

Amendments to Income Tax Ordinance: Some observations

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The government has brought about a massive change in income tax measures in fiscal 2010-11 for merely raising tax collection. Among such changes, the major ones are aimed at collecting more advance tax, the target of which is more than 50% of the budgeted Tk 210 billion as income tax. A total of 39 major sectors have been selected for advance tax collection and from contractors' and sub-contractors' bill. The National Board of Revenue (NBR) targeted Tk 31.74 billion tax at source where the rate of deduction has been raised by 25% in this sector.

Overall, it appears that the amendments are tax-collection driven. But in so doing, some basic principle of income and taxation thereon has been disregarded when premium realized on the issue of shares has been subjected to 3.0% income tax. Plainly, it is not an income rather part of the capital which is illegally taxed now.

No amendment to simplify tax assessment and collection or to reduce the discretionary power of the tax officials has been made, though NBR repeatedly assured the representatives of various trade and other groups to do so. It appears that pre-budget consultation is an annual ritual, signifying nothing other than spending huge money, time etc.

Fifty amendments have been made through the Finance Act 2010 in relation to Income Tax Ordinance, 1084. Here below is a summarized version of such sector-wise amendments which are section-wise stated below:

Sec 2, Cl (25AA): Under this amendment, the meaning of Director General, Central Intelligence Cell has been expanded to include any Additional Director General.

Sec 4, Sub-sec (2): This amendment will enable NBR to appoint a Director General, Central Intelligence Cell amongst others as it thinks fit.

Sec. 4A, Cl (c): A new clause has been inserted to empower the Board to authorize any Additional Director General or Joint Director General, Central Intelligence Cell to exercise the authority of Director General of the same Cell.

Sec. 11, sub-sec (3), cl (ix) : This is a new clause to include someone who is or has been a District Judge

to be eligible to become a member of the Taxes Appellate Tribunal.

Sec. 11, sub-sec (4): The position of the president of the Appellate Tribunal has been specified and now he must be a member of the Board or holds the current charge of a member of the Board.

Sec. 16E: This is a new section to realize tax on sale of shares over face value @ 3.0% of such premium. As a matter of fact and principle to conceive and tax something which is not income but part of the share capital, however, does not appear legally sound.

Sec. 19, sub-sec (24): This is a replacement of old sub-sec (24) with minor change. The replaced sub-sec. is reproduced below:

"Where an assessee, being a private limited company or a public limited company not listed with a stock exchange, increases its paid up capital by issuing shares in an income year, the amount so received as increased paid up capital, not being received by crossed cheque or bank transfer, shall be deemed to be the income of such assessee for that income year classifiable under the head 'Income from other sources'."

Sec. 19A, 19AA, 19AAA and 19BBBB: These sections relating to special tax for investment in new industry, Balancing, Modernisation, Replacement Expansion (BMRE) in existing industry purchase of stocks and shares and house property respectively have been fully deleted under this amendment.

Sec. 19C: This is a new section relating to special tax treatment of investment in bond under Bangladesh Infrastructure Finance Fund. Under this no question would be raised by the tax authority regarding the source of any sum invested by an assessee in the aforesaid bond within the period between July 01, 2010 and June 30, 2012 upon payment of 10% tax on such investment, before filing of return for the concerned income year.

Sec: 29 sub-sec (1) cl (viii) : This amendment relates to depreciation claim of an assessee on bridge or road or flyover owned by a physical infrastructure undertaking apart from building, machinery plant or furniture.

Sec. 30 cl (e): The amount of admissible employee perquisites have been raised through this amendment to Tk 0.25 million (2.5 lakh) from Tk 0.2 million (2.0 lakh).

Sec. 32 sub-sec (7): Through amendment to this section, the exemption of capital gain from the transfer of stocks and shares in a listed company has been withdrawn. However, such exemption shall

remain in force in case of Govt. securities.

Sec. 46B, sub-sec (2) cl (a) sub-cl (i): For tax exemption, the definition of industrial undertaking has been revised to include also those engaged in the production of energy-saving bulb, solar energy panel, barrier contraceptive or rubber latex.

Sub-sec (4) cl (f): This is a new provision to condition the granting of tax exemption to industrial undertaking to obtain environment clearance certificate for the relevant income year.

Sec. 49, sub-sec (1): Clause (Zn); this clause, relating to deduction at source on account of income as trustee fees, has been removed.

New clauses Zu and Zv have been included to subject share premium and income from the transfer of securities or mutual fund units by sponsor shareholders of a company respectively.

Sec. 52A: This relates to deduction at source from the payment of certain services i.e. any commission to a stevedoring agency, private security service agency and the rate of deduction has been raised to 10% from earlier 7.5%.

Sec. 52AA: Collection of tax from clearing and forwarding agency has been likewise raised to 10% from earlier 7.5%.

Sec. 52C: This has been replaced with new provision which reads as follows:

"Deduction at source from compensation against acquisition of property - Any person, responsible for paying any amount of compensation against acquisition by the Government of any immovable property shall, at the time of paying such compensation deduct advance tax at the rate of,-

(a) two per cent of the amount of such compensation where the immovable property is situated in any city corporation, paurashava or cantonment board;

(b) one per cent of the amount of such compensation where the immovable property is situated outside any city corporation, paurashava or cantonment board."

Sec. 52D: First and second proviso, relating to exemption of tax on interest on saving instruments up to Tk 0.15 million (1.5 lakh) and 5.0% deduction at source on interest on saving instruments purchased before January 01, 2004 respectively, have been removed and a new proviso has been included exempting interest on Pensioner Sanchaypatra and Paribar Sanchaypatra from tax deduction at source.

Sec. 52F: Collection of tax from brick manufacturers have been revised as follows:

cl. (a) for one section Tk 30,000, earlier Tk 10,000

cl. (b) for two sections Tk 45,000, earlier Tk 12,000
cl. (c) for three sections Tk 60,000, earlier Tk 18,000

A three-section brickfield has been newly included whereas earlier one and a half sections has been removed.

Sec. 52I: This section relating to collection of tax from trustee fees, has been removed.

Sec. 52M: Deduction at source upon payment to freight forwards for agency commission has been raised to 15% from 7.5%.

Sec. 53BB: Collection of tax from the export proceeds of knitwear, woven garments, terry towels, carton, accessories of garment industry, jute goods, frozen food, vegetables, leather goods and packed food has been raised to 0.50% from 0.25%.

Sec. 53BBB: Collection from Members of Stock Exchanges has been raised to 0.50% from 0.25% on the value of shares, debentures, mutual funds, bonds or securities transacted.

Sec. 53BBBB: Collection of tax from the export proceeds of goods exported other than those specified under Sec 53BB has been raised to 0.50% from 0.25%.

Sec. 53CC: Deduction from the courier business of a non-resident has been raised to 15% from 7.5%.

Sec. 53EE: Deduction from commission or remuneration paid to an agent of foreign buyer has been raised to 7.5% from 4%.

Sec. 53FF: Clause (a) of this has been replaced with a new clause (a) which reads as follows:

(a) in case of building or apartment situated-

(i) at Gulshan Model Town, Banani, Baridhara, Defense Officers Housing Society (DOHS), Dhanmondi Residential Area, Lalmatia Housing Society, Uttara Model Town, Bashundhara Residential Area, Dhaka Cantonment Area, Motijeel Commercial Area, Dilkusha Commercial Area, Karwan Bazar Commercial Area of Dhaka, and Khulshi Residential Area, Panchlaish Residential Area and Agrabad of Chittagong, taka two thousand per square meter;

(ii) in areas other than areas mentioned in sub-clause (i), taka eight hundred per square meter;

Sec. 53G: Deduction from insurance commission has been raised to 5.0% from 3.0%.

Sec. 53GG: Deduction on fees of general insurance surveyors has been raised to 15% from 7.5%.

Sec. 53I: The first proviso, granting exemption from

deduction from interest on post office savings bank account up to Tk 0.15 million (1.5 lakh), has been withdrawn.

Sec. 53L and 53M: These are new sections included to deal with the taxation of share premium and sponsors' sale of securities etc which read as follows:

53L: Collection of tax from sale of share at a premium over face value.- Where a company raises its share capital through book building or public offering or rights offering or placement or preference share or in any other way at a value in excess of face value, the Securities and Exchange Commission shall collect tax at the rate of three per cent on the difference between the value at which the share is sold and its face value from the concerned company at the time determined by the Securities and Exchange Commission.

53M: Collection of tax from transfer of securities or mutual fund units by sponsor shareholders of a company etc.-The Securities and Exchange Commission or Stock Exchange, as the case may be, at the time of transfer or declaration of transfer or according consent to transfer of securities or mutual fund units of a sponsor shareholder or director or placement holder of a company or sponsor or placement holder of a mutual fund listed with a Stock Exchange shall collect tax at the rate of five per cent on the difference between transfer value and cost of acquisition of the securities or mutual fund units.

Sec. 64: Under this amendment, threshold of last assessed income for advance payment of tax has been raised to Tk. 0.4 million (4 lakh).

(a) exclusion provision for fixation of the above amount now specifies exclusion of capital gain on the sale of shares of a listed company.

Sec. 68: The threshold of estimated income of a new assessee for the payment of advance income tax has been likewise raised to Tk 4.0 million (4.0 lakh) from Tk 3.0 million (3.0 lakh).

Sec. 73 sub-sec (2): The date for the calculation of interest on the deficiency of advance income tax has been fixed from April 01, instead of July 01 of the year in which the advance tax was paid to the date of regular assessment or a period of two years from the said 01 April whichever is shorter.

Sec. 75, sub-sec (3): Second proviso obliging the Deputy Commissioner of Taxes (DCT) not to extend the date of return submission in respect of Universal Self-Assessment under Sec. 82BB, has been withdrawn.

Sec. 82C, sub-sec (2): This amendments relates to Clause (ba), the amount of compensation against acquisition of property by the Govt. Clause (bb), the

premium received on the sale of shares and securities and Clause (bc), income on the sale of securities or mutual fund units by a sponsor shareholder. Taxes paid on the above shall be deemed to be final discharge of tax liability. Furthermore, Clause (e), entitling the tax deduction under Sec. 52D from interest on savings instruments to be included for treatment as final discharge, has been removed.

Sec. 94, sub-sec (IA), cl (b) : Time limit of 15 months from the end of the month in which the return is submitted under Sec. 82BB for assessment by the DCT has been removed.

Sec. 117: This refers to the power of search and seizure and electronic records and systems have been added with all the sub-sections and clauses wherever the words books of accounts and other documents appear.

Sec. 124A: This is a new section introduced to deal with the use of fake Tax-payers Identification Number (TIN) which reads as follows:

Penalty for using fake Tax-payer's Identification Number.- Where a person has, without reasonable cause, used TIN of another person or used fake TIN on a return of income or any other documents where TIN is required under this Ordinance, the Deputy Commissioner of Taxes may impose a penalty not exceeding taka twenty thousand on that person.

Sec. 165A: This is also a new section intended to deal with the improper use of TIN which reads as follows:

Punishment for improper use of Tax-payer's Identification Number: A person is guilty of an offence punishable with imprisonment for a term which may extend to three years or with fine up to taka fifty thousand or both, if he deliberately uses or used a fake Tax-payer's Identification Number (TIN) or a Tax-payer's Identification Number (TIN) of another person.

Sec. 184A: Three new clauses have been included in this section requiring certificate of TIN. These are: Clause (q) applying for connection of gas for commercial purpose in a city corporation, paurashava or cantonment board; Clause (r) applying for connection of electricity for commercial purpose in a city corporation, paurashava or cantonment board; and Clause (s) registration, change of ownership or renewal of fitness of a bus, truck, prime mover, lorry etc. plying for hire.

Sec. 184B: A new proviso, relating to TIN, has been added with this section which reads as follows: "Provided that in case of filing return under section 82D, the assessee is not required to apply for Tax-payer's Identification Number (TIN) or pay tax for TIN."

Sec. 184D: This is a replaced section referring to the reward to officers and employees of the Board and its sub-ordinate income tax officers for collection and deduction of income tax evasion which reads as follows:

"Reward to officers and employees of the Board and its subordinate income tax offices for collection and detection of evasion of taxes-

(1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, the Board may, in such manner and in such circumstances and to such extent as may be prescribed, grant reward to the following persons :-

(a) an officer or employee of the Board and its subordinate tax offices for outstanding performance in collection of taxes and detection of tax evasion;

(b) any other person for furnishing information leading to detection of tax evasion.

(2) The Board may, in addition to the reward mentioned in sub-section (1), grant reward to officers and employees of the Board and its subordinate tax offices for a financial year for collecting of revenue in excess of the revenue target as may be prescribed." |

Sec. 184E: This is also a new section which refers to the assistance to income tax authorities which reads as follows:

Assistance to income tax authorities. All officers and staff of government and semi-government organizations, law enforcement agencies, autonomous bodies, statutory bodies, financial institutions, educational institutions, private organizations, local government and non-government organizations shall assist the income tax authorities in the discharge of their functions under this Ordinance.

Amendment to the Third Schedule: Bridge, road or flyover have been included in this Schedule for admitting accelerated depreciation claim along with plant and machinery used in an industrial undertaking between 01 July 1977 and June 30, 2012.

Amendment to the Sixth Schedule: Para 34, from the list of exemption from income tax on fulfillment certain conditions, production of pelleted poultry feed has been excluded.

A new proviso has been included in this Schedule excluding the income of a company as defined in clause (20) of Sec (2).

Further Para 41 exempting income received by an assessee as interest or profit from pensioners' savings certificate has been withdrawn.

Amendment to the Eight Schedule: The amended Schedule has been appropriately amended to effect all changes regarding tax collection and deduction at source.

SRO No 269-Law/Income tax/2010, date July 01, 2010: This has been issued to tax income from transactions of securities other than Govt. securities and the rates of income tax have been specified as:

Ten per cent on all companies as defined under clause (20) of section 2 and all firms included under clause (32).

Five per cent on sponsor shareholders or directors of banks, financial institutions, merchant banks, insurance companies, leasing companies, stock dealers or stock broker company.

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FDI plunges by 36 percent in 2009 : Red-tapism bigger barrier than energy shortages for FDI , says BoI chief

Foreign direct investment in Bangladesh plunged by 36 per cent in 2009 and may see no dramatic improvement due to bureaucratic tangles that continue to pose bigger barrier in attracting overseas funds.

Red-tapism was posing bigger barrier than chronic energy shortages in attracting FDI, Board of Investment executive chairman SA Samad said while releasing a report, Inflow of FDI in Bangladesh in 2009, at his office in the capital recently.

According to the United Nations Conference on Trade and Development report, the FDI declined in Bangladesh by 386 million dollar to reach 700.16 million dollar in 2009 from 1.08 billion dollar in 2008.

The BoI executive chairman said that sluggish bureaucratic procedure was continuing to discourage the overseas investors although the country offered most attractive incentives to them.

The foreign investors complained about the procedural complexities in starting business here, Samad said adding that the investors hardly raise the questions on power and energy situation.

He noted that the bureaucracy in Bangladesh is complex and difficult which should be simplified.

Answering to a query, the BoI executive chairman, without elaborating, said his organisation in the last one-and-a-half-year has taken a number of measures to simplify the procedures.

Privatisation Commission chairman Mirza Jalil MP who was present at the function, observed that there were flaws in the policies for attracting FDI and local investment.

He suggested that the country should overcome confrontational politics and frame pro-democratic, pro-people and pro-development policies to improve the investment scenario.

Jahangirnagar University's economics teacher M Ismail Hosain presented the UNCTAD report which showed that investment in telecom sector in Bangladesh decreased by nearly 400 million dollar in 2009 compared to 2008.