they are more beneficial to the provisions of the Act, will override the Act which is the fundamental concept in treaty override.

What are the differences between double tax relief and double tax avoidance?

Double tax relief means granting of relief in respect of income on which income tax has been paid under the Bangladesh tax laws and in other country.

Double taxation avoidance means avoidance of double taxation on income under the tax laws of the two countries. One important distinction between the two is that in the case of avoidance of double taxation the assessee does not have to pay the tax first to claim refund later, but he would be obliged to do so in the case of relief against double taxation.

The other distinction is that no benefit is given unless otherwise stipulated in the DTAA, but relief can be awarded unilaterally against double tax even when there exists no DTAA. Section 244 of the Income Tax Act, 2023 empowers the DCT to grant such relief, subject to such rules as the NBR may make in this behalf.

Firstly, as per section 244 of Income Tax Act, 2023, where Bangladesh Govt. has entered any DTAA, the provisions of that agreement would normally apply to the case of an assessee covered by such agreement. However, if the relevant provisions in the Bangladesh Income Tax Act are more favorable, then to that extent he can seek applications of the provisions of the Act as against those of the agreement.

26.2 Agreement to avoid double taxation: section 244

This section confers the right to GOB to enter into an agreement with the government of any other country for the avoidance of double taxation and the prevention of fiscal evasion with respect to income tax and may, by Gazette Notification, make such provisions as may be necessary to implement the agreement.

Income tax policy section of NBR is entrusted to negotiating the Double Taxation Avoidance Agreement (DTAA) with foreign countries to promote foreign direct investment in Bangladesh. DTA is an agreement between two countries seeking to avoid double taxation by defining the taxing rights of each country regarding cross border flows of income, providing for tax credits or exemptions to eliminate double taxation.

At present, Government of Bangladesh has entered into Double Taxation Avoidance Agreement (DTAA) with 34 countries as stated below:

Sl. No	Name of the Countries	SRO		Date of effect in Bangladesh (assessment year commencing on or after)
		No.	Date	
1.	U.K.	227-L/80	08/07/1980	01/07/1978
2.	Singapore	124-L/82	21/04/1982	01/01/1980
3.	Sweden	382-L/83	19/10/1983	01/07/1984
4.	Korea	433-L/84	02/10/1984	01/07/1984
5.	Canada	247-L/85	06/06/1985	01/07/1982
6.	Pakistan	221-L/88	11/07/1988	01/01/1980
7.	Romania	348-L/88	23/11/1988	01/07/1989
8.	Sri Lanka	365-L/88	10/12/1988	01/07/1989
9.	France	2-L/89	04/01/1989	01/07/1989
10.	Malaysia	67-L/90	15/02/1990	01/01/1982
11.	Japan	235-L/91	06/08/1991	01/07/1992
12.	India	45-L/93	27/02/1993	01/07/1993
13.	Germany	1-L/94	01/01/1994	01/01/1990
14.	Netherlands	267-L/94	14/09/1994	01/07/1995
15.	Italy	63-L/97	12/03/1997	01/07/1980
16.	Denmark	72-L/97	17/03/1997	01/07/1997
17.	China	114-L/97	13/05/1997	01/07/1998
18.	Belgium	11-L/98	14/01/1998	01/07/1998
19.	Thailand	222-L/98	07/09/1998	01/07/1999
20.	Poland	39/L/99	03/03/1999	01/07/2000
21.	Philippines	56/L/2004	04/03/2004	01/07/2004
22.	Vietnam	301-L/2004	18/10/2004	01/07/2005
23.	Turkey	308/L/2004	31/10/2005	01/07/2004
24.	Norway	20-L/2006	12/02/2006	01/07/2006
25.	Indonesia	60-L/2007	20/04/2007	01/07/2007
26.	USA	71-L/2007	10/05/2007	01/07/2007
27.	Switzerland	52-L/2010	23/02/2010	01/07/2008

28.	Oman	16-L/2009	02/02/2009	01/07/2009
29.	Myanmar	313-L/2012	18/10/2012	01/07/2012
30.	Mauritius	122-L/2012	09/05/2012	01/07/2012
31.	Saudi Arabia	103-L/2012	15/04/2012	01/10/2011
32.	UAE	313-L/2012	05/09/2012	01/07/2012
33.	Belarus	189-L/2014	08/07/2014	01/07/2014
34.	Kuwait	376-L/2018	25/12/1018	01/7/2019
35.	Bahrain	301-L/2017	16/10/2017	01/7/2018
36.	Bhutan	56-L/2020	20/02/2020	01/7/2020
37.	Nepal	57-L/2020	20/02/2020	01/7/2020
38.	Czech Republic	304-L/2020	10/11/2020	01/7/2021

Comparative Rates in Double Taxation Avoidance Agreement.

Sl. No.	Name of the Country	Permanent Establishment	Maximum tax rate for dividend	Maximum tax rate for Interest	Maximum tax rate for Royalties
1.	U.K	183 days	10%/15%	7.5%/10%	10%
2.	Singapore	183 days	15%	10%	10%
3.	Sweden	183 days	10%/15%	10%	10%
4.	Korea	183 days	10%/15%	10%	10%
5.	Canada	183 days	15%	10%	10%
6.	Pakistan	183 days	15%	15%	15%
7.	Romania	183 days	10%/15%	10%	10%
8.	Sri Lanka	183 days	15%	15%	15%
9.	France	183 days	10%/15%	10%	10%
10.	Malaysia	183 days	15%	15%	15%
11.	Japan	6 months	10%/15%	10%	10%
12.	India	183 days	10%/15%	10%	10%
13.	Germany	183 days	15%	10%	10%
14.	Netherlands	6 months	10%/15%	10%	10%
15.	Italy	183 days	10%/15%	10%/15%	10%/15%
16.	Denmark	183 days	10%/15%	10%	10%
17.	China	6 months	10%	10%	10%
18.	Belgium	183 days	15%	15%	10%
19.	Thailand	183 days	10%/15%	10%/15%	15%
20.	Poland	183 days	10%/15%	10%	10%
21.	Philippines	6 months	10%/15%	15%	15%
22.	Vietnam	6 months	15%	15%	15%
23.	Turkey	12 months	10%	10%	10%
24.	Norway	6 months	10%/15%	10%	10%
25.	Indonesia	183 days	10%/15%	10%	10%
26.	USA	183 days	10%/15%	10%	10%
27.	Switzerland	183 days	10%/15%	10%	10%
28.	Oman	Only airlines			
29.	Myanmar	6 months	10%	10%	10%
30.	Mauritius	12 months	10%	0%	0%
31.	Saudi Arabia	6 months	10%	7.5%	10%
32.	UAE	6 months	5%/10%	10%	10%
33.	Belarus	6 months	10%/12%	7.5%	10%
34.	Kuwait	183 days	5%/10%	10%	10%

35.	Bahrain	183 days	10%/15%	10%	10%
36.	Bhutan	183 days	10%/15%	10%	10%
37.	Nepal	183 days	10%/15%	10%	15%
38.	Czech Republic	6 months	10%/15%	10%	10%

26.3 Relief In respect of income arising outside Bangladesh: section 246

This section empowers DCT to allow relief to an assessee in respect of any income accrued or arisen in any other country with which Bangladesh does not have DTAA. The assessee must prove that he has suffered tax on that income by way of deduction or otherwise, then the DCT may, subject to such rules as the NBR may make in this behalf, deduct from the tax payable by the assessee a sum equal to tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax at the said country, whichever is lower. Average rate of tax means the rate arrived at by dividing the amount of tax calculated on the total income by such income.

26.4 Comparative picture of Double Tax Avoidance and tax relief

Double tax avoidance and tax relief as presented in sections 244 and 246 respectively in ITA, 2023 have conceptual difference which is presented in the table below:

Reference	Income	Heading of the section	Tax advantages
Section 244	Arises from those countries with whom there is DTAA	Avoidance of Double Taxation	Tax calculated as per rate in the agreement, but it will not be more than the tax amount calculated on the basis of the average tax rate applicable in Bangladesh (considering foreign income in total income) on the foreign income.
Section 246	Arises from those countries with whom there is no DTAA	Relief	Tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the said country, whichever is lower subject to such rules as the NBR may make in this behalf.

Illustration 1:

Mr. Nazim, a Bangladeshi resident, received interest income of Tk. 450,000 from Indonesia after deduction of 10% of tax at source during the year ending on 30 June 2023. His other income in Bangladesh amounts to Tk. 300,000 for the same year. Compute the net tax liability of Mr. Nazim.

Solution

Mr. Nazim
Assessment year: 2023-24

Heads of income	**Amount (Tk.)**
Income from Bangladesh sources	300,000
Foreign income (Tk. 450,000/1-0.1)	500,000
Total income	800,000

Computation of tax liability:

Tier of income	**Rate**	**Amount (Tk.)**

On first	Tk. 3,50,000	0%	Nil
On next	1,00,000	5%	5,000
On next	3,00,000	10%	30,000
On balance	50,000	15%	7,500
	Tk. 800,000		42,500

Thus, the average tax rate in Bangladesh is 5.31% (Tk. 42,500 / Tk. 800,000 × 100). So, the maximum limit of tax credit will be Tk. 26,550 (Tk. 500,000 × 5.31%) though he already paid Tk. 50,000 tax in Indonesia. Mr. Nazim will have to pay Tk. 23,450 (Tk. 50,000 – Tk. 26,550) as remaining tax in Bangladesh.

Illustration 2:

Mr. Khan Jahan records the income for the income year 2022-23 as income from Bangladesh Tk. 2,000,000; income from Sweden Tk. 600,000; income from Singapore Tk. 400,000; and income from Russia Tk. 1,000,000. The income tax rate for foreigners in Sweden is 30%, but he has paid tax @ 25% as per DTAA. 20% tax has been paid in Russia for the income generated in Russia and 25% tax has been paid in Singapore for the income generated in Singapore. Show the application of double taxation relief due to these foreign incomes for the assessment year 2023-24.

Solution 2:

Mr. Khan Jahan
Computation of total income
For the assessment year 2023-24

Particulars	Tk.	Tk.
1. Income from Bangladesh		2,000,000
2. Income from Sweden		600,000
3. Income from Russia [No DTAA]		1,000,000
4. Income from Singapore		400,000
Total income		4,000,000

Mr. Khan Jahan
Computation of tax payable in Bangladesh

Particulars	Rate.	Tk.
On first 3,50,000	0%	-
On next 1,00,000	5%	5,000
On next 3,00,000	10%	30,000
On next 4,00,000	15%	60,000
On next 5,00,000	20%	1,00,000
On balance 23,50,000	25%	5,87,500
Total Tax		7,82,500
Less: Double taxation relief (Note-5)		1,90,000
Net tax payable		5,95,000

Notes:

1. Average tax rate in Bangladesh = [(7,82,500/4,000,000) ×100] = 19.56%
2. No tax relief from income from Russia (as there is no DTAA and as NBR not yet prescribed any rule as per section 246 in this behalf)
3. Tax relief from income from Sweden (DTAA exists) = (6,00,000 ×25%) = Tk. 150,000. However, maximum limit is Tk. 1,17,375 (6,00,000 ×19.56%).
4. Tax relief from income from Singapore (DTAA exists) = @ 25% or average tax rate i.e.19.56% whichever is lower = (400,000 ×19.56%) = Tk. 78,240

5. Total double taxation relief is = Tk. (1,17,375 + 78,240) = Tk. 1,95,615.

Illustration 3:

(a) Mrs. Roma Chowdhury, a dual citizen (Bangladeshi by birth and Canadian nationality through immigration) is a differently abled (disabled) person, was working as a consultant in a reputed company in Sri Lanka during 1st July 2016 to 31st October 2022. After spending consultancy stint and vacation in India, Mrs. Chowdhury returned to Bangladesh on 31st December 2022. Mr. Chowdhury started consultancy and supply business in Bangladesh effective from 1st February 2023. For the purpose of consultancy business, Mrs. Chowdhury frequently traveled abroad.

Accordingly, Mrs. Chowdhury has sought your advice as to how she should file his tax return in compliance with the prevailing tax laws. In relation to this, Mrs. Chowdhury shared you the following information:

Income from abroad:	
Description	**Amount (Taka)**
Ex-employer in Sri-Lanka remitted performance bonus: Accrued for the year 2021	760,000
Accrued for the year 2022 (December)	1,140,000
The amount was net-off tax @ 24%, credited to her bank account in Canada on 1st March'22 (Bangladesh and Sri Lanka have a double tax avoidance treaty)	2,700,000
Consultancy fees remitted net-off tax @ 12% by an Indian Company on 28th February 2023 for services provided in India in November-December'21 credited to her bank account in Canada (Bangladesh and India have a double tax avoidance treaty)	

Consultancy services provided in Bangladesh:	
Description	**Amount (Taka)**
For consultancy services provided from 1st April 2022 to 30th June'22 fees earned from a public limited company on which, the company deducted tax at source @ 10% under the tax law.	3,000,000
Supply of computer hardware and accessories to Company Y on 15th May 2022, amount received during same period on which Tk. 200,000 being 5% was already deducted as tax at import stage under the tax law. Act by customs authorities at import point on 1st March 2022 and Company Y mentioned that they will deduct tax @ 5% on the total supply value u/s 89 of the ITA, 2023 Note: This Supply business will be assessed 163 of the ITA, 2023	6,000,000

Expenses made by Mr. Chowdhury during 2022-23 income year	
Description	**Amount (Taka)**
Expenses relevant for supply business including material cost	5,000,000
Expenses relevant for non-supply business	2,000,000
Bank interest for working capital for non-supply business	500,000
Bank interest for a home loan of Tk. 50 lacs	450,000
On account of purchase of Bangladesh savings certificate	3,000,000

Required:
Considering the withholding taxes provisions as per Income Tax Act, 2023 compute:

(1) Total income for the income year 2022-23.
(2) Tax liability for the income year 2022-23

(b) Asia limited; Singapore has opened a liaison office in Bangladesh. Initially, they have hired 3 employees and expect to hire more people in future. The entity has finalized the total benefits per employee. The GM of the entity has heard that, proper structuring of salary components (e.g., basic, house rent, etc.) in Bangladesh can bring in tax benefits to the employee. One of the newly joined employees is asking for salary payment in cash. S/he said that, cash payments are not subject to withholding tax in Bangladesh.

The GM wants to be fair in tax practice. He also wants to avail the maximum tax benefits for himself and the other employees. The entity does not have any fixed payroll structure ratio. Below is the salary pay structure plan.

Pay structure
Asia Ltd. - Bangladesh Liaison Office

Name: Mr. Kei San
Position: General Manager
Gender: Male
Monthly salary: Tk. 500,000.
Joining date: 1st July 2021

Required
Calculate the most tax efficient salary structure ratio for Mr. Kei - San that will result in withholding tax per month. The comparison is shown below:

Particulars	Ratio 1	Ratio 2	Ratio 3
Basic Salary	50%	40%	40%
House rent allowance	30%	30%	30%
Medical Expenses	10%	20%	10%
Conveyance Allowance	10%	10%	20%
	100%	100%	100%

(c) Mr. Z an individual, working for a large food company having compliant tax practices, has come to you to seek your advice on the following:

For the Assessment Year 2023-24 Mr. Z received Taka 190,000 from the Workers' Profit Participation Fund established under Bangladesh Labor Act, 2006 after deduction of 5% tax as per ITA.

In connection with the above, while discussing about this withholding tax (which was not applicable earlier) with one of his colleagues, he told that although there is tax applicable on income from Workers' Profit Participation Fund but it is in fact exempted from income taxes as per the Bangladesh Labor Act, 2006 for the workers. For the Assessment Year 2023-24, while assessed Mr. Z's total income is already at the highest slab of tax rate without this income from Workers' Profit Participation Fund.

Mr. Z is requiring following advice from you:

i) What would be his legal position based on the tax laws and labor law? If he has to pay taxes on income from Workers' Profit Participation Fund,

ii) Tax liability considering the withholding taxes and exemption if any as per the tax laws (ignore investment allowances)

Solution-3(a)
Mr. Chowdhury
Income Year from 2022-23
Assessment Year: 2023-24
Computation of total income

Heads of Income	**Note**	**Amount (Taka)**	**Amount (Taka)**
Income from Salary: (Section 21)			
Remittance by ex-employer in Sri-Lanka for performance bonus	2		15,00,000
Total Income from Salary			15,00,000

Income from Business or profession: (section 28-30)			
Consultancy Fee:			
Consultancy fees remitted by Indian Company on 28th February 2023 for services provided in India in November-December 2022 credited to his bank account in Canada after deduction of tax @ 10% at source	3		30,00,000

Consultancy fees earned in Bangladesh (tax at source @ 12% of the tax law applicable)			30,00,000
Less: Admissible expenses			
Expenses relevant for non-supply business		20,00,000	
Bank interest for working capital for non-supply business		5,00,000	(25,00,000)
Total income on consultancy business			35,00,000
Supply business:(withholding tax is the minimum tax u/s 163)			
Supply of computer hardware and accessories to Company Y executed on 15th May 2023			60,00,000
Less: Admissible expenses			
Expenses for supply business including material cost			(50,00,000)
Total Income from Supply business			10,00,000
Total Income [Requirement (i)]			60,00,000

Calculation of Tax liability considering the rate applicable for Disabled person:

Income	**Slab**	**Rate**	**Amount (Taka)**
on 1st	4,75,000	0%	-
Next	1,00,000	5%	5,000
Next	3,00,000	10%	30,000
Next	4,00,000	15%	60,000
Next	5,00,000	20%	1,00,000
Next	27,25,000	25%	6,81,250
On supply (u/s 163) withholding tax being higher (Note 4)	10,00,000	minim um tax	4,20,000
On local consultancy (u/s 163) withholding tax being higher	5,00,000	minim um tax	3,60,000
Total	60,00,000		**16,56, 250**
Rebate: (45, 00,000x3%)			**(1,35,000)**
Net tax liability after tax rebate			15,21,250
Less: Double taxation relief (Foreign Tax credit as per sec 144(4)			
Withholding tax credit allowed on Salary income in Sri Lanka (Note-5)			(3,60,000)
Withholding tax credit allowed on Consultancy income in India (Note-6)			(3,00,000)
Less: Tax deducted at source in Bangladesh (Note-7)			(6,60,000)
Net Tax liability [Requirement (ii)]			**2,01,250**

Calculation of Eligible amount for investment allowances under Income Tax Act, 2023:

Description	Amount	Amount	Amount
Investment in Sanchaya Patra			30,00,000
Total Actual Investment			30,00,000
Tax rebate on investment:			
3% of total income - income u/s 163 = (6,000,000-1,500,000)			1,35,000
Or 15% on actual investment			4,50,000
or Tk.			10,00,000
Thus, eligible amount is lowe one			**1,35,000**

Note:1

Mr. Chowdhury arrived in Bangladesh on 31st December 2022; hence for the purpose of the AY 2023-24, Mr Chowdhury's status would be Resident because he stayed total [1+31+28+31+30+31+30] =182 days. Additionally, Mr. Chowdhury is also a disabled person as per definition of the ITA, 2023.

Note: 2

Mr Chowdhury is a resident tax payer in Bangladesh. Salary income of Taka 1,000,000 (grossed up: 760,000/ (1-76%)) accrued for the year 2021 should not be within the scope of total income u/s 26 of the ITA, 2023. Because, this income was generated beyond this tax period, when his status was non-resident

Salary income of Taka 1,500,000 (grossed up: 1,140,000/(1-76%)) accrued or arises to him outside Bangladesh for the income year 2021-2022 should be within the scope of total income u/s 26 of the ITA, 2023. Because, this income was generated within the same tax period, when his status was resident

Note-3

Consultancy income of Taka 3,000,000 (grossed up: 2,700,000/(1-90%)) accrued or arises to him outside Bangladesh for the income year 2021-22 should be within the scope of total income u/s 26 of the ITA, 2023. Because, this income was generated within the same tax period, when his status was resident. Whether the money was received in Canada or not, it does not matter, as Resident tax payer's income is assessed on global income basis.

Note-4

Tax liability for Supply business (u/s 163)			Amount (Taka)
Profit as per normal calculation		1,000,000	
Tax as per 25% slab, or			250,000
Total withholding tax, treated as minimum tax u/s 163			420,000
Whichever is higher			420,000
Thus, tax liability for Supply business u/s 163			**420,000**

Note-5			
Withholding tax credit allowed on Salary income in Sri Lanka			
Gross salary earned Taxable in Bangladesh			1,500,000
Withholding tax in Sri Lanka @ 24%			360,000
Average tax rate in Bangladesh including foreign income (1,550,000/6,000,000)			25.83%
Maximum credit allowed @ 24% as it is lower			360,000
Credit to be claimed (lower of maximum allowed vs. actual)			**360,000**

Note-6			
withholding tax credit allowed on Consultancy income in India			
Gross consultancy fee earned Taxable in Bangladesh			3,000,000
Withholding tax in India @ 24%			300,000

Average tax rate in Bangladesh including foreign income (1,550,000/6,000,000)			25.883%
Maximum credit allowed @ 24% as it is lower			300,000
Credit to be claimed (lower of maximum allowed vs. actual)			**300,000**

Note-7			
Withholding tax in Bangladesh:			
On consultancy services to be provided from 1st April 22 to 30th June 22 (Taka 3,000,000 X 12%)			360,000
On Supply business:			
Tax paid at import point u/s 120		200,000	
Tax to be withheld u/s 89 (Taka 6,000,000 x 5%)	300,000		
Less: Tax paid at source u/s 120(as per section 89)	200,000	1,00,000	300,000
Total withholding tax in Bangladesh			**660,000**

Solution-3 (b)

In every situation taxable income and withholding tax are same because his yearly salary is Tk. 60,00,000. Whereas non-taxable ceiling of house rent allowance is Tk.3,00,000, medical allowance is only Tk.1,20,000 and conveyance allowance is only Tk.30,000. So altogether he will get yearly exemption of Tk.4,50,000 which is highest and same in every situation and his taxable salary will be 60,00,000-4,50,000=55,50,000 in all situation. Accordingly withholding tax in every situation will also be the same. Tax planning will not work here due to high salary.

<table>
<tr><td>3(c)(i)</td><td>The legal position on the taxability on income from Workers' Profit Participation Fund based on the tax laws and labor law:

On the application of withholding taxes:

It is correct that as per Bangladesh Labor Act, 2006 ("Labor Act") it has been mentioned that income from Workers' Profit Participation Fund is exempted from taxes for the workers defined under the said Labor Act.

However, while introducing this withholding tax provision u/s 88 of tax law, taking into account such provisions in other laws, it is clearly mentioned that notwithstanding anything contained in any other provisions of ITA or any other laws being in force in respect of exemption from tax on payments from Workers' Profit Participation Fund …withholding taxes @10% shall be applicable. Hence, it is clear that the Income Tax law has an overriding authority over the labor law in this regard.

On the application of income taxes:

As per Income tax law, exemptions are considered only when there is expressed provision as per Sixth Schedule Part 1 (Exclusions from total Income) or through a SRO irrespective of any exemption given under other laws.

This is because; section 3 of the Act has given the Act an overriding authority on other laws. Hence, any income from Workers' Profit Participation Fund shall be taxable subject to exemption allowed as per the Sixth Schedule Part 1 (Exclusions from total Income) or any SRO thereof. Currently the only exemption allowed is up to Taka 50,000 as of Sixth Schedule of Income Tax Act, 2023.</td></tr>
<tr><td>3(c)(ii)</td><td>If he has to pay taxes on income from Workers' Profit Participation Fund, net tax liability of Mr. Z on income from Workers' Profit Participation Fund considering the withholding taxes and exemption if any:

<table>
<tr><td>Description</td><td>Amount (Taka)</td></tr>
<tr><td>Gross income from WPPF (190,000/(90%)
Exemption allowed [ref. Sixth Schedule Part 1]</td><td>211,111
(50,000)</td></tr>
<tr><td>Net income taxable on income from WPPF</td><td>161,111</td></tr>
<tr><td>Tax @ 25% (being in the highest slab)
Tax already deducted u/s 88</td><td>40,278
(21,111)</td></tr>
<tr><td>Net Tax liability</td><td>19,167</td></tr>
</table>
</td></tr>
</table>

Illustration 4:

A multinational Tobacco Company i.e., MTC Co. has been running their tobacco business in Bangladesh for some time. The company is a private limited company. Now it is contemplating to explore the possibility of introducing new product(s)/service line(s) of non-tobacco nature along with their existing tobacco business. Hence, the company has considered the following options and asked for the certain queries under each option:

Option A: Integration of the new product/service line within the existing business which will be producing and marketing both tobacco and non-tobacco product/service lines.

Option B: Setting up a separate local subsidiary which will be owned by existing company i.e. MTC Co.

Option C: Setting up a legal entity which will be owned by the non-resident parent company of the existing company in Bangladesh.

Besides, the company has outlined some specific queries under each option which have been outlined below:

Queries for Option A:

(i) Whether the income generated from non-tobacco business would be taxed separately or the tax rate of current tobacco business would be imposed on non-tobacco business as well?

Queries for Option B:

(i) How would the cost of the management team be allocated to the subsidiary as most of the management work of the subsidiary would be done by the Parent company management team.
(ii) What is the tax implication on the charge of management fees to the subsidiary company?
(iii) What would be the tax implication of the subsidiary company considering the two scenarios:

1. If its legal status is a listed company
2. If its legal status is a private limited company

(iv) How would the dividend income be treated in the financial statements of the Parent company and what would be the tax implication therein along with the net income of Ultimate parent company situated in JAPAN, upon distribution of dividend.

(v) Would the parent company and subsidiary company both require to submit tax return? If so, would there be a requirement to submit tax return for the consolidated profit as well.

The company has approached Mr. X, the partner of a one of the reputed CA firms for an expert opinion with optimal tax structure on the above-mentioned business options and queries pertained to them. You are currently acting the role of a senior manager in the firm since long as a qualified Chartered Accountant. And the partner of the firm has delegated the assignment to you.

Requirements:

Explanation of each option mentioned above in the light of Income Tax Act, 2023. This should also include the following:

- Double tax treaty benefits if any in case of repatriation of dividend to ultimate parent, situated in JAPAN, of the tobacco Co. Assume 100% foreign holding
- Financial analysis considering the new company to be considered as a subsidiary of MTC as a private entity and as a public entity
- Financial analysis considering the new company to be considered as a subsidiary of MTC or of non-resident parent entity of MTC as a private entity

Solution-4

Option-A

(i) Would the income generated from non-tobacco business be taxed separately or would the tax rate of current tobacco business be imposed on non-tobacco business as well?

As per my understanding, current business income being generated from Tobacco, is subject to corporate tax @ 45% along with income surcharge @ 2.5% which in total comes to 47.5%. However, as for the income to be generated from non-tobacco business, regular rate of tax will be applicable which is 25% being a publicly listed company, if you can evidently categorize your new product stream as non-tobacco.

Now question comes, as to whether authority will allow you to effectively use different rates for each of your segregated business lines.

In my view, there is a perception risk of operating both the product lines under the umbrella of Tobacco business, where the tax authority may impose the tax rate of 47.5% on the overall income generated from each product stream, due to the principal business of tobacco company to manufacture and sale of tobacco products. However, from my practical experience, I have examples, where an assessee who generated income from more than one business, one business income was subject to tax at regular rate @ 30% and another business was subject to tax at reduced rate.

An example has been furnished outlining the tax impact based on what have been discussed above:

	With no segmentation	With segmentation		
		Tobacco	Non-Tobacco	Total
Revenue	2,000	1,600	400	2,000
Less: Operating Expenses	(400)	(320)	(80)	(400)
Profit Before Tax	**1,600**	**1,280**	**320**	**1,600**
Corporate Tax (Tobacco 47.5%; Non-Tobacco 25%)	(760)	(608)	(80)	(688)
Profit After Tax	**840**	**672**	**240**	**912**
Available for Raleigh (72.91%)	612			665
WHT thereon (10%*)	(61)			(66)
Net Available for Raleigh	**551**			**598**

** Please see note on WHT on dividend under DTAA in Option B point 3*

Option-B

(i) **How would the cost of the management team be allocated to the subsidiary as most of the management work of the subsidiary will be done by the Parent company management team.**

If the company intends to establish a separate legal subsidiary for the new business, as per my understanding, it is very unlikely that the tax authority will accept the allocation of management cost incurred by the Parent company to the subsidiary, unless the company invoices the subsidiary on an agreed management fee basis, which is applied consistently in terms of calculation mechanism. In such case, the company needs to maintain documentation to support the cost allocation.

Here, question comes as to whether the company can be engaged in rendering such management services. In my view it is possible provided that there is an object clause in MoA.

(ii) **Tax & VAT implications on management fees:**

TDS implication:

As per section 90 of the ITA, 2023, any company (in this case the new subsidiary company) responsible for making any payment which constitutes as income of the payee shall deduct tax at source at the applicable rate.

Hence, management fees will be subject to tax deduction at source (TDS) @ 10% as per section 90.

Corporate tax implication:

Such income will be considered as other income for the Parent company. Hence, such income will be subject to corporate tax @ 20% or 22.5% being a publicly traded company.

(iii) **What would be the tax implication of the subsidiary company depending on its listing status.**

Tax on Business income

Business income of the private limited company is subject to corporate tax @ 27.5%, and as for publicly listed company, the tax rate is 20%. This is to reiterate that, if the new line of business is considered as non-tobacco business, in that case, regular rate of tax will be applicable.

(iv) **How would the dividend income be treated in the financial statements of the Parent company and what would be the tax implication therein.**

Treatment of dividend income:

As per International Accounting Standard (IAS) 1, dividend income should be presented as non-operating income in the financial statements of the Parent company (i.e. MTC).

Tax implication on dividend income of Foreign Parent Company:

As per section 117 of ITA, 2023, any company, at the time of paying dividend to a shareholder, is required to deduct tax on the amount of such dividend, at the rate applicable to a company. Please note that, the law applies in case of payment of dividend to both resident and nonresident shareholder.

If the income of the new subsidiary is to be distributed as dividend income to the Parent company, then with reference to section 117 as mentioned above, tax shall be deducted @20% on the dividend income distributed to MTC, **which is the final tax for the Parent company on dividend income as the rate of tax on dividend income is also 20%.**

However, if the parent company further distributes the dividend income to its foreign shareholder situated in JAPAN, as per section 119 of ITA, 2023, such payment shall be subject to a further withholding tax @ 20%. A reduced rate of 10% in place of 20% may be applicable because there is DTAA with JAPAN. But this is subject to obtaining certificate from NBR as per section 119.

An example has been furnished below showing the various level of taxation and the ultimate net income in the hand of ultimate Parent company, situated in JAPAN.

	With Non-Listed Subsidiary			With Listed Subsidiary		
	Subsidiary Company (X)	(Parent Company)	Consolidated Financials	Subsidiary Company (X)	(Parent Company)	Consolidated Financials
Revenue	400	1,600	2,000	400	1,600	2,000
Cost	(80)	(320)	(400)	(80)	(320)	(400)
Profit Before Tax	**320**	**1,280**	**1,600**	**320**	**1,280**	**1,600**

Corp. Tax (Non-listed subsidiary 30%; Listed 22.5%; Tobacco Co. 47.5%)	(96)	(608)	(704)	(72)	(608)	(680)
Divisible Profit before Dividend Income	**224**	**672**	**896**	**248**	**672**	**920**
(Dividend to Parent)/ Dividend from X	(224)	224	-	(248)	248	-
WHT (20%) on Dividend Income from X		(45)	(45)		(50)	(50)
Divisible Profit of Parent	**-**	**851**	**851**	**-**	**870**	**870**
Available for Ultimate parent (72.91%)			620			634
WHT (10%)			(62)			(63)
Net Income for Ultimate Parent			**558**			**571**

(v) **Would the parent company and subsidiary company both require to submit tax return? If so, would there be a requirement to submit tax return for the consolidated profit as well.**

With reference to section 73 of ITA, 2023 states that, every public or private company (as defined under Companies Act 1994) shall be required to furnish a copy of audited financial statements as certified by a chartered accountant at the time of filing the return of income. In addition to that, as per section 166 of the ITA, 2023, submission of tax return must be accompanied by audited financial statements.
According to the above laws, both the subsidiary company and the parent company's financial statement must be audited by a chartered accountant.
There is no provision in the ITA, 2023 for separate audit of the consolidated financial statement and separate tax return submission for the consolidated financial statement.

Illustration 5:

A multinational company "Fantastic Limited" is owned by a China based company and by a Sarkar family in Bangladesh. The China based company holds 45% shares and Sarkar family holds 55% (of which Mr. Sarkar himself holds 35% and the rest are equally divided between his two sons) shares in Fantastic Limited. The Sarkar family has decided to transfer their shares and a German based company (GZR Inc.) has expressed their interest to buy the shares of Sarkar family in Fantastic limited. Please do note that the China based company and the German based company are the concern of same holding company.

The acquirer company has contemplated the following options as part of the consideration to be given to the Sarkar Family against the purchase of the shares:

Option A:

- Dividend of USD 2,000,000 equivalent to BDT 170,000,000 will be distributed out of previous year's retained earnings (estimated around 4 years' earnings) to Sarkar Family and to the China based company on the basis of their proportion of shares the "Fantastic Limited".
- The acquirer company will provide USD 2,135,000 equivalent to BDT 181,475,000 to purchase the shares of Sarkar Family in the "Fantastic Limited".

Option B:

- No dividend will be distributed rather the acquirer company would like to add the cash part of USD 1,020,000 equivalent to BDT 86,700,000 along with the original purchase price of USD 2,135,000 equivalent to BDT 181,475,000 which in total comes to USD 3,135,000 equivalent to BDT 268,175,000 for the purchase of shares from Sarkar Family held in the "Fantastic Limited"

Note: Total number of shares held in Fantastic Limited is 20,000. Face value of the share is valued @ Tk. 250 per share. And the current fair value of the share is valued @ Tk. 25,000 applying the market value approach. Mr. Sarkar from the Sarkar Family approached one of the Partners of your CA firm and you have been assigned to cater the queries from tax point of view.

Requirements:

(i) Tax implication on dividend distribution assuming that there is no tax treaty between BD and China.
(ii) Capital Gain Tax implication.
(iii) Analysis of pros and cons of the proposed option from financial aspects on the basis of below mentioned scenario.
(iv) Recommendations.

Please note that, your analysis and recommendation should take into account the following tax implication on the basis of assumptions mentioned below under two scenarios:

Scenario-1

- Consider the yearly income of Mr. Sarkar of Tk. 25,000,000
- Consider the dividend income and capital gain earned from option A.
- Share disposal took place within 5 years from the date of acquisition.

Scenario-2

- Consider the yearly income of Mr. Sarkar of Tk. 25,000,000
- Consider capital gain earned from option B.
- Share disposal took place after 5 years from the date of acquisition.

Solution-5

(i) Tax implication on dividend distribution

Dividend Repatriation to China Based Company:

As per section 119 of the ITA, 2023, repatriation of dividend is subject to tax deduction at source @ 20%. Since there is double taxation avoidance agreement (DTAA) between Bangladesh and China, dividend repatriation to China Based Company will be subject to tax @ 10%.

Dividend distribution to Sarkar Family:

As per section 117 of ITA, 2023 that, distribution of dividend to Sarkar family will be subject to tax deduction at source @ 10%.

Please note that this source tax is not the final tax. However, this tax can be adjusted with total tax liability. Calculation of tax liability depends on the threshold level of income on the basis of slab rate which are as follows:

Male	Female	Tax rate
First 350,000	First 400,000	Nil
Next 100,000	Next 100,000	5%
Next 300,000	Next 300,000	10%
Next 400,000	Next 400,000	15%
Next 500,000	Next 500,000	20%
Rest of the income	Rest of the income	25%

(ii) Capital Gain tax implication

As per section 57 of ITA, 2023, tax shall be payable by an assessee under the head "Capital gains" in respect of any profits and gains arising from the transfer of a capital asset and such profits and gains shall be deemed to be the income of the income year in which the transfer took place.

As per 7th Schedule of the ITA, 2023, tax payable on capital gain will be depending upon the tax slab rate applicable for the individual on his total income if the disposal of shares takes place within 5 years from the date of acquisition.

However, if the disposal of shares takes place after five years from the date of acquisition, in that case, tax payable on the capital gain will be calculated depending upon the tax slab rate applicable for the individual on his total income or tax @ 15% on the capital gain which is the lower.

(iii) Analysis of pros and cons of the proposed option from financial aspects

- Dividend entitlement of Sarkar family will be compensated as purchase consideration on the disposal of shares.

- Capital route is tax effective as compared to dividend route if:

1. The individual holds the share more than five years and if
2. The individual is now at higher tax bracket

Now let us analyze the two routes from tax exposure point of view:

Scenario-1

Yearly usual income of Mr. Sarkar is Tk. 25,000,000. He is expected to earn capital gain of Tk. 61,766,250 from the disposal of shares held in Fantastic Ltd and dividend income of Tk. 59,500,000. This is to note that the share disposal took place within 5 years from the date of acquisition. Hence, total income comes to Tk. 146,266,250. Now let us calculate the tax payable.

Male (Amount in Tk.)	Tax rate	Tax payable
First 350,000	Nil	Nil
Next 100,000	5%	5,000
Next 300,000	10%	30,000
Next 400,000	15%	60,000
Next 500,000	20%	100,000
Remaining 14, 46,16,250	25%	3,61,54,063
Total		3,63,49,063

That means, capital gain is taxable @ 25% as share disposal took place within 5 years.

Scenario-2

Yearly usual income of Mr. Sarkar is Tk. 25,000,000. He is expected to earn capital gain of Tk. 92,111,250 from the disposal of shares held in ABC Co. This is to note that the share disposal took place after 5 years from the date of acquisition. Hence, total income comes to Tk. 117,111,250. Now let us calculate the tax payable.

Male (Amount in Tk.)	Tax rate	Tax payable
First 350,000	Nil	Nil
Next 100,000	5%	5,000
Next 300,000	10%	30,000
Next 400,000	15%	60,000
Next 500,000	20%	100,000
Remaining 24,950,000	25%	6,237,500
Remaining 92,111,250 (Capital Gain)	15%	13,816,688
Total income 117,111,250		20,249,188

In this case, tax payable on capital gain will be lower of (i) and (ii):

(i) Tax payable on capital gain based on 25% tax rate is Tk. 23,027,813 (92,111,250 * 25%).
(ii) Tax payable on capital gain based on 15% tax rate is Tk. 13,816,688 (92,111,250 * 15%)

(iv) Recommendations:

Upon considering the above-mentioned pros and cons of the two options, option B seems lucrative from tax savings point of view but from income perspective option-A seems more feasible as compared to option B.

Illustration 6:

Since 2016, “ABC Co.” a branch of a Spanish Company situated in India has been working with XYZ Co. in India as a Joint Venture (JV) for the Bangladeshi Government providing consultancy services for the design and construction supervision of the Construction of the Dual Gauge Railway Track between Dhaka – Tongi and Tongi- Joydebpur sections.

ABC Co. performed the design services from India but now there is an important part of the works (construction supervision) to be carried out in Bangladesh (with Indian and Bangladeshi staff). Until now, the project has been carried out through an Indian Joint Venture (the Government received a financing for the Project and one of the requirements from the Bank was to be registered in India) formed by XYZ Co. and ABC Co.

Below are the salient points of the project:

- The Project was awarded to an Indian Consortium (not company) formed by ABC Co. (50%) and XYZ Co. (50%).
- The project is divided into 3 stages: Stage 1 – Detailed Design, Stage 2 – Construction Supervision, Stage 3 – Development Phase
- Stage 1 is already completed
- Duration of stage 2 is 3 years (tentatively). It was started in July 2021.
- Duration of stage 3 is 6 months (tentatively).
- XYZ Co. has developed its part of the work since the beginning of the Project
- For the performance of stages 2 and 3, ABC Co. and XYZ Co. have established a JV in India.
- The price is going to be paid in USD & BDT.
- 5 Indian engineers to be located in Dhaka (3 from ABC Co. and 2 from XYZ Co.)
- One or some local subcontract/s
- The project is financed by a bank situated in India. Invoices are issued to the Client (Bangladesh Railways) but payment is done in India by the Indian Bank, including the BDT component that the bank converts into USD at a fixed rate (100 BDT/US) for payment.

Now the JV is considering to set up either a branch or a company in Bangladesh to carry out the phase 2 and 3 of the project.

Requirements:

(i) Whether the establishment of a branch office will trigger PE from local tax point of view and from the perspective of Double Tax Treaty agreement?
(ii) Whether PE risk if any can be averted if JV hires own employees instead of opening a branch office or a company i.e., JV?
(iii) Should the income generated through PE be subject to tax in Bangladesh and if so, then how it should be taxed in the light of ITA, 1984?
(iv) Advising any other way out to avoid PE risk, if any?

Solution-6

(i) Whether the establishment of a branch office will trigger PE from local tax point of view and from the perspective of Double Tax Treaty agreement?

From local tax point of view:

As per new section 2(92) of the ITA, 2023, permanent establishment, in relation to income from business or profession, means a place or activity through which the business or profession of a person is wholly or partly carried on, and includes-

(a) a place of management;
(b) a branch;
(c) an agency;
(d) an office;
(e) a warehouse;
(f) a factory;
(g) a workshop;

(h) a mine, oil or gas well, quarry or any other place of exploration, exploitation or extraction of natural resources;
(i) a farm or plantation;
(j) a building site, a construction, assembly or installation project or supervisory activities in connection therewith;
(k) the furnishing of services, including consultancy services, by a person through employees or other personnel engaged by the person for such purpose, if activities of that nature continue (for the same or a connected project) in Bangladesh; and
(l) any associated entity or person (hereinafter referred to as "Person A") that is commercially dependent on a non-resident person where the associated entity or Person A carries out any activity in Bangladesh in connection with any sale made in Bangladesh by the non-resident person;"

From DTAA perspective:

Article 5 of the DTAA between India and Bangladesh defined the meaning of "permanent establishment" which are as follows:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a warehouse, in relation to a person providing storage facilities for others and
(g) a mine, an oil or gas oil, a quarry or other place of extraction of natural resources;
(h) a building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days

Hence, establishment of a branch office will trigger PE from both local tax point of view and from the perspective of Double Tax Treaty agreement.

(ii) Whether PE risk if any can be averted if JV hires own employees instead of opening a branch office from local tax and DTAA perspective?

As discussed above, as per serial no. (k) of section 2(92) of the ITA, 2023, furnishing of services, including consultancy services, by a person through employees or other personnel engaged by the person for such purpose, if activities of that nature continue (for the same or a connected project) in Bangladesh shall constitute PE in Bangladesh. Hence, PE risk cannot be averted if JV hires own employees instead of opening a branch office.

In addition to that, from the perspective of DTAA, stay period of more than 183 days shall constitute PE. Since, the project will run for more than three (3) years, hence, PE risk cannot be averted from DTAA perspective even.

(iii) Should the income generated through PE be subject to tax in Bangladesh and if so, then how it should be taxed in the light of ITA, 2023?

As per section of 27 of the ITA, 2023, any income accruing or arising, whether directly or indirectly, through or from any permanent establishment in Bangladesh shall be taxable in Bangladesh.

(iv) Advising any other way out to avoid PE risk, if any?

As per para 5 of the DTAA, an enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

This means that, if the JV outsource the full function to an independent third party to carry out the onsite services, in that case, JV will not be exposed to PE in Bangladesh from DTAA perspective.

Illustration 7:

A Sweden based company i.e., CNPC Co. has sold electrical power generators to a Bangladeshi Company i.e., PQR Co. The seller needs to deliver the services for the electrical power generators supplied to PQR Co. The Sweden based Co. has a subsidiary in Bangladesh called MNC Limited which can provide the service to PQR Co. on behalf of CNPC Co. Alternatively, CNPC Co. can also appoint an independent subcontractor to deliver those service to PQR Co.

To render the services to PQR Co., engineers of both CNPC Co. and independent subcontractors are necessary regardless of the transaction structure CNPC Co. chooses.

The entity has considered the following options to carry out the onshore services in Bangladesh:

- **Option-1:** The contract will be signed between CNPC and MNC. As per the contract, MNC will deliver the onshore services to PQR.

- **Option-2**: There will be a contract between MNC and PQR only to render services to PQR.

- **Option-3**: There will be a contract between CNPC and PQR. PQR will bring the employees of CNPC employees under their banner

- **Option-4**: There will be a contract between CNPC and PQR. CNPC sub contracts to Independent 3rd party (3P) to deliver the services to PQR Co.

Requirements:

(i) Withholding tax and corporate tax implication, transfer pricing implications and DTAA implication (if any) for each of the option.

(ii) Recommendations for the management of the company.

Solution-7

(I) **Withholding tax and Corporate tax implication and DTAA implication (if any) for each of the option.**

Option-1 (Agreement between CNPC and MNC):

Withholding Tax

The banker of MNC, at the time of crediting service amount from CNPC, shall deduct withholding tax @ 10% as per section 124 of the ITA, 2023 from the proceeds.

Corporate Income Tax

From MNC Perspective:

Service value will be considered as income from business for MNC and will be taxed at standard corporate tax rate of 27.5% or 30% on income from business i.e., after deducting allowable business expenditure from the service value. However, minimum corporate income tax of MNC will be 0.6% on gross receipts.

MNC can adjust the withholding tax deducted by Bank with its corporate tax payable at year end provided corporate tax liability of MNC is higher than the amount of withholding tax deducted. If the TDS is higher

than corporate tax liability, in that case, the excess amount cannot be claimed as refund as because tax suffered at source u/s 124 is considered to be minimum tax u/s 163 of the ITA, 2023.

From CNPC Perspective:

As per section 2(92) of the ITA, 2023, if an associated entity or person is commercially dependent on a non-resident person to carry out the services in a connected project, in that case, such activities shall constitute PE in Bangladesh.

Here, since MNC is commercially dependent on CNPC a non-resident entity, in that case, CNPC is likely to be exposed to Bangladesh tax through the creation of PE with reference to section 18 of the ITA, 2023.

If CNPC is exposed to Bangladesh tax, in that case, question will come how the income will be determined. In such case, the DCT can determine the income with reference to Rule 34 of the ITR, 1984.

Transfer Pricing

MNC will be exposed to the transfer pricing regulation if it enters into contract with CNPC to deliver service to PQR as it is an intercompany cross border jurisdictional transaction. MNC will be required to submit transfer pricing return (TP return) called “Statement of International Transaction” along with the corporate tax return. In TP return, MNC will be required to declare the amount of international transactions and respective transfer pricing methods. MNC will also be required to keep detailed documentation related to transfer pricing. If the total amount of international transactions during an income year exceeds BDT Thirty (30) million (approximately Euro 300K) then tax authority may ask MNC to provide a report from Chartered Accountants or a Cost and Management Accountants on its Transfer Pricing Compliance.

Option-2 (Agreement between MNC and PQR):

Withholding Tax

Construction Work is done through the Contract and as such would require tax deduction at source under section 89 of ITA, 2023 and related rule when payment is made to MNC by PQR. The current withholding tax rate is for such type of payment of amounting contract value of service is @ 7% which is much lower than option 1.

Corporate Income Tax

Service value will be considered as income from business for MNC and will be taxed at standard corporate tax rate of 27.5% or 30% on income from business i.e., after deducting allowable business expenditure from the service value.

MNC can adjust the withholding tax deduction at source with its corporate tax payable at year end provided corporate tax liability of MNC is higher than the amount of withholding tax deducted. If the TDS is higher than corporate tax liability, in that case, the excess amount cannot be claimed as refund as because tax suffered at source u/s 89 is considered to be minimum tax u/s 163 of the ITA, 2023.

From CNPC Perspective:

There will be no tax implication under option-4 from CNPC perspective

Transfer Pricing

MNC will not be exposed to transfer pricing regulation.

Option-3 (Agreement between CNPC and PQR):

Withholding Tax

Question comes whether the service will be considered as technical know-how fee or technical assistance fee. If this is so considered and PQR signs an agreement with the Government to establish an electricity power plant run by other than coal subject to fulfillment of the conditions of **"Private Power Generation Policy of Bangladesh"** then usually no tax is payable on technical know-how fee or technical assistance fee.

If this is not so considered, PQR might be required to deduct tax on the amount payable to CNPC.

Corporate Income Tax

Generally, there will not be any Corporate Income tax for CNPC or MNC in Bangladesh on the transaction. But, Permanent Establishment of CNPC in Bangladesh may be created if CNPC renders the service through the secondment of employees as per section 2(44A) of the ITA, 1984 and if their stay in Bangladesh in aggregate exceeds 183 days in any 12-month period commencing or ending in the fiscal year concerned.

Hence, position of CNPC is likely to be exposed.

And as per amended section of 27 of the ITA, 2023, any income accruing or arising, whether directly or indirectly, through or from any permanent establishment in Bangladesh shall be taxable in Bangladesh.

Option-4 (Agreement between CNPC and Third party):

There will be no tax implication under option-4 from CNPC perspective.

Implication of DTAA:

As per article 5 of the DTAA between Bangladesh and Sweden, meaning of PE is as follows:

a. a place of management;
b. a branch;
c. an office;
d. a factory;
e. a workshop;
f. a warehouse, in relation to a person providing storage facilities for others and
g. a mine, an oil or gas oil, a quarry or other place of extraction of natural resources;
h. a building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days

As per Article 6 of the said agreement, an enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business and their business and their activities do not fall within the meaning of sub-paragraph (c) of paragraph 5.

Contradiction between DTAA and ITA, 2023:

Definition of PE incorporated in the Income Tax Act, 2023 and definition of PE in respective DTAA seems to be contradictory in couple of aspects. For example, the following two items are included in the definition of DTAA as provided in the ITA, 2023 which are not included in the DTAA:

- the furnishing of services, including consultancy services, by a person through employees or other personnel engaged by the person for such purpose, if activities of that nature continue (for the same or a connected project) in Bangladesh; and any associated entity or person (hereinafter referred to as "Person A") that is commercially dependent on a non-resident person where the associated entity or

Person A carries out any activity in Bangladesh in connection with any sale made in Bangladesh by the non-resident person.

Furthermore, if we look at the definition of PE given in the DTAA in relation to a building site, construction, assembly or installation projects, PE will be constituted if number of days lasts more than 183 days whereas in the Income Tax Act, 2023 there is no such days mentioned. Hence it is implied that even single day presence might create PE in Bangladesh to meet the purpose as mentioned above as per the definition given in the Income Tax Act, 2023.

Again, if we look at the relevant Article of the DTAA in relation to the Engagement of Independent third party it will not create a PE in Bangladesh whereas as per the definition given in the Income Tax Act, 2023, Engagement of Independent third party will create PE as explained above.

Now the question comes which will prevail in any contradictory scenario between DTAA and Income Tax Act, 2023 from local law perspective.

Section, 244 of the ITA, 2023 states that, agreement signed between the two contracting states and the provision shall have effect notwithstanding anything contained in any other law. This implies that provisions of the DTAA shall prevail of the Income Tax Act, 2023 if such matter is expressly covered in the DTAA.

However, the real challenge are those cases which are not expressly covered in the DTAA and interpretation is required thereon. In such case, the tax authority normally disallow DTAA benefit and impose tax as per the ITA, 2023.

(ii) **Recommendations:**

Upon considering the above-mentioned scenario, CNPC in all the way will be exposed for Bangladesh tax except option-4. Hence the only way forward is that CNPC can no way be involved in rendering installation and maintenance work rather to engage the third party to render the activities.

Illustration 8:

The Owners of a project undertaken by a world-renowned hotel company in Bangladesh wants to remit Royalty fees and P&S charges (“Reimbursable”) to the company “XYZ” based in Hong Kong. The payment will be made to the company based in Singapore.

Permission is required from Bangladesh Investment Development Authority (BIDA) or Bangladesh Bank in order to remit money abroad. The client informed that approval from BIDA and BB are granted on the basis that withholding tax has to be deducted on Royalty fees and reimbursable by the authorized bankers to the company in accordance with domestic tax law.

Payment of such reimbursable cost with deduction of tax from Bangladesh will become cost to the company. And hence, the company wants to gross up the reimbursable charges inclusive of WHT as such treatment is not prohibited in Bangladesh. Besides, this treatment is followed by other hotels and industries.

In this regard, the hotel company XYZ is contemplating the following options and seeks expert opinion in the light of Bangladesh tax law and regulations:

Option 1: Grossing up P & S charges (reimbursable) inclusive of WHT.

Option 2: Setting up a local entity to receive the P & S charges (reimbursable) in Bangladesh and subsequent repatriation of the payment to XYZ as dividend.

Option 3: Setting up a local entity to receive both Royalty fees and P & S charges (reimbursable) in Bangladesh and subsequent repatriation of the payment to XYZ as dividend.

Requirement:

(i) Withholding tax and Corporate tax implication and DTAA implication if any of each option. And the answer should include the financial analysis if any along with recommendations.

Solution-8

(i) Withholding tax and Corporate tax implication and DTAA implication if any of each option. And the answer should include the financial analysis if any.

Option-1 (Grossing up P & S charges (reimbursable) inclusive of WHT)

WHT implication:

As per section 119 of the ITA, 2023, any payment made by a resident in Bangladesh to a nonresident will be subject to withholding tax in Bangladesh at the applicable rate.

Hence, the payment of P & S charges to the hotel company based in Singapore will be subject to tax deduction at source (TDS) @ 20%.

An example has been furnished below:

If XYZ grosses up the fee of Tk. 100 on the basis of applicable tax rate, in that case, invoice amount will stand at Tk. 125 (100/.80) and the company will receive net amount of Tk. 100 after deduction of tax of Tk. 25(125*20/100).

If the fee is grossed up and tax and VAT is deducted at source at the applicable tax rate, in that case, the assessing officer is unlikely to raise question as to the extent of such expenses.

DTAA implication:

Currently there is no DTAA agreement between Bangladesh and Hong Kong, hence DTAA benefit cannot be availed on the payment of P & S charges (reimbursable).

Option 2: Setting up a local entity to receive P & S charges in Bangladesh WHT implication:

As per section 90 of the ITA, 2023, payment made to a resident by a specified person on account of services mentioned therein will be subject to tax deduction at source at the applicable rate(s).

Payment of reimbursement expenses is not subject to tax deduction at source if the reimbursement is related to professional fees. But in other cases, law is silent which implies that reimbursement is subject to tax deduction at source except on professional fees. Hence, payment made to the local entity of Marriott by the owners on account of P & S charges will be subject to TDS @ 10%. Please note that tax suffered at source by the local entity of XYZ is tax creditable against its corporate tax liability.

Corporate tax implication:

Income of the local entity of the XYZ will be subject to corporate tax @ 27.5% or 30%. As mentioned above, tax suffered at source can be tax creditable with the corporate tax liability.

Local entity of XYZ can repatriate the remaining income (after payment of corporate tax) to XYZ in the form of dividend. Please note that with reference to section 119 of the ITA, 2023, dividend payment will be subject to TDS @20%.

An example has been furnished below:

Particulars	TK.
Income	100
Corporate tax @ 30% (assuming that conditions to avail 27.5% tax rate not fulfilled)	30
Less: AIT	10
Net tax payable	20
Profit after tax (PAT)	80
Withholding tax on dividend @ 20%	16
Net remittance as Dividend	64

DTAA implication:

Please note that as per section 119 of the ITA, 2023, there is a provision to apply to NBR to obtain reduced rate certificate or non-deduction certificate in the light of tax treaty. We note that the payment is to be remitted to Hong Kong. There is currently no Double Taxation Avoidance Agreement (DTAA) between Bangladesh and Hong Kong. Hence, no DTAA benefit can be availed on the payment of Dividend.

Option 3: Setting up a local entity to receive both Royalty fees and P & S charges (reimbursable) in Bangladesh

WHT implication:

Under Option 3, if the local entity of XYZ receives payment of royalty fees in addition to P&S charges, payment of royalty fee will be subject to tax deduction at source @ 10% u/s 90 of the ITA, 1984. P&S charge already discussed in option 2.

Corporate tax implication:

As we have discussed in Option 2, income of the local entity of XYZ will be subject to corporate tax @ 30%. And tax suffered at source can be tax creditable against the corporate tax liability. Local entity of XYZ can repatriate the remaining income (after payment of corporate tax) to XYZ in the form of dividend. Please note that with reference to section 90 of the ITA, 2023, dividend payment will be subject to TDS @20% as per section 90.

DTAA implication:

Please note that as per section 90 of the ITA, 2023, there is a provision to apply to NBR to obtain reduced rate certificate or non-deduction certificate in the light of tax treaty. We note that the payment is to be remitted to Hong Kong. There is currently no Double Taxation Avoidance Agreement (DTAA) between Bangladesh and Hong Kong. Hence, no DTAA benefit can be availed on the payment of Dividend.

An example has been furnished below:

Particulars	**TK.**
Income	200
Corporate tax @ 30%	60
Less: AIT	20
Net tax payable	40

Profit after tax	140
Withholding tax on dividend @ 20%	28
Net remittance as Dividend	**112**

Summary of the options discussed:

Particulars	**Net reimbursable receivable (TK)**	**Net Royalty fees receivable (TK)**	**Total net Payment (TK)**
Option 1	100	80	180
Option 2	54	80	134
Option 3			**108**

Upon considering the aforementioned facts, it is recommended to opt for option 1.

26.5 Methods of avoiding double taxation

There are four methods of avoiding double taxation. These are –

(i) Unilateral relief
(ii) Bilateral relief
(iii) Multilateral relief
(iv) Non-tax treaties

Unilateral relief

Under this system whether the income is subject to tax abroad or not is immaterial, relief is given by way of tax credit for the tax paid abroad.

Under Section 246 of the Income Tax Act, 2023, tax credit method is followed. A resident in Bangladesh who has paid income tax in any country with which Bangladesh does not have a treaty for the relief or avoidance of double taxation is allowed credit against his Bangladesh income tax for an amount equal to Bangladesh coverage rate i.e. average rate or the foreign rate whichever is lower, applied to the doubly taxed income. This is done as follows:

(a) Where the foreign tax is equal to Bangladesh tax, full amount of foreign tax will be given credit.
(b) Where the foreign tax exceeds the Bangladesh tax, the liability to Bangladesh tax is nil. However, no refund in respect of the excess amount is allowed.
(c) Where foreign tax is less than Bangladesh tax, the difference would be payable by the taxpayer.

The basic principle to remember is that credit/relief will never exceed the Bangladesh income tax on the concerned income calculated at average rate.

Bilateral relief

It may take one of the following two forms:

Firstly, the treaty may apply exempting method, the country in question refraining from exercising jurisdiction to tax a particular income.

For instance, the country of source where PE is located is assigned an exclusive jurisdiction to tax the profits of the establishment. In turn it may agree to refrain from exercising its jurisdiction to tax the owner of these profits.

Alternatively, the treaty may provide relief from double taxation by redacting the tax ordinarily due in one or both of the contracting states on that income which is subject to double taxation.

For instance, the country, which is the source of a dividend, often agrees to reduce the withholding rate normally applicable to dividends paid to non-resident and the country of residence agrees to give tax credit or similar relief for the tax paid in the source country. In such a case, both the countries exercise the rights to jurisdiction, while mutually agreeing for adjustments, many DTAAs combine both the methods of relief.

Multilateral treaties

These are similar to bilateral treaties achieved through agreement between many countries i.e. EEC.

Non-tax treaties

These are not direct tax treaties but are of friendship, co-operation cultural exchange, political and diplomatic relations, but which consequently may reflect upon tax matters

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26.6 Tax treaty

What is tax treaty and how does it work?

'Treaty' as commonly understood is a formally concluded and ratified agreement between independent nations. Tax treaties are generally a matter of bargain and prolonged negotiations centering on economic interests of the countries involved.

What is the scope of tax treaties in determining jurisdiction?

Normally tax treaty between two countries covers-

(i) Persons (ii) Taxes (iii) TerrITAry (iv) Time

The treaty, generally applies to residents of the contracting states. Each country retains the power to tax its citizens and residents on their total world income (Status jurisdiction) and tax others, non-citizens, non-residents only on their income in the country (Source jurisdiction). However, the treaty provisions protect the taxpayer from suffering double taxation on the same income.

How does a treaty become a law?

The agreement entered into becomes a part of domestic law only when it has sanction of the constitutions of the nations which are parties to it. The power to legislate is conferred on our Parliament and therefore, the Government has authority to enter into DTAA. However, all treaties are also required to be formally approved by official gazette notification.

26.7 Some other concepts used in DTAA

Treaty override

The executive of the state has been given rights under our Constitution to enter into DTAAs. This is an executive power exercisable by the Govt. like legislative and judicial powers. As the power to enter into DTAAs comes from the Constitution, the relevant article thereof will have the effect of the DTAA overriding the Act, as the executive also has to exercise jurisdiction keeping in mind DTAA obligations and commitments made thereon. It is now an undisputed proposition that DTAA overrides the Act.

For this very reason, Section 144(2) has referred to the wording "notwithstanding anything contained in any other law for the time being in force" to give effect of DTAA provision over domestic law, instead of saying "notwithstanding anything contained in any other provisions of this Act".

Treaty shopping

Just as the domestic law can, sometimes, be used more than fairly to the advantage of a taxpayer, the DTAA too can be exploited through popularly known means of “Treaty Shopping”. A non-resident seeking shelter under a DTAA is still open to domestic assessment when the tax authorities feel that, he is taking an undue advantage of provisions of the DTAA or has structured the commercial arrangement in such a way so as to avail the DTAA benefit otherwise not available to him. The authorities may then deny the benefits of the DTAA. The most common form of Treaty Shopping is setting up of a dummy enterprise. This is set up by say, Company A, in one of the Contracting States, to avail DTAA benefits, which the company, not being a resident of either Contracting States, would otherwise not be entitled to. In such a case, the Court can lift the corporate veil.

Attribution Rule

The basic requirement to bring the business profits to tax they should be capable of being attributable to the Permanent Establishment (PE) or residency. The question to be asked is the enterprise trading with the country on a regular basis? If yes, what is the nature of establishment in Bangladesh? If the income arises out of the business activity carried on in that state and if it can be attributed to the PE, it can be taxed to that extent of attribution.

Certain established and accepted rules are to be followed in the determination of such income. Generally, the expenses that can or cannot be considered will depend upon the taxation laws of each state.

Force of attraction rule

It means all income arising from all source in a country where the foreign enterprise maintains a PE is subject to tax in that country irrespective of whether the said income is attributable to the PE or not. Therefore, profits arising from transactions outside PE are also taxable. As per this rule not only the profits attributable to the sale of same or similar kind of goods is brought to tax and any other income from sources within the country are also regarded income attributable to the PE.

Exchange of Information amongst Two Countries

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on one of the Contracting States the obligation:

(a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State.

(b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Students should carefully note the following main objectives of DTAA:

a) Any income earned by a resident of a contracting state in the other contracting state cannot escape from tax assessment in both the contracting states.
b) Any income earned by a resident of a contracting state in the other contracting state cannot be taxed in both the contracting states.
c) Conditions of taxability and rates of tax payable of a resident of a contracting state in respect of incomes from various heads earned in the other contracting state.

26.8 Other topics of International Taxation

26.8.1 Tax havens

There are some common misconceptions about 'Tax Havens'. Many people consider any jurisdiction with nil or very low tax rate as 'tax haven' which may not always be correct.

As per the definition provided by OECD, Tax haven refers to a country which imposes a low or no tax is used by corporations to avoid tax which otherwise would be payable in a high-tax country. According to OECD report, tax havens have the following key characteristics:

- No or only nominal taxes;
- Lack of effective exchange of information; and
- Lack of transparency in the operation of the legislative, legal or administrative provisions

As per the International Consortium of Investigative Journalist (ICIJ), who were responsible for publishing leaked documents in the name of 'Paradise Papers' and the Panama Papers' tax havens, or offshore financial centers, are generally countries or places with low or no corporate taxes that allow outsiders to easily set up businesses there. Tax havens also typically limit public disclosure about companies and their owners. Because information can be hard to extract, tax havens are sometimes also called secrecy jurisdictions.

Tax havens are speeded all over the world. Some are independent countries like Bermuda, Panama, Mauritius, Cyprus etc. and some are terrITAries like British Virgin Islands (BVI), Cayman Islands, etc.

So, Tax haven nations are those with nil or moderate level of taxation and/or offering liberal tax incentives for export activities, shipping business. These tax havens attract investments as the corporate tax rate is low. They may also exempt dividends and capital gains on the transfer or exchange of movable assets like shares and sometime immovable properties like land, building, plants etc. Besides tax haven countries may also pursue absolute secrecy and easy exchange control policies to attract offshore investors.

There are two types of tax haven—

1. Nil tax haven
2. Nil tax outside haven countries

26.8.2 Thin capitalization

A company is typically financed (or capitalized) through a mixture of debt and equity. —Thin capitalization refers to the situation in which a company is financed through a relatively high level of debt compared to equity. Thinly capitalized companies are sometimes referred to as —highly leveraged or —highly geared.

Why is thin capitalization significant?

The way a company is capitalized will often have a significant impact on the amount of profit it reports for tax purposes. Country tax rules typically allow a deduction for interest paid or payable in arriving at the tax measure of profit. The higher the level of debt in a company, and thus amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity.

Multinational groups are often able to structure their financing arrangements to maximize these benefits. Not only are they able to establish a tax-efficient mixture of debt and equity in borrowing countries, they are also able to influence the tax treatment of the lender which receives the interest - for example, the arrangements may be structured in a way that allows the interest to be received in a jurisdiction that either does not tax the interest income, or which subjects such interest to a low tax rate.

Example 1: Debt to equity investment of 1 to 1.

Company X, a corporation from Country A, establishes group affiliate Company Y in Country B with an investment of $50 in equity capital and a loan of $50 from Company X at a 10% interest rate. Company Y generates pre-tax and pre-interest operating income of $15 for year 2020, and pays interest to Company X at 10% i.e. an interest payment of $5. The post-interest taxable profit of Company Y is $10 and, taxed at a 30% tax rate, generates tax revenue of $3 for Country B and net profit of $7 for Company Y.

Example 2: A debt to equity investment of 9 to 1.

Company X, a corporation from Country A, establishes another group affiliate Company Z in Country C with an investment of 10 in equity capital and a loan of $90 from Company X at a 10% interest rate. Company Z also generates pre-tax and pre-interest income of $15 for year 2020, and pays interest to Company X at 10% i.e. a total interest payment of $9. The remaining taxable profit of Company Z is $6 and taxed at a 30% tax rate, which generates tax revenue of $1.8 for Country C and $5.20 for Company Y.

Apparently, it would indicate that Company Y in Country B is more profitable as it is earning $7 in year 2020 against $5.20 earned by Company Z in Country C. However, if the interest payment is also considered than it would appear that Company Y could remit $12 (interest $5 + Profit $7) but Company Z's remittance is $14.20 (interest $9 + Profit $5.20). The excess amount of remittance by Company Z is due to the additional tax benefit taken on interest payment.

What are ―thin capitalization" rules?

As described above, the manner in which a company is capitalized can have a significant effect on the amount of profit it reports, and thus the amount of tax it pays.

For this reason, country tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in calculating the measure of a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive debt, and thus aim to protect a country's tax base. From a policy perspective, failure to tackle excessive interest payments to associated enterprises gives MNEs an advantage over purely domestic businesses which are unable to gain such tax advantages.

Thin capitalization rules typically operate by means of one of two approaches:

a) determining a maximum amount of debt on which deductible interest payments are available; and

b) Determining a maximum amount of interest that may be deducted by reference to the ratio of interest (paid or payable) to another variable.

26.8.3 The Base Erosion and Profit Shifting (BEPS)

The international tax landscape has changed dramatically in recent years. With political support of G20 Leaders, the international community has taken joint action to increase transparency and exchange of information in tax matters, and to address weaknesses of the international tax system that create opportunities for BEPS. The internationally agreed standards of transparency and exchange of information in the tax area have put an end to the era of bank secrecy. With over 130 countries and jurisdictions currently participating, the Global Forum on Transparency and Exchange of Information for Tax Purposes

has ensured consistent and effective implementation of international transparency standards since its establishment in 2009.

At the same time, the financial crisis and aggressive tax planning by multinational enterprises (MNEs) have put BEPS high on the political agenda. With a conservatively estimated annual revenue loss of USD 100 to 240 billion, the stakes are high for governments around the world. The impact of BEPS on developing countries, as a percentage of tax revenues, is estimated to be even higher than in developed countries.

Domestic tax base erosion and profit shifting (BEPS) due to multinational enterprises exploiting gaps and mismatches between different countries' tax systems affects all countries. Developing countries' higher reliance on corporate income tax means they suffer from BEPS disproportionately.

Business operates internationally, so governments must act together to tackle BEPS and restore trust in domestic and international tax systems. BEPS practices cost countries 100240 billion USD in lost revenue annually, which is the equivalent to 4-10% of the global corporate income tax revenue.

Working together in the OECD/G20 BEPS Project, over 60 countries jointly delivered 15 Actions to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment.

26.8.4 Anti-Avoidance Rules against International Tax Planning

The main anti-avoidance rules against international tax planning in place among OECD and G20 countries are based on five main dimensions. Anti-avoidance rules can effectively reduce tax planning by multinational enterprises (MNEs). Also strong anti-avoidance rules can reduce the impact of tax planning on market concentration and increase the sensitivity of tax-planning MNEs' investment to changes in the corporate tax rate.

Strong rules reduce manipulation of debt location. Finally, strong anti-avoidance rules can reduce the strategic tax-motivated location of patents.

The main types of anti-avoidance rules against international tax planning can be described as follows:

1. **Transfer price rules** require that cross-border transactions between related firms should be valued at market price (so-called "arm's-length" principle). When no comparable transaction exists, different valuation methods can be used, for instance based on cost plus a fixed mark-up or using economic models to split the relevant profit among entities.

2. **Thin capitalization rules and rules limiting interest deductibility** disallow the deduction of certain interest expenses when the debt-to-equity or the interest-to-earnings ratio of the debtor is considered excessive. These rules apply either to total or related-party debt.

3. **Controlled foreign company (CFC) rules** aim at eliminating the deferral of tax on certain income by using lower-tax foreign affiliates or the exemption on certain mobile foreign source income.

4. **General anti-avoidance rules (GAARs)** prohibit "aggressive" tax avoidance, for instance, by denying tax benefits from a transaction that lacks economic substance.

5. **Withholding taxes on interest, royalties and dividends** are not anti-avoidance rules in a strict sense, but they can also influence firms' profit shifting opportunities. For instance, withholding taxes on interest payments can discourage the use of (internal) debt for tax planning. Withholding taxes on royalties can discourage the allocation of royalties to certain jurisdictions to gain a tax advantage.

26.8.5 International tax disputes

International tax disputes are between the taxes authorities of two different countries. They result from differing interpretations of the provisions of a tax treaty between the two countries. However, they mainly affect taxpayers with cross-border economic activities, usually transnational corporations (TNCs) commonly known as multinational company (MNC) operating in at least Two or more than countries.

Most disputes concern the allocation of profits of MNCs, and the growth has occurred as enforcement of transfer pricing rules has strengthened. Developing countries have been introducing transfer pricing rules and are now improving enforcement. So MNCs fear there will be more disputes. This fear may be justified, since the OECD Transfer Pricing Guidelines are complex and do not provide clarity. They require tax officials to identify the functions performed by each part of the MNC, by analyzing its business model. This requires specialized knowledge and involves discretionary and subjective judgements.

Double Tax treaties are normally incorporated into domestic law. So, taxpayers can go to court if they disagree with how a treaty rule is applied. But tax treaties also give them the right to complain to the competent authority in the relevant national tax administration. The competent authority is obliged either to resolve the issue, or, under the mutual agreement procedure (MAP), to consult with the competent authority of the Double Tax treaty partner.

Under the MAP, the competent authorities must 'endeavor' to solve the problem – but are not obliged to do so. The MAP is totally secret. Even the existence of a claim is not made public. Tax advisers prefer the MAP over court cases, which generally are public. But they complain that the MAP takes too long, and does not guarantee an outcome. They have long urged that unresolved disputes should go to binding third party arbitration.

When a MAP request is submitted, the Competent Authority (CA) will need some preliminary information to consider whether the case is eligible for MAP. The information necessary to process a MAP depends on the nature and complexity of the case. If the main focus of the case is on the interpretation and application of a particular article in the tax treaty, the taxpayer may not need to prepare any documentation other than some basic information about the case. On the other hand, if the case is highly factual and complex and therefore requires rigorous analysis and evaluation of facts and circumstances, the CAs involved in the process would need a considerable amount of information to examine the case properly. In either situation, it should be stressed that at the initial stage of MAP it would be enough to establish the taxpayer's eligibility for MAP, therefore it would not be necessary to review the substantive basis of the case. Accordingly, documentation the taxpayer has to provide at this stage would be considered in light of what information the CA needs to confirm the eligibility of the case for MAP.





Chapter-27

Transfer pricing

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27.1 Concept of transfer pricing

Transfer pricing is the setting of prices of goods & services sold between controlled legal entities.

If a subsidiary company sells goods to a parent company; the cost of those goods is the transfer price. Suppose a company 'A' purchases goods for Tk. 1,000 and sells it to an associate company B for Tk. 2,000 who then sells in the open market for Tk. 4,000. Had A sold it directly in open market it could earn a profit of Tk.3,000. By routing through B the profit is restricted to Tk. 1,000. The profit of Tk. 2,000 is shifted to country of B. The goods are transferred on an arbitrary price (transfer price) and not open market price.

The expression "transfer pricing" thus refers to prices of transaction between associated enterprises which may take place under different condition from those between two independent enterprises. The effect of transfer pricing is that the parent company or a subsidiary tends to declare insufficient taxable income or excessive loss in transaction because corporate tax rate varies between countries. Multinational companies tend to reduce their tax burden by shifting profit of countries where tax rate is higher to country where tax rate is lower.

Transfer pricing may occur in transaction of (a) goods (b) service (c) use of property (including intangible property). This may occur:

(a) Between two related enterprises.
(b) Through transaction in foreign currency.

Most countries including Bangladesh have taken policy of **'arm's length price'** to combat transfer pricing.

27.2 Introduction of transfer pricing regulations in Bangladesh

The incorporation of transfer pricing regulations into the Income Tax Act occurred as a significant development with the Finance Act, 2012. Addressing this complex matter, Chapter II of Part 15 (section 233 to 239) of the Income Tax Act of 2023, along with Rule 71, 72, 73, 74, 75, and 75A from the Income Tax Rules of 1984, comprehensively encompasses the framework for transfer pricing regulations. These regulations are strategically introduced beforehand, serving multiple objectives. Firstly, they provide taxpayers with adequate time to meticulously prepare their records in compliance with the regulations. Secondly, these regulations afford the tax authority the necessary time to establish and consolidate a robust database. Lastly, a critical facet involves training tax officials and enhancing their capacity to effectively implement the transfer pricing regulations.

In accordance with these regulations, the scope of transfer pricing extends to two pivotal scenarios—it applies to international transactions involving associated enterprises, ensuring that transactions between these interconnected entities adhere to fair market values, and the transfer pricing regulations come into play when at least one of the enterprises involved is non-resident. This comprehensive approach ensures the integrity of financial transactions and the equitable distribution of taxes in cross-border economic activities.

27.3 Important definitions relating to transfer pricing

(a) **Associated enterprise:** An "associated enterprise" refers to an enterprise that shares a certain relationship with another enterprise during a given income year. This relationship is defined by several criteria. First, if one enterprise engages in the management, control, or capital aspects of another enterprise, either directly, indirectly, or through intermediaries, they are considered associated. Similarly, if one enterprise holds shares with more than 25% of the voting power in the other or provides cumulative borrowing exceeding 50% of the recipient's book value of total asset or gives cumulative guarantees exceeding 10% of the recipient's total book value of borrowing, shall be considered as associated enterprise. Moreover, if one enterprise appoints over half of the other's board members, has practical decision-making influence, or appoints or shares executive directors or members, then it would become associated enterprise.

This definition also encompasses situations where the same individual participates in the management, control, or capital of both enterprises, directly or indirectly, or holds controlling shares exceeding 25% of voting power, or appoints over 50% of board members or executive directors or members.

(b) **International transaction:** "International transactions"—transaction between associated enterprises, either or both of whom are non-resident, in any nature having a bearing on the profits, income, losses, assets, financial position or economic value and includes—

(i) a mutual agreement or arrangement for allocation or apportionment or contribution of cost, expenses incurred or to be incurred in connection with benefit, service or facility provided;
(ii) a transaction entered in by an enterprise with a person, irrespective of whether such other person is a non-resident or not' other than associated enterprise, if there exists a prior agreement between such other person and associated enterprise or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

(c) **Property:** “Property” includes goods, articles, things or items, patent, invention, formula, process, design, pattern, know-how, copyright, trademark, trade name, brand name, literary, musical, or artistic composition, franchise, license or contract, method, program, software, database, system, procedure, campaign, survey, study, forecast, estimate, customer list, technical data, any aspects of advertising and marketing, any item which has substantial value, or any other intangible property;

(d) **Transaction:** “Transaction”–any arrangement, understanding or action, whether formal or written or intended to be legally enforceable or not;

27.4Arm’s length price—the basis of determining transfer pricing

Price shall be determined based on nature, availability of information, functions performed, assets employed, risk assumed etc by applying most appropriate method like—

(a) Comparable uncontrolled price method;
(b) Resale price method;
(c) Cost plus method;
(d) Profit split method;
(e) Transactional net margin method;
(f) Any other method that yields a result consistent with the arm's length price.

Where most appropriate method applied is a method other than (d) and (f), the dataset of the arm’s length price consists six or more entries, arm’s length range beginning from the 30% and ending on the 70% of the dataset shall be constructed and arm’s length price shall be:

- actual price if the price belongs to the said range;
- if actual price is outside the range, then arm’s length price shall be the median of the dataset.

In case the dataset is less than six entries, the arm’s length price shall be the arithmetical mean of all the values included in the dataset. Arm's length price shall not result lower income basis the international transaction actually undertaken. DCT may determine arm's length price if he think the price has not been determined as per provision or fails to maintain required documents or the price computation is not reliable or incorrect.

27.4.1 Comparable uncontrolled price method:

1 the price charged or paid for property transferred or services provided in an uncontrolled transaction or a number of transactions of comparable circumstances is identified;
2 if the price so identified differs from the price of the international transaction, the differential amount is calculated;
3 the price of international transaction is then adjusted by the said differential amount;
4 the adjusted price under sub-clause (iii) is taken to be the arm's length price of the property transferred or services rendered in the international transaction.

27.4.2 Resale price method:

(i) the price at which the said property or service is resold to an independent enterprise is identified;
(ii) the price, as identified in sub-clause (i), is reduced by a comparable normal gross margin;
(iii) the price so arrived at is then adjusted for other unique costs (such as customs duty) associated with the purchase of the property or services;
(iv) the price so arrived at is then adjusted to take into account the material differences (differences that could materially affect the gross margin in open market condition) such as functions performed, risks involved, assets employed, time gap between the original purchase and the resale and accounting practices between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;
(v) the adjusted price under sub-clause (iv) shall be taken to be the arm's length price of the property purchased or the service obtained in the international transaction.

27.4.3 Cost plus method:

(i) the direct and indirect costs incurred in the supply of property or the provision of services, hereinafter referred to as cost base, are determined;
(ii) a comparable profit mark-up (based on comparable accounting policies) is identified;
(iii) appropriate adjustment is then made to the comparable profit mark-up adjusted to take into account the material differences (differences that could materially affect the mark-up in open market condition) such as functions performed, risks involved, assets employed, contractual terms and market conditions between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions.
(iv) the adjusted profit mark-up under sub-clause (iii) is then added to the cost base;
(v) the sum so arrived at is taken to be the arm's length price of the property transferred or services provided in the international transaction.

27.4.4 Profit split method:

(i) the combined profit, arising from international transaction or transactions and divisible among the associated enterprises, is identified.
(ii) the combined profit is then divided among the associated enterprises by using the following approaches:

(a) each of the associated enterprises is allocated a basic return based on the basic functions (manufacturing, distribution, service provision etc.) each enterprise performed and determined by reference to market returns earned by independent enterprise in similar transaction. This basic return does not usually account for the return that would be generated by any unique and valuable assets possessed by the associated enterprises. The residual profit (which may be attributable to such unique assets), calculated by deducting the sum of basic returns allocated to associated enterprises from the combined profit, is then apportioned to the associated enterprise based on their relative contribution and taking into consideration how independent enterprises in similar circumstances would have divided such residual profit; or

(b) basic return is not allocated to the associated enterprises; the combined profit is divided among the associated enterprises based on the relative contribution of each the associated enterprises to that profit;

(iii) the profit thus allocated to the assessee under sub-clause (ii) is taken to be the arm's length price.

27.4.5 Transactional net margin method: - the net profit margin earned by the associated enterprise from the international transaction with the associated enterprise is computed having regard to an appropriate base such as costs, sales or assets;

(i) the net profit margin earned by an independent enterprise or enterprises from comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;
(ii) appropriate adjustment is then made to the net profit margin referred to in sub-clause (ii) to take into account the differences, that can materially affect the net profit margin, between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;
(iii) the adjusted net profit margin under sub-clause (iii) is then applied to the base as referred to in sub-clause (i) to arrive at the arm's length price in relation to the international transaction.

27.5 Factors to be considered in judging uncontrolled international transaction

(1) The factors to be considered in judging uncontrolled international transaction is described in rule 71. These are as follows:

(a) the characteristics of property, services or intangible properties involved in the transaction:

(i) the case of tangible property: physical features, quality and reliability, availability, volume and timing of property transferred;
(ii) in the case of services provided: the nature and extent of the services;
(iii) in the case of intangible property: the type of intangible, the form of transaction, the expected benefits, the duration of protection, the degree of protection, etc.;

(b) the functions performed, the risks assumed and the assets employed, especially the functions, risks and assets that are materially significant in determining the price or margin in relation to the international transaction;

(a) the contractual terms (whether or not such terms are formal or written) dictating the allocation of responsibilities, risks and benefits between enterprises involved in the international transaction;
(b) economic circumstances, that affect the international transaction and uncontrolled transactions, including geographic location, the size and level of markets; the extent of competition in the market, the availability of substitute goods and services, the purchasing powers of consumers, government orders and policies and the timing of the transaction;
(c) Any other factors that have material effect on the international transaction and uncontrolled transaction.

(2) An uncontrolled transaction shall be deemed to comparable to an international transaction if:

(i) there are no material differences in respect of cost, price or margin between the transactions being compared or between the enterprises undertaking such transactions; or
(ii) reasonably accurate adjustments can be made to eliminate any material differences in the transactions.

(3) In analyzing the comparability, data relating to the relevant financial year (in which the international transaction has been entered into) shall be considered.

Provided that data relating to a period prior to the financial year may also be considered if such data bears such facts which could have an influence on the analysis of comparability.

27.6 The factors to be considered for the most appropriate method

The factors to be considered for the most appropriate method are described in rule72:

(a) the nature and class of the international transaction, and of enterprises entering into the international transaction;
(b) the comparability factors (industry, functions, risks, contractual terms, market level) that are materially significant in determining the price or margin in relation to the international transaction;
(c) the quality (availability, coverage, validity and reliability) of relevant data;
(d) the reliability of assumptions in the method;
(e) the sensitivity of results in the deficiency in data and assumptions;
(f) the extent to which the reliable and accurate adjustments can be made to eliminate the differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions.

27.7 Reporting of information relating to international transaction

According to section 237 every person having international transaction will keep information and maintain record as per role 73 as under:

(a) Ownership profile of the multinational group in which the assessee enterprise is a member. Profile should include information on groups global organizational structure, showing in details the name, location, legal status and country of tax residence of the enterprises in the group with whom the assessee enterprise have international transactions, and ownership linkages among them;

(b) business profile of the group including the line of business, industry dynamics, and market and economic environment in which the group operates, and the business model and strategies of past, present and future;
(c) brief business profiles of each of the member of the group;
(d) information on the business relationship (purchase and sells of goods, provision of services, use of assets and intangibles etc.) among the members of the groups;
(e) consolidated financial statement of the group;
(f) profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh, including tax and VAT registration number, IRC & ERC numbers, address, locations of activity centers etc.;
(g) business profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh including the line of business, industry dynamics, and market and economic environment in which the assessee enterprise operates, and the business model and strategies of past, present and future of the assessee enterprise;
(h) brief description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction;
(i) financial statements of the assessee enterprise and each of the associated enterprises operating in Bangladesh;
(j) information on economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee enterprise and each of the associated enterprises operating in Bangladesh either for whole business or for any segment or line of product;
(k) details of all transactions with the associated enterprises;
(l) contracts, terms and agreements of the transactions with associated enterprises;
(m) segment financial statements with respect to the transactions with associated enterprises;
(n) the manner of choosing tested party including the rationale for the choice;
(o) details of comparable including the manner in which the comparable have been screened and the adjustment made to achieve comparability;
(p) details of comparability analysis;
(q) the manner of choosing tested party including the rationale for choice;
(r) information on transfer pricing method chosen considered for determining the arm's length price including the justification stating why the method is considered most appropriate;
(s) records showing the calculations and workings regarding the determination of the arm's length price/margin including the explanation of any assumption;
(t) any assumption, policy and price negotiations which may have an effect on the determination of the arm's length price;
(u) information on any adjustment made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;
(v) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

The information specified above shall be supported by authentic documents, which may include the following:

(a) Official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;
(b) Reports of market research studies carried out and technical publications brought out by institutions of national or international repute;
(c) Price publications including stock exchange and commodity market quotations;
(d) Published accounts and financial statements relating to the business affairs of the associated enterprises;
(e) Agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions;
(f) Letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;
(g) Documents normally issued in connection with various transactions under the accounting practices followed.

The information and documents specified shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

According to section 238, every person, having international transaction is required to furnish information regarding international transaction in prescribed form. Such form is prescribed in rule 75A.This information in prescribed form is to accompany annual tax return. The form prescribed in rule 75A is as follows:

STATEMENT OF INTERNATIONAL TRANSACTIONS

(Section 238 of the Income Tax Act, 2023 and Rule 75A of the IT Rules, 1984)

A. Particulars of the Assessee:

1.Name of the Assessee: .....
2.TIN:
3.(a) Circle : ..... (b) Taxes Zone : .....
4.Assessment Year: .....
5.Income Year: From …….... to .....…

B. Particulars of International Transactions [see section 233 (5)]

.

PART-I

Tangible property of revenue and capital nature transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Stock in trade/ raw materials						
Other (specify)						

Rent, royalties and intangible property related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Rent						
Royalties (for the use of patents, trademark etc.)						
License of franchise fees						
Intangible property or rights (acquired or disposed of)						

Services related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Treasury related services						
Management and administrative services						
Sales and marketing services						
Research and development						
Software and ICT services						
Technical and engineering services						
Commissions						
Logistics						
Asset management						
Other services (specify)						

Financial transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Interest						
Sale of financial assets (including factoring, securitization and securities)						
Lease payments						
Securities lending (fees and compensation payment)						

Insurance and reinsurance						
Guarantees						
Other services (specify)						

Any other international transaction of revenue nature not reported above:

Total of PART-I

PART-II
Interest bearing loans, advances and investments (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts owed by the assessee				
Amounts owed to the assessee				

Current accounts and similar items (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts of accounts payable				
Amounts of accounts receivable				

.....Designation…….....of……
…….. Solemnly declare that to the best of my knowledge and belief the information given in this Form is correct and complete.

Place: .....
Date: .....
Signature
(Name in block letters)
Designation and Seal

Instructions

1. Enter the total value of international transaction for each item in the appropriate column.

2. Enter the appropriate Transfer Pricing Method Code(s) (TPM Code) in PART-I from the list given below (see section 235).

Transfer Pricing Method (TPM)	**Code**
Comparable Uncontrolled Price	1
Cost Plus	2
Resale Price	3
Profit Split	4
Transactional Net Margin Method	5
Others	6

The '%' column for each item in PART-I represents the total value of international transactions of that item as the percentage (up to two decimal places) of the total value of all transactions under the item.

According to section 239 every person who has entered into international transaction with one or more persons total value of which in an income year exceeds taka 30 million is required to furnish a report from a chartered accountant. This report, in prescribed form, is to accompany his annual tax return. The prescribed form as per rule 75 is as follows:

"1. The accounts and records of ----------

(name and address of the assessee with TIN) relating to the international transactions entered into by the assessee during the income year ending on, _____ has been examined by me.

2. It appears from our examination of the accounts and records that proper information and documents, as are required by the Income Tax Act, 2023, have been kept by the in respect of the international transaction(s) entered into by the assessee.

3. The particulars required to be furnished under section 239 are given in the Annexure to this Form.

4. In my opinion and to the best of my information and according to the explanations given to me, the particulars given in the Annexure to this form are true and correct.

Signature Name:
Address:
Membership No:
Place: _____
Date: _____

27.8 Assessment procedure of transfer pricing issues:

The chronology of processing of international transaction by tax authority is stated in section 236 .According to section 236:

(a) DCT with prior approval of NBR refers a case to TPO for determination of arm's length price.
(b) TPO will then on approval of NBR proceed to determine arm's length price in relation to international transaction. He will then serve notice to taxpayer to produce evidences in support international transaction.
(c) TPO will then determine arm's length price in relation to international transaction considering evidences produced and all other related information he will send his report to the DCT.
(d) DCT will then assess total income &taxes payable on the basis of report of TPO and all other relevant matter.

27.9 Penalties in transfer pricing regulation:

1. According to section 277 income tax authority may impose a penalty up to 1% of international transaction for failing to furnish information or not maintaining records.
2. According to section 276 income tax authority may impose a penalty up to 1% of international transaction for failing to comply with requisition of a notice.
3. According to section 278 income tax authority may impose a penalty up to 2% of the value of such international transaction for non-submission of statement of international transaction as per section 238.
4. According to section 279 income tax authority may impose a penalty up to BDT 3 lakh for failing to furnish report of chartered accountant as per section 239.

Question no 1

XYZ Pharmaceuticals Limited, a pharmaceutical manufacturing company, commenced its operations in 2015. The audited profit & loss statement of the company for the year ended 30 June, 2023 is as follows:

Particulars	Taka
Net sales	12,000,000
Cost of Sales	(10,200,000)
Gross Profit	1,800,000
Other Operating Income	1,600,000
Administrative Expenses	(14,500,000)
Selling and Marketing Expenses	(74,500,000)
Other Operating Expenses	(1,000,000)
Profit from Operations	(86,600,000)
Financial Expenses	(25,000,000)
Foreign exchange gain/ (loss) Interest income	(2,200,000) 12,000
Profit/ (Loss) before Tax	(113,788,000)

Other information:

(i) Depreciation booked in the accounts during the year Tk. 30 million. As per tax law depreciation for the year would be Tk. 50 million.
(ii) Royalty charged to expense during the year was Tk. 9.60 million (8% of net sales).
(iii) Expense incurred for free samples distributed was Tk. 5 million.
(iv) Out of the total employees of the company 10 employees' salaries include perquisites on an average Tk. 10,50,000 each, 10 employees' salaries include perquisites on an average Tk. 400,000. No other employee's salaries have perquisites more than Tk. 475,000.
(v) Provision for gratuity made during the year was Tk. 1,000,000, whereas gratuity paid during the year was Tk. 900,000.
(vi) The company contributed to the employees' provident fund during the year Tk. 1,500,000. The provident fund is duly recognized by concerned Commissioner of Taxes.
(vii) Entertainment expense of Tk. 250,000 charged during the year.
(viii) Financial expense includes Tk. 2 million for the interest paid on the foreign loan received from its overseas parent company. The rate of interest is LIBOR+4.50. The transfer pricing officers of NBR have assessed that the arm's length rate of interest of the similar loan should LIBOR+3.0 [Assume the LIBOR rate was 0.50]

Required:

(i) Compute the total income of the company for the year.
(ii) Compute the net tax liability of the company for the year

Solution-1:

Computation of total income of XYZ Pharmaceuticals Ltd. for the assessment year 2023-24:

	Taka	Taka
Net profit (loss) before tax as per accounts		(113,788,000)
Add: Accounting depreciation Royalty Free samples Excess perquisites (10,50,000-10,00,000) X 10 Provision for gratuity Entertainment Interest on foreign loan	 30,000,000 9,600,000 5,000,000 500,000 1,000,000 250,000 2,000,000	 48,350,000
Less: Tax depreciation Free samples expenses (Note-1) Gratuity paid during the year Interest on foreign loan (2000/5% X 3.5%) Entertainment (Note 2) Royalty expenses (Note-3)	 50,000,000 1,600,000 900,000 1,400,000 Nil Nil	 (53,900,000)
Total income		(108,238,000)

Notes:

[1] 2% on 5 crore, 1% on next 5 crore and 0.5% on balance Tk. 2 crore of turnover (section 55(i))
[2] As there no taxable profit, no entertainment will be allowed as per section 66(h)
[3] Royalty is allowed up to 10% of disclosed net profit. As disclosed net profit is negative so no royalty is allowed (section 55(e)).
[4] Though the company suffered loss but tax @ 30% (assuming that the conditions to avail 27.5% tax rate not fulfilled) to be paid on disallowances u/s 55 as per section 56. Total disallowances u/s 55 are:

[1] Royalty Tk. 96,00,000
[2] Free samples Tk. 34,00,000
[3] Excess perquisites Tk. 5,00,000
[4] Entertainment Tk. 2,50,000
Total Tk. 1,37,50,000. Tax@ 30% comes at Tk.41,25,000

Computation of tax liability of the company

Tax on calculated loss

Nil
But tax @ 30% as per sec. 56 on disallowances u/s 55
Tk. 41,25,000
+
Tax on gross receipts as per section 163(5) (12 crore X 0.60%) Tk. 7,20,000

Therefore, the net tax liability of the company for the AY 2023-24 will be **Tk. 48,45,000**

Question no 2

XYZ Bangladesh Ltd. a 100% Chinese equity-held 'A' category private company, operating as export-oriented(deemed) security label products factory in Savar EPZ and enjoying 10-year tax holiday, have related party transactions. You are an ACA, working as deputy to the CA Firm's tax partner who specializes in TP. Tax partner advised XYZ as to the appropriate methods for pricing international transactions. He filed tax return of XYZ Bangladesh Ltd. for income year ended 30.06.2023 together with Statement u/s 238 of the Act, Rule 75A; selected extracts are:

Particulars of International Transactions (XYZ Bangladesh Ltd. For y/e 30.06.2023) PART – I
Tangible **property of revenue and capital nature transactions**

Item	**Expense ('000**	**TPM Code**	**%**	**Revenue('000)**	**TPM Code**
Export of F/G			15%	150,000	TNMM
Import of R/M	50,000	TNMM	10%		
Import of Machineries	200,000	OTHER	75%		
Service related transactions					
Item	**Expense ('000)**	**TPM Code**	**%**	**Revenue('000)**	**TPM Code**
Management Fee	10,000	TNMM	100%		

PART – II
Interest free loans, advances and investments (figures in '000 taka)

Item	**Opening Balance**	**Increase**	**Decrease**	**Closing Balance**
Due to Assessee	----	5,000	---	5,000
Current accounts and similar items (figures in thousand taka)				
Item	**Opening Balance**	**Increase**	**Decrease**	**Closing Balance**
Accounts Payable	35,000	50,000	--	85,000
Accounts Receivable	65,000	50,000		115,000

Exports of F/G to AE are same „label products". The import of R/M includes semi-finished label papers of high specifications which are available only with one Chinese supplier; the AE in question has global volume contract with Chinese Supplier. Machineries include state-of-the-art printers from proprietary sources. Management fee is shared cost of technical team sitting in China under a Management Service Agreement with assessee. „Due to Assessee" includes remittance made to Paris trading office of the company to support its initial set-up cost (opened in June 2022). This new trading office is set up to secure nominations for its label products from EU customers who source apparel products from Bangladeshi suppliers. DCT referred the case for y/e 30.06.2023 to TPO u/s 236. TPO served a notice to XYZ Bangladesh Ltd. u/s 236 (2) requiring to explain:

1.Why assessee relied on TNMM method and 'OTHER' method for reported/selected transactions with AEs?

2.Why TP adjustment should not be given on management fee paid to AE in Shanghai?

3.Why TP adjustment should not be given on interest-free remittance to AE in Paris?

4.Why TP adjustment should not be given for interest on overdue receivable from AEs?

Long working with TP specialist tax partner brought you experience on TP advisory. NBR formed TP cell comprising of proven high-caliber officials from department. TP regulations are new in Bangladesh. NBR advertised for a short-term consultant (preferably CA) to seek technical supports to the cell in these initial days. You got this one-year engagement at NBR to work as Consultant at TP Cell, to begin from September, 2023.

Requirements:

a) Your tax partner wants you to draft explanations in ref to TPO notice. Cover reasons why 'TNMM' and 'OTHER' methods are used by XYZ Ltd in its reported transactions as opposed to other methods.
b) Draft explanation for your partner covering the reasons as to why TP adjustments should not be given for reported management fee, interest-free remittance and overdue receivable.

c) During incumbency at NBR, you will support TP team with your findings identifying potential adjustments involving critical returns. Assume, you are tasked by TP head to
provide findings on a return filed by your ex-Tax partner. Answer your position covering ethical threats, if any, and your possible actions.

Solution 2(a)

A TP study on XYZ Ltd was carried out, ready for submission to tax authority. At XYZ Ltd., operating margin is taken as profit level indicator (PLI) when using TNMM method. Rule 70(1) of the IT Rules, 1984 was taken as guidance and thus the selected methods were decided for given international transactions. TNMM uses objective measures of profitability, called Profit Level Indicators (PLI) to evaluate whether the price of controlled transactions is at arm's length and so it was taken as appropriate for finished goods sale (export), raw material import and Management fee. At XYZ Ltd. when using **Transactional net margin method** (TNMM) for determining selling price of 'label products', PBIT margin on export sales from sale transactions with AEs were compared with the PBIT margin on sale from export transaction with unrelated customers. Adjustments for difference in functional analysis between transactions with AEs and unrelated parties were also given.

Similarly, for purchase of materials from AEs, PBIT margin on cost from transactions of purchase raw material transactions with AEs were compared with the PBIT margin on cost from transactions of purchase raw material transactions with unrelated suppliers. As the raw materials semi-finished, of high specifications and they are sourced from selected Chinese suppliers under the global volume contract with AEs in Shanghai, the scope of comparability with uncontrolled transactions were less. However, as the r/m is procured under global volume contract with AE, the price of raw material received by XYZ Ltd. was already competitive.

TNMM was used for Management fee also on the ground of simplicity. When doing this, the PBIT margin-Management fee to AE at XYZ Ltd. was compared with the PBIT margin-Management fee relationship practiced by unrelated competITArs in the same industry sector (Label Products). Such comparison revealed the size of management fee at XYZ is lower than that practiced at uncontrolled competITArs.

Application of TNMM for export sale, r/m purchase and management fee thus made the operations simple, objective and so the prices are duly in arm's length. Net margin under TNMM is less affected by transactional difference than in the case with price under CUP method. Net margin is also a better indicator than gross margin which is used in the case of CPM and RPM. PSM better suits service industry.

Use of 'OTHER' method was used for transactions with AEs for purchase of machineries. These are state-of-the art machines, purchased from proprietary sources to maintain the quality of label products. As the source is 'proprietary' and having no other alternative, no ALP pricing methods could be applied but the price of the supplier was taken as it is, i.e., the method falls under 'OTHER'. Section 235(1)(f) allows using 'any other method' where it can be demonstrated that none of the specific five methods can be reasonably applied to determine ALP for given international transaction. XYZ had to resort to section 235 for 'machinery import from proprietary source.

Solution 2(b)

Rule 70(1) was duly complied when determining the ALP methods for the three items of international transactions. Further grounds why TP adjustments should not be given on those three items:

Management Fee to AE in Shanghai, China

i) Management fee is paid to AE using TNMM method which is the most reliable measure on merit, duly being backed by Rule 70(1) of the IT Act.
ii) Management fee paid is still lower than size of the item practiced by the uncontrolled competITArs in the same industry of label products export, revealed by TNMM approach.
iii) Pricing method has been determined after a detailed TP study, submitted with tax return.
iv) The payment is well documented and the amount within the limit of section 55(e) of ITA,2023.
v) The amount paid to AE is towards sharing of the cost of the technical team in China (head quarter), well documented, and under a formalized agreement duly approved by BIDA. The management fee recovers proportionate cost of AE without any savings, as revealed by TP study FAR analysis.

Remittance to AE in Paris

iii) New trading office in Paris was set up to market, coordinate and secure nominations of the EU retainers for the assessee's label products, which will be a direct increase of assessee's export.
iv) AE in Paris, being non-resident, cannot make any local borrowing there. The only option for initial set up cost was funding from the assessee. This remittance is also approved by Bangladesh Bank.
v) Fund remitted to start the set-up could otherwise be treated as 'capital expenditure' whereas the remittance has been recognized as repayable loan to AE. This means better protection to the assessee.
vi) Financial support made to AE comes under the ordinary business practice of assessee's operations. This is a one-off assistance and amount is not very large. Assessee's business is not 'lending'. Therefore, there cannot be any interest charge on the funds remitted.
vii) The decision to support AE in Paris was duly approved by the BOD for greater business cause.

Receivable from AE

i) Receivable with AE is in the ordinary course of assessee's business operations, not extraordinary.
ii) Receivable is not alone with AE, other parties also have receivable balance as per payment term. Such receivable is unavoidable in business.
iii) The annual increase figure of receivable is for an amount which is equally off-set by the payable to AE. The net effect on assessee is well balanced.
iv) There is no term of interest charge on the receivable with the AEs when sale was done.

Solution 2(c)

As NBR consultant, I shall be in the character of a PAIB. Working on a file of my ex-tax partner's client at my incumbency at TP cell may be an issue of 'conflict of interest' which may create threats to objectivity and other fundamental principles, such as, integrity, confidentiality and good reputation of my profession. I shall be subject to NBR contractual terms, policies and procedure of NBR and the Govt. Secrecy law. I shall be exposed to 'familiarity threats' for my long association with ex-tax partner plus a threat of 'self-interest' for the likely slide of my image if I fail to do a just job at TP cell.

The threats are significant. No safeguard seem to be relevant. I have to a firm position. As a TP Cell consultant, I shall draw an ethical wall both in fact and appearance under the circumstances. I shall remain objective, confidential at all times and shall not allow any undue influence including any familiarity pressure in my mind to override my professional judgment. I shall not allow conflict of interest but shall disclose to my TP cell boss the fact of my relationship with ex-tax partner and the tasked file in hand. If I am still tasked to do the job, on merit, I shall bring change in my conduct with my ex-tax partner during my incumbency at TP Cell. Major threats as mentioned could thereby be managed well.

Question no 3

A Bangladeshi entity X Ltd, purchases certain finished goods from an associated enterprise in Singapore Y Pte Ltd, which it sold to an independent enterprise in Bangladesh XY Ltd at Tk. 575,000 (inclusive of 15% VAT). Another entity BB Ltd in Bangladesh around same time procured similar goods from an independent enterprise in Singapore SS Pte Ltd at Tk. 440,000 (inclusive recoverable VAT of Tk. 40,000), which was sold to another Independent party ZA Ltd at Tk. 690,000 (inclusive of 15% VAT) with an associated freight cost Tk. 35,000 and insurance cost of Tk. 15,000.

Required:

i) Determine the most appropriate method for determining the Arm's length price and explain why this should be applied.
ii) Compute the Arm's length purchase price of X Ltd.

Answer to the question no-3
Requirement: 3 (i)

Most appropriate method for this transaction would be Transactional Net Margin Method (TNMM).

The reasons behind selecting TNMM as the most appropriate method:

- General, marketing and administrative expenses are like establishment costs and therefore they do not directly affect the prices of the goods in the market

- TNMM tests the net margins of the tested party as oppose to gross margins in case of Resale Price Method RPM or Cost Plus Method

- TNMM becomes inevitable where the assessee has interlinked transactions of purchase and sale from/to related parties where they cannot be benchmarked isolated.

Requirement: 3 (ii)

Independent Enterprise transaction:

Description	Amount (Taka)
Sales by BB Ltd excluding VAT (690,000X (100/115)	600,000
Material cost (purchased from independent enterprise): Total cost including VAT 440,000 (-) Recoverable VAT 40,000 Material cost without VAT Freight Insurance	 400,000 35,000 15,000
Operating profit	150,000

Operating Profit in %	25%

Arm's Length price computation of X Ltd:

Description	Amount (Taka)
Sales by X Ltd to independent enterprise excluding VAT (575,000X (100/115)	500,000
(-) Operating profit margin @ 25%	125,000
Arm's length purchase price from associated enterprise	375,000

Question no 4 (A) [CUP Method]

Bio Chem Limited (A German Company) sold 500 vaccine to its subsidiary Bio Chem BD Limited (Bangladeshi Company) for $200 each on CIF (Cost, Insurance & Freight) basis. It sells the vaccine to Beximco Pharma in Bangladesh also at $190 each on FOB basis. Transportation cost from Germany to Chittagong port is $3.5 for each vaccine. Insurance cost for the transportation is $2500 for all 500 vaccines. The subsidiary in Bangladesh incur additional cost of $5.5 for packaging of the vaccine while the parent takes the responsibility for packaging to other subsidiaries for which the cost is $15 for each vaccine.

Please compute the Arm's Length price for the vaccine in Bangladesh and the required adjustment required.

Solution 4 (A):

Arm's length price determination for transaction between Parent and Subsidiary

Particulars	**Amount**
Unit price charged to Bio chem BD Limited (AE)	$200.00
Unit price charged to Independent Customer (Third party)	$190.00
Add: Cost of Transportation	$3.50
Add: Cost of Insurance	$5.00
Adjusted unit price*	$198.50
Arm's length price per unit using internal CUP	$198.50
Transfer pricing adjustment in US$ (500*($200-$198.50))	$750.00
Transfer pricing adjustment in BDT (1 US$ = 85 Taka)	BDT 63,750

Question 4 (B):

External CUP

The German entity sells the same vaccine to other subsidiaries at the following price:

Market	**Selling Price (Vaccines)**
USA	$225.00
China	$215.00

Brazil		$210.00

Solution 4 (B):

Arm's length price determination for transaction between Parent and Subsidiary

There is no specific guidance on how to determine External CUP using external price when multiple prices are available. Common practice is using average of selling prices. Using average selling price of the above three market:

Particulars	Amount
Average price per unit using external CUP	$216.67
Packing cost incurred by parent	$15.00
Arm's length price per unit using external CUP (Average Price)	$201.67
Unit price charged to Bio chem BD Limited (AE)	$200.00
Less: Packaging Cost **(B)**	$5.50
Adjusted unit price charged to Bio chem BD Limited by AE **(A-B)**	$194.50

Transfer Pricing adjustment is not required because AE charged lower price than the external selling prices of the same product to other subsidiaries.

Resale Price Method (RPM)

Question 5:

Ryans Bangladesh Limited trades IT related product only. Ryans purchases all its laptop from Dell Limited (A related Party). It also purchases its laptop from HP Limited but without warranty. Warranty cost for laptop is BDT 1,500.

Particulars	Dell Limited (AE)	HP Limited
Purchase price of Ryans	15,000	19,000
Selling price of Ryan	18,000	26,000
Other expenses	1,000	1,500

Calculate the arm's length price of each laptop it procures from the related party.

Solution 5:

Details of the Gross Profit Margin is as follows:

Particulars	Dell Limited (AE)	HP Limited
Selling price of Ryan	18,000	26,000
Less: Purchase price of Ryans	15,000	19,000
Less: Other expenses	1,000	1,500
Gross Margin	2,000	5,500
Gross Margin on Sales	11%	21%

Calculation of ALP is as follow:

Particulars	Amount (Tk)
Selling price of Ryan	18,000

Less: Other expenses	1,000
Less: Arm's length resale margin @21%	3,780
Add: Warranty Cost	1,500
Adjusted Arm's Length Price	**14,720**
Price Paid to AE	15,000
Adjustment per product	280

Cost Plus Method (CPM)

Question 6:

Executive Cover Limited (ECL) manufactures I-phone cases for its associated enterprise. IPhone cases are manufactured by several other companies including Candy Casing Limited (CCL). Both CCL & ECL manufactures the same product

Details of the transactions of both the parties are given below:

Particulars	**ECL**	**CCl**
Selling price	12,000	13,000
Manufacturing cost	8,000	8,250
Cost of packaging	-	250

ECL manufactures 15,000 I-phone cases for its AE during the year. Please calculate the arm's length price of each I-phone cases and required adjustment.

Solution 6:

Details of the Gross Profit Margin are as follows:

Particulars	**ECL**	**CCL**
Selling price	12,000	13,000
Less: Manufacturing cost	8,000	8,250
Less: Cost of packaging	Nil	250
Gross Margin	4,000	4,500
Total Cost	8,000	8,500
Mark up on cost	50%	53%

Calculation of ALP is as follow:

Particulars	**ECL**
Total Cost	8,000
Add: Arm's length Mark Up @53%	4,240
Adjusted Arm's Length Price	**12,240**
Selling Price to AE	12,000
Adjustment per I-phone Case	240
Total Transfer Pricing adjustment	3,600,000

Profit Split Method

Question 7:

Kevlin Private Limited of India sells all of its manufactured goods to Kevlin Private Bangladesh Limited (AE of KPL India) and after further processing KPL (Bangladesh) sells those products to the customers all over Bangladesh.

Profit & Loss Statement of KPL (India) and KPL (Bangladesh)

Particulars	**KPL (India)**	**KPL (Bangladesh)**
Sales	$55	$ 100
Purchase	$ (10)	$ (55)
Manufacturing costs	$ (15)	$ (20)
Gross Profit	$ 30	$ 25
Research & Development	$ (15)	$ (10)
Operating expenses	$ (10)	$ (10)
Operating Profit	$5	$ 5

It is established, for both jurisdictions, that third-party comparable manufacturers without unique and valuable intangibles earn a return on manufacturing costs (excluding purchases) of 10% (ratio of net profit to the direct and indirect costs of manufacturing).

Recalculate Arm's length profit of KPL (India) and KPL (Bangladesh) using profit split method.

Solution 7:

Calculation of residual profit:

Particulars	**KPL (India)**	**KPL (Bangladesh)**	**Total**
Total operating profit earned by KPL (India & Bangladesh)	$ 5.00	$ 5.00	$ 10.00
Less: Return on manufacturing costs (Manufacturing cost x 10%)	$ 1.50	$ 2.00	$ 3.50
Residual profit	$ 3.50	$ 3.00	$ 6.50
Proportion of R & D Cost	$ 15	$ 10	$ 25.00
Percentage of Proportion of R&D Expenses (R&D expense / Total R & D Expense x 100%)	60%	40%	
Calculation of Residual Profit (Operating Profit)	**$ 5.40**		**$ 4.60**

(Return on Manufacturing cost + Proportion of R&D Expense X Total Residual Profit)

Adjusted Profit & Loss Statement of KPL (India) and KPL (Bangladesh)

Particulars	**KPL (India)**	**KPL (Bangladesh)**
Sales	$ 55.40	$ 100.00
Purchase	$ (10.00)	$ (55.40)
Manufacturing costs	$ (15.00)	$ (20.00)
Gross Profit	$ 30.40	$ 24.60
R&D	$ (15.00)	$ (10.00)

Operating expenses	$ (10.00)	$ (10.00)
Operating Profit	$ 5.40	$ 4.60

Transaction Net Margin Method (TNMM):

Question 8:

Tiger IT Bangladesh Limited (TIL-BD) procures software (Data X) from Gameloft Singapore Limited at BDT 1,500. The company incurs promotional expense of BDT 600 and sells the software to its customer at BDT 3,000.

Tiger IT Bangladesh Limited (TIL-BD) also procures its software (Foto Z) from Tiger IT UK Limited (TIL-UK) at BDT 700. The company incurs promotional expense of BDT 200 per software and sells the software at BDT 1,200 to its customer.

Please find the arm's length price for the software assuming the difference in product is immaterial.

Solution 8:

Computation of Net Profit Margin

Particulars	**Data X**
Sales Price	BDT 3,000
Less: Purchase price	BDT 1,500
Less: Promotional Expense	BDT600
Net Profit	BDT 900
Net Profit Margin Ration (% of sale)	30%

Calculation of ALP is as follow:

Particulars	**Amount**
Sales price of Foto Z (A)	BDT 1,200
Net Profit Margin Ratio	30%
Net Profit Margin (B) [A X Net Profit Margin Ratio]	BDT 360
Total Cost (A-B)	BDT 840
Less: Promotional Expense	BDT 200
Adjusted Arm's Length Price per software	**BDT 640**
Price Paid to AE	BDT 700
Transfer pricing adjustment per software	**BDT 60**

Question 9:

A company (ABC Ltd) has received interest free loan of BDT 15,000,000 from its parent (XYZ Ltd) as working capital on 10 December 2021. The company repaid the loan on 01 May 2022. The financial year of the company is from July 2022 to June 2023.

Now, the group CFO is in the view that, the TP return is not required to file as the there is no closing balance in the Financial statements. He approached your tax partner for opinion on whether this need to be file or not.

You are required to prepare a memorandum for the tax partner for the above queries.

Solution 9:

To,
Tax Partner.
ABC & Co.
Chartered Accountants

Subject: **Memorandum on filling of Statement of International Transactions under Section 107 EE**

Dear Sir,

As per Section 233 (5), international transaction means in the nature of Purchase, Sale, Lease of tangible or intangible property, provision of services, lending money, borrowing of money between associated enterprises.

As the ABC Limited (subsidiary) received interest free loan from XYZ limited (Parent) it falls under international transaction for which TP return must be filed as per section 107EE. Though there is no closing Balance but as the transaction incurred during this year, it must be reported under Part-II Interest Free loan, advances and investments.

However, as the transaction for the year is less than BDT 30,000,000, so no certificate from a qualified chartered accountant is required. Also, there is no need to mention transfer pricing method rather it can be considered only as disclosure.

Question 10:

A German based research institute developed a vaccine for protecting the children from harmful seasonal flue which was not developed by any other entity in the world. The German based institute will supply the vaccine to Bangladesh at fixed value of USD 250, the rate is the same for the supply to other country by the institute.

Now, the entity wants to open a subsidiary in Bangladesh and approaches your firm for the transfer pricing implication and method.

You are required to prepare a memorandum for the tax partner for the above queries.

Solution 10:

To,
Tax Partner.
ABC & Co.
Chartered Accountants

Subject: **Memorandum on Transfer Pricing Method and Implication for newly developed vaccine**

Dear Sir,

As per section 238, the subsidiary need to file the TP return for purchasing the vaccine from its parent based in Germany.

In case of determining the transfer pricing method, we need to take into the fact that, this is a very unusual product (Vaccine) and the vaccine is being sold by the institute to all other countries at a fixed price. As the subsidiary will act as only as a distributor and resale the product, the Transfer pricing method would be “Comparable uncontrolled Price” TPM code: 01”.

Also, as the vaccine is supplied to all the countries of the world at the same rate ($250), there will not be any transfer pricing adjustment.

Question No.11:

Ideal Bangladesh Ltd ("Ideal BD" or "the Company") is a 100% owned subsidiary of Ideal World Limited, a German conglomerate renowned for its famous consumer goods across the world. Ideal BD is a public limited company but not listed with any stock exchanges in Bangladesh and has been engaged in manufacturing and marketing of consumer goods under the global brands of Ideal World Limited for the last 10 years. Accordingly, Ideal BD manufactures certain products in Bangladesh ("manufacturing unit") and imports some other finished products from its sister concerns (associated of Ideal BD) across the world, which it markets without doing any further modification ("Trading unit").

For the year ended on 31 December 2022 (A/Y 2023-24), following extracts were relevant for computing income tax for Ideal BD

Particulars	Amount in Crore Taka
Turnover	4,100
Profit before tax	700
Depreciation as per book	60
Royalty expenses	90
Excess perquisite	10
Profit on sale of motor vehicles used by the Chairman & MD for business purpose	2
Profit on sale of land property of the Company	5

In addition to the above, following information were also made available relevant for its tax assessment:

1) Turnover of Tk. 4,100 crore comprises of Tk. 3,500 crore on account of manufacturing unit and Tk. 600 crore on account of Trading unit.
2) Net profit after tax as per statement of accounts was Tk. 502.95 crore, out of which Tk. 9.75 crore represent net profit of Trading unit.
3) Profit before tax posted by Ideal BD comprises Tk. 645 crore from Manufacturing unit and Tk. 55 crore from Trading unit.
4) The Company maintains an unfunded gratuity scheme for its permanent employees and for the 2021 it created a provision of Tk. 8 crore, while Tk. 2 crore were paid to 3 outgoing employees
5) The motor vehicles were sedan car, having antique value, acquired two years back at a price of Tk. 2.5 crore, which were sold at Tk. 3.5 crore, although the written down value was much lower. The Company follows a straight-line method and depreciates its motor vehicle @ 20% rate.
6) All the capital gains were reinvested in new plant & machineries of the Company in 2021 itself and the Company has obtained a permission from the tax authority to claim capital gain tax exemptions.
7) For Fiscal depreciation following information are available:

   i)
   otal depreciation (excluding the depreciation of new plant and machinery) as allowed under law was Tk. 78 crore. Addition to plant & machinery was Tk. 7 crore. As per 3rd Schedule of the ITA, 2023 there are normal depreciation allowance @ 20% and initial depreciation allowance @ 25% on plant and machinery cost
   ii)
   uring 2021, for the purpose of depreciation allowances, maximum Tk. 25 lac as cost was allowed for motor vehicle not plying for hire.

8) The latest assessed tax (A/Y 2021-22) of the Company was Tk. 189 crore (Manufacturing unit Tk. 175 crore and Trading Unit Tk. 14 crore). Because of fulfilling certain conditions of an

exemption SRO, the Company was eligible for a rebate of 20% on profit of the Manufacturing unit, which will continue this year as well. The standard tax rate applicable for the Company in the latest assessed tax was 30%, which is now 27.5% or 30% based on a changes made in the last Finance Act 2023. The Company paid due advance tax u/s 154 following its last assessed income.

9) The Gross Profit ratio between Manufacturing and Trading unit was 92%:8%, which was allowed by tax authority to allocate common business profit between these two units.
10) At port point the Company deposited Tk. 100 crore under Manufacturing unit and Tk. 20 crore under Trading unit as advance tax, which were considered while depositing the advance tax for the Company u/s 154.
11) From a data set acceptable by the Bangladesh taxing authority if the lowest value of comparable operating profit at 30th percentile is 10%, highest value of comparable operating profit at 70th percentile is 15% and median value comparable operating profit is 13%, state whether any adjustment is required to determine the arm's length profit for Trading unit. The operating profit % of trading unit was 9.17% of turnover (consider TNMM will provide the most reliable measure of an arm's length result)

Requirements:

a) Compute total income after determining adjustment if any required under transfer pricing regulations for the Trading unit; and
b) Compute net tax liability considering the advance tax already deposited by the company for the relevant assessment year, the income year being the year ended on 31st December 2022

Solution 11 (a & b):

Ideal Bangladesh Limited
Computation of Total Income and Net Tax Liability
Assessment year 2023-24 (income year ended on 31 December 2022)

			Note	Taka in crore
A	**Income from Business or Profession:**			
	Profit before tax as per statement of profit and loss and comprehensive income			700.00
	Less :	Accounting gain on sale of fixed assets for separate consideration	**1**	7.00
				693.00
	Add:	Fiscal gain on sale of fixed assets	**1**	0.38
				693.38
	Add:	**Inadmissible expenses as per provision of law:**		
		Accounting depreciation and impairment loss for separate consideration		60.00
		Gratuity provision (unfunded)		8.00
				68.00
				761.38
	Less :	**Admissible expenses as per provision of law:**		
		Fiscal depreciation	**2**	81.06
		Gratuity amount paid to the outgoing employees		2.00
				83.06
	Total Income from Business or Profession			**678.32**

Allocation of business income between manufacturing unit (other than section 163) and trading unit (section 163) on the basis on gross profit ratio:

Unit	Ratio	Amount
Manufacturing (other than section 163)	92.00 %	624.05
Trading (section 163)	8.00%	54.27
Total Business income		**678.32**

B	**Capital gains:**			
	From sale of Motor vehicle	0.20	**1**	
	Less: Exemption for investment in Plant & machinery within one year of disposal	(0.20)		
	From sale of Land property	5.00		**5.00**
C	**Separate business income to be taxes u/s 56:**			
	Inadmissible expenses u/s 55 of the ITA, 2023		**4**	**50.70**
D	**Transfer pricing adjustment as per statement of international transaction u/s 238 of ITA**		**6**	23.00
Total Income (A+B+C+D)[Requirement 2(a)(i)]				**757.02**
Tax Liability/Payable				
	Business income from manufacturing undertaking (other than section 163):			
	Tax payable @30% on Tk.624.05	187.2		
	Less: Tax rebate @20% on manufacturing profit as per exemption SRO	37.44		**149.78**
	Income from 163:			
	Tax payable @30% on Tk.54.27	16.28		
	Analysis of minimum tax under section 163:			
	Tax payable on regular business income (@30% on Trading profit)	16.28		
	Tax deduction under section 120 considered as minimum tax	20		20.00
	(Actual tax payable or TDS the higher one)			
	Capital gains:			
	Tax payable @15% on Tk.5			0.75
	Income from Other Sources:			
	Tax payable @30% on Tk.50.7			15.21
	Adjustment from transfer pricing as per statement of international transaction u/s 238 of ITA, 2023			
	Tax payable @30% on Tk.23			6.90
				192.64
	Less: Tax paid			
	Tax deducted at source:			
	Other than section 163 of the ITA, 2023			80.00
	Section 163 of the ITA, 2023 (TDS under section 120)			20.00
				100.00
	Advance tax paid u/s 173		**5**	75.50
				175.50
Balance Tax to be deposited u/s 173 of the ITA, 2023 [Requirement 2(a)(ii)]				**17.14**

Note:1 Gain on sale of Motor Vehicle	**As per book**	**As per Tax**
Cost of acquisition	2.50	0.50

Ratio of actual cost of acquisition vs Tax cost of acquisition		20%	
Sale value		3.50	0.70
Written down value		1.50	0.32
Total gain		**2.00**	**0.38**
Split:			
Capital gain (sale value exceeding cost of acquisition)		1.00	0.20
Balance: Revenue gain		1.00	0.18
Total gain		**2.00**	**0.38**

Note: 2 **Depreciation allowances as per Tax**

Total depreciation other than Plant & machinery		78.00
Depreciation allowances on Plant & Machinery:		
Addition in 2021	7.00	
Less: Excluded benefit on capital gain	0.20	
	6.80	
Depreciation (Normal 20% + initial 25%)		3.06
Total Depreciation allowances as per Tax law		**81.06**

Note: 3 **Royalty disallowances as per section 55(e) of the ITA, 2023**

Royalty amount claimed in the financial statement	90.00
Admissible Royalty (10% of disclosed profit Tk. 502.95 crore)	50.30
Inadmissible amount	**40.70**

Note: 4 **Separate business Income to be taxed u/s 56 of ITA, 2023**

Inadmissible excess perquisite u/s 55(d)	10.00
Inadmissible Royalty expenses u/s 55(e) **(Note:3)**	40.70
	50.70

Note: 5 **Calculation of Advance Tax**

Assessed income based on latest assessment	**Assessed income**	**Rate applicable**	**Assessed tax**
Manufacturing unit	625.00	28%	175.00
Trading Unit	40.00	35%	14.00
Total	665.00		189.00

Advance tax for current A/Y	**Assessed income**	**Rate applicable**	**Advance Tax**
Manufacturing unit	625.00	26%	162.50
Trading Unit	40.00	33%	13.00
Total	665.00		175.50
Tax paid at port point			100.00

	Amount to be deposited u/s 154 of the ITA, 2023	**75.50**
	Note: Manufacturing tax rate has arrived at 30% less 20% rebate allowed	

Note: 6 **Transfer pricing adjustment as per statement of international transaction u/s 238 of ITA, 2023**

Operating profit of the company is 9.17% of turnover, which does not fall within the arm's length of 10% to 15%. Hence to arrive at the arm's length operating profit, we have to consider the median value of the data set acceptable to Tax authority. The median value of the comparable operating profits for 2021 is 14% of turnover. Therefore, the income of Trading unit for 2021 is to be increased to 13% of turnover. Accordingly, the amount to be added as adjustment is as follows:

Operating profit at 13% of turnover of Trading unit (600 crores X 13%)	78.00
Operating profit declared by the company (@9.17% of turnover)	55.00
Adjustment required	23.00

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Question No.12:

Expo Ltd. is a foreign subsidiary company of BGD Ltd. The Company sells air conditioners to Expo Ltd. at a price of Tk. 40,000 each for sale to its dealers in Vietnam. In other States, BGD Ltd. is directly elling to their dealers at Tk. 45,000 with a warranty of two year (Tk. 3,500 for each air conditioner). Expo Ltd. does not offer such warranty. Quantity sold to Expo Ltd. is 10,000 units and to dealers of BGD Ltd. is 5,000 units. Discuss the method to be applied to arrive at the Arm's Length Price (ALP) and compute the ALP. How is the assessment of BGD Ltd. going to be affected?

Solution 12:

Expo Ltd. and BGD Ltd. are associated enterprise as Expo Ltd is subsidiary of BGD Ltd. Comparable product (Air Conditioner) is sold to dealers (Uncontrolled transactions). Hence, in given circumstances Comparable Uncontrolled Price (CUP) Method for determining arm's length price can be applied.

Particulars	**Amount (Tk.)**
Sale price charged to Dealers of BGD Ltd.	45,000
Less cost of warranty included in price	3,500
Arm's length price	41,500
Actual price paid by Expo Ltd. to BGD Ltd.	40,000
Difference per unit 1,500	1,500
Addition required to be made in the computations of the total income of BGD Ltd. (1500 x 10,000 units)	15,000,000

Tk. 15,000,000 is to be shown as adjustment for Arm's length price for international transaction u/s 235.





Chapter 28

Refunds

Contents

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28.7	Adjustment of refund against tax

Introduction

Learning objectives

- Recognize the requirement to issue refund voucher
- Define the entitlement of refund.
- Recognize the claim of refund for deceased or disabled persons
- Define the refund on the basis of orders in appeal
- Calculation of interest on delayed refund
- Define the adjustment of refund against tax

Practical significance

When any amount of tax is refundable as per tax law the DCT shall issue refund voucher unless such refund is set off against tax. The refund shall be entitled when the amount of tax paid exceeds the properly chargeable tax or when income of one person included in income of another person.

Where through death, incapacity, insolvency, liquidation or other cause, a person, is unable to claim or receive any refund due to him, the legal representative shall be entitled that refund. In case of refund on the basis of orders in appeal, the amount is payable within 30 days. Interest is also payable if there is

delay in payment of refund more than 2 months from the claim of refund. In certain cases, the refundable amount can be adjusted against tax.

Stop and think

Excess payment of tax is refundable or adjustable against tax. Do you think that refundable tax can be received or adjusted even in some cases with interest?

Working context

Excess payment of tax by a taxpayer may be incurred in many ways. Refund of such tax is a legal right for that taxpayer. Accountants support to calculate and claim the refundable tax on behalf and in favour of the clients that is sometime very essential.

Detailed knowledge on the refund procedures can help accountants to provide this service to their clients.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the requirement to issue refund voucher.
- Mentioned who are entitled to refund.
- Recognize the claim of refund for deceased or disabled persons.
- Recognize the refund on the basis of appeal order.
- Calculate interest on delayed refund.
- Mention how refund is adjustable against tax.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have historically prepared well for this area of the syllabus. Better prepared candidates are able to perform well in the more difficult areas.

28.0 REFUNDS

Section overview

- ➔ DCT shall issue refund voucher when any amount of tax is refundable unless such refund is adjustable against tax.
- ➔ Legal representative of a disable person shall be entitled to get refund.
- ➔ Refund on the basis of appeal order is payable within 60 days of receiving such revised order from the DCT.
- ➔ Interest is also payable in case of delay in payment of refund.
- ➔ Refundable amount can be adjusted against tax.

28.1 Direct refund : Section 215(3):

Irrespective of any provisions within this law or any other legislation, in cases where a return is filed under universal self-assessment, the DCT shall execute electronic transfers for any refunds resulting from the return processing carried out under the universal self-assessment method.

28.2 Entitlement to refund: Section 224

Where a person can demonstrate to the DCT that the tax amount paid by him or on his behalf or deemed to be paid by him or on his behalf, for a given year exceeds the rightful amount chargeable under the Act for that specific year, is eligible to receive a refund for the surplus amount.

In a situation where income of a person is encompassed within the total income of another person through any provision of the Act, solely the latter person shall be entitled to claim a refund concerning that particular income.

28.3 Claim of refund for deceased or disabled persons: Section 227

Where through death, incapacity, insolvency, liquidation or other cause, a person, is unable to claim or receive any refund due to him, his legal representative, or the trustee, guardian or receiver, as the case may be, shall entitled to claim or receive such refund for the benefit of such person or estate.

28.4 Correctness of assessment etc. not to be questioned: Section 228

In any claim for refund under this chapter, it shall not be open to the claimant to question the correctness or validity of any assessment or other matter which has become final and conclusive or to ask for a review of the same, and the claimant shall not be entitled to any relief on any such issue raised except refund of the tax paid in excess.

28.5 Refund on the basis of appeal order: Section 229

Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to an assessee, the DCT shall refund the amount, unless set off against tax or treated as payment of tax as per provisions of section 225 to the assessee, within 60 days from the date on which the refund has become due without his having to make any claim in that behalf.

28.6 Claim for refund: Section 226

If a refund arises through legal proceedings or any official order, and it is not electronically transferred to the taxpayer's bank account, the taxpayer has the option to claim the said refund according to the prescribed procedure.

Rule 36: Form of Application for Refund of Income Tax

I, ---------- of ---------- hereby declare that my total income computed in accordance with the provisions of the Income Tax Act, 2023, during the income year ending on relating to the assessment year ---------- amounted to taka, ----------~----------that the total income tax chargeable in respect of such total income is taka ---------- and that the total amount of income tax paid or treated as paid under sections 150 is taka ----------

I, therefore, request that a refund of taka ----------may be allowed to me.

.....
(Signature)

I hereby declare that I am resident / non-resident in Bangladesh and that what is stated in this application is correct.

Date----------

.....
(Signature)

Notes:

1. The application should be accompanied by return of income in the specified form unless it has already been filed.
2. Where the application is made in respect of interest on securities, the application shall be accompanied by the certificates required under section 145.
3. The application for refund shall be made to the DCT of the Circle in which the applicant is chargeable directly to tax, otherwise to the DCT under whose jurisdiction the applicant resides, unless there is a special Refund Circle, in which case the application shall be made to the DCT of that Circle.
4. A non-resident person shall make his application for refund to the DCT who has jurisdiction over him. If the non- resident tax-payer is assessed through a statutory agent, the application for refund shall be made to the DCT who has jurisdiction over that statutory agent.
5. The application may be presented by the applicant in person or through a duly authorized agent or may be sent by registered post.

28.7 Adjustment of refund against tax: Section 225

Where, according to the provisions in this Act, the Income Tax Ordinance, 1984, the Gift-tax Act, 1990, or the Wealth-tax Act, 1963, there is a determined refund or repayment owed to a person, the entirety or a portion of the owed amount might be offset against the tax liability of that person as per this Act.

Refunds that are utilized to settle outstanding tax obligations shall be considered as tax refunds issued to the taxpayer, and the DCT will duly document this adjustment.

Question

A refund of tax becomes due to an assessee on reduction of total income in appeal filed by him, but the DCT does not take any action to make the refund. What are the remedies open to the assessee?

Answer

1. The aggrieved assessee can file appeal to the AJCT or the Commissioner (Appeals) against the refusal of the DCT to make the refund.
2. The assessee can apply to the DCT to adjust the refundable amount against his arrear tax demand, if any, u/s 226 of the Income Tax Act, 2023.





Chapter 29

Appeal, Tribunal, reference, Revision and ADR

Contents

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29.1	First appeal
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29.4	Reference application to the High Court Division of the Supreme Court
29.5	Summary of appeal and reference
29.6	Revision power of the Commissioner of Taxes
29.7	Alternative Dispute Resolution (ADR)

Self-assessment questions

Introduction

Learning objectives

- Identify the conditions and procedures for different appeal, tribunal and references.
- Mention the different orders of tax authorities for which an assessee may be aggrieved.
- Define various appeals to the different appeal authorities in different situations.
- Identify the decisions or results of appeal come from different appeal stages.

Practical significance

An assessee not being a company or an assessee being a company in respect of certain cases aggrieved by any order of a DCT or IJCT can appeal to the AJCT or the Commissioner (Appeals) against such order. Appeal can also be made to the AJCT against the order of TRO.

An assessee may appeal to the Taxes Appellate Tribunal if he is aggrieved by an order of an AJCT or the Commissioner (Appeals). The Taxes Appellate Tribunal may, after giving both the parties an opportunity of being heard, pass such orders on the appeal as it thinks fit. The Taxes Appellate Tribunal may dispose of the appeal if the appellant does not appear when the appeal is called for hearing.

The assessee or the Commissioner may refer any question of law arising out of the order of the Taxes Appellate Tribunal communicated to him to the High Court Division. The High Court Division of the Supreme Court shall pass such orders as are necessary to dispose of the case in conformity with the judgment delivered by it.

For the appeal and reference, the appellant need to comply with some conditions and maintain some procedures to make his appeal valid.

Stop and think

The aggrieved parties in certain cases can appeal to the different appeal authorities. Do you think that the appeal and reference procedures are enough to get the proper judgment by the aggrieved parties under the Act?

Working context

The appeal and reference procedure under tax law is the most complex and risky area for the aggrieved parties. The assessee being a client is sometimes very much required the service from an accountant. Accountants being tax expert can provide the practical and useful advice and service to their clients in such cases.

Detailed and reasonable knowledge on appeal and reference can help accountants to provide practical service to their clients in this regard.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the conditions for appeal made by the assessee against order of the DCT.
- Recognize the procedures of appeal before AJCT or the Commissioner (Appeals).
- Demonstrate the decision in appeal by the AJCT or the Commissioner (Appeals).
- Identify the appeal against order of the TRO
- Define the appeal to the Taxes Appellate Tribunal.
- Identify the disposal of appeal by the Taxes Appellate Tribunal.
- Define the reference to the High Court Division of the Supreme Court.
- Mention the decision of the High Court Division of the Supreme Court
- Identify the appeal to the Appellate Division of the Supreme Court against the judgment of the High Court Division.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have prepared well for this area of the syllabus.

29.0 APPEAL AND REFERENCE

Section overview

➔ There are different orders of tax authorities by which an assessee may be aggrieved.
➔ The aggrieved assessee can appeal to appropriate appeal forum
➔ The aggrieved tax authority can also file appeal in certain cases.

- ➔ Appeal can be filed to different appeal authorities including Taxes Appellate Tribunal
- ➔ Appeal can also be preferred to the High Court Division of the Supreme Court.
- ➔ There are some procedures of filing appeal including time limitation.
- ➔ Judgment by the AJCT or the Commissioner (Appeals) or Taxes Appellate Tribunal.
- ➔ The Taxes Appellate Tribunal can also dispose the appeal if the appellant does not appear when the appeal is called for hearing.
- ➔ The High Court Division shall pass such orders as are necessary to dispose of the case in conformity with the judgment delivered by it.
- ➔ The assessee can prefer application to the Alternative Dispute Resolution (ADR) instead of appeal, Tribunal or Higher Court.

a. **First appeal: Section 286, 287, 288 & 289**

Any taxpayer aggrieved by the order of any income tax authority regarding the following matters may appeal to the respective appellate tax authority i.e., Commissioner of Taxes (Appeals) and Appellate Joint Commissioner of Taxes—

(a) assessment of income;
(b) computation of tax liability or refund;
(c) set off or carry forward of loss;
(d) imposition of penalty or interest;
(e) charge and computation of surcharge or any other sum;
(f) credit of tax;
(g) payment of a refund.

Appeal in the following cases shall be made to the Commissioner of Taxes (Appeals):

(a) appeal by a company;
(b) appeal against an order under section 213;
(c) appeal against any order of adjustment or penalty involving international transactions.

No appeal in respect of an income which is computed as a share of the taxed income. Further, no appeal where return has filled but tax has not been paid under section 173 and where return has not filled and 10% of tax as determined by DCT has not been paid. However, appeal may be granted if tax paid before the filing of appeal with sufficient reasons.

Appeal under section 286 shall be filed in a prescribed form and manner along with a fee of BDT 200 and filed within 45 days from the date of serving demand notice in relation to any assessment or penalty, and in other cases, from the date of an order is served. However, appellate authority may admit an appeal after expiry of said period if satisfied by the reason for delay.

Appellate authority shall fix a day and place for hearing and give notice to the appellant and the DCT. The appellate authority may allow the appellant to go into any ground of appeal which was not included earlier mistakenly, before or at the time of hearing. Appellate authority may enquire or ask for particulars or direct further enquiry to be made by the DCT before disposing of appeal. Appellate authority shall not admit any documents or evidence which was not produced before the DCT unless satisfied with reasons.

Appellate income tax authority in disposing an appeal, may confirm, reduce, enhance, set aside or annual the assessment or penalty or pass any order as he thinks fit. Order of appeal shall be communicated to the appellant, DCT and Commissioner within 30 days of the date of passing such order. An appeal shall be deemed to have been allowed if Appellate income tax authority fails to make an order within 150 days from the end of the month of filing of appeal.

Question

Can the first appellate authority dismiss an appeal for non-appearance of the appellant on the hearing date of appeal?

Answer

The first appellate authority is not empowered to dismiss an appeal for having the appellant absent on the hearing date. The appellate authority should pass an appellate order on merit after examination of the assessment records made available by the concerned DCT.

29.2 Appeal against order of Tax Recovery Officer (TRO): Section 290

Any person aggrieved by an order of the TRO under section 217 may, within 30 days from the date of service of the order, appeal to the IJCT to whom the TRO is subordinate, and decision of the IJCT on such appeal shall be final.

29.3 Second appeal: Section 291 and 292

Appeal against the order of AJCT or the Commissioner of Taxes (Appeals) as the case may be filed with the Taxes Appellate Tribunal.

Such appeal by an assessee must be filed, within 60 days of the communication of the appeal order, in the prescribed form accompanied by a fee of Tk. 1,000. In the case of appeal filed by an assessee the tax to be paid @10% of the amount representing difference between the taxes determined on the basis of the order of the AJCT or the CT (Appeals) and tax payable under section 173.

However, on the basis of an application filed by the Assessee, the Commissioner of Taxes of the relevant Circle of the Assessess, may reduce the requirement of paying such 10% disputed tax if the grounds of application appears reasonable to him. Normally such ground can be 'significant distress/hardship' for the assesse.

The DCT can file an appeal to the Taxes Appellate Tribunal with the prior approval of the Commissioner of Taxes.

Appeal shall be deemed to have been allowed if Tribunal fails to deliver an order within 180 days from the end of the month of filing the appeal. However, if an additional member is appointment to hear the case because of differences of decision by the two members then the period shall be 240 days.

The Taxes Appellate Tribunal shall communicate its order on the appeal to the assessee and to the Commissioner of Taxes within 30 days from the date of such order.

Question

Can the Taxes Appellate Tribunal pass an order ex-parte for non-appearance of the appellant on the hearing date of appeal?

Answer

If the appellant does not appear when the appeal is called for hearing, the Tribunal may dismiss the appeal for default. If the appellant makes on application within 30 days of such order of dismissal, for restoration of the appeal on the ground that notice of the appeal was not served on him or that the service was not valid in law or that he was prevented by sufficient cause from appearing on the hearing day and the Tribunal if satisfied, the order of dismissal shall be vacated and a fresh date of appeal hearing be fixed and disposed of on merit.

29.4 Reference to the High Court and Appellate Division of the Supreme Court: Section 293, 294 and 295

The assessee or the Commissioner may within 90 days from the date of receipt of the order of the Taxes Appellate Tribunal refer to the High Court Division of the Supreme Court in the prescribed form and

manner, question of law arising out of the order of the tribunal. Provided that no reference by an assessee shall be entertained unless the assessee has paid the following tax at-

a. 15% of the difference between the tax as determined on the basis of the order of the Taxes Appellate Tribunal and the tax payable under section 173 where tax demand does not exceed one million taka;

b. 25% of the difference between the taxes as determined on the basis of the order of the Taxes Appellate Tribunal and the tax payable under section 173 where tax demand exceeds one million taka.

Provided that the Board may, on an application made in this behalf, modify or waive, in any case, the requirement of such payment.

Section 293(3) has specified the documents need to be submitted along with the reference application submitted to the High Court Division.

The High Court Division shall, upon hearing any case referred to it under this section, decide the question of law raised thereby and shall deliver its judgment thereon stating the grounds on which such decision is founded. The judgment of the Court shall be send to the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with the judgment.

It is important to note that notwithstanding a reference made under section 293, tax shall be payable in accordance with the assessment made in the case unless recovery thereof has been stayed by the High Court Division. Therefore, it shall be noted that while filing such reference application by an assessee should also be made to stay the demand of disputed tax.

An appeal shall lie to the Appellate division against a judgment of the High Court Division if the High Court Division certifies that the order to be fit for appeal to the Appellate Division. Provision of the Code of Civil Procedure, 1908 relating to the appeals to the Appellate Division shall so far as may be, apply in regard to the appeals under Section 295 in the like manner as they apply in the case of appeals from decrees of the High Court Division.

29.5 Summary of appeal and reference

A close scrutiny of above discussions reveals the following situations for easy understanding:

Appeal against the order of -	**Appeal by**	**Appeal to**	**Time limit**
Tax Recovery Officer	Any person aggrieved by an order of the TRO	Inspecting Joint /Additional Commissioner of Taxes	Within 30 days
Deputy Commissioner of Taxes	Any aggrieved assessee, not being a company,	Appellate Joint /Additional Commissioner of Taxes	Within 45 days
	Any partner	Appellate Joint /Additional Commissioner of Taxes	Within 45 days
	Any aggrieved assessee, being a company	Commissioner of Taxes (Appeals)	Within 45 days
Inspecting Joint/Additional Commissioner of Taxes	any assessee aggrieved	Commissioner of Taxes (Appeals)	Within 45 days

Appellate Joint/Additional Commissioner of Taxes or the Commissioner of Taxes (Appeals)	Any assessee or the Commissioner of Taxes	Taxes Appellate Tribunal	Within 60 days
Taxes Appellate Tribunal	The assessee or the Commissioner of Taxes	High Court Division of the Supreme Court (for reference only)	Within 90 days

29.6 Revision power of the Commissioner of Taxes: Section 285

An assessee may also file revision petition before the Commissioner of Taxes within 60 days of receipt of Order of the DCT or AJCT/AACT, who are subordinate to the Commissioner, on payment of fees of taka 200 along with payment of admitted liability. Revision petition will be deemed to have been allowed the Commissioner fails to make an order within 60 days from the date of filing of the application for revision.

29.7 Alternative Dispute Resolution (ADR): Section 297

Any dispute of an assessee lying with any income tax authority, Taxes Appellate Tribunal or Supreme Court may be resolved through ADR. Assessee can also go directly to the ADR against the assessment or re-assessment done by the DCT. If the case in pending an Appeal, Tribunal or Supreme Court then also an assessee can prefer ADR taking permission from the concerned appeal forum. After obtaining such permission from the appeal forum, the appeal (both from assessee and department) shall remain stayed during the ADR negotiation process.

Procedure to file application to ADR:

- ➔ 4(four) set of application in the prescribed form shall have to be submitted to the respective appeal authority.
- ➔ Fee Tk. 5oo/- per year is to be paid and copy of which is to be attached with the ADR application.
- ➔ Application for ADR is to be filed within 30 days from the date of receiving demand notice or the date of receiving permission from the appeal authority /court as the case may be.
- ➔ Where the case is under process at appeal/tribunal/court, then the copy of permission is to be attached with the application of ADR.
- ➔ Assessee shall not be eligible for application to ADR if he does not file return of income for the concerned year and does not pay tax as per return.

Procedure of disposal by the ADR:

(1) Board will nominate a facilitator from the panel of facilitators and convey it to the applicant, facilitator and the concerned Commissioner of Taxes. Board may, however, change the facilitator if any objection raised by the applicant or by the tax department.

(2) Upon receiving the application of ADR, the Facilitator shall forward a copy of the application to the respective DCT and call for his opinion on the grounds of the application and also whether the conditions of return submission and tax payment as per return by the assessee have been complied with.

(3) If the DCT fails to give his opinion regarding fulfillment of the above-mentioned conditions within 5 working days from receiving the copy, the Facilitator may deem that the conditions thereto have been fulfilled.

Panel of Facilitators:

NBR will form a panel of facilitators. The following persons shall be eligible for appointment as a facilitator by the NBR:

- ➔ An expert retired income tax official not below the rank of Joint Commissioner.
- ➔ A retired official of judicial service not below the rank of District Judge.

- ➔ A Chartered Accountant practiced income tax for a period not less than 8 years.
- ➔ A Cost and Management Accountant practiced income tax for a period not less than 10 years.
- ➔ An Income Tax Practitioner within the meaning of section 327 and practiced income tax for a period not less than 20 years.
- ➔ A professional legislative expert not below the rank of Deputy Secretary.
- ➔ A business man expert at income tax law.

Methodology to be followed by the Facilitator to mitigate the dispute:

1. The Facilitator will notify in writing both the applicant and the Commissioner of Taxes or the Commissioner's Representative to attend the meeting for settlement of disputes.
2. He may adjourn the meeting from time to time;
3. (3) He may call for records or evidences from the DCT or from the applicant with a view to settle the dispute;
4. Before disposing of the application, he can cause to make such enquiry by any income tax authority as he thinks fit.
5. The Facilitator will assist the applicant assessee and the Commissioner's representative to agree on resolving the dispute or disputes through consultations and meetings.
6. Dispute may be resolved by an agreement either wholly or in part where both the parties of the dispute accept the points for determination of the facts or laws applicable in the dispute.
7. Where an agreement is reached, either wholly or in part, between the assessee and the Commissioner`s Representative, the Facilitator shall record, in writing, the details of the agreement.
8. The recording of every such agreement shall describe the terms of the agreement including any tax payable or refundable and any other necessary and appropriate matter and the manner in which any sums due under the agreement shall be paid and such other matters as the Facilitator may think fit to make the agreement effective.
9. The agreement shall be void if it is subsequently found that it has been concluded by fraud or misrepresentation of facts.
10. The agreement shall be signed by the assessee and the Commissioner`s Representative and the facilitator.
11. Where no agreement, whether wholly or in part, is reached or the dispute resolution is ended in disagreement between the applicant-assessee and the concerned Commissioner`s Representative for non-cooperation of either of the parties, the Facilitator shall communicate it, in writing recording reasons thereof, within 15 days from the date of disagreement, to the applicant and the Board, the concerned court/ Tribunal/ appellate authority and income tax authority, as the case may be, about such unsuccessful dispute resolution.
12. Where the agreement is reached, recorded and signed accordingly containing time and mode of payment of payable dues or refund, as the case may be, the Facilitator shall communicate the same to the assessee and the concerned DCT for compliance with the agreement.
13. No agreement shall be deemed to have been reached if the Facilitator fails to make an agreement within 2 months from the end of the month in which the application is filed.
14. Where there is a successful agreement, the Facilitator shall communicate the copy of the agreement to all the parties within 15 days from the date on which the Facilitator and the parties have signed the agreement.

Effect of agreement:

(1) Where an agreement is reached, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or by the department.
(2) Every agreement shall be conclusive as to the matters state therein and no matter covered by such agreement shall be reopened.

Limitation for appeal where agreement is not concluded.

(1) Where an agreement is not reached wholly or partially, the assessee may prefer an appeal –

(a) to the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals) as the case may be, where the dispute arises against the order of the DCT.
(b) to the Taxes Appellate Tribunal where the dispute arises against the order of the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), as the case may be; and
(c) to the Court from where the assessee-applicant has got permission to apply for ADR.

(2) In computing the period of limitations for filing appeal the time elapsed between the filing of the application and the decision or order of the ADR shall be excluded.

Fees to be paid to Facilitator

The facilitator is entitled to receive fees from both the assessee and the Govt. The quantum of fees is to be computed in the following manner:

50% of fee is to be paid by the assessee	or Whichever is	lower
20% of disputed tax Tk.50,000/- but not less than Tk.5,000/-	and	
50% by the Govt. or approved agency within 30 days	Govt. from resolving the	dispute.

Self-assessment questions

(a) What are the various Income Tax Appellate Authorities under ITA, 2023?
(b) What are the time limits and relaxation thereof, if any, in respect of the following matters under the ITA, 2023?
I)Filing of appeal to the AJCT u/s. 286;
ii) Filing of appeal to the Commissioner of Taxes (Appeals) u/s.286;
iii) Filing of appeal to the Taxes Appellate Tribunal u/s. 291;
iv) Filing of reference application to the High Court Division and appeal to the Appellate Division of the Supreme Court u/s. 293, 294 and 295.
(c) Discuss the provisions relating to service of notice u/s. 335 of the IT Act.
(d) Differentiate between question of fact and question of law?
(e) “Taxes Appellate Tribunal is the highest fact-finding Authority” - Do you agree with this statement?
(f) What is the procedure to file application to the ADR?
(g) Time limits have been prescribed in sections 289 and 292 to dispose of appeals filed with the AJCT/CT and Appellate Tribunals, respectively. However, no time limit has been prescribed to dispose of reference to the High Court Division and Appeal to the Appellate Division under sections 293, 294 and 295. What could be the reason for not giving any time limits in sections 293, 294 and 295.





Chapter 30

Ethics

Contents

Introduction

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30.1	Fundamental principles
30.2	Threat and safeguards framework
30.3	Ethical conflict resolution
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30.5	Conflict of interest
30.6	Basic principles of taxation work
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30.8	Anti-money laundering
30.9	Tax evasion Vs. tax avoidance

Introduction

Learning objectives

Identify the guidance given in the IFAC Code of Ethics for Professional Accountants in relation to tax practice with regard to:

- Identify ethical issues arising from tax work undertaken, explain the relevance and importance of these issues and provides guidance in given scenarios
- Differentiate between tax avoidance and tax evasion
- Judge when to refer matters for specialist help

Practical significance

Belonging to a professional body requires adherence to a code of ethics and have had claims for breaches of confidentiality. This is part of what differentiates a Chartered Accountant from unqualified accountants. Clients, members of the public, and the government recognize that we are required to adhere to exacting standards and so expect a certain standard of behavior from us.

Money laundering has been a major problem in the past and as part of new laws designed to combat this, professionals are required to participate in its prevention by reporting certain suspicions relating to the proceeds of crime.

Stop and think

Accountants have been penalized for non-compliance with the Code of Ethics. Even in the short time, that the anti-money laundering regulations have existed, accountants have been prosecuted. It is essential that professional accountants should act ethically in all of their work.

What sort of questions should you ask a potential client apart from the obvious ones? Should you always do what the client wants whether you agree or not?

Working context

Ethical considerations underpin all of your studies as well as your work experience. You will often make ethical decisions without even realizing it, but sometimes you may find yourself in a quandary and be unsure how to act. This is when the Code of Ethics will be of assistance. You need to know what to look out for and how to act. You should always take particular care in relation to client confidentiality; not always an easy task.

Syllabus links

The topics covered in this chapter are essential knowledge for the whole of your Taxation studies. They will ensure that advice and communication is appropriate and in keeping with the requirements of the ICAB.

Examination context

Exam requirements

In the examination, students may be required to:

- Apply the five fundamental principles to given scenarios
- Determine safeguards to be put in place when threats are made to the fundamental principles
- Advise on the ethical resolution of conflicts
- Give appropriate guidance relating to conflicts of interest and money laundering

Question practice

For question practice on these topics, go to the end of this manual covering this chapter

30.1 Fundamental Principles

Section overview

➔ The International Federation of Accountants (IFAC) has produced a Code of Ethics for professional accountants (IFAC Code).

➔ ICAB has adopted and published IFAC Code of Ethics for ICAB Members.

➔ The IFAC Code aims to ensure high quality ethical standards for use by professional accountants around the world.

➔ Part A of the IFAC Codes (the Codes) establishes the fundamental principles of professional ethics for accountants.

Definition

Professional accountant: A member of the ICAB.

The Codes require a professional accountant to comply with the following five fundamental principles:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behavior

The purpose of this chapter is to provide background information which will assist your understanding of the framework of the Bangladesh taxation system, why governments impose tax and the principles of taxation.

The Bangladesh taxation system has developed over centuries from the then British India in 1860 to the present condition on a piecemeal basis. Successive ruler and governments have changed the taxation system in accordance with their need.

Integrity

Definition

Integrity: Requires all professional accountants to be straightforward and honest in professional and business relationships.

A professional accountant should not be associated with any information where he believes that the information:

- Contains a materially false or misleading statement
- Contains statements or information furnished recklessly
- Omits or obscures information required to be included where such omission or obscurity would be misleading

Objectivity

Objectivity: Imposes an obligation on professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.

Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided.

Professional competence and due care

Professional competence and due care: Require professional accountants to:

Maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service based on current developments in practice, legislation and techniques; and
Act diligently in accordance with applicable technical and professional standards when providing professional services.

Competent professional service requires competence to be achieved in two phases:

Attainment of professional competence; and
Maintenance of professional competence, requiring a continuing awareness and understanding of relevant issues.

Steps should be taken to ensure that those working for the professional accountant have appropriate training and supervision.

Any limitations relating to the service being provided must be made clear to clients and other users to ensure that misinterpretation of facts or opinions does not take place.

Confidentiality

Confidentiality: Imposes an obligation on professional accountants to refrain from:

Disclosing outside the firm confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

A professional accountant should maintain confidentiality even in a social environment. The professional accountant should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family member.

A professional accountant should also consider the need to maintain confidentiality of information within the firm. All reasonable steps should be taken to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

A professional accountant should also maintain confidentiality of information disclosed by a prospective client or employer.

The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

Professional behavior

Professional behavior: Imposes an obligation on a professional accountant to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession.

This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.

Professional accountants should be honest and truthful and should not:

Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained
Make disparaging references or unsubstantiated comparisons to the work of others

30.2 Threats and safeguards framework

Section overview

- ➔ The circumstances in which professional accountants operate may give rise to specific threats to compliance with the five fundamental principles.
- ➔ The Codes provide a framework to help identify, evaluate and respond to these threats.
- ➔ The professional accountant is then able to apply safeguards to eliminate the threats or reduce them to an acceptable level.
- ➔ As a result, compliance with the five fundamental principles is not compromised.

Threats

The professional accountant is obliged to evaluate any threat as soon as he knows, or should be expected to know, of its existence.

Both qualitative and quantitative factors should be taken into account in considering the significance of the threat.

Most threats to compliance with the fundamental principles fall into the following categories:

- **Self-interest threats**, which may occur as a result of the financial or other interests of a professional accountant or of an immediate or close family member
- **Self-review threats,** which may occur when a previous judgment needs to be reevaluated by the professional accountant responsible for that judgment
- **Advocacy threats**, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised
- **Familiarity threats**, which may occur when, because of a close relationship, a professional accountant becomes too sympathetic to the interests of others
- **Intimidation threats**, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived

Safeguards

If a professional accountant cannot implement appropriate safeguards, he should decline or discontinue the specific professional service involved, or where necessary resign from the client.

Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories:

- Safeguards created by the profession, legislation or regulation.
- Safeguards in the work environment.

Safeguards created by the profession, legislation or regulation include, but are not restricted to:

- Educational, training and experience requirements for entry into the profession
- Continuing professional development requirements
- Corporate governance regulations
- Professional standards
- Professional or regulatory monITAring and disciplinary procedures
- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant

Certain safeguards may increase the likelihood of identifying or deterring unethical behavior. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organization, include, but are not restricted to:

- Effective, well publicized complaints systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior

- An explicitly stated duty to report breaches of ethical requirements

The nature of the safeguards to be applied will vary depending on the circumstances. In exercising professional judgment, a professional accountant should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

30.3 Ethical conflict resolution

Section overview

➔ To ensure compliance with the fundamental principles a professional accountant may need to resolve a conflict in applying the principles.
➔ The conflict resolution process may be formal or informal.
➔ In both cases the same steps are to be followed.

Conflict resolution process

When initiating either a formal or informal conflict resolution process, a professional accountant should consider the following five factors:

- Relevant facts
- Relevant parties
- Ethical issues involved
- Fundamental principles related to the matter in question
- Established internal procedures
- Alternative courses of action

Having considered these issues, the appropriate course of action can be determined which resolves the conflict with all or some of the five fundamental principles. If the matter remains unresolved, the professional accountant should consult with other appropriate persons within the firm for help in obtaining resolution.

Where a matter involves a conflict with, or within, an organization, a professional accountant should also consider consulting with those charged with governance of the organization.

It is advisable for the professional accountant to document the issue and details of any discussions held or decisions taken, concerning that issue.

If a significant conflict cannot be resolved, a professional accountant may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby obtain guidance on ethical and legal issues without breaching confidentiality.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant should, where possible, refuse to remain associated with the matter creating the conflict.

The professional accountant may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement or the firm.

Interactive question 1: Ethical conflict resolution [Difficulty level: Exam standard]

Mr. X, a member of the ICAB, is the reporting accountant of a pension company. Over the years he has developed a close working relationship with the finance director Mr. Y.

Recently he has become concerned about the financial controls within the company being overridden by Mr. Y, with the possibility of substantial funds being withdrawn from the company bank account. Mr. X discussed this at a formal end of audit meeting with Mr. Y, who assured him that the issue would be rectified immediately but that she felt there was no real issue and the controls were overridden for good reasons.

Mr. X is not satisfied with the explanations given and wishes to take further steps to resolve the ethical conflict.

Requirement: Outline the options open to Mr. X

Answer

Mr. X may first approach the other directors of the company in order to resolve the ethical conflict with Mr. Y. If this course of action does not give Mr. X sufficient comfort that the conflict is resolved he will have to consider going outside the company.

Mr. X may obtain professional advice from the ICAB or the legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. Mr. X should consider obtaining legal advice to determine whether there is a requirement to report.

If the ethical conflict remains unresolved, Mr. X should refuse to remain associated with the matter creating the conflict. He may determine that, in the circumstances, it is appropriate to resign altogether from the engagement.

30.4 Disclosure of information

Section overview

- ➔ Part A of the Codes contains a section relating to confidentiality.
- ➔ The confidentiality section explains when a professional accountant may disclose information to third parties without threatening the fundamental principle of confidentiality.

When to disclose

A professional accountant may disclose confidential information if:

- Disclosure is permitted by law and is authorized by the client or the employer Disclosure is required by law, for example:
  - Production of documents or other provision of evidence in the course of legal proceedings, or
  - Disclosure to the appropriate public authorities of infringements of the law, e.g.

under antimony laundering legislation

- There is a professional duty or right to disclose, when not prohibited by law:
  - To comply with the quality review of a member body or professional body
  - To respond to an inquiry or investigation by a member body or regulatory body
  - To protect the professional interests of a professional accountant in legal proceedings
  - To comply with technical standards and ethics requirements

Factors to consider regarding disclosure

In deciding whether to disclose confidential information, professional accountants should consider the following:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant
- Whether all the relevant information is known and substantiated, to the extent it is practicable to do so. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any
- The type of communication that is expected and to whom it is addressed; in particular, professional accountants should be satisfied that the parties to whom the communication is addressed are appropriate recipients

Worked example: Disclosure of information:

You have just obtained Mr. Jamal as a client. He has a source of income which may or may not be taxable depending on his personal circumstances which are uncertain.
Requirement

Discuss the ethical considerations you must bear in mind when deciding whether to disclose the income on his tax returns.

Solution

There is a possible legal obligation to disclose the source to Tax Authorities, but the situation is unclear.

You must use your professional judgment, based on all facts. If disclosure is not to be made the exact reasons for non-disclosure should be recorded and Mr. Jamal advised of the reason for nondisclosure.

If you decide that disclosure is required, the client should be notified. If he does not accept the advice, you should decide whether you can continue to act for Mr. Jamal

Interactive question 2:

You are a Chartered Accountant and working in Y Ltd. ("Company") as a tax manager. The Company is engaged in the business of export of the goods manufactured by it. The bank, through which export proceeds of Y Ltd. is received, deducts tax at the specified rate from the total export proceeds in accordance with the provisions of section 123 of the Income Tax Act, 2023. Export income of Y Ltd. falls under the scope of section 163 of the ITA, 2023. Generally, the Company does not have additional income from export as referred to in section 163 of the ITA, 2023.

In the income year 2016-17, a warehouse owned by the company was leased out to another company for a term of 3 years. Y Ltd. received rent on the warehouse for the income year 2016-17 but no tax was deducted at source from the rent paid by the lessee. The management of Y Ltd. is thinking of assessment of income of the company for the income year 2015-16 under section 82C of the ITA, 1984, upon considering the tax collected at source by the bank from the export proceeds as minimum tax. In a meeting with the management team of Y Ltd. on tax issues, you have been asked to consider whether it is possible to ignore income from house property so that no demand for additional income tax arises. To discuss the issue further, a meeting would be held next week.

Requirements

(a) Prepare a briefing note as regards tax evasion, tax avoidance and professional ethics to be followed by a Chartered Accountant rendering taxation services.

(b) Enumerate the steps should be taken to deal with unethical request from the management, if any.

Solution

(a) Briefing Note for the Management Team

Subject: Tax Evasion, Tax Avoidance and Professional Ethics to be followed by a Chartered Accountant rendering Taxation Services.

Tax Evasion:

Tax evasion is unlawful dodging in tax payments by tax payers. It is a process whereby a person illegitimately pays less tax than the law mandates. Tax evasion often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, overstating deductions or suppressing turnover.

Tax Avoidance:

On the other hand, tax avoidance is the process whereby a person plans his or her finances so as to apply all exemptions and deductions provided by tax laws to reduce taxable income. Through tax avoidance, a person takes advantage of all legal opportunities to minimize his or her tax. Tax avoidance must be distinguished from Tax Evasion, which is the employment of unlawful methods to circumvent the payment of taxes. Tax evasion is a crime; tax avoidance is the legal way to reduce tax burden.

Professional Ethics to be followed by a Chartered Accountant rendering Taxation Service:

A professional accountant rendering taxation service is entitled to put forward the best position in favor of his employer provided the service is rendered with professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the professional accountant consistent with the law. Doubt may be resolved in favor of the employer if there is reasonable support for the position. A professional accountant should not hold out to an employer the assurance that the tax return prepared and the tax advice offered are beyond challenge. Instead, the professional accountant should ensure that the employer are aware of the limitations attaching to tax advice and services so that they do not misinterpret an expression of opinion as an assertion of fact. A professional accountant should not be associated with any return or communication in which there is reason to believe that it:

(i) Contains a false or misleading statement;
(ii) Contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or
(iii) Omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.

(b) In light of the aforementioned academic discussion, I will take following steps if there is any unethical request from my employer:
(i) I will put my tax advice on record, either in the form of a letter or in a memorandum, while providing the requested opinions on ignoring/concealing income from house property.
(ii) I will let my employer know the consequences of error/omission/concealment of income as provided in the income tax laws for the time being in force and will recommend that appropriate disclosure be made to the revenue authorities.
(iii) If my employer does not accept my suggestion, I will inform them that it is not possible to act for them in connection with the evasion of tax or pertinent return of income.
(iv) I will follow the established policies of Y Ltd. to seek a resolution of such conflict.
(v) If those policies do not resolve the ethical conflict, I will bring the problem to the notice of the next higher reviewing level such as the Executive Committee, Board of Directors or Shareholders. I will also seek counseling and advice on a confidential basis with an independent advisor to obtain an understanding of possible courses of action.
(vi) If the ethical conflict still exists, I will consider whether continued association with Y Ltd. in any capacity is consistent with professional responsibilities and as a last resort I may have no other recourse on the tax evasion issue than to resign and to submit an information memorandum to an appropriate representative of Y Ltd.

30.5 Conflicts of interest

Section overview

➔ Part B of both the IFAC Code and the ICAEW Code illustrate how the fundamental principles are applied in certain situations for professional accountants in public practice.
➔ One of the illustrations given in part B contains details relating to conflicts of interest.

The threat of a conflict of interest

A professional accountant should take reasonable steps to identify circumstances that could pose a conflict of interest. These may give rise to threats to compliance with the fundamental principles.
A conflict may arise between the firm and the client or between two conflicting clients being managed by the same firm. For example, where a firm acts for:

- A Client which has specific interests which conflict with those of the firm;
- Financial involvements between the client and the firm e.g., where a loan is made by or to a client;
- Both a husband and wife in a divorce settlement;
- A company and for its directors in their personal capacity; or
- Two competing business

Evaluation of threats includes consideration as to whether the professional accountant has any business interests or relationships with the client or a third party that could give rise to threats. If there are other than clearly insignificant, safeguards should be considered and applied as necessary.

Safeguards

Depending upon the circumstances giving rise to the conflict, safeguards should ordinarily include the professional accountant in public practice:

- Notifying the client of the firm's business interest or activities that may represent a conflict of interest
- Notifying all known relevant parties that the professional accountant is acting for two or more parties in respect of a matter where their respective interests are in conflict
- Notifying the client that the professional accountant does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service)

In each case the professional accountant should obtain the consent of the relevant parties to act.

Where a professional accountant has requested consent from a client to act for another party (which may or may not be an existing client) and that consent has been refused, then he must not continue to act for one of the parties in the matter giving rise to the conflict of interest.

The following additional safeguards should also be considered:

- The use of separate engagement teams
- Procedures to prevent access to information (e.g. strict physical separation of such teams, confidential and secure data filing)
- Clear guidelines for members of the engagement team on issues of security and confidentiality

The use of confidentiality agreements signed by employees and partners of the firm

- Regular review of the application of safeguards by a senior individual not involved with relevant client engagements

Where a conflict of interest poses a threat to one or more of the fundamental principles that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant should conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.

Interactive question 2: Conflict of interest (Difficulty level: Exam standard)

A professional Accountant in Public Practice has had two partners, Mr. S and Mr. R as clients for many years. Mr. S is intending to sell his share of the partnership to Mr. R so that can continue as a sole trader. Both have asked if you will be their advisor.

Requirements

Outline the accountants' position with regard to the potential conflict of interest.

Answer

The firm should not usually act for both parties in a transaction. However, this can cause particular problems where both have previously been clients.

There are available options,

The firm has three options,

- To act for both
- To act for one
- To act for neither

In a situation where there is an element of doubt, the latter is probably the preferred course of action.

30.6 Basic principles of taxation work

Section overview

 One of the topics included in the statement is an explanation as to the accountant's relationship with the client.

Agent or principal

It is very important that it is understood when an accountant is acting as an agent on behalf of a client and when he is acting as the principal. The two different capacities carry different degrees of risk and potential liability.

An explanation as to when an accountant is acting in each capacity should be given in a client engagement letter. The letter should also explain the scope of the client's and the accountant's responsibilities in each case.

Agent

An accountant acts as agent when he merely prepares documents on behalf of a client. The client retains responsibility for the accuracy of the document itself. The accountant is thus an agent when performing tax compliance work such as preparing and submitting a tax return on behalf of a client. The client would be required to sign the return prior to its submission.

The accountant takes no responsibility for any information which he passes on to the tax authorities when acting as an agent. The accountant is not normally liable if any of the information proves to be incorrect.

Acting as an agent is therefore considered to be a low risk activity.

Principal

An accountant acts as principal when he provides advice to the client as to the taxation consequences of different courses of action. The accountant takes full responsibility for the advice given and may be liable to the taxpayer in the event the advice turns out to be incorrect or inappropriate.

Where an accountant does not have the professional skill required to act as a principal in a particular case, he may still accept the engagement. However, he must ensure that the opinion of a suitably qualified accountant is sought.

Acting as a principal is therefore considered to be a high-risk activity.

30.7 Tax authority's errors

Section overview

 One of the topics included in the statement is Tax Authority's errors.

Tax authority's errors

It may be apparent to the professional accountant that a mistake has been made by Tax Authorities, such as:

- The raising of an inadequate assessment
- An under collection of tax or interest
- An over repayment of tax or interest

The mistake may be:

- Misinterpretation of law
- A calculation or clerical error
- A misunderstanding on the part of tax Authorities of the facts as presented

Professional accountants are advised to include in their letters of engagement authority to advise Tax Authorities of errors, so that consent from the client is not needed. Where no such authority has been obtained, the procedure set out below must be followed.

Where the accountant becomes aware that Tax Authorities, in full possession of the facts, has made a material error in dealing with the affairs of a client, the professional accountant should seek the client's authority to write to Tax Authorities for correction of error.

In cases of a Tax Authorities error, the professional accountant should refer the matter to the client. The client should be:

- Asked to authorize the professional accountant to advise Tax Authorities of the error; and
- Warned of the possible legal consequences if he is reluctant to give the authority sought, including interest and penalties and possible criminal prosecution; and

Advised that if consent is not given, the accountant will consider taking independent legal advice with a view to:

- Notifying Tax Authorities in any event, and notifying the client of his action; and
- Ceasing to act for the client.

The professional accountant should ensure that a written record is kept of all advice given to clients in connection with Tax Authorities errors.

If a professional accountant is specifically asked by Tax Authorities to agree a figure, he must agree what he believes to be the correct figure; this may be a figure negotiated in the course of discussions following full disclosure of the facts and circumstances. He may not accept a figure he knows to be incorrect, and he does not need to seek his client's authority to disclose to Tax Authorities its errors in this case.

30.8 Anti-money laundering

Section overview

➔ Money Laundering Prevention Act, 2002 has been published with the purpose of combating money laundering
➔ Accountants should comply the requirement relating to money-laundering

Money laundering

Definition

Money laundering is the process of changing large amounts of money obtained from crimes, such as drug trafficking into origination from a legitimate source.

Money Laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of criminal activities. If successful, the money can lose its criminal identity and appear legitimate.

In terms of section 2 (tha) of Money Laundering Prevention Act, 2002, "Money Laundering means:

(a) Properties acquired or earned directly or indirectly through illegal means;
(b) Illegal transfer, conversion, concealment of location or assistance in the above act of the properties acquired or earned directly or indirectly through legal or illegal means."

In this Act, “Properties means movable or immovable properties of any nature and description”.

The term Money Laundering is used for a number of offences involving the proceeds of crime or terrorist funds. It now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.

Someone is engaged in money laundering under where they:
- Acquire or earn properties directly or indirectly through illegal means
- Transfer, convert, conceal location or assist in the above act of the properties acquired or earned directly or indirectly through legal or illegal means

Where a professional accountant suspects that a client is involved in money laundering, he should report this to the authorities.

Tax related offences

Tax related offences are not in a special category. The proceeds or monetary advantage arising from tax offences are treated no differently from the proceeds of theft, drug trafficking or other criminal conduct.

Anti-money laundering procedures

Business needs to maintain some procedures:

Appoint a Money Laundering Reporting Officer (MLRO) and implement internal reporting procedures

- Train staff to ensure that they are aware of the relevant legislation, know how to recognize and deal with potential money laundering, how to report suspicions to the MLRO, and how to identify clients
- Establish internal procedures appropriate to deter and prevent money laundering, and make relevant individuals aware of the procedures
- Verify the identity of new clients and maintain evidence of identification
- Maintain records of client identification, and any transactions undertaken for or with the client
- Report suspicions of money laundering

Records of client identification and transactions also need to be maintained for few years.

Client confidentiality in relation to money laundering

An accountant should disclose confidential information without client consent in certain circumstances. In order to disclose confidential information, the accountant must have knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that a person has committed a money laundering offence.

Disclosure without reasonable grounds for knowledge or suspicion will increase the risk of a business or an individual being open to an action for breach of confidentiality. **Punishment for money laundering**

If any person is engaged in Money Laundering in any way he will be regarded as a person who has committed a crime and the concerned accused for that crime will be sentenced to imprisonment for at least a period of six months and a maximum of seven years and will be fined for an amount not exceeding double the amount involved in the crime.

30.9 Tax evasion vs. tax avoidance

Section overview

- Tax evasion is illegal and tax avoidance is legal.
- Tax evasion could lead to prosecution for both the client and his accountant
- Tax avoidance through legal procedure

Tax evasion

Tax evasion consists of seeking to mislead tax authorities by either:

- Suppressing information to which tax authorities is entitled, for example by:
- Failing to notify tax authorities of a liability to tax
- Understating income or gains
- Omitting to disclose a relevant fact

Or

Providing tax authorities with deliberately false information, for example by:

- Deducting expenses that have not been incurred
- Claiming capital allowances on plant that has not been purchased

Minor cases of tax evasion are generally settled out of court via the payment of penalties. However, there is a statutory offence of evading income tax that can be dealt with in a magistrate's court.

Serious cases of tax evasion, particularly those involving fraud, continue to be the subject of criminal prosecutions which may lead to fines and/or imprisonment on conviction.

Furthermore, tax evasion offences will fall within the definition of money laundering and in certain cases individuals may be prosecuted under one of the money laundering offences. This includes both the under declaring of income and the over claiming of expenses.

If the assets of any clients were derived from illegal activities or if the client has committed tax evasion that considered under money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant may consider seeking legal advice and he should report this to the authorities.

Tax avoidance

Tax avoidance is not defined, but is broadly any legal method of reducing the tax burden.
The distinction between tax evasion and tax avoidance is usually obvious as avoidance has no intention of misleading tax authorities.

The accountant should take care in situations, for example, where a client believes that his tax avoidance has been successful and so does not submit a tax return.

Example-1

(a) You have been invited by the organizers of a seminar to deliver lecture on the responsibilities of a Chartered Accountant rendering professional tax services. The organizers of the seminar informed you about the average understanding level of the participants. According to the organizers, the participants might have perception that a Chartered Accountant rendering professional tax services is obliged to act absolutely in the interest of his/her client/employer.

Requirements:
Prepare handouts addressing the following issues for distribution at the seminar to be held next month:

i) Responsibilities of a practicing Chartered Accountant to the public while rendering tax advisory services.

ii) Guidance for a Chartered Accountant, working in the tax department of a company, on conflict of loyalties.

Answer-1 (a):

(a)Responsibilities of a practicing Chartered Accountant to the public while rendering tax advisory services

A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce.

This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the professional accountant serves.

Professional accountants have an important role in society. Investors, credITArs, employers and other sectors of the business community, as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behavior of professional accountants in providing such services have an impact on the economic well-being of their community and country.

It is in the best interest of the worldwide accountancy profession to make known to users of the services provided by professional accountants that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance. Tax experts help to establish confidence and efficiency in, and the fair application of, the tax system. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest. As such, a Chartered Accountant in practice, who advises on tax matters, also bears significant responsibilities to the public.

(b) Guidance for a Chartered Accountant, working in the tax department of a company, on conflict of loyalties

Employed professional accountants owe a duty of loyalty to their employer as well as to their profession and there may be times when the two are in conflict. An employee's normal priority should be to support his or her organization's legitimate and ethical objectives and the rules and procedures drawn up in support of them. However, an employee cannot legitimately be required to:

(a) Break the law;
(b) Breach the rules and standards of their profession;
(c) Lie to or mislead (including misleading by keeping silent) those acting as audITArs to the employer; or
(d) Put their name to or otherwise be associated with a statement which materially misrepresents the facts.

Differences in view about the correct judgment on accounting or ethical matters should normally be raised and resolved within the employee's organization, initially with the employee's immediate superior and possibly thereafter, where disagreement about a significant ethical issue remains, with higher levels of management or non-executive directors.

If employed accountants cannot resolve any material issue involving a conflict between their employers and their professional requirements they may, after exhausting all other relevant possibilities, have no other recourse but to consider resignation. Employees should state their reasons for doing so to the employer but their duty of confidentiality normally precludes them from communicating the issue to others (unless legally or professionally required to do so).





Chapter 31

Tax Planning

Contents

Topic List

31.0	What does tax planning really mean?
31.1	How tax planning and financial planning are connected?

31.0 What does tax planning really mean?

Tax planning is the art of arranging affairs in ways that postpone or avoid taxes. By employing effective tax planning strategies, anyone can have more money to save and invest or more money to spend or both. It's choice.

Put another way, tax planning means deferring and flat-out avoiding taxes by taking advantage of beneficial tax-law provisions, increasing and accelerating tax deductions and investment tax rebates, and generally making maximum use of all applicable area under our beloved IT Act,1984.

Of course, we should not change your financial behavior solely to avoid taxes. Truly effective tax planning strategies are those that permit us to do what we want while reducing tax burden along the way.

Thus, 'tax planning' means dealing with the tax matters of a taxpayer with a view to maximizing the after-tax rate of return on investments after ensuring voluntary tax compliance. For this purpose, each taxpayer has to

1. Ensure that proper records are kept;
2. Deduct tax at source where it is necessary;
3. Pay advance tax in time, if applicable;
4. File returns in time;
5. Comply with notices received from the tax authorities; and
6. Be aware of legal remedies where it does not have its rights under the law recognized.

Tax planning takes maximum advantage of the exemptions, deductions, rebates, reliefs and other tax concessions allowed by taxation statutes, leading to the reduction of the tax liability of the tax payer.

31.1 How tax planning and financial planning are connected?

Financial planning is the art of implementing strategies that help us to reach our financial goals, be they short-term or long-term. That sounds pretty simple. However, if the actual execution was simple, there would be a lot richer folks.

Tax planning and financial planning are closely linked, because taxes are such a large expense item as we go through life. If we become really successful, taxes will probably be our single biggest expense over the long haul. So, planning to reduce taxes is a critically important piece of the overall financial planning process.

Problem-1

Mr. Shin, Chief Financial Officer (CFO) of Techno world Inc., a Singapore based IT company has appointed you as tax consultant and sought your opinion on the areas of tax planning so as to prepare an effective business plan.

Techno world wants to expand its business in Bangladesh by providing IT based solutions in many industries along with BPO services. It wants to set up a liaison office. But it has been advised by BIDA to incorporate a company in Bangladesh with 100% equity ownership to run the business.

In the first year it has a plan of selling BDT 1Bn of IT and BDT 500 Mn of BPO services with 10% increment in each of the following two years. If the service charges are remitted from Bangladesh, the purchaser will deduct 20% of withholding tax of it and 15% VAT will be borne by the service recipient. Techno world achieves 20% income before tax on net proceeds and has 25% corporate tax rate in Singapore. If it incorporates a company in Bangladesh, the services it will deliver will fall under ITES (information technology enable services) and in accordance of business plan it will achieve 30% Income before tax. Under double taxation avoidance agreement, Dividend from Bangladesh to Singapore is subject to maximum 15% tax withholding.

Requirement:

Give your opinion to Techno world elaborating the aspects of the above-mentioned options with demonstrating financial impact.

Answer to problem no-1:

Mr. Shin,
Chief Financial Officer (CFO) Techno world Inc.

Subject: Opinion regarding tax planning and techniques

Dear Sir,

We refer your letter dated 15 April 2023 where you have narrated a plan of business with Bangladesh and requested us to provide our opinion on the areas of tax planning which will enable you to prepare an effective business plan. We are submitting the following analysis and suggestions which will curtail the tax burden for your prospective business complying the tax legislations presently enforced in Bangladesh.

Techno world wants to expand its business in Bangladesh by providing IT based solutions in many industries along with BPO services. Initially it wants to set up a liaison office. It has been advised by BIDA to incorporate a company in Bangladesh with 100% equity ownership to run the business. Hence, there are two options in hands, namely, selling services from abroad where liaison office will play a coordination role and setting a local fully owned subsidiary of Techno world to deliver the services to Bangladeshi customers locally.

Relevant tax regulations in Bangladesh:

(a) As per para (21) of 6th Schedule, Part 1 of ITA, 2023, income derived from some business of a person being resident or non-resident Bangladeshi between July 2008 to June 2024 shall be exempted income, services includes--Software development; Software or application customization, Nationwide Telecommunication Transmission Network (NTTN), Digital content development and management, Digital

animation development, Website development, Website services, Web listing, IT process outsourcing, Website hosting, Digital graphic design, Digital data entry and processing, Digital data analytics, Geographic information service (GIS), IT support and software maintenance service, Software test lab service, Call Centre service, Overseas medical transcriptions, Search Engine Optimization service, Document conversion, imaging and digital archiving, Robotic process outsourcing, Cyber security services, Cloud service, System Integration, E-learning platform, E-book publications, Mobile application, development service; and IT Freelancing.

(b) Under Finance Act 2023, the corporate tax rate of a non-listed company is 27.5%.
(c) Under section 117 of ITA, 2023, the tax deduction rate on payment of dividend is 20%.
(d) Based on article 24 of Double Taxation Avoidance Treaty between Singapore and Bangladesh, Tax deducted at source in Bangladesh will be eligible to take credit in Singapore to the extent of tax computed on the same income.
(e) As per sec 119 of ITA, 2023, foreign remittance on account of IT solutions and BPO related services to a non-resident Bangladeshi is subject to deduction of tax at source @ 20% under the category of Technical service fees or Technical knowhow fees.
(f) As per VAT law, for the import of services, service recipient will be responsible to pay VAT and will be eligible for input VAT credit against the treasury challan of the deposit of VAT.

Analysis of tax legislations applicable for Techno world:

Techno world has two alternatives for doing business here in Bangladesh. It can sell services from abroad where liaison office will play a coordination role or set a local fully owned subsidiary of Techno world Singapore to deliver the services to Bangladeshi customers locally.

From the perspective of tax laws, if it sells services to Bangladesh from Singapore, it will receive the proceeds in Singapore, which will be remitted by the service recipients in Bangladesh. This remittance will be subject to withholding tax @ 20% as per ITA, 2023 after which the net proceeds will be remitted to Techno world from Bangladesh. In Singapore, Techno world will be eligible to take the credit of tax deducted at source in Bangladesh. VAT will be borne by the service recipient and will be eligible for input VAT credit. It will incur cost neither to Techno world nor to the service recipients in Bangladesh.

If Techno world Singapore sets a local fully owned subsidiary in Bangladesh, it will be subject to 27.5% corporate tax rate. Moreover, in accordance with double taxation avoidance treaty between Singapore and Bangladesh, the payment of dividend from Bangladesh is subject to 15% tax withholding in Bangladesh which we can assume will be available for full foreign tax credit by Techno world in Singapore.

Outcome in Business plan after tax impacts:

Techno world sells services to Bangladesh from Singapore				
Particulars	**Equation**	**Year 1**	**Year 2**	**Year 3**
Gross proceeds	A	1,500,000,000	1,650,000,000	1,815,000,000
Tax deduction at source in BD @ 20%	B	300,000,000	330,000,000	363,000,000
Remittance i.e.Net proceeds	C=A-B	1,200,000,000	1,320,000,000	1,452,000,000
Income before tax (20% on net proceeds)	D	240,000,000	264,000,000	290,000,000
Corporate tax (25%)	E	60,000,000	66,000,000	72,500,000
Credit on corporate tax on business from BD under DTAA	F	60,000,000	66,000,000	72,500,000
Net profit after tax for Techno world	D-E+F	240,000,000	264,000,000	290,000,000

Techno world sets a fully owned subsidiary in Bangladesh				
Particulars	**Equation**	**Year 1**	**Year 2**	**Year 3**
Gross proceeds	A	1,500,000,000	1,650,000,000	1,815,000,000
Income before tax (30% on Gross proceeds)	B	450,000,000	495,000,000	544,500,000
Corporate tax rate in BD (27.5%)	C	123,750,000	136,125,000	149,737,500
Income after tax / Gross dividend income of Techno world	D=B-C	326,250,000	358,875,000	394,762,500
Withholding tax on dividend (15%)	E	43,875,000	48,262,500	53,088,750
Net remittance of dividend to Techno world	F=D-E	282,375,000	310,612,500	341,673,750
Corporate tax of Techno world (25%) on dividend	G= 25% of D	81,562,500	89,718,750	98,690,625
Withholding tax credit on dividend taken by Techno world under DTAA	H=E	43,875,000	48,262,500	53,088,750
Additional tax in Singapore	I=G-H	37,687,500	41,456,250	45,601,875
Net profit after tax for Techno world	J=F-I	244,687,500	269,156,250	296,071,875

Suggestions:

From the above table of business plan analysis, it is found that, for the first three years in Singapore Techno world will earn Tk. 794,000,000 if it sells services from Singapore to Bangladesh and Tk. 809,915,625 if it sets a fully owned subsidiary in Bangladesh.

Hence, after putting the taxation impacts, considering the change in financial of Techno world, Singapore, you should opt to set a local fully owned subsidiary of Techno world Singapore to deliver the services to Bangladeshi customers locally.

Thank you very much for taking us to your confidence. Should you require any clarification, please do not hesitate to contact us.

Thanking you,

Problem-2

You are a Chartered Accountant in practice and have expertise in income tax matters. Mr. ABC (“Client”) is your client and a director of XYZ Ltd. (“Company”). He has provided you with the following information and requested to consider each case separately:

(a) The Client is interested to do his own tax planning for the income year 2022-23 on the basis of following forecasted information and considering the provisions of prevailing tax laws:

Particulars	Tk.
Gross interest income from savings instruments (taxable)	300,000
Tax deduction at Source @ 10% from interest income	30,000
Income from house property (taxable)	180,000
Income from salary (taxable)	450,000
Investment eligible for tax credit	100,000

Requirements:

Provide the Client with the information about his taxable income, investment allowance, net tax payable and suggest him whether he should invest in savings instruments.

(b) The Client is planning to buy a residential flat of 500 square meter (sqm) located at Gulshan along with 0.50 katha share of land from a real estate company. The total purchase price of the flat is Tk. 5,750,000, which is sum of land value of Tk. 2,000,000 and flat value of Tk.3,750,000.

Answer to question No-2:

Answer :(a)

The required information is provided below on the basis of forecasted information relating to Income year 2022-23 applying provisions of tax laws for AY 2023-24:

Name of Assessee: ABC
Taxpayer's Identification Number:
Statement of Forecasted Income during the income year ended on 30June, 2023

Particulars		**Taxable Income (Taka)**	**Tax (Taka)**
1. Income from employment : u/s 32		450,000	
2. Interest on securities: u/s 62 (gross interest on savings instruments)		300,000	
3. Income from house property: u/s 36		180,000	
4. Total income: (1+2+3)		930,000	
5. Tax leviable on total income (Note 2)			53,000
6. Tax rebate			15,000
7. Tax payable (difference between serial no. 5 and 6)			48,000
8. Tax Payments (tax deducted from interest on savings instruments)			30,000
9. Net tax payable (difference between serial no. 8 and 9)			18,000

Note 1:

Tax deduction at source from the interest on savings instruments shall be deemed to be the final discharge of tax liabilities as per provisions of section 163.

Note 2:

Tax on Taxable Income excluding interest on savings Instruments:

Slabs/Particulars	Taxable Income (Tk.)	Rate	Tax (Tk.)
First	350,000	0%	-
Next	100,000	5%	5,000
Next	180,000	10%	18,000
(a) Tax payable on taxable income excluding interest on savings instruments			**23,000**
(b) Tax deducted at source from interest on savings instruments (Final tax as per section 163)			**30,000**
(a+b) Total tax payable (including 163)			**53,000**

Investment Allowance & Tax rebate: Tk.

(a) 15% of actual Investment made during the year: 15,000
Income 28,500

(b) 3% % of total taxable Income 10,00,000

15,000

(c) Maximum Limit

Investment tax rebate, lower of above

Note 3:

Tax savings for making investment in savings instruments:

Slab/Particulars	Taxable Interest (Tk.)		Tax (Tk.)
10% Tax Slab (300,000 - 180,000)	120,000		12,000
15% Tax Slab on 180,000	180,000		27,000
Total (A)	300,000		39,000
Tax Deduction at Source and minimum Tax (B)			30,000
Tax Savings for minimum tax scheme (A-B)			9,000

As per aforementioned computation, tax savings is Tk. 9,000.

Answer :(b)

The computation of tax to be collected at source by the registering officer responsible for registering any document of a person has been computed below:

Particulars	Quantity	Deed Value (Tk.)	Rate	Amount (Tk.)	Tax Payable (Tk.)	Remarks
Land	0.50 Katha	2,000,000	4% of deed value	80,000	150,000	Whichever is higher
			Tk. 300,000/Katha	150,000		
Flat	500 sqm	3,750,000	4% of deed value	150,000	300,000	Whichever is higher
			Tk. 600/sqm	300,000		
Total tax to be collected at source by the registering officer					450,000	

As per section 53H of the ITA, 1984, and rule 17II of the ITR, 1984, tax on transfer of property shall be collected from the person whose right, title or interest is sought to be transferred, assigned, limited or extinguished thereby, at the time of registration of transfer document.

Question No.3:

You are a practicing-chartered accountant and focused on taxation areas. Before finalizing business plan for the year ended 31 December 2022, ABC Ltd. (“Company”) wants to know the effect of section 56 on computation of minimum tax and carry forward of unabsorbed depreciation. In this regard, the Company has requested you to help them based on the following situations:

Particulars	AY 2023-2024			
	Situation-1	Situation-2	Situation-3	Situation-4
	Tk. ('000)	Tk. ('000)	Tk. ('000)	Tk.('000)
Net income before tax as per audited financial statements	125	(30)	(20)	175
Expenditures would be disallowed due to non-availability of appropriate evidences	50	50	50	50
Trade liability created and deducted in AY 2018-2019, but would remain unpaid in the income year corresponding to AY 2022-2023	25	25	25	25
Depreciation allowances as per the audited FS	10	10	10	10
Depreciation allowances as per the 3rd schedule	30	30	30	30
Unabsorbed depreciation allowances (opening balance)	-	25	50	50
Excess perquisites and cash payment of rent	80	80	80	80
Loan taken without banking channel	25	25	25	25
TDS from sources mentioned in section 163	50	50	50	50

Other information:

1) Income of the Company falls under the sources mentioned in section 163;
2) The Company plans to make a partial of adjustment of Tk. 45,000/= out of total depreciation allowance available in situation-4;
3) Apply 45% corporate tax rate and minimum tax at the rate of 2%.

Requirement: You are requested to compute tax liability for each of the illustrations provided in the above table along with opinion on the issues in question from the standpoint of the ITA, 2023.

Solution 3:

The Chief Financial Officer
……..
Dhaka, Bangladesh
……November 2022

Dear Sir:

Computation of tax liability and pertinent issues

Please refer to your request dated ……. for providing professional opinion(s) on the issue(s) raised therein. In this connection, our analysis focuses on the following provisions of tax laws:

According the provision of section 56 of the ITA, 2023, notwithstanding anything contained in section 82C or any loss or profit computed under the head "Income from business or profession", the amount of disallowances made under section 30 shall be treated separately as "Income from business or profession" and the tax shall be payable thereon at the regular rate. It is notable that section 30B of the ITA, 2023, has been inserted to ensure collection of tax from the expenditures inadmissible under the provisions of section 55 of the same Act. In this connection, section 78 of the ITA, 2023, may be discussed here. As per the said section, notwithstanding anything contained in section 78 or any other section, any disallowance of expenditure under section 55, in calculating the income of a source or of a person that is

exempted from tax or is subject to a reduced rate of tax, shall be treated as income for that source or of that person, as the case may be, and tax shall be payable on such income at the regular rate. Section 78 as referred to above deals with exemption from tax, reduction in tax rate, tax credit entitlement, etc.

In light of the aforementioned provisions of tax laws, we have reviewed the tax implications for business of the Company on the basis of situations provided by you and presented below:

Particulars	Sl. No.	AY 2021-2022 (computation)			
		Situation-1	Situation-2	Situation-3	Situation-4
		Tk. ('000)	Tk. ('000)	Tk. ('000)	Tk. ('000)
Net income before tax	**1**	**125**	**(30)**	**(20)**	**175**
Disallowances of expenditure (except section 30)	2	50	50	50	50
Trade liability added back under section 19 (business income)	3	25	25	25	25
Total Income before allowing depreciation	**4=1+2+3**	**200**	**45**	**55**	**250**
Depreciation allowances as the audited FS	a	10	10	10	10
Depreciation allowances as the 3rd schedule	b	30	30	30	30
Net effect of depreciation allowances (difference between audited FS & 3rd schedule)	5=b-a	20	20	20	20
Unabsorbed depreciation allowances (opening balance)	6	-	25	50	50
Depreciation allowance for the year	**7=5+6**	**20**	**45**	**70**	**70**
Income from business (excluding section 30)	**8=4-7**	**180**	**-**	**-**	**225**
Unabsorbed depreciation allowances to be carried forward		**-**	**-**	***15***	***45***
Inadmissible expenditure under section 30	9	80	80	80	80
Loan taken without banking channel added back under section 19 (other income)	10	25	25	25	25
Total taxable income	**11=8+9+10**	**285**	**105**	**105**	**330**
Gross receipts	**12**	**5,000**	**5,000**	**5,000**	**5,000**
Minimum tax on gross receipts @ 2%	**13**	***100***	***100***	***100***	***100***
Income from business (excluding section 30) @ 45%	14	81	-	-	101
Loan taken without banking channel added back under section 19 (other income) @ 45%	15	11	11	11	11
Regular tax (excluding section 30)	**16=14+15**	***92***	***11***	***11***	***113***
TDS from sources mentioned in section 82C (2) (b)	**17**	***50***	***50***	***50***	***50***
Tax payable: Higher of 13, 16 & 17	**18**	**100**	**100**	**100**	**113**
Tax on income from business under section 30B @ 45%	19	36	36	36	36
Assessed tax liability	**20=18+19**	**136**	**136**	**136**	**149**

As regards carry forward of unabsorbed depreciation, section 71 of the ITA, 2023, states that where, in making an assessment for any year, full effect cannot be given to the allowances referred to in section 49 owing to there being no profits or gains chargeable for that year or such profits or gains being less than the allowance then, subject to the provisions of section 158, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and be deemed to be part of that allowance or if there is no such allowance for that year, be deemed to be the allowance for that year and so on for succeeding years.

While addressing limitation in respect of allowance for depreciation, 3rd Schedule of the ITA, 2023, provides that where full effect cannot be given to depreciation allowances under the aforementioned Schedule in the year in which it is admissible there being no income chargeable for that year or such income being less than the allowance admissible, then, subject first to carrying forward of the loss, if any, under section 70, the allowances or the part thereof to which effect has not been given shall be added to the amount of the allowance for the following year or, if no allowance is admissible for such following year, shall be deemed to be allowance admissible for such year and so on for succeeding years till such time as the entire allowance on this account is adjusted against the profits.

In light of the, partial adjustment of unabsorbed depreciation allowance is not permitted by tax laws if there is sufficient taxable profit from business for making full adjustment.

Should you have further queries in this regard, please contact us.

Yours faithfully,





Chapter 32

Gift Tax

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Introduction

Examination context

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Introduction

The Gift Tax Act, 1963, which was repealed in 1985 has been re-introduced under the name **"The Gift Tax Act, 1990"** with the provisions almost similar to those in the act of 1963 but with more liberal exemptions. The gift tax is chargeable on gifts executed by any person in a financial year with effect from the 1st day of July. 1990 at the rates prescribed in the Schedule.

Examination context

Exam requirements

In the examination, candidates may be required to:

Identify the nature of gift
When gift is taxable
Who will bear gift tax- donor or receiver
When gift tax is payable

32.1 Meaning of Gift

"Gift" means the transfer of any immovable or movable property by one person to another voluntarily and without any consideration of money or money's worth.

32.2 Valuation of Gift:

The value of the property transferred as gift, other than cash, shall be determined in terms of its value to be obtained had the property been sold in the open market on the date of gift. Where the value of the property is not determinable at this process, its value shall be determined as per rules.

32.3 Gift Tax Authorities

The following income tax authorities are also the gift tax authorities: -

Commissioner of Taxes,
Appellate Additional/Joint Commissioner of Taxes,
Inspecting Additional/Joint Commissioner of Taxes,
Deputy Commissioner of Taxes and
Tax Recovery Officer

32.4 Submission of gift tax return

Any person making a taxable gift during any financial year requires to submit gift tax return to the Deputy Commissioner of Taxes (DCT) before the fifteenth day of September of the corresponding assessment year. Tax based on Gift tax return is to be paid on or before submission of return.

32.5 Rate of Gift Tax

On the first Taka 5,00,000/- of taxable gift	----	5%
On the next Taka 10,00,000/- of taxable gift	----	10%
On the next Taka 20,00,000/- of taxable gift	----	15%
On the balance of taxable gift	----	20%

32.6 Exemption from Gift Tax:

Gift tax shall not be applicable under Gift Tax Act for gifts made by any person in respect of the following:

(1) Where the gifted property is situated outside Bangladesh.
(2) Where the gift is made to the Government or any local authority.
(3) Where the gift is made to the following funds or institutions for charitable purposes:
   I. Any educational institution (including polytechnic institute) either run by the Government or recognized by any Education Board or any university established under the law in force in Bangladesh.

   II. Any hospital recognized or run by the Government or any local Authority or any hospital that receives charity from the Government.

   III. Any flood or disaster management fund either established or approved by the Government.

   IV. Any Government approved religious or charitable institution (other than private religious institution or fund which does not ensure the benefit of the public as a whole) up to 20% of total income or Tk. 1,00,000/ whichever is lower.
(4) Where the gift is made to any dependent relative up to Tk. 20,000/- on the occasion of his/her marriage.
(5) Where the gift is made to any dependent (other than wife) by way of insurance premium up to Tk. 20,000/-
(6) Gift made under a will.
(7) Gift in contemplation of death.

(8) Gift made to son, daughter, father, mother, spouse, own brother and sister.

In addition to the above exemptions, no gift tax shall be applicable for any gift made by any person in a financial year not exceeding Tk. 20,000/. The Government may by notification in the official gazette exempt any class of gift or any class of person from gift tax.

32.7 Limitation of implementing gift tax law:

Gift tax law will, however, not apply in case of gifts made by:

(1) A body corporate established or constituted by or under any law.
(2) Any institution or fund, income of which is exempt from payment of income tax as per provision of Paragraph 11 and 12 of Part 1 of the Sixth Schedule of the Income Tax Act, 2023.

FOR FURTHER COMMUNICATION:

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