



The Offshore Indirect Transfer Rules 2022 (Valuation and compliances)

(SRO 156/Law/Income Tax/2022 dated 01 June 2022)

Why is this compliance required ?

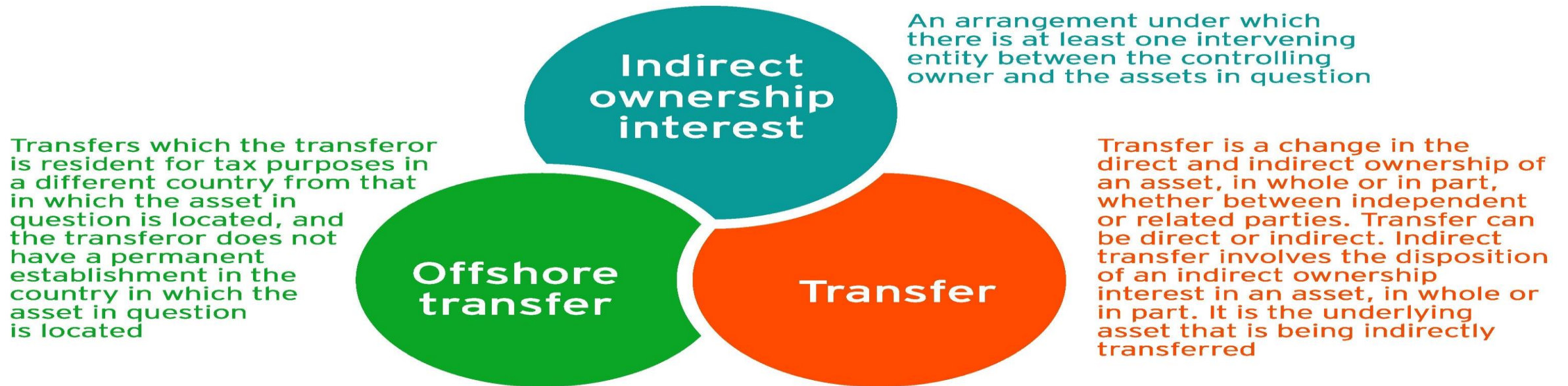
As per section 18 sub-section (2) clause (c) of The Income Tax Ordinance (ITO) 1984 “ Any income accruing or arising, whether directly or indirectly, through or from the transfer of any assets situated in Bangladesh” shall be deemed to accrue or arise in Bangladesh.

Under the said section, the Internal Resources Division of NBR has issued “The Offshore Indirect Transfer Rules, 2022” through SRO NO. 156-law/Income tax/2022 of ITO, 1984.

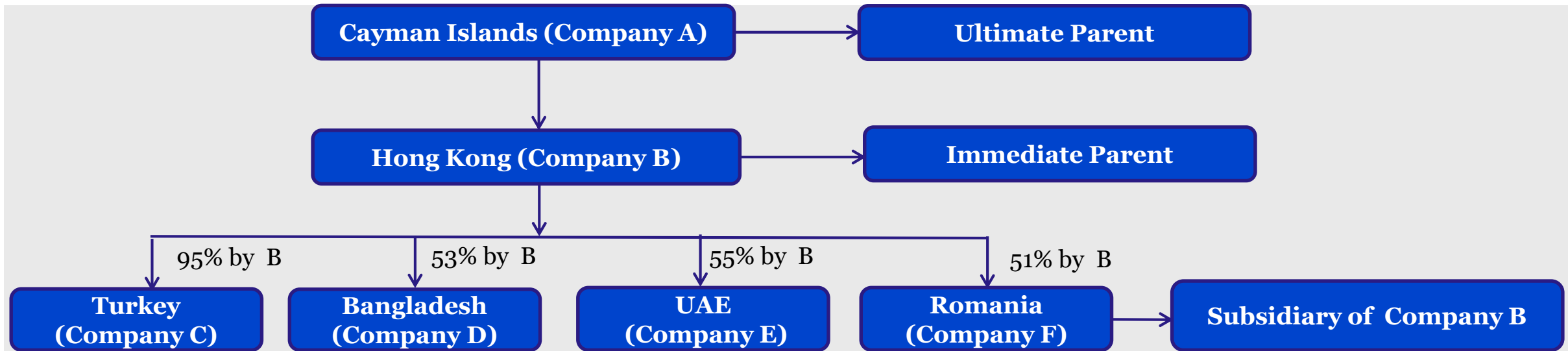


What is Indirect Transfer ?

What is Offshore Indirect Transfers - Definition



What is Indirect Transfer ?



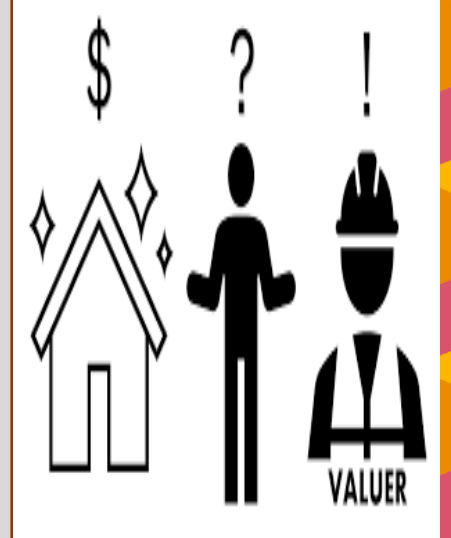
**** Any indirect transfer of shares of the Company B in Hong Kong will require to meet the compliance of SRO 156 of ITO 1984 and thereby requires the Valuation of the all above entities (except Company A) with few exceptions.**

Indirect transfers refer to situations where foreign entities own shares or assets in Bangladesh, the shares of such foreign entities are transferred instead of a direct transfer of the underlying assets in Bangladesh.

Who Can Carry Out the Valuation ? [SRO 156 (2a)]

Accountant means an accountant referred to clauses (17) and (22) of section 2 of the Income Tax Ordinance 1984 (ITO -1984) and includes any valuer recognized for undertaking similar valuation by the Government of the country where a foreign company registered with or incorporated in any of its agencies, who has professional experience of not less than 10 years.

- **According to section 2 (17) of the Income Tax Ordinance 1984** “ Chartered accountant means a chartered accountants as defined in Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973).
- **According to section 2 (17) of the Income Tax Ordinance 1984** “ cost and management accountant as defined in the Cost and Management Accountants Ordinance, 1977 (LIII of 1977).



Key Definitions [SRO156-(2)]

“Observable price” in respect of share quoted on a stock exchange shall be higher of the average of the weekly high and low of the closing pricing of the said stock exchange during the six months period preceding the specified date and the average of the weekly high and low of the closing pricing of the said stock exchange during the two weeks period preceding the specified date .

“Right of management of control” shall include the right to appoint majority of the directors of to control the management or to policy decision exercisable by a person or persons acting individually or in concert.

“Specified date” means-

- i) The date on which the accounting period of the company ends preceding the date of transfer of share; or
- ii) The date of transfer, where the book value of the assets of the company, on the date of transfer, exceeds the book value as on the date referred to in sub-clause (i), by fifteen percent.

“Value” means fair market value as calculated in the manner prescribed in the rule.

“Immediate holding company” means a company that directly maintains the controlling interest in the Bangladeshi concern.

“Intermediate holding company” means a company that has controlling interest in another company and is itself controlled by, or is subsidiary by another company.

A woman with short dark hair, wearing a dark blazer over a light-colored collared shirt, is seated in the driver's seat of a car at night. She is looking out the window with a slight smile. The background outside the car shows blurred city lights and trees, creating a bokeh effect. The interior of the car is dimly lit, with the woman's face partially illuminated by the ambient light.

Computation of fair Market Value of Assets of Bangladeshi Company

Computation of fair Market Value of Assets of Bangladeshi Company. [SRO 156 (3)]

(1) Where the asset is a share of Bangladeshi company **listed on a recognized stock exchange** on the specific date, the fair market value of the share shall be the observable price of such share on the stock exchange.

(2) Where the asset is a share of Bangladeshi company listed on a recognized stock exchange and **the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company,** the fair market value of the share shall be determined in accordance the following $(A+B)/C$ formula, where:

A= the market capitalization of the company on the basis of observable price of its shares quoted on the recognized stock exchange ;

B= the book value of liabilities of the company as on specific date ;

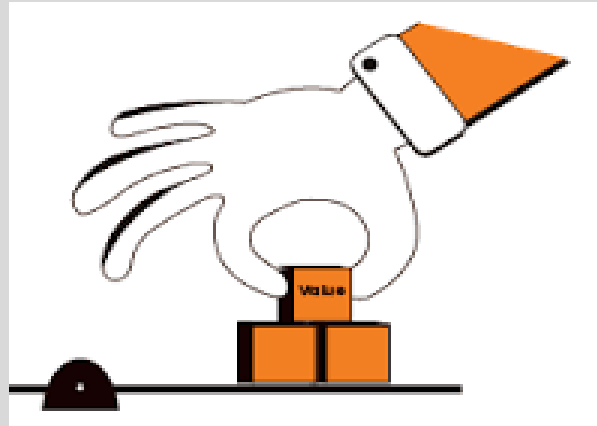
C= the total number of outstanding shares.

(3) Where the assets is share of a Bangladeshi Company **not listed on a recognized stock exchange** on the specific date, the fair market value on such date determined by a **merchant banker or an accountant** according to with any internationally accepted valuation method.

Computation of fair Market Value of Assets of Bangladeshi Company. [SRO 156 (3)]

(4) The fair market value of the asset other than shares shall be price it would fetch if sold in the open market on the specified date determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.

(5) For determining the fair market value of any asset situated in Bangladesh, being a share of Bangladeshi Company, all the Assets and business operation shall be taken into account (both home and global assets).



Valuation Approaches and Methods

IVS 105 : Internationally Accepted Valuation Methods

Consideration *must* be given to the relevant and appropriate valuation approaches. One or more valuation *approaches may* be used in order to arrive at the *value* in accordance with the *basis of value*. There are three approaches which all are based on the economic principles of price equilibrium, anticipation of benefits or substitution.

The principal valuation approaches are:

- (a) market approach,
- (b) income approach, and
- (c) cost approach.

Computation of fair Market Value of Assets of Foreign Company



Computation of fair Market Value of Assets of foreign Company. [SRO 156 (4)]

(1) Where the asset is a share of a foreign company **listed on a stock exchange** on the specific date, the fair market value of all the assets owned by the said company shall be determined in accordance the following (A+B) formula, where:

A= the market capitalization of the company on the basis of observable price of the share on the stock exchange where the share of foreign company is listed;

B= the book value of liabilities of the company as on specific date.

(2) Where the asset is a share of a foreign company is **not listed on a stock exchange** on the specific date, the value of all the assets owned by the said company shall be determined in accordance the following (A+B) formula, where-

A= Fair market value of the foreign company as on the specific date as determined by a merchant banker or an accountant according to with any internationally accepted valuation method;

B= Value of liabilities of the company if any, considered for the determination of fair market value in A.

Determination of income attributable to assets in Bangladesh



Determination of income attributable to assets in Bangladesh [SRO 156 of ITO 1984]

(1) The income from transfer outside Bangladesh of a share of a company has been described in section 18 subsection 2 clause (c) of ITO 1984, attributable to assets situated in Bangladesh, shall be determined in accordance with the following **D x (E/F) formula** where:

D= Income from the transfer of the share of the company computed as per ITO 1984.

E= Fair Market Value of assets situated in Bangladesh as on the specified date, from which the share referred to in clause (c) of explanation of subsection 2 of section 18 of ITO 1984, derives its value, computed in accordance with rule 3;

F= Fair Market Value of all the assets of the company as on the specified date, computed in accordance with rule 4.

(2) Where transfer of share of the company fails to provide necessary information required to apply the aforesaid formula, then the income from transfer of such share shall be determined in such manner as the Deputy Commissioner of Taxes may deem fit.

(3) The transfer of share of a company that derives its value from assets situated in Bangladesh, shall furnish along with the return of income a report in the form No. OIT-1 duly signed by an accountant providing the basis of the apportionment in accordance with the aforesaid rules.

Comparing De Minimis Values

(US dollars)

De Minimis Threshold



De minimis threshold [SRO 156 (6)]

The asset being the share referred to in clause (c) of explanation of subsection 2 of section 18 of ITO 1984 shall be deemed to derive, directly or indirectly, its value from the assets in Bangladesh, if, on the specified date, the value of such asset-

- (i) exceeds Taka fifteen (15) crore; and
- (ii) represents at least fifty percent (50%) of the value of all assets owned by the foreign company that directly holds the assets being share in Bangladesh.

Determination of De Minimis Threshold with Example



Determination of De Minimis Threshold

Example: 1

ABC Group (UK) Limited, *immediate parent of ABC (Bangladesh) Company Limited*, *ABC Romania and ABC Turkey*, (“ABC UK”) is engaged in manufacturing hang tags, woven, care & content label products. ABC Group UK is focused on UK-based apparel brand owners including APP, CDF, CCC etc.

The **fair value of equity and total assets** of **the entities** has been calculated in order to determine the De-minimis threshold as per the guidance of S.R.O. No 156-Act/Income tax/2022 dated 01 June 2022 of ITO, 1984. Details of which are tabulated as under:

GBP Thousand

Name of the entity	Equity percentage owned by ABC UK	Controlling Equity (Amount)	Total Assets (Amount)
ABC (Bangladesh) Company Limited	58%	14,357	18,378
ABC Group (UK) Limited	-	19,872	25,130
ABC Romania	99.875%	1,476	N/A
ABC Turkey	1%	19	N/A

Solution:

Determination of De Minimis Threshold

<i>GBP thousands</i>	
Particulars	Amount
A. Total assets of ABC (Bangladesh) Company Limited (18,378 x 58%)	10,659
B. Total Assets of ABC Group (UK) Limited	25,130
De Minimis Threshold [(A/B) x 100]	42.4%

Conclusion:

Based upon and subject to the foregoing, including such other matters as considered relevant, it is clear that, the value of assets represented by ABC (Bangladesh) Company Limited is **42.4%** of the value of all the assets of ABC Group (UK) Limited. As such, the De Minimis Threshold as per the said S.R.O of ITO, 1984, is **not satisfied**.

Example-2:

Assuming that the value of total assets of ABC (Bangladesh) Company Limited is of GBP 27,586 and ABC UK of GBP 30,000.

Requirement:

Calculate the De minimis threshold.

<i>GBP thousands</i>	
Particulars	Amount
A. Total assets of ABC (Bangladesh) Company Limited (58%)	16,000
B. Total Assets of ABC Group (UK) Limited	30,000
De Minimis Threshold [(A/B) x 100]	53.33%

Conclusion:

Based upon and subject to the foregoing, including such other matters as considered relevant, it is clear that, the value of assets represented by ABC (Bangladesh) Company Limited is **53.33%** of the value of all the assets of ABC Group (UK) Limited. As such, the De Minimis Threshold as per the said S.R.O of ITO, 1984, **is satisfied.**

**Determination of
Income Attributable
to Assets in
Bangladesh with
Example**



Illustration relating to Determination of Income Attributable to assets in Bangladesh

Example: 1

Suppose **ABC** Group (UK) Limited has been sold to **XYZ** Group by its ultimate parent. The total income/deal value of which is amounting to GBP 80,000,000.

Requirement:

To determine the income attributable to assets in Bangladesh.

Solution:

As the Company, located in Bangladesh, satisfies the De minimis threshold criteria, the income from transfer outside Bangladesh of a share of the Company as per Section 18 (2)(c) of ITO 1984, shall be determined in accordance with the following way.

=D x (E/F), where;

D: Income from transfer of the shares of the company as if shares are situated in Bangladesh;

E: Fair market value of assets situated in Bangladesh as on specific date (meaning valuation date);

F: Fair market value of all the assets of the Company (**ABC** Group (UK) Limited) as on specific date (valuation date).

Illustration relating to Determination of Income Attributable to assets in Bangladesh

Computation:

$$= D \times (E/F)$$

$$= \text{GBP } 80,000,000 \times 53.33\% = \text{GBP } 42,840,000$$

Hence, the income attributable to assets in Bangladesh is of GBP 42,840,000 and $\text{GBP } 42,840,000 / .0091$
= **BDT 471 Crore (approximately).**

Notes:

* Spot rate is assumed to be as of 31 August 2022 **BDT/GBP 0.0091.**

**Please refer slide-20 for computation of 53.33%.

Exemptions from offshore indirect transfer

An illustration of a desk with various office supplies. A large speech bubble in the center contains the text 'TAX EXEMPT'. To the right is a white calculator with a green display and a red button. Below the calculator is a black pen. To the left of the speech bubble is a black paperclip. In the bottom left corner, a pair of black-rimmed glasses is visible. The background is a light blue surface with a white grid pattern on the left and a red folder or book in the top right corner.

**TAX
EXEMPT**

Exemptions From Offshore Indirect Transfer [SRO 156 (7)]

1) No income shall be deemed to accrue or arise to a non-resident from transfer, outside Bangladesh, or share of-

(a) **A**, if the transferor (whether individually or along with its associated enterprises), at any time preceding the specified date, does not hold in **A**-

- i) right of management or control; or
- ii) the voting power exceeding 5% of the total voting power;

or

iii) share capital exceeding 5% of the of the total share capital; or

(b) **B**, if the transferor (whether individually or along with its associated enterprises), at any time preceding the specific date, does not holds the right of management or control in **B** and through **B** in **A**-

- (i) right of management or control; or
- (ii) the voting power exceeding 5% of the total voting power;

or

(iii) share capital exceeding 5% of the of the total share capital;

In above, **A** means a company registered or incorporated outside Bangladesh and directly owns the assets situated in Bangladesh; and

B means a company registered or incorporated outside Bangladesh and does not directly owns the assets situated in Bangladesh.

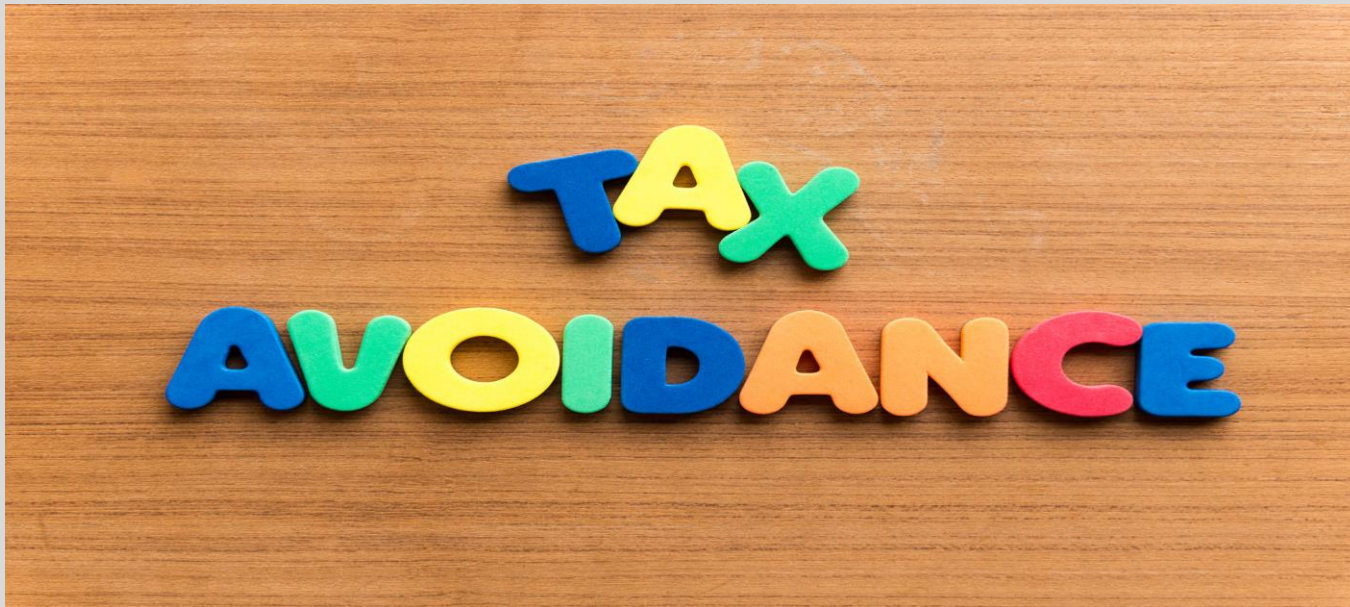
2) No income shall be deemed to accrue or arise to a non-resident from the redemption of shares, bonds, debentures or other redeemable shares outside Bangladesh by foreign investment funds including private equity funds and venture capital funds.

Arrangement to avoid tax



Arrangements to Avoid Tax [SRO 156 (7)]

Where involving transfer of share in a foreign company, arrangement has been made in such a manner that tax payable in Bangladesh would be avoided consequentially, the Deputy Commissioner of Taxes shall not take into consideration such arrangements and shall proceed to recover the amount of tax due as if no such agreement has been made.



**Information or
documents to be
furnished**



Information And Documents To Be Furnished [SRO 156 (9)]

- 1) Where any share of a company registered and in a foreign company registered or incorporated outside Bangladesh derives its value from assets in Bangladesh as referred to this law, the Bangladesh concern that holds such assets in Bangladesh shall, for the purpose of the Rule, maintain and furnish the documents according to the Rules.
- 2) The information shall furnished in Form OIT-2 (SRO 156, Rule-9), within ninety days of such transfer to the Deputy Commissioner of Taxes having jurisdiction over the Bangladeshi concern.
- 3) The Bangladeshi concern shall maintain the following along with its English translation, if the documents are prepared in foreign language.
 - i) Details of immediate holding company, intermediate holding company or companies or entity or entities and ultimate holding company of Bangladeshi Concern.
 - ii) Details of other entities in Bangladesh of the group of which the Bangladeshi concern is a constitute.

Information And Documents To Be Furnished [SRO 156 (9)]

- iii) Holding structure of the shares of the foreign company before and after the transfer;
- iv) Any transfer contract or agreement relevant to the transfer;
- v) Financial statement of the relevant company for two years prior to the specified date of the share.

- vi) Information relating to the decision or implementation process of the overall arrangement of the transfer.
- vii) Information in respect of the foreign company and its subsidiaries relating to
 - A) the business operations;
 - B) Personnel;
- a) Finance and properties
- b) Internal and external audit or valuation report forming basis of the consideration in respect of shares;

- Viii) Asset valuation report, details of tax payment outside Bangladesh, and such other documents mentioned in this rules.

- 4) The information and documents specified in sub-rule (3) shall be kept and maintained for a period of six years from the end of relevant assessment year.

Sk. Md. Tarikul Islam,
FCA (ICAB), ACA (ICAEW), MBA (UK) CBV (CANADA)



An FCA 'big four' qualified Chartered Accountant (Qualified from an affiliate firm of Deloitte) with over 15 years' experience gained in the field of large scale Local and MNCs Audit, Tax & VAT, Valuation, Due diligence, IPO issues, Loan Restructuring, Investigation and Mergers & Acquisitions.

Mr Tarik is a ***Chartered Business Valuator*** (CBV) under CBV Institute, Canada. His practice is varied - pure valuation, litigation support, M&A support and fair value reporting etc. He is an accredited expert in International Valuation Standards (IVS) from iiBV, USA and CBV Institute, Canada.

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THANK YOU