

SALARY TAX ASSESSMENT

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(KL)

Ranjan Kumar Bhowmik FCMA
Member

Taxes Appellate Tribunal, Dhaka

13 July 2018

Definition of Salary

There is no exhaustive definition of salary at Income Tax Ordinance, 1984. Only an inclusive definition is given at section 2(58) where "salary" includes the following:-

- a) Pay or Wages
- b) Annuity
- c) Pension – Fully tax free as per 6th Schedule (Part-A) Para-8
- d) Gratuity – Tax free up to Tk. 2.5 crore as per 6th Schedule (Part-A) Para-20
- e) Fees
- f) Commission
- g) Allowances
- h) Perquisites
- i) Profits in lieu of salary or wages
- j) Profits in addition to salary or wages
- k) Advance Salary
- l) Leave encashment

Section 2(58) contains definitions within the definition. Salary includes perquisites and profits in lieu of salary, which again defined at section 2(45) and 2(50) respectively.

Salary once included in any year on due basis or advance payment basis is not includible again in salary income of an employee of any other year. No payment can fall and to be taxed under the head salary unless the relationship of employer and employee exists between the payer and the payee. Salary can be taxed not only on payments made by an employer during employment, but also on payments by a former employer after the employment has come to an end. The definition of "employee" is given at section 2(28) where employee includes a director also. It has been provided that an 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. So a director who is not connected with the management of affairs of the company may not be called employee. For the purpose of determining the value of perquisites of an employee under rule-33, employee includes a shareholder director. If the shareholder director is director of more than one company then he shall be entitled to the benefits under rule-33 for one company only.

1. Classification of Salary (Section : 21)

The following 3 (three) categories of income of an assessee is classified and computed under the head "salaries", namely:-

- a) Salary due from an employer to an employee in the income year, whether paid or not ;
- b) Salary paid or allowed to an employee in the income year though not due before it become due to him; and
- c) Arrears of salary paid or allowed to him in the income year, if not charged to income tax for any earlier income year.

2. Pay and Allowances totally exempt from Tax: (Sixth Schedule, Part-A)

The following pay and allowances shall be exempted from payment of tax and shall not be included in the computation of salary income:-

- a) Interest accrued on G.P.F. (Para 4(1).
- b) Interest accrued on Workers' Profit Participation Fund established under Bangladesh Labour Act, 2006 (Para 4(2))
- c) Any special allowances, benefits, or perquisites granted to meet expenses incurred for official duties (Para-5)
- d) Remuneration of Ambassadors/High Commissioner/Charge d'affairs etc. of Embassies of foreign states and their non-Bangladeshi employees (Para-7).
- e) Pension (Para-8).
- f) Gratuity up to Tk. 2.5 crore (Para-20).
- g) Any payment from provident fund to which PF Act. 1925 applies or from a recognized provided fund, an approved superannuation fund to any employee or up to Tk.50,000 from workers' participation fund established under Bangladesh Labour Act, 2006, to any worker (Para-21).
- h) Interest credited on accumulated balance of an employee in a RPF in so far as it does not exceed $\frac{1}{3}^{\text{rd}}$ of salary of the employee for the year concerned [here salary means basic salary and dearness allowance as per definition of salary at 1st Schedule (Part -B)]
and
@ not exceeding 14.5% (Para-25, and S.R.O.310 dated 27/06/1984) whichever is lower.
- i) Any amount received at the time of voluntary retirement in accordance with any scheme approved by the Govt. (Para-26).

3. Salaries exempt from payment of tax (as per S.R.O.)

- (a) All allowances and benefits (except basic salary and festival bonus) of Govt. employees are exempted from payment of tax [SRO No: 198 dated 30/6/2015]

Salary Income Computation

As per income tax law the following pay and allowances will be included in computing salary income:-

- o Full basic salary;
- o Full festival bonus;
- o Full incentive bonus;
- o Full dearness allowance.
- o Full entertainment allowance;
- o Employer's contribution to Recognised provident fund;
- o Cash house rent allowance if it exceeds 50% of basic salary or Tk. 25,000/- per month whichever is lower;
- o Rental value of the rent-free accommodation or 25% of basic salary of the employee whichever is less. (Where the accommodation is provided at a concessionary rate, the rent actually paid by the employee shall be deducted);
- o Cash conveyance allowance if it exceeds Tk. 30,000/ per year.
- o 5% of basic salary or Tk.60,000 whichever is higher if full time car is provided by the employer for the use of the employee. If anybody received cash conveyance allowance in addition to full time car facility then full cash conveyance allowance will be added with salary income.
- o Medical allowance (including hospitalization and medical expense) if it exceeds 10% of basic salary or Tk. 1,20,000/- per year whichever is lower. However the limit for disabled employee is Tk.10,00,000.
- o The value of any benefit provided free of cost or at a concessionary rate;
- o Any sum paid by an employer in respect of any obligation of an employee.
- o Any other allowance where there is no exemption limit

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4. Investment Tax Rebate:

According to section 44(2) and Part-B of the 6th schedule, the following investments and donations are eligible for tax rebate:-

- a) Life insurance premium of self, spouse and dependent children maximum up to 10% of the policy value (Para-1)
- b) Employee's contribution to Govt. provident fund (Para-3)
- c) Both employee's and employer's contribution to Recognized Provident Fund (Para-5)
- d) Employee's contribution to approved superannuation fund in which the employee is a participant (Para-6)
- e) Contribution to benevolent fund and group insurance scheme (Para 17)
- f) Contribution to any DPS up to Tk.60,000 per year at any scheduled bank/financial institution. (Para-11)
- g) Investment in the following instruments-
 - (1) Savings Certificates
 - (2) Unit Certificate and Mutual Fund Certificate issued by ICB or any other financial institution.
 - (3) Government Bonds and Securities (Para-10)
- h) Purchase of 1 computer (desktop) within Tk. 50,000/ or 1 laptop within Tk.1, 00,000/ (Para-23).
- i) Donation to:
 - (1) Rural charitable hospital approved by the Govt (Para- 11A)
 - (2) Organisation for the welfare of the retarded people (Para 11B)
 - (3) Govt. Jakat Fund (Para 13)
 - (4) Institution of Aga Khan Development Network (Para 21)
 - (5) Govt. approved philanthropic and educational institutions (Para-22)
 - (6) National level institution set up in memory of the liberation war (Para-24)
 - (7) National level institution set up in memory of Father of the Nation. (Para-25)
- j) Investment in shares, debentures or mutual fund either primary or secondary listed with any stock exchange. (Para-27)
- K) Investment at Govt. Treasury bond (Para-28)

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5. **Allowable Investment Allowance:**

The allowable investment allowance is the lower amount of the following three:

25% of total income excluding

- (1) employer's contributions to RPF
- (2) taxable portion of interest on RPF
- (3) any income u/s 82C
- (4) any income on which reduced tax rate is applicable

OR

TK. 1,50,00,000/=

OR

Actual Investments as per 6th schedule (Part-B)

Whichever is lower is to be treated as eligible amount

Tax rebate

@15% on 1st eligible amount Tk.2,50,000

@12% on next eligible amount Tk.5,00,000

@10% on the remaining eligible amount

1. **Income tax rate for the assessment year 2016-2017**

Income slab	Rate	Minimum tax
On the 1 st Tk. 2,50,000/- of total income	Nil	After rebate, minimum tax for individual taxpayer is [1] Tk.5,000/ in case of Dhaka & Chittagong City Corporation area, [2] Tk. 4,000/ for other city corporation area and [3] Tk. 3,000/ for other areas if total income exceeds the minimum taxable ceiling.
On the next Tk. 4,00,000/- of total income	10%	
On the next Tk. 5,00,000/- of total income	15%	
On the next Tk. 6,00,000/- of total income	20%	
On the next Tk. 30,00,000/- of total income	25%	
On the balance of total income	30%	

However, the threshold limit for woman and senior citizen ageing 65 years or above is Tk.3,00,000/ and for physically handicapped persons Tk. 3,75,000/ and for gazetted war-wounded freedom fighter is Tk.4,25,000. Threshold limit in case of parents or legal guardian of any person with disability will be 25,000 taka more. If both father and mother are assessee then any one will avail this benefit.

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House Property Income

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mp (2/5)
Ranjan Kumar Bhowmik FCMA
Member

Taxes Appellate Tribunal, Dhaka

~~27 July 2016~~

Introduction:-

As per Income Tax Ordinance, 1984 house property means any building (including furniture, fixture, fittings etc.) and land appurtenant thereto **owned by the assessee and rented for commercial or residential purposes**. Property situated outside Bangladesh should also be assessed according to the same provision of section 24 of the Income Tax Ordinance, 1984. Rental income derived from vacant plots of land will not be treated as house property income rather it will be treated as income from other sources u/s 33. If an assessee let out his machinery, plant or furniture along with building and the letting out building is inseparable from the letting of machinery, plant or furniture, the income must necessarily be assessed as income from other sources and in such a case there is no room for disintegrating the rent or assessing a part of the rent as income from house property.

Ownership of the property:-

The tax on house property income is upon the owner (either legal or beneficial) and **not** upon the occupant. The mere existence of a dispute regarding the title to ownership of a certain property cannot of itself hold up an assessment even if a suit has been filed, otherwise it would be open to an assessee to delay assessment indefinitely. The DCT has prima facie the power to decide whether the person sought to be taxed is the owner of the property.

Assessment of Co-owner:-

As per section 24(2), where property is owned by two or more persons and their respective shares are definite and ascertainable, the co-owners should not be assessed in respect of their income from such property as an association of persons (AOP), but each co-owner must be assessed individually in respect of his share of house property income. Though the property may be possessed jointly by co-heirs under the Muslim law, the shares of co-heirs under that law are definite and ascertainable, and therefore **each of the heirs must be separately assessed** u/s 24 in respect of his share of house property income.

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Self occupied property:-

In respect of house property, **no tax is payable if the owner occupies the property for his own residence** or for the purpose of his business or profession the profits of which are assessable to tax u/s 28.

Annual Value:-

Income tax is levied not upon the actual income from the property but upon the notional income based on an annual value. Annual value is defined in section 2(3) as “**The sum for which the property might reasonably be expected to let from year to year** and any amount received by letting out furniture, fixture, fittings etc.” That is, the sum for which the owner could let the premises having regard to all the prevailing circumstances such as local conditions and the demand for house in that particular locality. Where the property is let out and the rent is received by the owner, the annual value may be more or less than the actual rent received as the annual value is only a hypothetical sum. In case where the actual consideration received by the owner from his tenant does not represent the annual value, evidence of such annual value may be afforded by the rents paid for similar and similarly situated properties in the locality.

Grossing-up when the owner's burden borne by the tenant:

It is necessary to take into account the whole of the consideration exacted by the owner for the right to use and occupy the property. For example, where the tenant agrees to pay the service charge which is actually payable by the owner, the total consideration paid by the tenant is the house rent plus the service charge and that is the figure which may be taken as evidence of the annual value by grossing-up.

Treatment of advance when it is not adjustable against house rent:

In case the advance received by the owner is not adjustable against house rent then such advance will be treated as house property income as per section 19(22) of the Income Tax Ordinance, 1984. However, such advance may be allocated into 5 years including 1st year in equal proportion if the assessee opts so. Where such advance or part thereof is refunded by the owner then the amount so refunded shall be deducted if it is taken as income as per section 19(22).

Maintenance of bank account by the owner of the house property (Rule: 8A):

Where any person having ownership or possession of any house property, whether used for residential or commercial purpose, receives any rent exceeding Tk. 25,000/- per month shall have to operate a bank account for the purpose of depositing rent and advance(if any) received from such house property. He shall also maintain a separate register for recording particulars of tenants and amount received or receivable from the tenants.

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Penalty can be imposed by the DCT as per section 123(2) for any violation of this rule. The maximum penalty is 50% of tax payable on house property income or Tk. 5,000/- whichever is higher.

Deduction of tax at source from house rent:

Tax is to be deducted @ 5% at source from any amount of house rent by the following tenants:

1. Govt. Organization
2. N.G.O.
3. Company
4. Bank (including Co-operative bank)
5. University
6. Medical/ Dental/ Engineering college or
7. Any school and college
8. Any hospital/clinic/diagnostic center

Exemption from payment of tax:

(1) Income from house property held under trust or other legal obligation wholly for religious or charitable purpose is exempt from payment of tax as per 6th schedule (part-A) paragraph-1(1). However, this provision will not be applicable for NGO.

(2) If any building is constructed (not less than 5 storied having at least 10 flats) between 01/7/2009 to 30/6/2014 in any area of Bangladesh other than the area of any city corporation, cantonment board, Tongi upazila, Narayangonj and Gazipur paurashava and any paurashava of Dhaka district, then tax on that house property income will be exempted from payment of tax as per 6th schedule (part-A) paragraph-38 for 10 years starting from the construction of the building.

(3) House property income of any chamber of commerce and industry is completely tax free as per SRO no: 210 dated 01/7/2013

Allowable deductions from annual value to derive income from house property:-

In computing house property income the following allowances are deductible from the annual value:-

(1) **Repairs and maintenance:-**

The following expenditure relating to repairs, maintenance and provision of basic services is granted as a deduction even if no evidence for such expenditure is produced. Where the property is let out for residential purposes the allowable deduction is 1/4th of the annual value and where it is let out for commercial purpose the allowable deduction is 30% of the annual value:

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- (a) Repairs;
- (b) Expenditure relating to collection of rent;
- (c) Water and sewerage;
- (d) Common electricity;
- (e) Salaries of darwan, security guard, pump man, liftman and caretaker.
- (f) All other expenditure related to maintenance and provision of basic services.

But if it is not really spent or partly spent then the remaining unspent amount shall be deemed to be the income from house property as per section 19(30)

- (2) Land development tax;
- (3) Municipal tax;
- (4) Ground rent; Insurance Premium,
- (5) Vacancy allowance (if the property remain vacant during a part of the year);
- (6) Where the let out property is acquired, constructed, repaired, renewed or reconstructed with loan from any bank or financial institution then the interest payable for the year on such loan;
- (7) Where the let out property has been constructed with borrowed capital from bank or financial institution and there was no house property income during the period of construction, the interest payable during the period of construction will be allowable in 3 equal installments from first 3 years of letting out;
- (8) Irrecoverable rent:-

Relief in respect of irrecoverable rent has been granted through S.R.O. No:-454-L/80 dated 31-12-1980 if the following conditions are fulfilled:-

- (a) The tenancy is bona-fide;
- (b) The defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;
- (c) The defaulting tenet is not in occupation of any other property of the assessee;
- (d) The assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Deputy Commissioner of Taxes that legal proceedings would be useless and;
- (e) The annual Value of the property to which the unpaid rent relates has been included in the assessed income of the year during which that rent was due and income tax has been duly paid on such assessed income;

The concession given here appears to be an exemption but it is actually a deduction as that part of rent which will be irrecoverable and which has already been charged in the preceding year will be deducted from the total income in the subsequent year.

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Company Tax Assessment

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Date: 17 Aug 16

01. Introduction:

In the Income Tax Ordinance, 1984, there is no separate status for taxation of a corporate body, But in the context of Bangladesh, Corporate Taxation Means charging of tax on income or profits of companies. So corporate tax can be termed as company tax which differs from tax levied on individuals. Both companies and individuals are assessed and taxed under the same I.T. Ordinance, 1984.

02. Definition of Company:

Under section 2(20) of the Income Tax Ordinance 1984, "Company" means a company as defined in the Companies Act, 1913 (VII of 1913) or Companies Act, 1994 (Act No. 18 of 1994) and includes-

- (a) A body corporate established or constituted by or under any law for the time being in force;
- (b) Any nationalized banking or other financial institution, insurance body and industrial of business enterprise;
- (bb) Any association or combination of persons called by whatever name, if any of such persons is a company as defined in the Companies Act 1913 (VII of 1913) or Companies Act, 1994 (Act No. 18 of 1994);
- (bbb) any association or body incorporated by or under the laws of a country outside Bangladesh, and'
- (c) 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 Ordinance.

03. Classification of Companies:

For preferential tax purpose, Companies are classified into following groups:

- (1) Bank, insurance and Financial institution;
- (2) Merchant Bank
- (3) a) Publicly traded company
b) Non-publicly traded company
- (4) Mobile Phone Operator company
- (5) Tobacco manufacturing company
- (6) Non Resident Company

04. Publicly Traded Company:

'Publicly traded Company' means a company which fulfills the following conditions:

- (a) The Company is registered in Bangladesh under the Companies Act 1913 or 1994;
- (b) The company is enlisted with the Stock Exchange before the end of the concerned income year in which income tax assessment will be made.

05. Obligations of a Corporate Taxpayer under Income Tax Laws

Following are the corporate tax compliance obligations as per various sections of the ITO 1984:

- (1) Obligations of a corporate entity as an assessee (taxpayer):
- (2) Obligations of a corporate entity as a Tax collector on behalf of tax authority:
- (3) Obligations of related persons of a corporate entity:
 - (1) **As an assessee (taxpayer):**
 - Collection of TIN (Tax-payer's Identification Number) Certificate u/s 184A, 184B
 - Displaying of TIN Certificate u/s 184C
 - Advance income tax payment u/s 64
 - Preparation of tax return u/s 75
 - Payment of tax as per tax return u/s 74
 - Filing of tax return with audited accounts in prescribed form u/s 75
 - Filing of revised return if any omission or incorrect statement in the previously filed return discovered before the assessment is made u/s 78
 - Maintenance of accounts and documents: u/s 35
 - Production of accounts and documents if required by the DCT: u/s 79
 - Compliance with various notices:
 - Notice of demand u/s 135,
 - Notice to file return u/s 77,
 - Notice to produce accounts, statements and documents u/s 79
 - Notice to attend hearing u/s 83(1) in case of assessment on the basis of hearing,
 - Notice to file return for re-assessment u/s 93(1),
 - Notice to attend hearing u/s 130 in case of imposing penalty u/s 123-128,
 - Notice calling for information u/s 113.
 - (2) **As a tax collector on behalf of tax authority:**
 - Collection of Tax Collection Account Number (TCAN) u/s 184BB
 - Tax deduction/collection at sources if applicable and deposit it to the Treasury u/s 48-63
 - Giving documents of TDS with necessary information u/s 58, and
 - Furnishing annual returns in case of payment of salary before 1st September (u/s 108 and rule 23), interest (u/s 109 and rule 20) and dividend (u/s 110 and rule 19).
 - Submit withholding tax return at every 6 months interval as per section 75A
 - Submit monthly statements of withholding tax from salary as per Rule 21
 - Submit monthly statements of withholding tax other than salary as per Rule 18(7)
 - (3) **Obligations of related persons of a corporate entity.**
 - Filing a return of any other person for whom the company is assessable [u/s 75(1B)]
 - Joint liability in case of director of a private limited company (u/s 100)
 - Joint Liability in case of liquidator of a private limited company (u/s 101).

06. TIN (Tax-payer's Identification Number) Certificate for a Company:

Every company requires 12 digit Taxpayer's Identification Number (TIN) to mention it in the income tax return. As per section 184B, TIN certificate is mandatory at the time of registration of a company under the Companies Act, 1994 and also in respect of sponsor shareholder directors [Section 184A (1)]. Besides these, in the following cases, a company requires mandatory submission of 12 digit TIN certificate under various clauses of section 184A:

- (1) Opening a L/C for the purpose of import [clause (a)];
- (2) Submitting an application for the purpose of obtaining IRC [clause (aa)]
- (3) Renewal of trade license in the area of city corporation or paurashava [clause (b)]

- (4) Submitting tender documents for the purpose of supply of goods, execution of a contract or for rendering services [clause (c)];
- (5) Purchase of a land, building or an apartment situated within any city corporation area [clause (f)];
- (6) Registration, change of ownership or renewal of fitness of a car, jeep or microbus [clause (g)];
- (7) Giving ISD connection to any kind of telephone [clause (k)].
- (8) Registration of a company under Companies Act, 1994

Under section 184C, a company shall display 12-digit TIN certificate at a conspicuous place of the company's business premises.

07. Submission of Income Tax Return

As per section 75(5), the return must be filed within the tax day; unless the date is extended by the DCT u/s 75(6). Here tax day means last date of submission of return which is 15th of the 7th month from the end of the income year. That means every company will get 6.5 months time to submit return. However, u/s 75(6), on application from the company, the assessing officer [DCT] may extend the return submission date up to 2 months at his own capacity and further 2 months after taking prior permission from the IJCT.

The return should be signed by the principal officer of the company [75(2) (b) (iii)]. As per section 2(48), 'principal officer', means-

- (a) Managing director, manager, secretary, treasure, agent or accountant (by whatever designation known), or any officer responsible for management of the affairs, or of the accounts, of the company; and
- (b) Any person connected with the management or the administration of the company upon whom the DCT has served a notice of his intention to treat him as principal officer.

However, revised return can be filed before the assessment is made if any omission or incorrect statement in the previously filed return is discovered [u/s 78].

(8) Universal self-assessment (Sec.82BB):

Universal self assessment system has been introduced in our country from the assessment year 2007-2008. Every assessee (including company) is eligible to submit return under this system. In this system assessee has to tick the box universal self assessment at the top of the return form. DCT will issue a receipt of such return and that receipt will mean that assessment is complete. It is hassle free in the sense that assessment has been done on the basis of return and without any physical presence. Meanwhile, due to this simplicity, it becomes very popular method of submitting return. But it should be kept in mind that return must be correct and complete.

Procedure to submit return under universal self assessment system:

The procedure is very simple. Assessee has to prepare his return either by himself or with the help of other and then it is to be signed and verified. Assessee has to tick the box universal self assessment at the top of the return form and after paying tax (if applicable) submit the return. However, the assessee should keep in mind the following:

- (a) Such return must be submitted within the last date of submission of return or within the extended time allowed by the DCT.
- (b) Tax as per return (if any) is to be paid before submission of return.
- (c) No question is to be raised by the DCT as to the source of initial capital investment in case of new assessee showing new business if at least 25% of initial capital is shown as income. Initial capital formed in such way is not transferable from that business within the year or within 5 years from the end of the assessment year in any manner.

Tax audit:

The return submitted at this system may, afterwards, be selected by the NBR or its subordinate authority (if so authorized by the Board) for audit. The Board will determine the manner of such selection.

If return filed under universal self-assessment scheme showing at least 20% higher income than the income assessed or shown in the immediate preceding assessment year, then it shall not be selected for tax audit by the NBR. But the conditions are:

1. Return is to be accompanied by proper evidences in support of tax free income (if any).
2. Return is to be accompanied by bank statement in support of taking loan (if any) exceeding taka 5 lac.
3. Return does not show any receipt of gift
4. Return does not show any income on which reduced tax rate is applicable.
5. Return does not show any refund

If the return is selected for audit, then DCT will proceed to make fresh assessment by issuing notice under section 83(1) for hearing and he will make assessment within 2 years from the end of the assessment year. Otherwise it will be barred by time limitation. Assessment can be done under section 83(2) or under section 84 as the situation permits.

Re-open the universal self assessment under section 93:

If any concealment has been detected in the return submitted by the assessee under universal self-assessment scheme within 6 years from the end of the assessment year, then the DCT may re-open the case and proceed to assess further.

Documents to be attached with the return:

- Audited statement of accounts.
- Income Computation sheet if shown income differ from income shown at audited statement of accounts [section-75]

Separate statement for:

- Any income from other sources e.g. interest, dividend, etc.
- Tax exempted income [rule 24]
- Information regarding name, address and TIN of the directors of the company (rule 24)
- Evidence of tax payment on the basis of income disclosed in the return.

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09. Method of Accounting and maintenance of Accounts [sec 35]

- ❑ All income classifiable under the head 'Agricultural income' 'Income from business or profession' or 'Income from other sources' shall be computed in accordance with the method of accounting regularly employed by the company [sec 35(1)].
- ❑ Every public or private company as defined in the Companies Act, 1913 or 1956 shall, with the return of income, require to be filed under the Income Tax Ordinance for any income year, furnish a copy of the trading account, profit and loss account and the balance sheet in respect of the income year certified by a chartered accountant to the effect that the accounts are maintained and the statements are prepared and reported in accordance with BAS & BFRS and are audited in accordance with BSA [sec 35(3)].
- ❑ Where no method of accounting has been regularly employed, or if the method employed is such that in the opinion of the DCT the income of the assessee cannot be properly ascertained, the income of the company shall be computed on such basis and in such manner as the DCT may think fit [sec 35(4)]

10. Income from Business or Profession (S.28):

Profits and gains of any business or profession carried on or deemed to be carried on by the assessee at any time during the income year shall be classified and computed under this head. The following income shall be classified and computed under the head "Income from business or profession": -

- a) Profits and gains of any business or profession
- b) Value of benefit and the unpaid trading liability referred to in section 19(15)
 - Recovery of any loss, bad debt or expenditure which was previously allowed as deduction
 - Any amount of interest on loan to any commercial bank, BSB, BSRS or any bank run on Islamic principles allowed as deduction but remains unpaid for three years
 - Trading liability if remains unpaid for three years
- c) Excess amount referred to in sec-19(16)
 - Gains on disposal of building, plant used for business
- d) Excess amount referred to in sec-19(18)
 - Insurance, salvage or compensation received for building, plant being discarded, demolished
- e) Sale proceeds referred to in sec-19 (20)
 - Gains on disposal of capital asset on scientific research
- f) The amount of income under section 19(23)
Sale of export quota by garments exporter

(a) Allowable expenditure under section-29 :

- Rent;
- Interest payable on borrowed capital;
- Tax Depreciation and amortization of certain fees.
- Any expenditure incurred wholly & exclusively for the purpose of business or profession etc.

(b) Inadmissible Expenses u/s 30

- i) Payment of salary, if tax thereon has not been deducted at source u/s 50[sec. 30(a)]
- ii) Payment of salary, remuneration, interest or commission to any partner of the firm[sec.30(b)]
- iii) Any payment wherefrom tax is deductible but not deducted/collected [sec. 30(aa)].
- iv) Payment of salary to an employee if the employee is required to obtain e-TIN but fails to obtain the same at the time of salary payment[sec. 30(aaa)]
- v) Payment of brokerage/commission to a non-resident without TDS violating section 56 [sec.30(c)]
- vi) Payment to PF or other funds unless effective arrangement has been made for TDS while making the payments from the fund which are taxable under the head 'Salaries [sec. 30(d)]
- vii) Payment of perquisites/ other benefits to an employee in excess to TK. 4, 75,000[sec. 30(e)]
- viii) Expenditure on foreign travels of employees and their dependents, spouse and minor children (including step and adopted children) for holidaying and recreation exceeding 3 months basic salary or 3/4th of actual expenditure whichever is less and such foreign travels shall not be oftener than once in every 2 years.[sec. 30(f) (ii) read with Rule 65A]

ix) Distribution of free sample exceeding the following limit[sec. 30(f)(iv) read with Rule 65C]:

Turnover	% of turnover		
	Pharmaceutical Industry	Food, cosmetics and toiletries industry	Other Industry
Up to Tk. 5 crore	2%	1%	0.50%
Exceeding Tk. 5 crore, up to Tk. 10 crore	1%	0.50%	0.25%
Exceeding Tk. 10 crore	0.5%	0.25%	0.10%

x) Entertainment expenditure exceeding the following limits [sec. 30(f)(i) read with Rule 65]:

Income	Limit
On 1st Tk. 10 lac	4%
On the balance	2%

- xi) Head Office Expenditure exceeding 10% of the disclosed net profit applicable for foreign company [sec. 30(g)]
- xii) Royalty and technical know-how fee exceeding 8% of the disclosed net profit [sec. 30(h)]
- xiii) Salary or remuneration paid by the employer otherwise than by crossed cheque or bank transfer having gross monthly salary of Taka 15,000/- or more [sec. 30(i)]
- xiv) Incentive bonus exceeding 10% of disclosed net profit [sec. 30(j)]
- xv) Overseas traveling exceeding 1.25% of disclosed turnover [sec. 30(k)]
- xvi) Any commission or discount paid by any company to its shareholder director[sec. 30(l)]
- xvii) Cash payment above Tk.50,000 other than cheque/bank transfer except[sec. 30(m)]
 - 1. Payment for purchase of raw materials
 - 2. Salary of employees where monthly salary payment was otherwise restricted
 - 3. Any payment for government obligation.
- xviii) Any house/office rent paid without crossed cheque or bank transfer [sec. 30(m)]

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Perquisites [Sec. – 2(45)] -

Perquisite is defined in the Oxford English Dictionary as "any casual emolument, fee or profit attached to an office or position in addition to salary or wages." There is an exclusive definition of perquisite at section 2(45) where perquisite means any payment or benefit made to an employee in the form of cash or any other form but excluding the following:-

- a) Basic Salary
- b) Festival bonus
- c) Incentive bonus
- d) Arrear Salary
- e) Advance Salary
- f) Leave encashment
- g) Leave Fare Assistance (LFA)
- h) Overtime
- i) Contribution by the employer to-
 - 1) Recognized provident fund.
 - 2) Approved Pension Fund.
 - 3) Approved Gratuity Fund and
 - 4) Approved Superannuation Fund.

(c) Restriction on Disallowance by the DCT [sec. 30A]

The DCT Shall not make any disallowance or deduction for any claim of the assessee in the trading account or profit and loss account without specifying the reasons for such disallowances.

(d) Other Issues

- (i) Tax depreciation as per Third Schedule of I.T Ordinance, 1984 is to be considered disregarding accounting depreciation.
- (ii) Applicability of provision of section 19 of the I.T Ordinance, 1984 regarding deemed income.

(e) Set-off and Carry-forward of Losses [Section 37-42]

Where loss is assessed in any head of income, the assessee is entitled to set off the loss against his income assessed in other heads of that year. However, loss on speculation business and loss on capital gain cannot be set off against income from any other head. Such loss can be set off only against the income of respective speculative business or capital gains. When loss cannot be wholly setoff, then the unabsorbed loss under the following four heads shall be carried forward but for not more than 6 successive assessment years:

- Speculation business loss
- Business loss
- Capital loss and
- Loss at Agricultural income.

Important Notes—

- Loss from business or profession shall not be set off against house property income.
- In case of capital loss, it cannot be carried forward if the loss does not exceed Tk. 5,000/-
- Unabsorbed depreciation loss can be carried forward for unlimited period.
- Loss so carried forward is to be set off against income of the respective head.
- If there is any loss at any exempted income it cannot be set off against any other income.
- Loss from any head shall not be set-off against any income from manufacturing of tobacco.



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11. Corporate Tax Rate

The income tax rates for companies are as follows:

Types of Company	Heads/sources of Income		Tax Rates for Assessment Year	
			2015-2016	2016-2017
Bank, Insurance, Financial Institutions	(1) Capital Gain (2 nd schedule)		15%	15%
	(2) Capital Gain from sale of shares of listed companies		10%	10%
	(3) Dividend Income		20%	20%
	(4) Other Income	Both publicly traded and not publicly traded company	42.5%(foreign)	42.5%(foreign)
40% (local)			40% (local)	
Merchant Bank			37.5%	37.5%
Other Company	(1) Capital gain (2 nd schedule)		15%	15%
	(2) Capital Gain from sale of shares of listed companies		10%	10%
	(3) Dividend Income		20%	20%
	(4) Other Income	For publicly traded company	25%	25%
		Newly listed companies in case of declaring more than 20% shares through IPO	22.5%	22.5%
	For non-publicly traded company (including non-resident company)	35%	35%	
Mobile Phone Company	(1) Capital Gain (2 nd schedule)		15%	15%
	(2) Capital Gain from sale of shares of listed companies		10%	10%
	(3) Dividend Income		20%	20%
	(4) Other Income	For publicly Traded Company	40%	40%
		Other than publicly Traded Company	45%	45%
Tobacco manufacturing company	Income from tobacco manufacturing business	45%	45%	
Excess Profit Tax			15%	Withdrawn
Additional Tax			5%	Withdrawn
Minimum tax			0.30%	1% (tobacco)
				0.75% (mobile phone operator)
				0.60% (others)

12. Some special reduced corporate tax rates:

1. Garments: 20% [SRO no 208 dated 29/6/2016]
2. Private University- 15%
3. Textile 15% [SRO no 193 dated 30/6/2015]
4. Poultry [up to Tk.20 lakh=nil, next Tk. 10 lakh=@5% and on rest @10%] [SRO 254 Dated 16/8/2015]
4. Jute Industries: 10% [SRO no 205 dated 29/6/2016]
5. Selected autonomous bodies: 25% [SRO no 158 dated 26/6/2014]
6. National level research institute: 15% [SRO no 163 dated 26/6/2014]

13. Tax Withholding Function: u/s 48-63

According to the provision of Chapter VII (section 48-63), tax is to be deducted or collected at source at the prescribed rate/ rates.

(a). Deposit of Deducted/Collected tax: [Rule-13]

- All sum deducted or collected at sources shall be deposited to the credit of the Government within 2(two) weeks from the end of the month of such deduction or collection. The only exception is TDS or TCS during the month of June must be deposited within June so that deductions are deposited within the same fiscal year.
- The Deputy Commissioner of Taxes may, in a special case and with the approval of the Inspection Additional/Joint Commissioner of Taxes, permit an employer to pay the tax deducted from "Salaries" quarterly on September 15, December 15, March 15 and June 15.

(b). Procedure of Deposit of Deducted/Collected tax: [Rule-14]

The amount of tax deducted or collected shall be deposited to the credit of the Government by remitting it into the Bangladesh Bank or the Sonali Bank, as the case may be, accompanied by an income tax challan [Rule 14(1)].

14. Payment of Advance Tax (sec 64 to 73)

- In case of first year, income if likely to exceed Tk 4,00,000/-, or
- In case of old assessee, last assessed income if exceeds TK. 4,00,000/-
- Advance tax is to be paid in 4 equal installments 15th September, 15th December, 15 March and 15th June. However advance tax is to be paid by the tobacco manufacturing company every month.

(15) Fiscal Incentives:

Following fiscal incentives are available for a company:

(1) Tax Holiday u/s 46B and 46C

This is a period (5 years or 10 years depending on the location of the industry) for which the company is allowed exemption of tax on its "income from business or profession"

2) Other Tax Exemption

(a) Dhaka and Chittagang division (excluding Dhaka, Narayangonj, Gazipur and Chittagong district and also the hill district of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%
		2nd 2 years.....50%
		Last year.....25%
(b) Rajshahi, Khulna, Sylhet, and Rangpur division excluding city corporation area(including the hill district of Rangamati, Bandarban and Khagrachari)	10	1st 2 years.....100%
		3 rd year.....70%
		4 th year.....55%
		5 th year.....40%
		6 th year.....25%
		7 th , 8 th , 9 th and 10 th year...20%

- Industries set up in Export Processing Zone (EPZ) will enjoy tax exemption from the month of commercial production.
- Income from 'Computer Software business' run by Bangladeshi resident is tax exempted up to 30/06/2024 [para-33]
- Income of the private power generation company up to 15 years from its commercial production. [S.R.O no- 211-Ain/2013 dated 01/7/2013]
- Any income from the export of handicrafts for the period from 1st day of July, 2008 to the 30th day of June, 2019. (Para-35)

(c) Accelerated Depreciation

In the case of machinery or plant, set up in Bangladesh between 01/07/2014 and 30/06/2019 and not having been previously used in Bangladesh, accelerated depreciation subject to some conditions will be allowed as follows:- [paragraph 7B of 3rd Schedule].

First year: - 50% of actual cost
Second year: - 30% of actual cost
Third year: - 20% of actual cost

Conditions:-

- Applicant must be a Bangladeshi company
- Applicant is an industrial undertaking
- Application is made to NBR within 6 months from the end of the month of commercial production
- Declaration not to enjoy any other tax exemption benefit
- Any other depreciation allowance will not be allowable.

(d) Initial Depreciation

In the case of machinery or plant, set up in Bangladesh after 30/06/2002 and not having been previously used in Bangladesh, initial depreciation subject to some conditions will be allowed as follows: - [paragraph 5A of 3rd Schedule].

- In the case of building-----10% of actual cost
- In the case of plant, machinery-----25% of actual cost

(e) General Export Incentives:

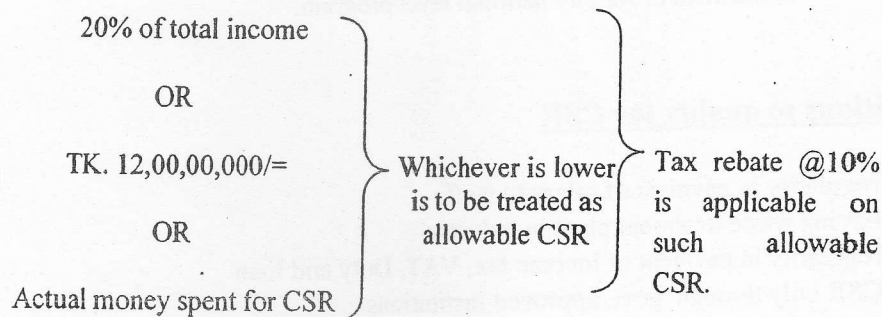
50% income of an assessee derived from the business of export is exempted from tax. This is not applicable for a company registered outside Bangladesh, enjoying exemption of tax or reduction in rate by any notification made under the Ordinance.

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Corporate Social Responsibility (CSR) is defined as the integration of business operations and values, whereby the interests of all stakeholders including investors, customers, employees, the community and the environment are reflected in the company's policies and actions. CSR is about how businesses align their values and behavior with the expectation of stakeholders-not just customers and investors, but also employees, suppliers, communities, regulators, special interest groups, and society as a whole. It is the company's commitment to be accountable to its stakeholders. CSR demands that businesses manage the economic, social, and environmental impacts of their operations.

The Government sees CSR as the business contribution to its sustainable development goals. Essentially it is about how business takes account of its economic, social and environmental impacts in the way its operates-maximizing the benefits and minimizing the downsides. However, CSR is still considered as the voluntary actions that business can take, over and above the compliance with minimum legal requirements, to address both its own competitive interests and the interests of wider society. Key CSR issues include good governance, responsible sourcing, eco-efficiency, environmental management, stakeholder engagement, labour standards, employee and community relations, social equity and human rights. It is not only about fulfilling a duty to society; it can also bring competitive advantage.

The corporate sectors in Bangladesh spend a big amount outside their business for the betterment of the society and the people. But any expenditure for this purpose does not qualify for allowable deductions as this is not business related expenditure. To encourage the companies to contribute towards the society, CSR 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. The companies will get 10% tax rebate on the lower amount of the following three:



The tax provision clearly specified 23 areas where the companies can perform their corporate social responsibility for availing the benefit of tax rebate.

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Areas of CSR—

- natural calamities
- old home
- welfare of retarded persons
- education of poor children
- accommodation of slum dwellers
- awareness programme of anti-dowry and women rights
- rehabilitation of poor and orphan children
- research on liberation war related subject
- sanitation in Chittagong hill tracts
- treatment of cataract, cancer, leprosy
- treatment of acid victims
- free medical treatment to the poor by specialized hospital
- public university
- technical and vocational education
- computer and information technology
- vocational training to unskilled workers for man power export
- infrastructure of national level sports
- Donation to national level institution set up in memory of the liberation war
- Donation to national level institution set up in memory of Father of the Nation
- 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
- Donations made to non-profit voluntary social welfare organizations engaged for running rehabilitation center for recovered children/women of cross boarder trafficking.
- Donation to Govt. approved fund for helping victims of natural disaster or for any tournament or for any national level program.

Conditions to qualify for CSR

- regularity in payment of salary to staff
- having waste treatment plant in industry
- regularity in payment of Income tax, VAT, Duty and loan
- CSR only through govt. approved institutions
- Compliance of Labour Law.
- amount spent for CSR will not be considered as business expenditures
- documents in support of actual expenditure of CSR to be submitted to the concerned DCT
- Submit CSR plan to NBR and obtain exemption certificate



Handwritten notes: R.K.B. (FCMA) and a signature.

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Inadmissible Expenses in case of computing income from business or profession u/s 30

Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

- i) Payment of salary, if tax thereon has not been deducted at source u/s 50[sec. 30(a)]
- ii) Payment of salary, remuneration, interest or commission to any partner of the firm [sec. 30(b)]
- iii) Any payment wherefrom tax is deductible but not deducted/collected [sec. 30(aa)].
- iv) Payment of salary to an employee if the employee is required to obtain e-TIN but fails to obtain the same at the time of salary payment [sec. 30(aaa)]
- v) Payment of brokerage/commission to a non-resident without TDS violating section 56 [sec.30(c)]
- vi) Payment to PF or other funds unless effective arrangement has been made for TDS while making the payments from the fund which are taxable under the head 'Salaries' [sec. 30(d)]
- vii) Payment of perquisites/ other benefits to an employee in excess to TK. 4, 75,000 [sec. 30(e)]
- viii) Expenditure on foreign travels of employees and their dependents, spouse and minor children (including step and adopted children) for holidaying and recreation exceeding 3 months basic salary or 3/4th of actual expenditure whichever is less and such foreign travels shall not be oftener than once in every 2 years. [sec. 30(f) (ii) read with Rule 65A]
- ix) Distribution of free sample exceeding the following limit [sec. 30(f)(iv) read with Rule 65C]:

Turnover	% of turnover		
	Pharmaceutical Industry	Food, cosmetics and toiletries industry	Other Industry
Up to Tk. 5 crore	2%	1%	0.50%
Exceeding Tk. 5 crore, up to Tk. 10 crore	1%	0.50%	0.25%
Exceeding Tk. 10 crore	0.5%	0.25%	0.10%

- x) Entertainment expenditure exceeding the following limits [sec. 30(f)(i) read with Rule 65]:

Income	Limit
On 1st Tk. 10 lac	4%
On the balance	2%

- xi) Head Office Expenditure exceeding 10% of the disclosed net profit applicable for foreign company [sec. 30(g)]
- xii) Royalty and technical know-how fee exceeding 8% of the disclosed net profit [sec. 30(h)]
- xiii) Salary or remuneration paid by the employer otherwise than by crossed cheque or bank transfer having gross monthly salary of Taka 15,000/- or more [sec. 30(i)]
- xiv) Incentive bonus exceeding 10% of disclosed net profit [sec. 30(j)]
- xv) Overseas traveling exceeding 1.25% of disclosed turnover [sec. 30(k)]
- xvi) Any commission or discount paid by any company to its shareholder director [sec. 30(l)]
- xvii) Any cash payment above Tk.50,000 other than cheque or bank transfer except [sec. 30(m)]
 1. Payment for purchase of raw materials
 2. Salary of employees where monthly salary payment was otherwise restricted
 3. Any payment for government obligation.

- xvii) Any house/office rent paid without crossed cheque or bank transfer [sec. 30(m)]

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(24-1) (24/5)

Tax-1 R.K.L

ADVANCE PAYMENT OF TAX

R.K.L
=

R.K.P.

Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

Date: 23 Aug 2016

Advance income tax is the tax which is to be paid by the assessee in advance either by deduction or collection of tax at source or by payment of quarterly instalments.

(1) Who is liable to pay advance tax?

Both existing and new assessee are liable to pay advance income tax. In case of existing assessee if his last assessed total income exceeds TK. 400,000/ [excluding agricultural income and capital gain (other than capital gain from sale of share)] and in case of new assessee if his current year's income likely to exceed TK. 400,000/ [excluding agricultural income and capital gain (other than capital gain from sale of share)] is also liable to pay advance tax.

(2) What is the basis on which advance payments should be calculated?

In case of existing assessee:

In case of existing assessee, advance tax is to be calculated on the basis of his last assessed income. If his last assessed total income exceeds Tk. 400,000/ [excluding agricultural income and capital gain (other than capital gain from sale of share)] he is required to pay advance tax. (See-64)

In case of new assessee:

A new assessee who has not previously been assessed shall also required to pay advance tax if his current year's income [excluding agricultural income and capital gain (other than capital gain from sale of share)] is likely to exceed Tk. 400,000/ (See.68)

In case of cigarette manufacturer:

A cigarette manufacturer shall pay advance tax @ 3% on net sales in every month. This monthly advance tax will be adjusted against quarterly instalments.

The formula of net sale=A-B

Where A=Gross sale

B=VAT & SD (if any)

(3) When and how advance tax is to be paid?

Advance tax is to be paid in the following 4 equal instalments on the basis of financial year for which the tax is payable:

1st instalment	:	15th September
2nd instalment	:	15th December
3rd instalment	:	15th March
4th instalment	:	15th June

Provided that, if an assessment of the assessee is completed before 15th May, then on that basis the payable amount of the rest instalment /instalments is/are to be determined. (Sec. 66)

(4) Whether deduction/collection of tax at source will be treated as advance tax?

Yes, withholding tax is also to be treated as advance payment of tax.

(5) What will happen in case of excess payment of advance tax?

If the advance tax paid by the assessee exceeds the tax payable by him on regular assessment, Govt. will pay simple interest on excess payment @10% per annum to be calculated from 1st July of the respective assessment year to the date of regular assessment but not more than 2 years.

(6) Is there any scope to pay estimated amount of advance tax?

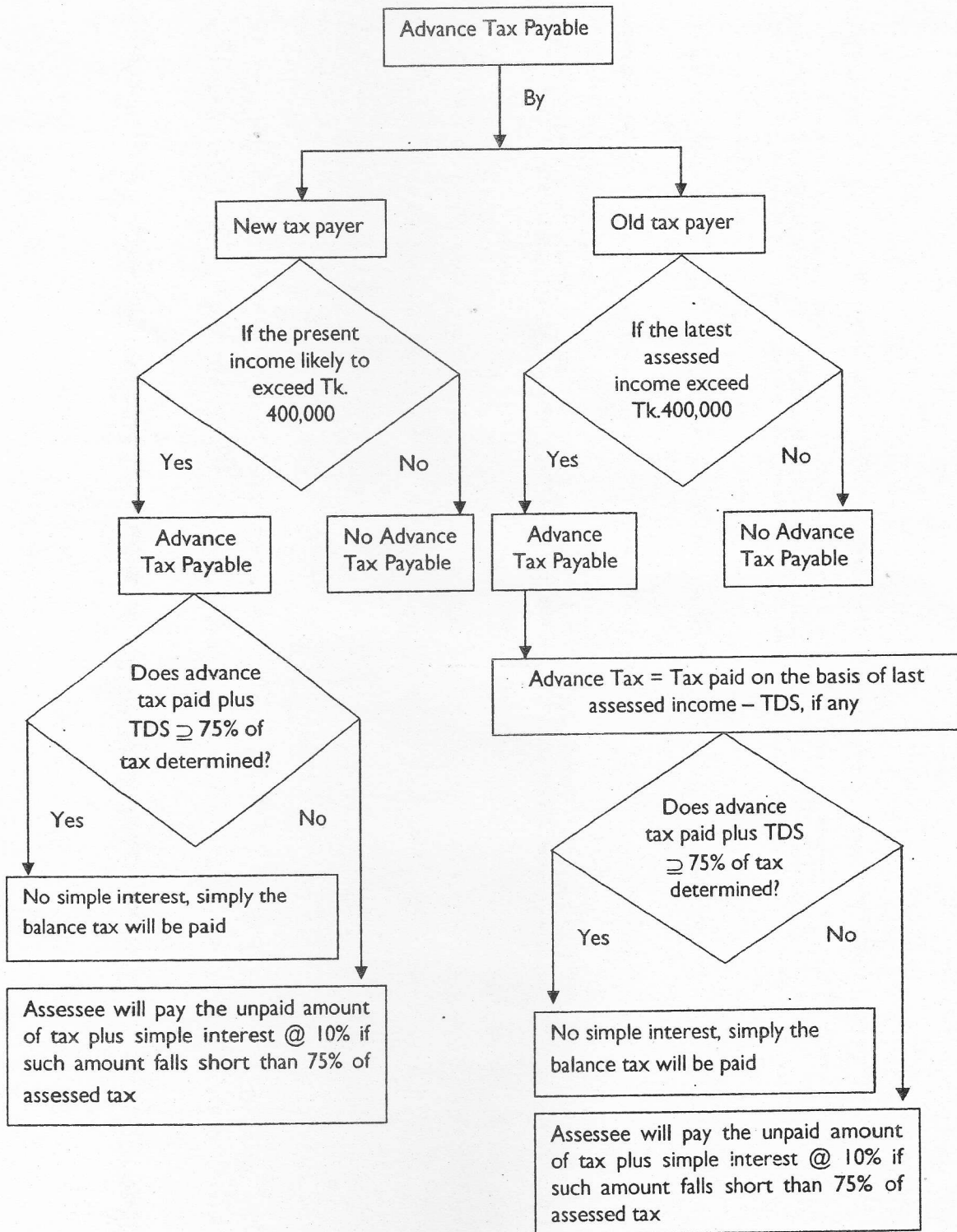
Yes, if any assessee feels, at any time during the year, that his tax is likely to be less than the tax payable as per law, then he may submit an estimate to the DCT and pay estimated amount of advance tax accordingly (Sec. 67). But at the time of assessment if the DCT found that his estimate is wrong and tax actually comes higher, then assessee will have to pay simple interest as per section 73.

(7) What are the consequences in case of failure to pay advance tax?

The consequences are as follows:-

- I. Assessee will be treated as an assessee in default. (Sec. 69)
- II. Simple interest @ 10% per annum will be chargeable on the amount falls short from 75% of the assessed tax to be calculated from 1st July of the assessment year to the date of assessment but not more than 2 years. (Sec. 73). However the rate of simple interest will be 50% higher if the return is not filed on or before the "Tax day"
- III. DCT may also impose penalty up to 100% of the shortfall (Sec. 125).

(8) Advance tax at a glance:



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Income Tax Return

Paper presented by:



Ranjan Kumar Bhowmik FCMA

Member

Taxes Appellate Tribunal, Dhaka

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016

Income Tax Return

Every person who is required to file return of income shall have to fill-up the return form prescribed at Rule-24, which shall also be verified in the manner indicated in that form.

For individual assessee the return together with the statement of assets, liabilities and expenditure as prescribed at Rule-25 and the life style statement as prescribed at Rule-25A shall collectively constitute a valid and complete return.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016

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Return Form:

These are

Now 4 types of return forms are available.

(1) For individual assessee
[IT-11GA2016]

(2) For company assessee
[IT-11GHA2016]

(3) For assessee other than individual and company
[IT-11CHA2016]

(4) For spot assessment
[IT-11GAGA]

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016

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Persons required to file return of income:

Every person (here person means Individual, Firm, AOP, HUF, NGO, Trust, Fund, Local Authority, Company, Entity and every other artificial juridical person) is required to file return of income if

- (1) His taxable income during the income year exceeded the non-taxable ceiling of income (now it is Tk. 2,50,000/- for the assessment year 2016-17)
- (2) He was assessed to tax for any one of the 3 years immediately preceding the year under consideration.

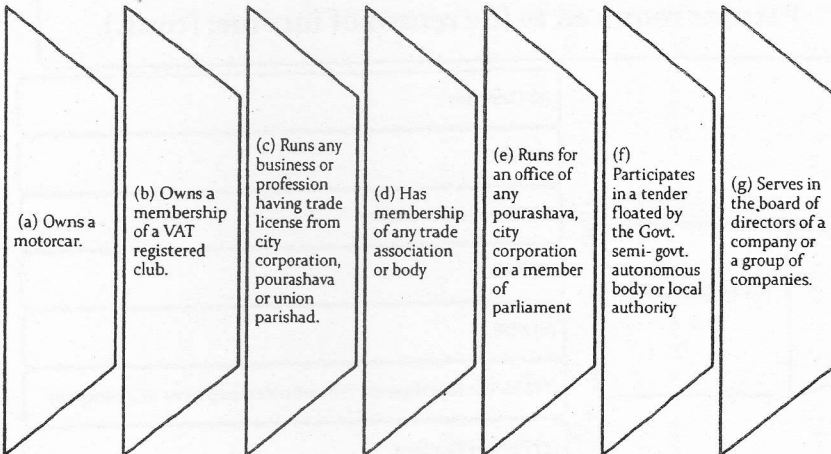
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Persons required to file return of income: (cont.)

(3) the person fulfills any of the following conditions: -



Persons required to file return of income: (cont.)

(4) The person has registered with a recognized professional body as -

- (a) Doctor
- (b) Engineer
- (c) Architect
- (d) Dentist
- (e) Lawyer
- (f) Income tax practitioner (ITP)
- (g) Chartered accountant
- (h) Cost and management accountant
- (i) Surveyor
- (j) Insurance Actuaries or
- (k) Any other similar professional man.

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Persons required to file return of income: (cont.)

(5) If the person is a -

- (a) Company
- (b) NGO
- (c) Co-operative society
- (d) Firm
- (e) AOP
- (f) Shareholder director /shareholder employee of a company
- (g) Partner of a firm
- (h) An employee of the Govt. or an authority or corporation, body or unit draws monthly basic salary of Tk.16,000 or more.
- (i) If any person has any exempted income or income where reduced tax rate is applicable.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July,2016

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Person does not require to file return of income:

The person does not require to file return of income-

- (a) Public University
- (b) Educational Institution receiving Govt. benefits under MPO
- (c) Fund
- (d) Any person which the NBR exempt from filing return of income.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July,2016

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Place where return is to be submitted:

- (1) Tax Return is to be submitted at concerned income tax circle office as per jurisdiction. Deputy Commissioner of Taxes (DCT) usually heads the circle office.
- (2) The only exception is in case of non-resident Bangladeshi who may file their return at nearest Bangladesh mission. The missions then send the return to NBR and NBR again send the return to concerned circle office.
- (3) Return can also be submitted at Tax Fair organized by the NBR every year.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016


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Return by whom to be signed and verified

Sl.	Type of assessee	Signatory
1.	Individual	Individual himself
2.	Hindu Undivided Family (HUF)	Karta
3.	Company	Principal Officer
4.	Local Authority	Principal Officer
5.	Partnership Firm	Any adult partner
6.	Association of Persons (AOP)	Any member of the association or the principal officer thereof
7.	Artificial Juridical person	By the person concerned or by any other person competent to act in this behalf.

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Documents to be accompanied with return:

Company

It is mandatory to submit audited statement of accounts at the time of filing return and a separate calculation sheet is to be submitted if income shown at return differs from audited statement of accounts.

Individual Assessee

- An individual assessee shall furnish statements of assets, liabilities and expenses if he
 - (a) Has gross wealth exceeding Tk.20,00,000; or
 - (b) owns a motor car; or
 - (c) has made investment in a house property or an apartment in the city corporation area:
- An individual assessee shall also furnish life style statement along with the return.
- Provided that an individual, not being a shareholder director of a company, having income from salary or from business or profession may opt not to submit life style statement if his total income does not exceed Tk.3,00,000

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July,2016

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Time limit for submission of return:

There are mainly 2 types of time limit for submission of tax return. One is for companies and other is for all other type of assessee. The time limits are tabulated below:

Type of assessee	Tax day within which return must be submitted	Remarks
Bank, Insurance and other non-banking Financial Institution	15th July	Delay interest will be imposed @ 2% per month on the difference between the tax assessed on total income for the assessment year and tax paid in advance along with tax deducted or collected at source. Period of delay interest: the period will start from the first day immediately following the Tax day to: [1] The date of filing return where return is filed [2] The date of regular assessment where return is not filed
A company which is a subsidiary or holding company 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 15 th of the 7 th month from the end of the income year	
All other company	15th January	However the period shall not exceed one year
Other than company	30 th November	

However the last date of submission of return may be extended by the concerned DCT if the assessee duly applied for time. He may extend the time up to 2 months at his own capacity and may extend further 2 months with the prior approval of his IJCT. In this way total 4 months time may be extended for submission of tax returns.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July,2016

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Can a return be revised or a revised return is re-revised:

As per section 78 the provision for submission of new return or revised return is enumerated below:

Sl. No.	Type of Return	Provision of law	Remarks
1.	New return	Any person who has not filed a return as required by section 75/77, he can submit return of current year or earlier year or years at any time.	Penalty u/s 124 may be imposed by the DCT for non-submission of return timely.

Can a return be revised or a revised return is re-revised: (Cont..)

Sl.	Type of Return	Provision of law	Remarks
2.	Revised return	<p>(1) If there is any omission or incorrect statement at the original return, the assessee can file revised return at any time but before assessment.</p> <p>(2) In the same way a revised return can be re-revised.</p>	<p>(1) After assessment no revised return is acceptable.</p> <p>(2) In any event the offence of filing a false return deliberately is punishable u/s 165 which can not be condoned by the filing of a revised return.</p> <p>(3) The benefit of this provision cannot be claimed by an assessee who has made a false return knowing it to be false. A Penalty may be imposed u/s 128 in respect of previous false return notwithstanding the filing of the revised return.</p> <p>(4) If any assessee files revised return u/s 78 or 93 showing tax free income or income where reduced tax rate is applicable, so much of the excess as exceeds the amount in original return shall be deemed to be the income from other sources as per section 19(31)</p>

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Penalty for non-submission of return

Amount of penalty	Reference section	Pre-conditions
10% of the last assessed tax or Tk. 1,000/- + Tk.50 per day during which the default continues	Whichever is higher 124 (1)	(1) In case of a new individual assessee whose income was not previously assessed then penalty amount shall not exceed Tk. 5,000 (2) In case of existing individual assessee penalty amount shall not exceed 50% of last assessed tax or Tk. 1,000 whichever is higher.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016

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Imprisonment for non-submission of return

Particulars	Reference	Imprisonment	Pre-conditions
Failure to file return u/s 75 or in compliance with notice u/s 77 and 93	164(C)	1 year (Maximum) with or without fine.	(1) No prosecution can be instituted without prior sanction of the NBR. (2) NBR has the power to compound offences.

Presentation on income tax return prepared by Ranjan Kumar Bhowmik FCMA as amended upto 12 July, 2016

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DEDUCTION/COLLECTION OF INCOME TAX AT SOURCE

Paper presented by:



Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16

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AREA TO BE COVERED AT THIS PRESENTATION

- ❖ Why withholding tax ?
- ❖ Area of withholding tax
- ❖ Reference sections and rules
- ❖ Rate of deduction/collection
- ❖ Name of the deducting/collecting authorities
- ❖ Name of the tax zone and code where withholding tax to be deposited
- ❖ Time frame within which withholding tax to be deposited
- ❖ Consequences of failure to deduct/collect/deposit tax at source
- ❖ Submission of half yearly withholding tax return

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16

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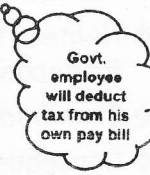
WHY WITHHOLDING TAX ?

1. PAYE
2. Fiscal stability
3. Revenue certainty
4. Broadening tax base
5. Year round revenue collection by the Govt.
6. NPV
7. Reducing tax burden at the time of submitting return

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT,16

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TABLE OF WITHHOLDING TAX

Sl. No	Head	Section	Rate of Deduction	Deducting Authority	TDS required to be deposited
1	Salary (including Govt. salary)	50	Average rate However, Commissioner has power to permit employer to deduct lump sum every month instead of actual average (Rule-22)	Every employer. (Employer will not deduct tax at source or will deduct tax at a lower rate/amount in case an employee can produce a certificate issued by the DCT to do so.)	Respective Zone 
	Remuneration of M.P.	50B	Average rate	Govt. Accounts Office.	
2	Discount on Bangladesh Bank Bill	50A	Maximum rate	Any Person responsible for making such payment.	L.T.U. [1-1145-0010-0101] (TDS from Company) Or [1-1145-0010-0111] (TDS from other than Company)
3	Interest on securities (Excluding treasury bill/treasury bond)	51	5%	Any Person responsible for issuing such security.	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]
			On Govt. securities at upfront system On securities based on Islamic principles at the time of payment or credit whichever is earlier.		

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT,16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl	Head	Sec/ Rule	Rate of Deduction		Deducting Authority	Tax Zone
			Base amount	Rate		
4(a)	>Contract [82C]	Sec.52 & Rule16	Up to Tk. 2,00,000/-	Nil	The following specified persons <input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Any authority <input type="checkbox"/> Body corporate <input type="checkbox"/> Project, program or activity where Govt. has any financial or operational involvement. <input type="checkbox"/> JV or consortium <input type="checkbox"/> Company <input type="checkbox"/> Financial Institution <input type="checkbox"/> Co-operative bank <input type="checkbox"/> Co-operative society <input type="checkbox"/> School, college, institute or University <input type="checkbox"/> Hospital, clinic or diagnostic center <input type="checkbox"/> Any trust or fund <input type="checkbox"/> Firm <input type="checkbox"/> Any PPP <input type="checkbox"/> A foreign contractor, foreign enterprise or an association or body established outside Bangladesh. <input type="checkbox"/> Any artificial juridical person not covered above	Dhaka Zone-2 [1-1141-0006-0101] or [1-1141-0006-0111]
			If > Tk. 2 lac but <= Tk.5 lac	1%		
			If > Tk. 5 lac but <= Tk.10 lac	2%		
			If > Tk. 10 lac but <= Tk.25 lac	3%		
			If > Tk. 25 lac but <= Tk.1crore	4%		
			If >Tk.1 crore but <=Tk.5 crore	5%		
			If >Tk.5 crore but <= Tk.10 crore	6%		
			If base amount > Tk. 10 crore	7%		
<div style="border: 1px solid black; border-radius: 50%; padding: 10px; width: fit-content;"> Applicable on base amount [Base amount means contract value or bill/invoice value or payment whichever is higher] </div>			The rate of deduction will be 50% higher if the payee does not have any e-TIN.			

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT,16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl	Head	Sec/ Rule	Rate of Deduction		Deducting Authority	Tax Zone
			Base amount	Rate		
4(b)	>Supply >Manufacture, process or conversion >Printing, packaging or binding [82C]	Sec.52 & Rule16	Up to Tk. 20,00,000/-	3%	The following specified persons <input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Any authority <input type="checkbox"/> Body corporate <input type="checkbox"/> Project, program or activity where Govt. has any financial or operational involvement. <input type="checkbox"/> JV or consortium <input type="checkbox"/> Company <input type="checkbox"/> Financial Institution <input type="checkbox"/> Co-operative bank <input type="checkbox"/> Co-operative society <input type="checkbox"/> School, college, institute or University <input type="checkbox"/> Hospital, clinic or diagnostic center <input type="checkbox"/> Any trust or fund <input type="checkbox"/> Firm <input type="checkbox"/> Any PPP <input type="checkbox"/> A foreign contractor, foreign enterprise or an association or body established outside Bangladesh. <input type="checkbox"/> Any artificial juridical person not covered above	Dhaka Zone-2 [1-1141-0006-0101] or [1-1141-0006-0111]
			If > Tk. 20 lac but <= Tk.1crore	4%		
			If base amount > Tk. 1 crore	5%		
<div style="border: 1px solid black; border-radius: 50%; padding: 10px; width: fit-content;"> Applicable on base amount [Base amount means contract value or bill/invoice value or payment whichever is higher] </div>			The rate of deduction will be 50% higher if the payee does not have any e-TIN.			

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT,16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section / Rule	Rate of Deduction	Deducting Authority	Tax Zone in whose name the tax to be deposited
4(c)	(a) Oil supplied by oil marketing company	Section 52 read with Rule 16	0.60% if payment exceeds Tk. 200,000/-	Same as serial no-4	Dhaka Zone-2 [1-1141-0005-0101] or [1-1141-0005-0111]
	(b) Oil supplied by dealer or agent of oil marketing company [excluding petrol pump station]		1%		
	(c) Oil supplied by Oil refinery		3%		
	(d) Gas supplied by Gas transmission company to gas distribution company		3%		
	(e) Gas supply by gas distribution company		3%		

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT, 16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl	Head	Sec	Rate of Deduction	Deducting Authority	Tax Zone
5	>Royalties >Franchise Fee for using >License >Brand name >Patent >Invention >Formula >Process >Method >Design >Pattern >Know-how >Copyright >Trademark >Trade name >Literary, musical or artistic composition > survey >Study	52A	10% If the base amount does not exceed Tk.25,00,000	The following specified persons <input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Any authority <input type="checkbox"/> Body corporate <input type="checkbox"/> Project, program or activity where Govt. has any financial or operational involvement. <input type="checkbox"/> JV or consortium <input type="checkbox"/> Company <input type="checkbox"/> Financial Institution <input type="checkbox"/> Co-operative bank <input type="checkbox"/> Co-operative society <input type="checkbox"/> School, college, institute or University <input type="checkbox"/> Hospital, clinic or diagnostic center <input type="checkbox"/> Any trust or fund <input type="checkbox"/> Firm <input type="checkbox"/> Any PPP <input type="checkbox"/> A foreign contractor, foreign enterprise or an association or body established outside Bangladesh. <input type="checkbox"/> Any artificial juridical person not covered above	Dhaka Zone-10 [1-1141-0085-0101] or [1-1141-0085-0111]
			12% If the base amount exceeds Tk.25,00,000 The rate of deduction will be 50% higher if the payee does not have any e-TIN.		
	>Forecast >Estimate >Customer list >Any other intangibles				

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Sl.	Head	Sec.	New rate of deduction depending on the base amount up to Tk.25,00,000 or above Tk.25,00,000/				
			Services	Rate	Services	Rate	
6.	Deduction from the payment of certain services	52AA	Advisory or consultancy service	10% or 12%	Catering service	10% or 12%	
			Cleaning service	(a) Commission	10% or 12%	(a) Commission	1.5% or 2%
				(b) Gross receipts	1.5% or 2%	(b) Gross receipts	6% or 8%
			Collection and recovery agency-	(a) Commission	10% or 12%	Private container port or dockyard service	6% or 8%
				(b) Gross receipts	1.5% or 2%	Stevedoring/ berth operation commission	10% or 12%
			Professional or technical services	10% or 12%	Private security service provider -	10% or 12%	
			Credit rating agency fees	10% or 12%	(a) Commission	1.5% or 2%	
			Event management-	(a) Commission	10% or 12%	(b) Gross receipts	6% or 8%
				(b) Gross receipts	1.5% or 2%	Motor garage or workshop	6% or 8%
			Meeting fees, training fees or honorarium	10% or 12%	Shipping agency commission	6% or 8%	
			Mobile network operator, technical support service provider or service delivery agents engaged in mobile banking operations		10% or 12%	Indenting Commission	6% or 8%
						Supply of manpower-	
			Transport provider	3% or 4%	(a) Commission	10% or 12%	
		(b) Gross receipts	1.5% or 2%				
		Any other service	10% or 12%				

The rate of deduction will be 50% higher if the payee does not have any e-TIN.

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
7	C & F Agency commission [82C]	52AAA	10%	Commissioner of Customs.	Dhaka Zone-15 [1-1141-0110-0101] or [1-1141-0110-0111]

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16 10

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TABLE OF WITHHOLDING TAX					
Sl. No	Head	Sec	Rate of Deduction/Collection	Deducting Authority	Tax Zone
9	Hand made Cigarette [82C]	52B	10% on banderole	Post Office	Dhaka Zone-10 [1-1141-0085-0101] or [1-1141-0085-0111]
11	Compensation paid against land acquisition [82C]	52C	2% of deed value at city corporation, Pourashava and cantonment board area 1% of deed value in other area	Government or Local Authority	Dhaka Zone-15 [1-1141-0110-0101] or [1-1141-0110-0111]
12	Interest on savings instrument [82C]	52D	5% (1) Not applicable on wage earners' development bond, US dollar investment bond, Euro premium bond, Euro investment bond, Pound sterling investment bond and Pound sterling premium bond (2) Not applicable on pensioners' savings certificate if cumulative investment during the year does not exceed Tk.5,00,000 (3) TDS @ 5% will also be applicable on interest on savings instruments purchased by any Fund.	<input type="checkbox"/> Bank <input type="checkbox"/> Post Office <input type="checkbox"/> National Savings Bureau.	Dhaka Zone-10 [1-1141-0085-0101] or [1-1141-0085-0111]
13	Workers' Participation Fund	52DD	5%	Person responsible for making such payment.	Newly inserted through Finance Act, 2016

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TABLE OF WITHHOLDING TAX (CONT.)					
Sl. No.	Head	Sec.	Rate of Deduction/Collection	Deducting Authority	Tax Zone
14	Brick Field [At the time of issuing permission or renewal of permission]	52F	Tk. 45,000/- for one section Tk. 70,000/- for one and half section Tk. 90,000/- for two section Tk. 150,000/- for automatic brickfield	D.C. Office	Dhaka Zone-7 [1-1141-0030-0101] or [1-1141-0030-0111]
15	Travel Agency Commission	52JJ	0.30% on the total value of the tickets or any charge for carrying cargo (excluding embarkation fees, travel tax, flight safety insurance, security tax and airport tax) + TDS on incentive bonus, performance bonus or any other benefit called by whatever name will have to be calculated applying a formula (A divided by B) X C A=Incentive bonus B=Commission or discount and C=0.30%	Airlines and GSA	Dhaka Zone-4 [1-1141-0015-0101] or [1-1141-0015-0111]
16	LIP Bonus	52T	5% (However TDS will not be applicable in case of death of such policy holder)	Life insurance company	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT, 16 12

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No	Head	Sec	Rate of Deduction	Deducting Authority	Tax Zone
17	Local L/C	52U	3% on total proceeds exceeding Tk.5 lac (But not applicable on rice, wheat, potato, onion, garlic, peas, chick peas, lentils, ginger, turmeric, dried chills, pulses, maize, coarse flour, flour, salt, edible oil, sugar, black peeper, cinnamon, cardamom, clove, date, cassia leaf, computer, computer accessories, jute, cotton, yarn and all kinds of fruits.)	Bank or Financial Institution	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]
18	Revenue sharing or any license fee or other fees paid by mobile phone company to regulatory authority	52V	10%	Mobile phone company	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16 13

TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction/Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
19	Trade License renewal	52K	Tk. 500/- for Dhaka & Chittagong city corporation	City Corporation and Pourashava	Dhaka Zone-3 [1-1141-0010-0101] or [1-1141-0010-0111]
			Tk. 300/- for other city corporation and pourashava at district headquarters.		
			Tk. 100/- for other pourashava		
20	Freight forward agency commission	52M	15%	Person responsible for making such payment.	Dhaka Zone-6 [1-1141-0025-0101] or [1-1141-0025-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section / Rule	Rate of Deduction/Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
21	L/C commission	52(l)	5%	Bank	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]
22	Import [82C] [But AIT on raw material import is not 82C]	Sec. 53 & Rule 17A	5% [But 2% on petroleum oil], raw skin, M.S. rod and mobile phone set] (But in case of water vessels and other floating structures for breaking up the rate is Tk. 800/ per ton)	The Commissioner of Customs.	Dhaka Zone-14 [1-1141-0105-0101] or [1-1141-0105-0111]
23	Service charge on services provided by a resident to any foreign person	52Q	10%	Bank	Dhaka Zone-11 [1-1141-0090-0101] or [1-1141-0090-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
24	IGW Service on International phone call [82C]	52R	1.5%	Tax to be deducted from IGW by Bank	Dhaka Zone-15 [1-1141-0110-0101] or [1-1141-0110-0111]
			7.5%	Tax to be deducted from ICX by IGW	Dhaka Zone-15 [1-1141-0110-0101] or [1-1141-0110-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Sec.	Rate of Deduction/Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
25	House rent	53A	5% [But DCT has power to issue non-TDS certificate to the owner of the house property against application if there is genuine ground] Sec-53A(3)	<input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Body corporate <input type="checkbox"/> Company <input type="checkbox"/> Bank <input type="checkbox"/> Insurance <input type="checkbox"/> University <input type="checkbox"/> Medical/Dental/Engineering colleges <input type="checkbox"/> Any school & college <input type="checkbox"/> Any Hospital, Clinic or Diagnostic Centre	Dhaka Zone-7 [1-1141-0030-0101] or [1-1141-0030-0111]
26	Shipping Business of a resident [82C]	53AA	5% of total freight received/receivable in or out of Bangladesh (but if service rendered between 2 or more foreign countries then the rate is 3%).	The Commissioner of Customs.	Dhaka Zone-10 [1-1141-0085-0101] or [1-1141-0085-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section / Rule	Rate of Deduction/Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
27	Manpower export [82C]	53B/17C	10% on per head service charge	Bureau of Manpower.	Dhaka Zone-4 [1-1141-0015-0101] or [1-1141-0015-0111]
28	Rent of conference hall and convention centre	52P	5%	<input type="checkbox"/> Company <input type="checkbox"/> NGO <input type="checkbox"/> University <input type="checkbox"/> Medical/Dental/Engineering colleges.	Dhaka Zone-4 [1-1141-0015-0101] or [1-1141-0015-0111]

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT, 16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section / Rule	Rate of Deduction/ Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
29	Export [82C]	53BB & 53BBBB	Jute export=0.60% (as per SRO no 207 date 29/6/2016) Other than jute=0.70% (as per SRO no 258 date 10/8/2016)	Bank	Dhaka Zone-4 1-1141-0015-0101 or 1-1141-0015-0111
30	Share trading house [82C]	53BBB	0.05% on transaction value (other than Bond)	DSE & CSE	Dhaka Zone-7 1-1141-0030-0101 or 1-1141-0030-0111
31	Public Auction [82C]	53C/ 17D	5% (in case of tea auction the rate is 1% only)	<input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Any authority <input type="checkbox"/> Corporation <input type="checkbox"/> Company <input type="checkbox"/> Bank <input type="checkbox"/> Insurance	Dhaka Zone-9 1-1141-0080-0101 or 1-1141-0080-0111

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT. 16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Sec	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
32	Signing money paid by real estate developer company to land owner	53P	15%	Real estate developer company	Dhaka Zone-5 [1-1141-0020-0101] or [1-1141-0020-0111]
33	Actor/Actress	53D	10% (not applicable if total payment does not exceed Tk. 10,000/-)	Program producer	Dhaka Zone-12 [1-1141-0095-0101] or [1-1141-0095-0111]

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TABLE OF WITHHOLDING TAX(CONT.)

Sl. No.	Head	Section	Rate of Deduction/ Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
34	Rental Power [82C]	52N	6%	PDB	Dhaka Zone-13 [1-1141-0100-0101] or [1-1141-0100-0111]
35	Salary of foreign technician serving in any diamond cutting industry [82C]	52(O)	5%	Diamond cutting industry	Dhaka Zone-9 [1-1141-0080-0101] or [1-1141-0080-0111]
36	Export Cash Subsidy [82C]	53DDD	3%	Bank	Dhaka Zone-4 [1-1141-0015-0101] or [1-1141-0015-0111]

TDS PREPARED BY RANJAN KUMAR BHŌWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section / Rule	Rate of Deduction/ Collection	Deducting Authority	Tax Zone
37	Distributorship Commission	53E(1)	10% on discount, commission, fees, dealer's promotional charges or any other payment called by whatever name.	Company	Dhaka Zone-12 [1-1141-0095-0101] or [1-1141-0095-0111]
		53E(2)	If any company sells its products to its distributors at a price lower than MRP, then @5% on DPX6%		
38	Foreign Buyer's Agent	53EE	10%	Bank.	Dhaka Zone-6 [1-1141-0025-0101] or [1-1141-0025-0111]
39	Bank Interest	53F/ 17H	10%	Bank/ Financial Institution	Dhaka Zone-1 [1-1141-0001-0101] or [1-1141-0001-0111]
			The rate will be 15% if the deposit holder, holding deposit more than Tk.1,00,000/ but does not possess 12 digit TIN		
			10% TDS will be applicable on public university, MPO enlisted educational institution, ICAB, ICMAB and ICSB though they have no TIN.		
			5% on interest of any fund		

TDS PREPARED BY RANJAN KUMAR BHŌWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT.16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
40	Real estate business [82C]	53FF	Tk. 1600 or Tk. 1,500 or Tk.1,000 or Tk.700 or Tk.300 per square meter for residential building or apartment depending on the area	Registration Authority.	Dhaka Zone-5 [1-1141-0020-0101] or [1-1141-0020-0111]
			Tk. 6,500 or Tk. 5,000 or Tk.3,500 or Tk.2,500 or Tk.1,200 per square meter for commercial space depending on the area		
	Land developer [82C]	53FF	5% of the deed value of land at any area of Dhaka, Gazipur, Narayangonj, Munshugonj, Manikgonj, Narshindi & Chittagong district.		
			3% in other district.		

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT, 16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
41	Insurance Commission paid to agent of insurance company [82C]	53G	5% [At the time of payment or at the time of credit whichever is earlier]	Insurance Company.	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]
42	Surveyor of General Insurance [82C]	53GG	15% [At the time of payment]	General Insurance Company.	L.T.U. [1-1145-0010-0101] or [1-1145-0010-0111]

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Table of Withholding Tax (cont.)

SL	Head	Section	Rate of deduction/provision	Tax Zone
43	Sale of land or land & building	53H read with rule 17(II)	Different rates depending on the area of Dhaka and Chittagong. Rate for commercial and residential land and building is also different.	Central Survey Zone-Dhaka 1-1145-0005-0101 or 1-1145-0005-0111
			Within the jurisdiction of RAJUK and CDA except areas in schedule (a) and (b) 4% of the deed value	
			Within the jurisdiction of Gazipur, Narayangonj, Munshiganj, Manikgonj, Narsingdi, Dhaka and Chittagong districts (excluding RAJUK, CDA and Dhaka both City Corporation area) 3% of the deed value	
			Areas within the jurisdiction of Paurasahova of any district headquarter 3% of the deed value	
			Areas of any other Paurasahova 2% of the deed value	
Other areas not specified in schedule (a), (b) and (c) 1% of the deed value				

Deducting Authority:
Sub-Register

TDS PREPARED BY RANJAN KUMAR BHOWMIK FCMA UPDATED UPTO 15/07/16 BASED ON FINANCE ACT, 16

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
44	Registration of leasehold property	53HH	4% (Applicable for more than 10 years lease)	Sub Registrar	Central Survey Zone-Dhaka [1-1145-0005-0101] or [1-1145-0005-0111]
45	Transfer of Share of Shareholder of Stock Exchange [82C]	53N	15%	DSE & CSE	Dhaka Zone-3 [1-1141-0010-0101] or [1-1141-0010-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
46	Interest on post office savings bank	53I	10%	Post Office.	Dhaka Zone-9 [1-1141-0080-0101] or [1-1141-0080-0111]
47	Rental value of vacant land or plant & machinery	53J	5%	<input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Corporation <input type="checkbox"/> Company <input type="checkbox"/> Bank <input type="checkbox"/> Insurance <input type="checkbox"/> University <input type="checkbox"/> Medical/Dental/Engineering college	Dhaka Zone-15 [1-1141-0110-0101] or [1-1141-0110-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction/ Collection	Deducting Authority	Tax Zone in whose name tax to be deposited
48	Direct advertisement to newspaper, magazine or private TV channel or private radio station or any web site (including airtime purchase of private television channel, private radio station or such web site)	53K	4%	<input type="checkbox"/> GO <input type="checkbox"/> NGO <input type="checkbox"/> Corporation <input type="checkbox"/> Company <input type="checkbox"/> Bank <input type="checkbox"/> Insurance <input type="checkbox"/> University <input type="checkbox"/> Medical/Dental/ Engineering college.	Dhaka Zone-5 [1-1141-0020-0101] or [1-1141-0020-0111]
49	Soft Drinks (including mineral or bottled water)	52S	4% (on the value of such soft drinks and mineral water determined by the VAT Authority)	The Security Printing Corporation, Gazipur	Gazipur Zone [1-1141-0120-0101] or [1-1141-0120-0111]

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TABLE OF WITHHOLDING TAX (CONT.)

Sl. No.	Head	Section	Rate of Deduction	Deducting Authority	Tax Zone in whose name tax to be deposited
50	Capital gain from transfer of shares by sponsor shareholders and directors of listed companies [82C]	53M	5%	DSE & CSE	Dhaka Zone-3 [1-1141-0010-0101] or [1-1141-0010-0111]
51	Cash Dividend	54	Individual @ 10% [if there is no 12 digit TIN then @15%] Company @ 20%	Company.	Dhaka Zone-13 [1-1141-0100-0101] or [1-1141-0100-0111]
52	Lottery [82C]	55	20%	Person responsible for such payment.	Dhaka Zone-9 [1-1141-0080-0101] or [1-1141-0080-0111]

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SL	Head of deduction	Sec.	List of services and rate of deduction/provision			
53.	Non resident	56	Head of payment	Rate	Head of payment	Rate
			Interest	20%	Certification, rating etc.	20%
			Advertisement making	15%	Charge or rent for satellite, airtime or frequency	20%
			Advertisement broadcasting	20%	Contractor or sub-contractor of manufacturing, process or conversion	7.5%
			Advisory or consultancy service	20%	Supplier	7.5%
			Air transport or water transport	7.5%	Management service including event management	20%
			Architecture, interior design or landscape design	20%	Insurance premium	10%
			Artist, singer or player	30%	Commission	20%
			Capital gain	15%	Dividend- (a) Company – (b) Other than company	20% 30%
			Legal service	20%	Pre -shipment inspection service	20%
			Machinery rent	15%	Professional / technical services	20%
			Salary or remuneration	30%	Exploration or drilling in petroleum operations	5.25%
			Survey for oil or gas exploration	5.25%	Any service for making connectivity between oil or gas field and its export point	5.25%
			Royalty, license or payment related to intangibles	20%		
			Any payment against any services not mentioned at this section & Any other payments	20% 30%		

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TIME LIMIT FOR DEPOSITING WITHHOLDING TAX

- [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
 - [4] Where the deduction or collection was made in the last two working days of the month of June of a year, the payment shall be made to the credit of the Government on the same day on which the deduction or collection was made.
- (Rule-13)
- Deduction from salary may be deposited quarterly with prior permission (Section-59 & Rule-13)
 - Deducting authority will have to issue certificate of TDS within 2 weeks of the months following the month of deduction or within such time as it is convenient in the form prescribed by the NBR at Rule-18
- (Section-58 & Rule-18)

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CONSEQUENCE OF NON-COMPLIANCE

- ❖ The deducting authority will be deemed to be an assessee in default and shall be personally liable to pay the taxes [sec. 57(1)]
- ❖ Additional 2% per month is also to be paid.[sec. 57(2)]
- ❖ It may be treated as an offence which is punishable with imprisonment for a term up to 1 year with or without fine if deducting authority fails to deduct/collect tax without reasonable cause.[sec. 164(a)]
- ❖ Expenditure will be treated as income for non deduction/ collection of tax at source [sec. 30]
- ❖ Where a person issues a TDS certificate without actual TDS, he shall be personally liable to pay the amount.[sec. 57A]

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WITHHOLDING TAX RETURN

- Every company or co-operative society or NGO shall have to file withholding tax return to the concerned DCT at every 6 months interval at the form prescribed at Rule-24A accompanied by copy of treasury challan as a proof of TDS.
- 1ST Return by 31st January and the 2nd return by 31st July. DCT may extend maximum 15 days time to submit such withholding tax return.
- DCT can do audit after taking approval from the Board but 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-75AA]

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WITHHOLDING TAX RETURN FORM

Return form at a glance:

- 1 Name of the person
- 2 Type of the person
- 3 TIN
- 4 TCAN
- 5 Circle & Tax Zone
- 6 Deduction/collection period
- 7 Address, phone & fax number, e-mail, web address
- 8 Main business (sector)
- 9 Particulars of tax deducted/collected
- 10 Verification [Rule-24A]

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Ret 4)

Tax Holiday

Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

Introduction: -

Tax holiday has been started to allow as a tax incentive for industrialization in this region since 1959 by introducing new section 15BB in the then Income Tax Act 1922. In 1972, the tax holiday system was withdrawn by repealing section 15BB. But the incentive was re-introduced by incorporating section 14A in the Income Tax Act 1922 by the Finance Act 1974 with effect from the assessment year 1974-75 for industrial undertakings (established on or after 1st July 1973 having subscribed and paid up capital not less than Tk. 1 Lakh and not more than Tk. 35 Lakh) and also for tourist industries (established on or after 01 January 1976 having subscribed and paid up capital not less than tk. 1 lakh and not more than Tk. 10 Core) with the tax holiday period of 9 years for the prescribed areas and of 5 years for other areas.

With the introduction of the Income tax Ordinance 1984, the provision of tax holiday has been maintained under sections 45 and 46 primarily. The provision was applicable for industrial undertakings (established between 01 July 1974 and 30 June 1985) and tourist industries (established between 01 January 1976 and 30 June 1985) having subscribed and paid-up capital not less than Tk 1 lakh for any industries. The tax holiday incentive was first extended for the industries up to 30 June 1990 by the Finance Act 1985, then up to 30 June 2000 by the FA 1989. But subsequently through FA 1991 the incentive was restricted for the industries established within 30 June 1995 with an apparent intention of withdrawing the tax holiday incentive since 1995-96.

New section 46A has been introduced through FA 1995 allowing the tax holiday incentive for industrial undertakings, tourist industries and physical infrastructure facilities established between 01 July 1995 and 30 June 2008 with having subscribed and paid up capital not less than Tk. 1 Lakh. It is extended for another 3 years through inserting section 46B with some minor changes and again for 2 years through inserting section 46C with having subscribed and paid up capital not less than Tk. 20 Lakh. Tax holiday facility has further been extended up to 30th June, 2019 through Finance Act, 2014.

(1) Type of Industries eligible for tax holiday.

Two types of industries are eligible to apply for tax holiday: -

1. Industrial Undertaking;
2. Physical Infrastructure facility.

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The Following categories of industries are eligible for the definition of Industrial Undertakings

01. Active pharmaceuticals ingredient industry and radio pharmaceuticals industry;
02. Barrier contraceptive and rubber latex;
03. Basic chemicals or dyes and chemicals;
04. Basic ingredients of electronic industries (e.g. resistance, capacitor, transistor, integrator, circuit);
05. Bio-fertilizer;
06. Biotechnology;
07. Boilers;
08. Brick made of Automatic Hybrid Hoffmann Kiln or Tunnel Kiln Technology
09. Compressors;
10. Computer hardware;
11. Energy efficient appliances;
12. Insecticide or pesticide;
13. Petro-chemicals;
14. Pharmaceuticals;
15. Processing of locally produced fruits and vegetables;
16. Radio-active (diffusion) application industry (e.g. developing quality or decaying polymer or preservation of food or disinfecting medicinal equipment);
17. Textile machinery;
18. Tissue grafting; or
19. Any other category of industries as the Govt. may notify in the official Gazette,
20. Automobile, bi-cycle and tyre manufacturing company [F.A.2015]

The following categories of infrastructure are within the meaning of Physical infrastructure facility:-

01. Deep sea port;
02. Elevated expressway;
03. Export processing zone;
04. Flyover;
05. Gas pipe line;
06. Hi-tech park;
07. ICT village or software technology zone;
08. IT Park;
09. Large water treatment plant and supply through pipe line;
10. Liquefied Natural Gas terminal and transmission line;
11. Mono-rail;
12. Rapid transit;
13. Renewable energy (e.g. energy saving bulb, solar energy plant, windmill);
14. Sea or river port;
15. Toll road or bridge;
16. Underground rail;
17. Waste treatment plant; or
18. Any other category of industries as the Govt. may notify in the official Gazette,

(2) Conditions for eligibility: -

Some conditions are required to be fulfilled for tax holiday under section 46B and 46C of the Income Tax Ordinance, 1984. These are as follows: -

(a) The undertaking must be owned and managed by either a body corporate established by or under an act of parliament with its head office in Bangladesh.

or

a company as per Companies Act, 1913/1994 with its registered office in Bangladesh having a subscribed and paid up capital of not less than taka 20, 00,000/-(Tk. Twenty lakh) on the date of commencement of commercial production or operation.

(b) The undertaking is not formed by splitting up or by reconstruction or reconstitution of business already in existence or by transfer to a new business of any plant and machinery used in business, which was being carried on in Bangladesh at any time before the commencement of the new business.

(c) The undertaking must be approved by the NBR for the purpose of tax holiday.

(d) The undertaking shall have to obtain clearance certificate from the Directorate of Environment for the relevant income year.

(3) Application procedure and its disposal by the NBR.

(a) Tax holiday application is to be submitted to the NBR within 6 months from the end of the month of commercial production or operations in the form prescribed in Rule 59A, in duplicate, duly signed and verified by the MD or Director of the company.

(b) NBR shall give its decision within 45 days from the date of receipt of the application by the Board. Otherwise the undertaking shall be deemed to have been approved.

(c) NBR shall not reject any application unless the applicant is given a reasonable opportunity of being heard.

(d) If NBR rejects any tax holiday application, the undertaking can submit a review application to the Chairman of the Board within 4 months from the date of receipt of the rejection letter. Chairman then will either review himself or will constitute a committee consisting of 3 Member of the NBR who will review its previous decision and pass such order as it think fit. There is no time limit for disposal of the review application. The decision of the review committee of the NBR as final and conclusive and there is no scope to submit further review application.

4) Withdrawal and Cancellation of tax holiday.

a) Any undertaking after getting tax holiday from the NBR can write to the NBR for cancellation of tax holiday within 1 year from the date of granting such tax holiday.

b) NBR may also cancel/suspend fully/partially any tax holiday in the public interest.

c) The DCT in the course of assessment may also withdraw the tax holiday from the relevant assessment year if he is satisfied that one or more of the required conditions are not fulfilled.

d) Tax holiday shall be deemed to have been withdrawn for the assessment year in which the following transaction is made:-

(1) If the company is engaged in any commercial transaction with another company having one or more sponsor shareholders.

(2) If the DCT finds that the company has purchased or sold goods at higher/lower price than the normal market price with the intention to reduce the income of another undertaking/company.

(3) If the DCT finds that the company employed/allowed any foreign national to work without prior approval from the BOI or any other competent authority of the Govt.

(5) Period of Tax holiday for industrial undertaking

Area	Years	Rate of exemption	
		If it is established within 30/6/13	If it is established from 01/7/13 to 30/6/19
(a) Dhaka and Chittagang division (excluding Dhaka, Narayangonj, Gazipur and Chittagong district and also the hill district of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%	1st 2 years.....100%
		2nd 2 years..... 50%	3 rd year-----60%
		Last year.....25%	4 th year-----40%
			5 th year-----20%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division [excluding city corporation area] and the hill district of Rangamati, Bandarban and Khagrachari	10	1st 3 years.....100%	1st 2 years.....100%
		2nd 3 years..... 50%	3 rd year-----70%
		Last year.....25%	4 th year-----55%
			5 th year-----40%
			6 th year-----25%
			7 th to 10 th year-----20%

Provided that bio-fertilizer industry and petro-chemical industry will get tax holiday for 5 years even if it is set up in the district of Dhaka, Narayangonj, Gazipur and Chittagong.

(6) Period of tax holiday for physical infrastructure facility irrespective of the location

Rate of exemption	
If it is established within 30/6/13	If it is established from 01/7/13 to 30/6/19
1 st 5 years.....100%	1 st 2 years.....100%
2 nd 3 years.....50%	3 rd year-----80%
Last 2 years.....25%	4 th year-----70%
	5 th year-----60%
	6 th year-----50%
	7 th year-----40%
	8 th year-----30%
	9 th year-----20%
	10 th year-----10%

(7) Conditions to be fulfilled after getting tax holiday:-

- (a) The profits and gains of the tax holiday company shall be computed separately;
 - (b) Any loss during the tax holiday period cannot be carried forward beyond the tax holiday period.
 - (c) Only normal depreciation is applicable for tax holiday enjoying companies
 - (d) 30% + 10% = 40% year wise tax holiday income is to be reinvested. 30% is to be reinvested in the same company or in a new industry within the tax holiday period or maximum within 1 year from the end of the tax holiday period. Another 10% is to be reinvested in the shares of listed company in each year within 3 months from the end of the income year.
- Otherwise income of the year or years will subject of tax. However, the quantum of reinvestment will be reduced by the amount of dividend if declared by the company.
- (e) Company shall not employ/allow any foreign national to work without prior approval from the BOI or any other competent authority of the Govt.

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(f) The income of the tax holiday company under the following heads are taxable; _

- (1) Capital gain
- (2) Any income arising from the disallowances u/s 30.
- (3) Dividend is taxable at the hand of shareholders

(8) Documents to be submitted with tax holiday application:-

The following documents are to be submitted along with tax holiday application:-

- (1) An attested copy of certificate of incorporation;
- (2) An attested copy of the Memorandum and Articles of Association of the company;
- (3) A certificate of commencement of business;
- (4) In case the company has already commenced business, certified copy of the audited balance sheet and profit and loss accounts for the period for which the accounts have been prepared;
- (5) In case of industrial undertaking/physical infrastructure facility for which approval is sought has been acquired for another party, an attested copy of the agreement between the applicant company and the seller enter into for the acquisition of the industrial undertaking/physical infrastructure with list and value of assets acquire;
- (6) A certificate to the effect that the industrial undertaking/physical infrastructure facility has not applied or shall not apply for accelerated depreciation allowance under paragraph 7 or 7A of the Third Schedule to the Ordinance.

(9) Tax exemption on income of cinema hall/Cineplex and industry producing rice bran oil [6th Schedule (Part-A) Para 44 and 45]

Income of cinema hall/Cineplex and income from industry producing rice bran oil will also be tax free like tax holiday but without any tax holiday application to NBR if it starts commercial exhibition/production within 01/07/2012 to 30/06/2019. Time and condition of tax exemption is tabulated below:

Area	Years	Rate of exemption
(a) Dhaka and Chittagang division (excluding the hill district of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%
		2nd 2 years..... 50%
		Last year.....25%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division (including the hill district of Rangamati, Bandarban and Khagrachari)	10	1st 3 years.....100%
		2nd 3 years..... 50%
		Last 4 years.....25%

(10) Tax exemption on income of industry set up at EPZ:

Industries set up at EPZ (including private EPZ) from 01/01/2012 onward will automatically get tax exemption as per SRO no 219 dated 04/7/2011. The area and period of tax exemption is tabulated below:

Area	Years	Rate of exemption
(a) Dhaka and Chittagang division (excluding the hill district of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%
		2nd 2 years..... 50%
		Last year.....25%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division (including the hill district of Rangamati, Bandarban and Khagrachari)	7	1st 3 years.....100%
		2nd 3 years..... 50%
		Last year.....25%

The End

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Penalty and Prosecution

Ranjan Kumar Bhowmik FCMA
Member

Taxes Appellate Tribunal, Dhaka

Date: 21 Aug 2016

Introduction

There are provisions for imposition of penalties on fraudulent assessee at chapter XV (section 123-133) and prosecution at chapter XXI (section 164-171) of the Income Tax Ordinance, 1984.

Some important points to remember:

- ❖ The penalty is the additional amount of income tax though as per definition of tax at section 2 (62), tax includes penalty.
- ❖ The power to impose penalty is given mainly to the Deputy Commissioner of taxes (DCT) and in case of concealment of income and submission of fake audit report the power to impose penalty is also given to the Commissioner of Taxes (Appeal), Appellate Joint Commissioner of Taxes and Taxes Appellate Tribunal.
- ❖ The power to impose penalty is subject to the prior approval of the Inspecting Joint Commissioner of taxes (IJCT) except in the case of imposing penalty for failure to file return u/s 124.
- ❖ Penal proceedings can be initiated by the DCT only in the course of any proceedings in connection with the regular assessment and no such proceedings can be started after completion of the assessment order.
- ❖ If the penalty proceedings are not finalized but the assessment is completed there is nothing to bar the DCT to impose penalty.
- ❖ There is another restriction that assessee has been heard or has been given a reasonable opportunity of being heard before imposing penalty.
- ❖ No prosecution can be instituted without prior sanction of the Board and Board has power to compound such offences.

Penal Provisions

The penal provisions are tabulated below: -

Sl.	Grounds of Penalty	Reference Section	Amount of Penalty	Pre-conditions/ Comments
1.	Penalty for not maintaining accounts in the prescribed manner	123 (Read with section 35, Rule-8 and Rule-8A)	(a) 1.5 times of the amount of tax payable (Maximum) (b) Tk.100 where the total income does not exceed the threshold limit (Maximum) (c) 50% of tax on house property income or Tk.5,000 whichever is higher in case the owner of the house receiving monthly rent more than Tk.25,000 but violates rules and order of NBR relating to maintenance of register and depositing rent to bank account.	1) Penalty cannot be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. 2) DCT shall not impose the penalty without the previous approval of the IJCT.

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Sl.	Grounds of Penalty	Section	Amount of Penalty	Pre-conditions/ Comments
2.	a) Failure to file return including withholding tax return	124(1)	10% of the last assessed tax or Tk. 1,000/- whichever is higher. plus Tk. 50/- per day of default. Total amount of such penalty will not exceed Tk. 5,000 in case of a new individual assessee who was not previously assessed. 50% of last assessed tax or Tk.1,000 whichever is higher in case of existing individual assessee failed to submit return in time.	Penalty cannot be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard.
	b) Failure to furnish certificate, statement, accounts, etc. required u/s 58, 108, 109, 110 and 184C	124(2)	Tk 500/- plus 250 per month during which the default continues.	-Do-
	c) Failure to furnish information required u/s 113	124(2) Proviso	Tk.25,000/- plus 500/- per day during which the default continues.	-Do-
	d) Penalty for using fake T.I.N. or T.I.N. of another person	124A	Tk.20,000/(maximum)	1) Penalty cannot be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. 2) DCT shall not impose the penalty without the previous approval of the IJCT
	e) Failure to verify TIN	124AA	Maximum Tk.50,000/- (NBR has given 25 authorities to verify TIN)	Do
3	Failure to pay advance tax	125	The amount of short fall (maximum)	Do
4.	Non-compliance with notice u/s 79, 80, 83(1) and 83(2)	126	The amount of tax subsequently assessed (maximum)	-Do-
5	Failure to pay tax u/s 74 on the basis of return	127	25% of the short fall (maximum)	-Do-

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Sl.	Grounds of Penalty	Section	Amount of Penalty	Pre-conditions/ Comments
6.	Penalty for concealment of income	128	15% of the tax evasion. If the tax evasion is detected after one year or more, then the amount of penalty will increase by additional 15% for each earlier assessment year	-Do-
7.	Penalty for false audit report by Chartered Accountant	129A	Not less than Tk.50,000/ and not more than Tk. 2,00,000/	-Do-
8.	Penalty for submitting fake audit report	129B	Tk.1,00,000/- (fixed) DCT, AJCT, CT(Appeal) and Taxes Appellate Tribunal can impose such penalty.	-Do-
9.	Penalty for default in payment of tax .	137	The amount of arrear tax (maximum)	If the amount of tax on which penalty was imposed has been fully reduced by the order of any Appeal/ Tribunal/ Supreme court, the penalty shall automatically be cancelled and if any penalty paid shall be refunded.
10.	Failure to deduct/collect tax at source or having deducted/collected but fails to deposit into national exchequer.	57	2% per month of the amount of tax to be deducted, collected or deposited	(1)The deducting authority will also be treated as an assessee in default. (2)Expenditure will be disallowed as per section 30(a) and 30(aa)
11.	Failure to give notice to the DCT regarding the discontinuance of business	89(3)	The amount of tax subsequently assessed (maximum)	No pre-condition.
12.	Failure to submit statement of international transaction as per section 107EE	107HH	Maximum 2% of the value of such international transaction.	

The above-mentioned sections prescribe the maximum penalty (except section 124,128 and section 57 where penalty is fixed). But the fact is that the ceiling of penalty does not mean that penalty must necessarily be imposed in every case. The discretion of the DCT to levy or not to levy a penalty is still preserved by the penalty sections mentioned above.

Prosecution (Imprisonment for punishable offence):

The prosecution provisions are tabulated below: -

Sl.	Nature of Offence	Reference Section	Imprisonment	Comments
1.	Failure to deduct/collect tax at source or having deducted/collected but fails to deposit into national exchequer.	164(a)	1 year (Maximum) with or without fine.	[1] No prosecution can be instituted without prior sanction of the NBR. [2] NBR has the power to compound offences.
2.	Non-compliance of notices u/s 77,79, 80 and 83	164(b)	1 year (Maximum) with or without fine.	do
3.	Failure to file return u/s 75 or in compliance with notice u/s 77 and 93	164(c)	1 year (Maximum) with or without fine.	do
4.	Refuses to furnish information required u/s 113	164(cc)	1 year (Maximum) with or without fine.	do
5.	Refuses to permit inspection or to allow copies to be taken in accordance with the provisions of section 114.	164(d)	1 year (Maximum) with or without fine.	do
6.	Fails to furnish information required u/s 115	164(e)	1 year (Maximum) with or without fine.	do
7	Fails to comply with the requirement u/s 116	164(ee)	1 year (Maximum) with or without fine.	do
8	Fails to comply with the requirement u/s 116A	164(eee)	1 year (Maximum) with or without fine.	do
9.	Refuses to permit or obstructs the income tax authority to exercise power u/s 117.	164(f)	1 year (Maximum) with or without fine.	do
10.	Makes false statement at the verification of the return or other documents.	165(a)	Minimum 3 months but maximum up to 3 years with or without fine.	do
11.	Willfully aids, abets, assists, incites or induces other person to deliver a false return, accounts, statements etc.	165(b)	Minimum 3 months but maximum up to 3 years with or without fine.	do

Sl.	Nature of Offence	Reference Section	Imprisonment	Comments
12.	Refuses to furnish information as may be necessary for the purpose of survey u/s 115	165(d)	Minimum 3 months but maximum up to 3 years with or without fine.	do
13.	Deliberately using fake T.I.N. or T.I.N. of another person	165(A)	3 years (Maximum) with or without fine up to Tk. 50,000/.	do
14.	Submitting fake audit report	165AA	Minimum 3 months but maximum up to 3 years with or without fine up to Tk. 1,00,000	do
15.	Obstructs income tax authority to discharge their function.	165(B)	1 year (Maximum) with or without fine.	do
16.	Giving employment of foreign national without valid work permit	165C	Minimum 3 months but maximum up to 3 years with or without fine up to Tk. 5,00,000	do
17.	Conceals income or deliberately furnishes inaccurate particulars.	166	Minimum 3 months but maximum up to 5 years with or without fine.	do
18.	Disposal of property after the receipt of notice from TRO to prevent attachment.	167	3 years (Maximum) with or without fine.	do
19.	Disclosure of information in contravention of the provisions of section 163	168	6 months (Maximum) with or without fine.	do

Penalty for not maintaining accounts in the prescribed manner (section 123).

As per provision of section 35 income shall be computed in accordance with the method of accounting regularly employed by the assessee in case of the following heads of income: -

1. Income from business or profession.
2. Income from house property
3. Agricultural Income
4. Income from other sources.

Medical practitioners known as doctors, surgeons, physicians, dentists, psychiatrists, homeopaths, veterinary surgeons other than medical practitioners, who do not make any separate charge for consultation but make a charge for the medicines supplied by them and legal practitioners (including income-tax practitioners) accountant and auditors, architects and engineers, are to maintain accounts in the manner prescribed in rule-8.

In case of house property income, the owner shall have to maintain accounts relating to details of rent received if monthly rent received exceeds Tk.25,000 and that rent must be deposited to his bank account (Rule-8A)

Penalty for failure to file Income Tax Return (Section- 124)

The Deputy Commissioner of Taxes has not the absolute power to impose penalty without giving due regard to see the circumstances which causes default on the part of the assessee to file the return on time and if there is any reasonable cause for which he failed to file the return on time penalty should not be imposed. Absence of reasonable cause is necessary to justify a penalty. Mere non-furnishing of, or delay in furnishing a return of income is not enough.

Imposition of penalty is not compensatory but punitive and the proceeding to impose penalty is quasi criminal. It is well settled that the liability to pay penalty does not arise merely on proof of default in filing the return on time and the discretionary power of the authority to impose penalty for failure to file return on time is to be exercised judicially and on consideration of all the relevant circumstances. Penalty may be imposed for not furnishing a return within the time allowed in the notice calling for a return, even if the assessee does furnish a return after the expiration of the time allowed.

Penalty for concealment of income (section 128)

This section prescribes penalty for concealment of income. An assessee who had deliberately filed an incorrect return submitted a revised return when the omission in the first return was on the point of being discovered and the DCT while assessing on the basis of the revised return imposed a penalty under section 128 of I.T. Ordinance, 1984 for concealment of income in the first return.

Concealment of income in the original return would be attracting penalty even if the assessee submits a revised return u/s-78 before the assessment is completed.

This section specifies the different nature of concealment and prescribed the maximum amount of penalty to be imposed depending on the nature and circumstances of the case. For concealing particulars of income or for furnishing inaccurate particulars of income which includes suppression of any item of receipt liable to tax or showing such expenditure which has not been actually incurred or claiming any deduction which is not legally allowable. For such type of concealment DCT shall impose @15% of the tax evasion. If the tax evasion is detected after one year or more, then the amount of penalty will increase by additional 15% for each earlier assessment year.

Penalty for default in payment of tax (section-137)

This section gives discretion to the DCT to impose or not to impose a penalty when an assessee is in default in payment of tax including advance tax. It is not obligatory on the DCT to impose a penalty in every case where there is default in payment of tax and the amount of the penalty is also in his discretion, but the total amount of penalty should not exceed the amount of tax in arrear.

The penalty so imposed under this ordinance shall be in addition to any other liability of the assessee, which he has incurred in any other provisions under this ordinance or under any other law of the country.

TASK

Tax Appeal

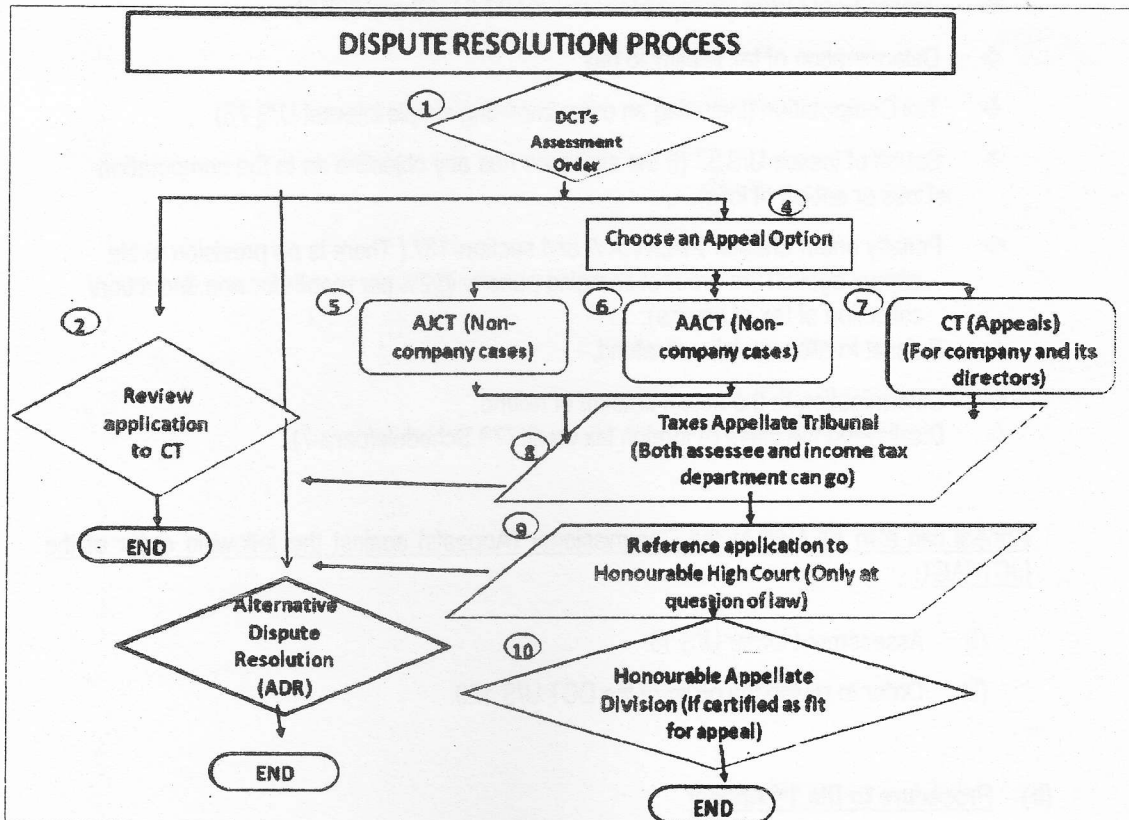
(Set 2) (R# 5)

Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

□

An appeal lies to the Appellate Joint Commissioner of Taxes (AJCT) or to the Commissioner (Appeals), as the case may be, against the order of the Deputy Commissioner of Taxes (DCT). Section 153 gives the right of appeal only to the tax payer and not to the department. Therefore, income tax department cannot appeal against any order of the DCT. But the Inspecting Joint/Additional Commissioner of Taxes (IJCT/IACT) has the power u/s 120 to revise any order passed by the DCT if it is erroneous and prejudicial to the interest of the revenue.

Commissioner of Taxes working in the territorial zone can also exercise his revisional power u/s 121A and pass such order not being an order prejudicial to the interest of the assessee. Therefore, no appeal would lie if a right of appeal is not given at our tax law because appeal is not an inherent right. The sequence of appeal is given below through a flow chart:



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1. First appeal to the AJCT/AAC/Commissioner (Appeals)

Only assessee can file 1st appeal to the Appellate Joint Commissioner of Taxes (AJCT) or Appellate Additional Commissioner of Taxes (AACT) or Commissioner (Appeals) as per jurisdiction. The jurisdiction is usually mentioned at the bottom of the demand notice issued by the DCT. Normally, AACT and Commissioner (Appeals) deal with company cases along with the directors of the company and the AJCT deals with other individual cases.

Appeal to the Commissioner (Appeals) also lies against the order made by the IJCT U/S 10 or U/S 120. It is to be noted here that the right of appeal is given to the assessee. Where an assessment is made on the representative or on the agent of a non-resident, the person beneficially entitled to the income is nevertheless an assessee within the meaning of section 153 and has therefore a right to appeal.

(a) When 1st appeal can be filed

Appeal can be filed by the assessee against the following order of the DCT:

- ❖ Assessment Order (except assessment U/S 81, 82 and 82BB)
- ❖ Determination of tax liability to pay.
- ❖ Tax Computation (including an order imposing simple interest U/S 73)
- ❖ Set-off of losses U/S 37 (If the assessee has any objection as to the computation of loss or set-off of loss).
- ❖ Penalty under chapter XIA, XV, XVI and section-137 (There is no provision to file appeal against the order of charging penalty @2% per month for non deduction/ collection of tax at source).
- ❖ Refusal to allow a claim of refund.
- ❖ Determination to the actual amount of refund.
- ❖ Disallowing the claim of foreign tax credit (7th Schedule(para-7)

Appeal can also be filed to the Commissioner (Appeals) against the following order of the IJCT/IACT:

- (i) Assessment Order U/S 10.
- (ii) Order to revise the order of the DCT U/S 120.

(b) Procedure to file 1st Appeal

The following procedure should be followed to file 1st appeal:

- (i) **Appeal shall be filed at the form prescribed** at Rule -27 and Rule-27A with duly signed and verified.
- (ii) **Appeal fee of TK. 200/-** is to be paid before submission of appeal.
- (iii) **Tax as per return is to be paid** at the time of filing return.

- (iv) **Appeal shall have to be filed within 45 days** from the date of service of demand notice except in case of appeal against the disallowances of the foreign tax credit as per 7th schedule Para-7.

However appeal authorities can entertain an appeal after condoning the delay if he is convinced that assessee has sufficient reason for failure of file appeal in time. Demand notice should be served properly otherwise assessee will get unlimited time. The power to condone such delay is discretionary. Provision for time limitation of 45 days will not attract if demand notice was not served with assessment order (I.T. 88) and Tax computation form (I.T. 30), in which case assessee will get unlimited time for filing appeal. So without I.T.88 and I.T.30 the service of demand notice is not complete. In computing the 45 days, the time required for obtaining a certified copy of such order should be excluded.

Where the 45 days expires on day which is a holiday, the appeal may be made on the day next following such holiday.

(c) Disposal of appeal cases by the appeal authority

The following procedure should be followed by the appeal authority to dispose of an appeal:

- (i) Notice of hearing is to be given to both appellant and the concerned DCT.
- (ii) Appeal authority can make enquiry and call for such particulars as he may require before disposing of an appeal. He can also give instruction to the DCT for further enquiry.
- (iii) Appeal authority can allow new or additional ground of appeal if he is satisfied that the omission of that ground was not willful or unreasonable.
- (iv) Appeal authority will not admit any documentary evidence which was not produced before the DCT unless he is satisfied that appellant was prevented by sufficient cause from producing such evidence before DCT.
- (v) Appeal authority in his judgment can give following decision when an appeal filed against assessment order:
 - a. confirm
 - b. reduce
 - c. Enhance
 - d. Set aside with the direction to make fresh assessment. (only on the ground that notice was not served properly)
 - e. Annul

Enhancement of assessment means increase in the amount of total income or tax. It can be done only after giving the assessee a reasonable opportunity of being heard.

If the AJCT or Commissioner (Appeals) does not enhance the total income but by means of reduction under one head and an increase under another head allows the assessment to remain the same or reduces it, it can not be said to have enhanced merely because income under one head has been increased Where the assessee's income has been assessed under more than one head, even if the assessee's appeal is confined to the income assessed under only one of the heads, the AJCT or Commissioner (Appeals) may enhance the assessment by increasing the amount assessed under another head of income in respect of

which the assessee has not appealed. The reason is that income tax is only one tax and when the assessee goes in appeal then exposes the assessment as a whole.

But appeal authority has no power to enhance the assessment by assessing entirely new sources of income outside the subject matter of the assessment appealed against. He has no jurisdiction to travel beyond the subject matter of the assessment and his power of enhancement relates only to that income which has been subjected to the process of assessment.

On the other hand it is not open to the assessee who has preferred an appeal to withdraw it so as to prevent the Appellate Joint Commissioner of Taxes (AJCT) or Commissioner (Appeals) from enhancing the assessment.

(d) Appeal authority in his judgment can give the following decisions when an appeal filed against penalty order:

- (i) confirm
- (ii) set-aside (only on the ground that notice was not served properly)
- (iii) cancel
- (iv) reduce
- (v) enhance (only after giving reasonable opportunity of being heard)

(e) In any other case, appeal authority can pass such order as they think fit. But the AJCT or Commissioner has no power to review his own order in any case but he is empowered U/S 173 to rectify any mistake apparent from record.

(f) Appeal shall be disposed of by the appeal authority with 150 days from the end of the month of which the appeal was filed and such order shall be communicated to the appellant, DCT and Commissioner of Taxes within 30 days. If the appeal is not disposed of within the period of limitation the appeal so filed shall be deemed to have been allowed.

2. Procedure to file 2nd appeal to the Taxes Appellate Tribunal

- (a) Both assessee and DCT (with prior approval of his Commissioner) can prefer 2nd appeal against the 1st appeal order (Including an order imposing penalty u/s 128 by the AJCT or Commissioner (Appeals). An order of the AJCT or Commissioner (Appeals) refusing to condone delay (if there is any application for condonation) and refusing to admit, or rejecting after hearing, an appeal as time barred, will be treated as an order passed in the appeal and a 2nd appeal would lie to the tribunal.
- (b) **Appeal shall be filed at the form prescribed at Rule-28** with duly signed and verified by the appellant.
- (c) **Tribunal fee of TK.1000/-** is to be paid before submission of 2nd appeal (this fee is not applicable when appeal is filed by the DCT).
- (d) **Assessee has to pay tax @ 10%** of the difference between the tax as per appeal order and tax as per section 74. However, authority to reduce such tax has been given to the Commissioner of Taxes if assessee applies for this.
- (e) **Appeal shall be filed to the Taxes Appellate Tribunal within 60 days** from the date of receiving 1st appeal order.

3. Disposal of appeal by the Taxes Appellate Tribunal

The following procedure should be followed by the Taxes Appellate Tribunal to dispose of an appeal:

- (a) Notice of hearing is to be given to both appellant and the department. Even if the appellant does not appear on the day fixed for hearing, the Tribunal is bound to decide the appeal on merit and cannot dismiss the appeal for default.
- (b) Tribunal may call for such particulars as they may require or can give instruction to the DCT for further inquiry.
- (c) Tribunal will give judgment as they think fit. The power to pass such order as the Tribunal thinks fit can be exercised only in relation to the matters that arise in the appeal. It is not open to the Tribunal to adjudicate or give a finding on a question which is not in dispute and which does not form the subject matter of the appeal.

The Tribunal would be entitled to enhance the assessment as it stands after the appeal order in case of appeal by the department or in case of cross appeal. But when the appeal is filed by the assessee and there is no cross appeal by the department, it is not open to the Tribunal to give a finding adverse to the assessee.

- (d) Since a reference application to the High Court division lies only on a question of law, the Tribunal is the final fact finding authority.
- (e) Appeal shall be disposed of by the Appellate Tribunal **within 6 months** from the end of the month of filing appeal; otherwise appeal so filed shall be deemed to have been allowed. Such order should be communicated within 30 days for the date of order.
- (f) Tribunal has no power to review its own order but they are empowered by section 173 to rectify any mistake apparent from record.
- (g) Tribunal has power to permit an appeal to be withdrawn.
- (h) Decision shall be given in accordance with the opinion of the majority of its members. It is the duty of the members of the Tribunal who heard the appeal in the first instance to formulate clearly the point on which they differ and it is only thereafter that a reference can be made to a third member. After the decision of the third member on the point referred to him the case should go back to the original Bench, since the third member has not given the jurisdiction to decide and dispose of the appeal. In this way decision will be based on the opinion of the majority of the members.

4. Procedure to file reference application to High Court Division of the Supreme Court

- (a) Both assessee and the Commissioner of Taxes (with prior permission from NBR) can file reference application to High Court Division of the Supreme Court only against any question of law arising from the order(including an order under section 173) of the Taxes Appellate Tribunal. An order of the Tribunal dismissing an appeal as time barred or refusing to condone delay is obviously an order of the Tribunal and consequently a reference lies against it. Where assessee is the applicant the Commissioner of Taxes will be the respondent and where the Commissioner of Taxes is the applicant, the assessee will be the respondent.

- (b) Application shall be filed within 90 days from the date of receipt of the Tribunal order at the form prescribed at Rule-29 with duly signed and verified.
- (c) Fee of Tk. 2,000 is to be paid before submission of application. However no fee is needed if application is made by the Commissioner of Taxes.
- (d) Where the assessee is the applicant then 15% or 25% of the difference between the tax as per return and the tax as per tribunal order is to be paid followingly.

	Particulars	Rate	Rate to be applied
i.	If tax demand is below Tk. 1,000,000	15%	On the difference between the tax as per Tribunal order and tax as per return.
ii	If tax demand is more than Tk. 1,000,000	25%	

However NBR has the power to waive or modify the requirement of such payment

- (e) Application shall be in triplicate and accompanied by the following document:
- (i) Certified copy of Tribunal Order
 - (ii) Certified copy of Appeal Order
 - (iii) Certified copy of Assessment Order
 - (iv) Any other document relevant to the question of law which was submitted to the DCT or to the AJCT or to the Tribunal.
- (f) After getting hearing notice from the High Court Division, the respondent shall have to submit the reply in writing at least 7 days before the date of hearing.
- (g) Tax as per Tribunal order shall be payable notwithstanding the pendency of a reference in the High Court Division. The High Court Division may in a proper case stay of recovery proceedings till the disposal of the reference.

5. Disposal of reference application by the High Court Division

- (a) A division bench of not less than 2 Judges will hear the case as per section 98 of the Code of Civil Procedure, 1908. If the judges are equally divided the question on which there is the difference of judicial opinion may be referred to another judge or to a larger Bench and the decision of the majority of the judges would prevail.
- (b) The High Court Division will decide the question of law and deliver its judgment containing the grounds on which the decision is founded. The judgment of the High Court Division as a whole is binding between the parties in the particular case. If the judgment expounds a wrong construction of the Ordinance, an appeal against it is open and there is no other procedure by which it can be corrected.
- (c) The cost of the reference shall be in the discretion of the Court.

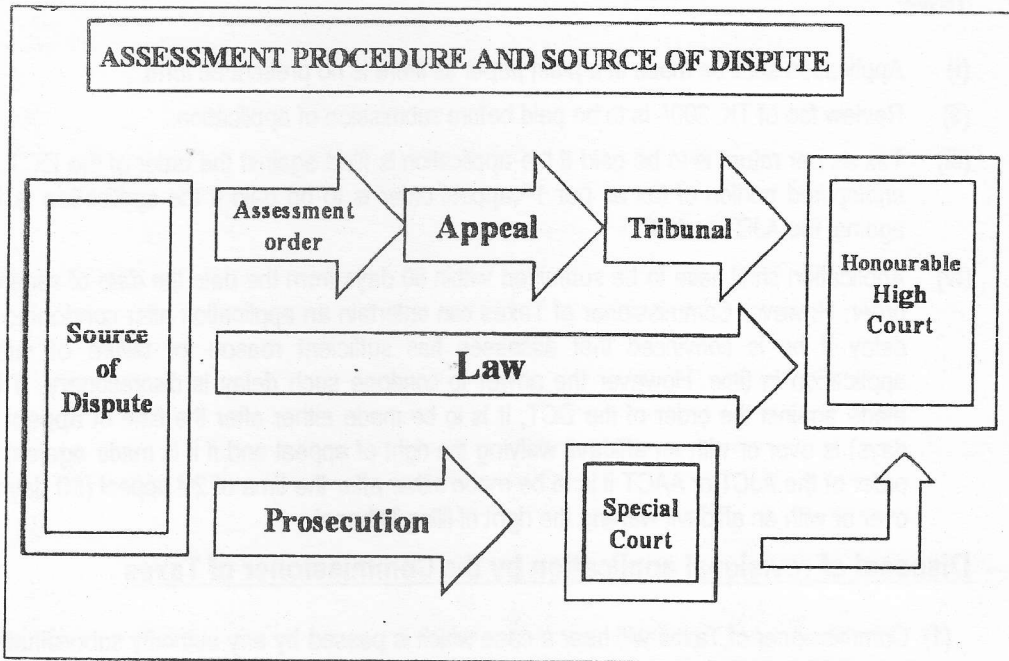
6. Procedure to file appeal to the Appellate Division of the Supreme Court

An appeal shall lie to the Appellate Division against the judgment of the High Court Division provided the High Court Division certifies the case to be a fit one for appeal to the Appellate Division of the Supreme Court. The High Court Division would certify the case as a fit one for appeal and grant leave to appeal to the Appellate Division if a substantial question of law is involved or if the question is otherwise of great public or private importance.

If the High Court Division refuses to certify a case to be a fit one for appeal to the Appellate Division, an application may be made to the Appellate Division for special leave to appeal against the decision of the High Court Division in special circumstances.

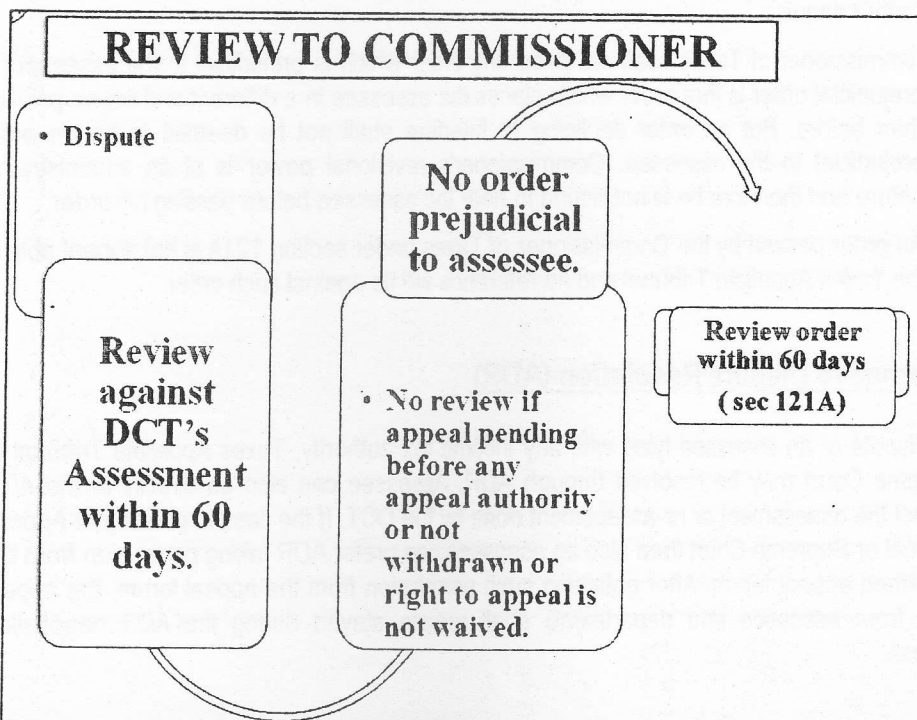
7. Disposal of appeal by the Appellate Division of the Supreme Court

The appellate division will hear and dispose of the appeal as per provision of Code of Civil Procedure, 1908



8. Revision Power of Commissioner of Taxes under section 121A

While section 120 empowers the Inspecting Joint Commissioner of Taxes and Inspecting Additional Commissioner of Taxes to exercise revisional power in favour of revenue, section 121A empowers the Commissioner of Taxes of the territorial zone to exercise revisional power in favour of the assessee.



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The following procedure should be followed to file a review application to the Commissioner of Taxes:

- (i) Application shall be made in a plain paper as there is no prescribed form.
- (ii) Review fee of TK. 200/- is to be paid before submission of application.
- (iii) Tax as per return is to be paid if the application is filed against the order of the DCT and undisputed portion of tax as per 1st appeal order is to be paid if the application is filed against the AJCT or AACT.
- (iv) Application shall have to be submitted within 60 days from the date the date of receiving order. However Commissioner of Taxes can entertain an application after condoning the delay if he is convinced that assessee has sufficient reason for failure of submit application in time. However the power to condone such delay is discretionary. If it is made against the order of the DCT, it is to be made either after the time of appeal (45 days) is over or with an affidavit waiving the right of appeal and if it is made against the order of the AJCT or AACT it is to be made either after the time of 2nd appeal (60 days) is over or with an affidavit waiving the right of filing Tribunal.

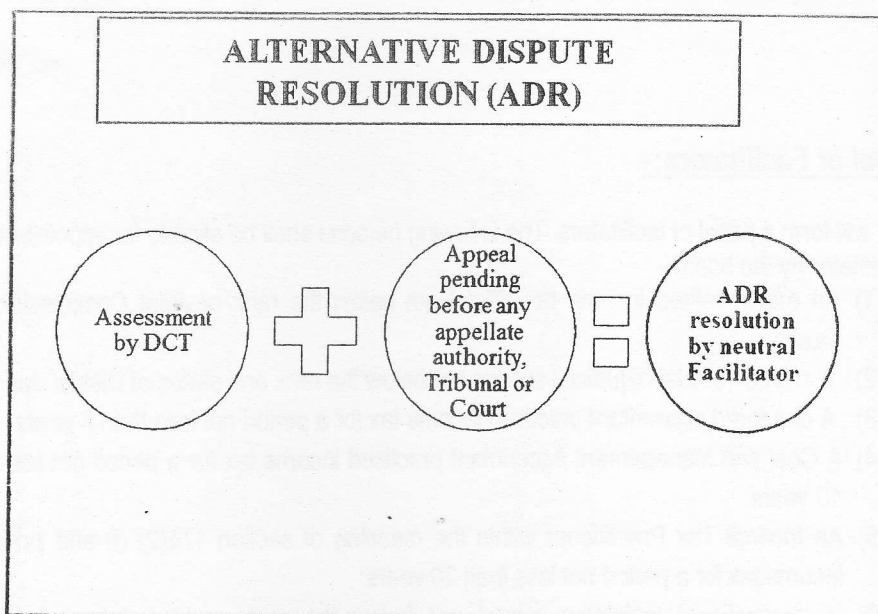
9. Disposal of revisional application by the Commissioner of Taxes

- (1) Commissioner of Taxes will hear a case which is passed by any authority subordinate to him. DCT is directly the subordinate to the Commissioner of Taxes. Though AJCT and AACT are not subordinate to the Commissioner but for the purpose of section 121A, they will be deemed to be the subordinate to the Commissioner so that their order can be revised by the Commissioner of Taxes.
- (2) Commissioner of Taxes will pass order within 60 days from the date of receiving application failing which application will be deemed to have been allowed fully.
- (3) Commissioner of Taxes can make enquiry and can also give instruction to the DCT for further enquiry.
- (4) Commissioner of Taxes shall not pass any order which is prejudicial to the assessee. A prejudicial order is that order which places the assessee in a different and worse position than before. But an order declining to interfere shall not be deemed to be an order prejudicial to the assessee. Commissioner's revisional power is of an administrative nature and therefore he is not bound to hear the assessee before passing his order.
- (5) An order passed by the Commissioner of Taxes under section 121A is not appeal able to the Taxes Appellate Tribunal and no reference will lie against such order.

10. Alternative Dispute Resolution (ADR)

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 is pending at 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.

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Procedure to file application to ADR:-

- (1) 4(four) sets of application at the prescribed form will be submitted to the respective appeal authority.
- (2) Fee Tk. 500/- per year is to be paid and copy of which is to be attached with the application.
- (3) 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.
- (4) Where the case is under process at appeal/tribunal/court, then the copy of permission is to be attached with the application of ADR.
- (5) 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.

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Panel of Facilitators:-

NBR will form a panel of facilitators. The following persons shall be eligible for appointment as a facilitator by the board:-

- (1) An expert retired income tax official not below the rank of Joint Commissioner of Taxes.
- (2) A retired official of judicial service not below the rank and status of District Judge.
- (3) A chartered accountant practiced income tax for a period not less than 8 years.
- (4) A Cost and Management Accountant practiced income tax for a period not less than 10 years.
- (5) An Income Tax Practitioner within the meaning of section 174(2) (f) and practiced income tax for a period not less than 20 years.
- (6) A professional legislative expert not below the rank and a status of Deputy Secretary.
- (7) 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) 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.

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- (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:-

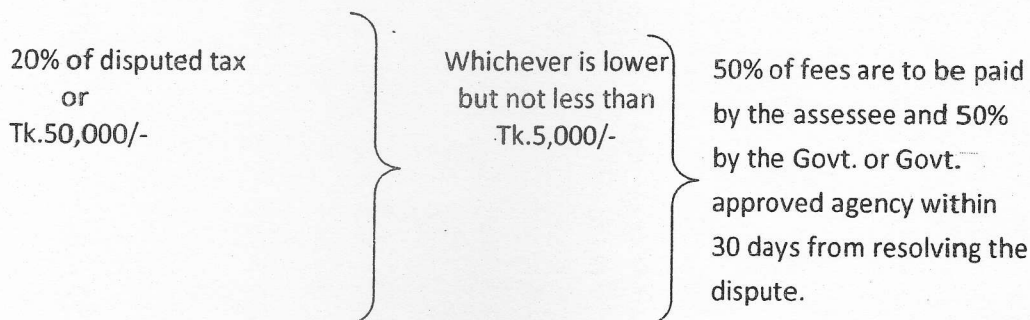
- (1) Where an agreement is reached, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or by the department.
- (2) Every agreement shall be conclusive as to the matters state therein and no matter covered by such agreement shall 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 followingly:-



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TYPES OF ASSESSMENT

Ranjan Kumar Bhowmik FCMA
Member
Taxes Appellate Tribunal, Dhaka

1. PROVISIONAL ASSESSMENT (SEC.81)

The D.C.T. is empowered under section 81 of I. T. Ordinance, 1984 to make provisional assessment in a summary manner—

- i. On the basis of return and statements, where return has been filed (after allowing depreciation as per 3rd Schedule and also after setting off any loss carried forward if any); or
- ii. On the basis of last assessed income, where no return has been filed.

As the name indicates that it is not final, just an assessment done provisionally to collect tax before regular assessment. There shall be no right of appeal against provisional assessment. Rather all penal measures can be enforced to recover tax as per provisional assessment.

2. ASSESSMENT ON THE BASIS OF CURRENT RETURN (SEC.82)

Where in the opinion of the D.C.T. normal return or revised return submitted by the assessee is correct and complete in all respect he shall assess total income on the basis of that return and communicate the assessment order within 30 days from the date of such assessment. The following are the restrictions to do assessment under this section:

- i. Return must be filed within the prescribed time;
- ii. Tax as per return shall be paid before submission of return;
- iii. Such return does not show any loss.
- iv. Such return does not show lesser income than the last assessed income.
- v. Assessment on the basis of such return does not result in refund.

3. **UNIVERSAL SELF-ASSESSMENT (SEC. 82BB)**

Universal self assessment system has been introduced in our country from the assessment year 2007-2008. Every assessee (including company) is eligible to submit return under this system. In this system assessee has to tick the box **universal self assessment** at the top of the return form. DCT will issue a receipt of such return and that receipt will mean that assessment is complete. It is hassle free in the sense that assessment has been done on the basis of return and without any physical presence. Meanwhile, due to this simplicity, it becomes very popular method of submitting return. But it should be kept in mind that return must be correct and complete.

Procedure to submit return under universal self-assessment system:

The procedure is very simple. Assessee has to prepare his return either by himself or with the help of other and then it is to be signed and verified. Assessee has to tick the box **universal self assessment** at the top of the return form and after paying tax (if applicable) submit the return within the last date of submission of return. However, the assessee should keep in mind the following:

- Such return must be submitted within the last date of submission of return or within the extended time allowed by the DCT.
- Tax as per return (if any) is to be paid before submission of return.
- No question is to be raised by the DCT as to the source of initial capital investment in case of new assessee showing new business if at least 25% of initial capital is shown as income. Initial capital formed in such way is to be kept in business and is not transferable in any manner during the year or within 5 years from the end of the assessment year.

Scrutiny assessment:

After submission of return under universal self assessment system, DCT shall scrutiny/process such return and make adjustment

- (1) if there is any arithmetical error in the return and
- (2) if there is any incorrect claim

After necessary adjustment DCT will send demand notice along with income computation sheet to the assessee. The time limit is 12 months from the end of the assessment year within which such intimation is to be sent to the assessee.

If as a result of scrutiny assessment more tax to be paid by the assessee then DCT shall have to give the assessee a reasonable opportunity of being heard.

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Tax audit:

The return submitted at this system may, afterwards, be selected by the NBR or its subordinate authority (if so authorized by the Board) for audit. The Board will determine the manner of such selection.

If return filed under universal self-assessment scheme showing at least 20% higher income than the income assessed or shown in the immediate preceding assessment year, then it shall not be selected for tax audit by the NBR. But the conditions are:

1. Return is to be accompanied by corroborative evidences in support of tax exempted income (if any).
2. Return is to be accompanied by bank statement in support of taking loan (if any) exceeding taka 5 lac.
3. Return does not show any receipt of gift
4. Return does not show any income on which reduced tax rate is applicable.
5. Return does not show any refund

If the return is selected for audit, then DCT will proceed to make fresh assessment by issuing notice under section 83(1) for hearing and he will make assessment within 2 years from the end of the assessment year. Otherwise it will be barred by time limitation. Assessment can be done under section 83(2) or under section 84 as the situation permits.

Re-open the universal self assessment under section 93:

If any concealment has been detected in the return submitted by the assessee under universal self assessment scheme within 6 years from the end of the assessment year then the DCT may re-open the case and proceed to assess further.

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4. Minimum Tax (SEC. 82C)

The following 27 heads of deduction shall be deemed to be the minimum tax:

- 1) Contract, supply, manufacture, process, conversion, printing, packaging & binding (sec 52+Rule 16)
- 2) Royalties (section 52A)
- 3) C&F agency commission (section 52AAA)
- 4) Band roll in case of Handmade cigarette (section 52B)
- 5) Compensation against acquisition of property (section 52C)
- 6) Interest on all type of savings instruments (section 52D)
- 7) Travel agent (section-53JJ)
- 8) Rental power (section 52N)
- 9) Salary of foreign technicians serving in a diamond cutting industry (section-52 O)
- 10) International gateway service(IGS)on international phone call (section 52R)
- 11) Import [other than raw-material import] (section 53+Rule 17A)
- 12)Shipping Agency commission(section 53AA)
- 13)Manpower export (section 53B+Rule 17C)
- 14)Export (section 53BB + 53BBBB)
- 15)Shareholder of Stock Exchange (section-53BBB)
- 16)Public auction (section 53C+Rule 17D)
- 17)Non-resident courier (section 53CCC)
- 18)Export cash subsidy (section 53DDD)
- 19)Foreign buyer's agent (section 53EE)
- 20) Bank interest of Public University, MPO enlisted institution, ICAB, ICMA, ICSB and all funds [Sec. 53F]
- 21)Real Estate and Land Development business (section-53FF)
- 22)Insurance commission (section 53G)
- 23)Surveyor of General Insurance (section-53GG)
- 24)Sale of property (section-53H)
- 25)Capital gain from transfer of shares by sponsor shareholders (section 53M)
- 26)Transfer of share of shareholder of stock exchange (section 53N)
- 27)Income from lottery (section 55)

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Section 82C completely re-drafted through Finance Act, 2016. Any tax deducted or collected at source from the above 27 heads shall be the minimum tax. Books of accounts shall be maintained in the regular manner in accordance with the provision of section 35. Income shall be determined in regular manner and tax shall be calculated by using regular rate. If tax so calculated is higher than the minimum tax then the higher amount shall be payable on such income. However income and tax shall be computed in the following manner from the 5 sources out of the above 27 sources:

Sl	Sources of income	Section	Amount that will be taken as income	Tax rate to be applied
1	Compensation against land acquisition	52C	Total amount of compensation from land acquisition	2% or 1% depending on the location
2	Interest on savings instruments	52D	Gross interest	5%
3	Export cash subsidy	53DDD	Actual gross cash subsidy	3%
4	Bank interest of certain organization and Fund.	53F(1)(c) + 53F(2)	Gross bank interest	10% and 5%
5	Transfer of property	53H	Deed value	Applicable rate of source tax and as per rule made there under.

Where the assessee has income from regular source in addition to income from sources for which minimum tax is applicable then regular tax shall be calculated on the income from regular source and the total tax liability shall be the aggregate of the minimum tax and regular tax.

Minimum tax shall not be refunded, nor shall be adjusted against refund due for earlier year or years or refund due for the assessment year from any source. Where any surcharge, additional interest, additional amount etc. is payable, it shall be payable in addition to minimum tax. Where the regular tax is higher than the minimum tax regular tax shall be payable.

7 SPOT ASSESSMENT (SEC.82D)

Where an assessee, not being a company, who has not previously been assessed but carrying on business or profession in any shopping centre or commercial market or having a small establishment, the D.C.T may fix tax payable by him at the rate prescribed at Rule-38B and the receipt obtained for payment of such tax shall be deemed to be an assessment order.

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8 ASSESSMENT AFTER HEARING (SEC.83)

When the D.C.T. is not satisfied without requiring the physical presence of the assessee who filed the return or the production of evidences then he will issue notice u/s 83(1) fixing a date and time for hearing.

After hearing and considering the evidences produced and if necessary considering such other evidences by issuing another notice u/s 83(2) the D.C.T. will make assessment u/s 83(2) within 30 days from the last hearing and communicate the assessment order within another 30 days from the date of assessment.

Thus section 83(1) deals with notice of hearing and section 83(2) deals with both requisition notice and assessment.

7. ASSESSMENT ON THE BASIS OF REPORT OF NBR APPOINTED CHARTERED ACCOUNTANT (SEC.83AAA):

When NBR has reasonable cause to believe that a return submitted by any company assessee is incorrect or incomplete, then the Board may appoint a chartered accountant to examine the books of accounts of that company. He will then exercise the powers and functions of a DCT only relating to section 79 and other than clause (f) of section 113. After examination of the books of accounts he will submit report to the Board and the Board will then forward the report to the DCT for consideration. After receiving the report DCT will proceed to assess the income of the company by issuing notice u/s 83(1)

8. BEST JUDGMENT ASSESSMENT (SEC. 84)

Where any assessee fails to file return required by a notice u/s 77/93 and has not filed a return or revised return u/s 78 or to comply with the requirements of notices u/s 79, 80 or 83(I), the D.C.T. shall assess income to the best of his judgment.

9. ASSESSMENT OF BUS, TRUCK, MINIBUS ETC.

Deviating from the normal assessment procedure, owner of bus/mini bus, truck/truck Lorries, coaster, taxi cab etc. will pay tax on at the fixed rate prescribed at SRO No 160-law/2014 dated 26/06/2014.

10. ASSESSMENT OF PARTNERSHIP FIRM (SEC.85,86 and 87)

Like other category of assessee, DCT will assess the income of the partnership firm and determine the tax payable thereon by the firm. He will also apportion the total income of the firm (arrived before tax) between the partners. (Section-85)

If DCT found at the time of assessment of a firm that a change has occurred in the constitution of the firm, the assessment shall be made on the re-constituted firm but the conditions are:

(1) Income will be apportioned between those partners who were partners during the income year.

(2) When tax assessed on any partner is not recoverable from him it will be recovered from the re-constituted firm. . (Section-86)

If it is found at the time of assessment of a firm that a new firm has been constituted to succeed the previous firm DCT will make 2 assessments one for the predecessor firm and the other for the successor firm. . (Section-87)

11. **ASSESSMENT IN CASE OF SUCCESSION TO BUSINESS OTHERWISE THAN ON DEATH (SEC.88)**

Where any person carrying on business or profession has been succeeded otherwise than by death by another person the predecessor shall be assessed for the period up to the date of succession and the successor shall be assessed for the period after the date of succession. Provided that-

- (1) Where the predecessor can not be found the assessment shall be made on the successor
- (2) Where tax is not recoverable from the predecessor it is to be recovered from the successor who shall be entitled to recover it from the predecessor.

12. **ASSESSMENT IN CASE OF DISCONTINUED BUSINESS (SEC.89)**

When any business or profession is discontinued, a notice of such discontinuance must be given to the D.C.T. within 15 days of such discontinuance of the business or profession accompanied by a return of total income for the broken period. If the person discontinuing such business or profession fails to give such notice, the D.C.T. may impose penalty a sum not exceeding the amount of tax subsequently assessed on him.

13. **ASSESSMENT IN CASE OF PERSONS LEAVING BANGLADESH (SEC. 91)**

Whenever any person is leaving Bangladesh and has no intention to come back, the D.C.T. may proceed to assess him for all the completed income years for which his assessments remain pending as well as for the broken period up to the probable date of his departure from Bangladesh.

Here is deviation from the usual practice as the assessment of the broken period may be completed before the commencement of the relevant assessment year. One important thing to note here is that, the assessee is entitled under the law to get at least seven days time to file his return and statements of income.

14. **ASSESSMENT OF A DECEASED PERSON (SEC. 92)**

Whenever any person dies, his executor, administrator or other legal representative is liable under the law to pay out of the estate of the deceased any tax which was payable by him and any other tax liability which might be payable in consequence of any assessment made after his death. Liability of the legal representative is limited to the extent to which decreased estate is capable of meeting the liability.

Legal representative shall be deemed to be an assessee for this purpose, provided a notice is given to him as per section 92(2).

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15. **ESCAPED ASSESSMENT (SEC. 93)**

A fresh assessment can be made by the D.C.T. in case of –

- i) Escaped assessment;
- ii) Under assessment;
- iii) Assessment at too low a rate;
- iv) Assessment results excessive relief or refund.

Preconditions:

- i) Action under section 93 can not be initiated unless definite information has come into the possession of the D.C.T.
- ii) Before initiating the proceeding under section 93 previous approval in writing from the IJCT is to be taken, except in a case where a return has not been filed u/s 75/77
- iii) Notice under section 93 can be issued within 6 years from the end of the assessment year in case it is escaped assessment or under assessment and within 2 years from the end of the assessment year in case it is assessed at too low a rate or has been subject to excessive relief or refund.

16. **ASSESSMENT IN THE CASE OF MINORS, LUNATICS, IDIOTS, BENEFICIARIES OF ANY TRUST. (SEC. 95)**

Minors, lunatics and idiots are assessable to tax as beneficiaries through their guardians and trustees in the same way and to the same extent as it would have been livable and recoverable from such beneficiaries of full age or sound mind in direct receipt of any income profits and gains. In the like manner, the beneficiaries of any property managed by a Trust, Court of Words, receiver or manager will be brought to tax through the Trustees, Court of Words, receivers or manager.

17. **ASSESSMENT OF NON-RESIDENT SHIPPING BUSINESS (SEC. 102)**

If any Ship calls on any port in Bangladesh, the aggregate of the receipt arising from the carriage of passenger, livestock, mail or goods shipped at the port since the last arrival of the ship or at any port outside Bangladesh for which amount is received or deemed to be received in Bangladesh shall be treated as income received in Bangladesh and in this case tax rate will be 8% (usually tax rate is 4% in case where there is a double taxation avoidance agreement with the country the ship is originated).

18. **ASSESSMENT OF NON-RESIDENT AIRLINES (SEC. 103A)**

If any foreign aircraft calls on any airport in Bangladesh, the aggregate of the receipts arising from the carriage of passengers, livestock, mail or goods loaded at the said airport into that aircraft shall be deemed to be income received in Bangladesh and in this case tax rate will be 3% (usually no tax in case where there is a double taxation avoidance agreement with the country the aircraft is originated).

The End

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Question No.6

Scanned
Taxi up RKR
KJ-KV

(RFS)
Date: 02/24/16

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, 2016.

(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 P.F. balance calculated @ 16% p.a.

(b) Income from House Property:

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

(c) 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: 82C.
- iii. Profit on sale of shares of ERZ Ltd. Tk. 23,30,500 (A Publicly listed Co.)

(d) Income from Land:

Sale of paddy from land given on "Adhi" system – Tk.1,12,000. Sale proceeds from trees of spontaneous growth in Mr. Quader's land Tk. 12,000

(e) Income from Business :

Share of profit from a partnership firm Tk. 67,000
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

(f) Interest 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

(g) Income from other Source:

- (1) Dividend (gross) Tk.12,350
- (2) Income from shop rent Tk. 2,500 per month

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 2016-17.

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