TAX PLANNING & COMPLIANCE

July-August 2024

Time allowed- 3:30 hours
Total marks- 100

[N.B. - The figures in the margin indicate full marks. Questions must be answered in English. Examiner will take account of the quality of language and of the manner in which the answers are presented. Different parts, if any, of the same question must be answered in one place in order of sequence.]

Marks

1. a) Food Grains Limited ("FGL") is a limited liability company registered under the Companies Act, 1994, and engaged in importing food grains from Egypt and selling them in the local market. It is a wholly-owned subsidiary of FGL UK Limited. The gross profit margin of FGL for the last 5 years was 9.9%, 9.52%, 8.7%, 6.93%, and 6.3%. In the income assessment year 2022-2023, FGL filed its corporate tax return under self-assessment with a reported net profit of Taka 10 crore, and the gross margin was 6.3%. The return was selected for audit, and the company received the assessment order on June 26, 2024, with an additional tax claim of Taka 2.5 crore. Upon reviewing the assessment order, FGL observed that a substantial amount of genuine expenses incurred for the operation had been disallowed on the grounds that tax at source from the payment had not been complied with and insufficient documentation was furnished in support of those expenditures.

Another surprise came to the attention of FGL's Bangladesh management when the Deputy Commissioner of Taxes ("DCT") estimated its revenue to maintain the gross profit margin at 9.9%. Here is the extract of the assessment order:

"A perusal of records and returns of income tax documents shows that the assessee company processed various types of food grains by importing and selling them in the market and earning income. During the tax year under review, the taxpayer company showed the total sales of Taka 330 crore and Gross Profit of 6.3%. Considering the market scenario, we believe the sale and associated gross profit have been understated by the company. Therefore, the sale of the company for the assessment year has been estimated to Taka 350 crore, and in light of the past records of the taxpayer company's documents in income tax, the gross profit has been estimated at 9.9%."

The assessment order shocked the local management as FGL is a compliant company upholding all the regulations applicable to its operation in Bangladesh. Furthermore, the financial statements have been audited by one of the leading firms in Bangladesh, which is well-known for upholding professionalism and audit quality. Local management inquired with the tax consultant regarding the unfavourable assessment and came to know that the tax official was approaching the consultant to offer a job opportunity to his cousin at FGL, bypassing the company's recruitment policy. The consultant discussed this matter with FGL's local tax manager, who refused the offer.

After communicating the tax audit outcomes, the local finance director, Mr. Tanvir Ahmed, has been requested to reply to the following questions by the group tax manager sitting in the UK. The local finance director is not sure whether he should share the underlying job offer by the tax officer with the group tax manager.

- Shall we go for the appeal to get a favourable order to establish that our line of business cannot have a fixed gross profit in place as the price of the commodity varies with the dynamics of the international market?
- What are the key matters we must know regarding the first appeal?
- What are the likely outcomes you believe in the best- and worst-case scenarios we may expect in appeal proceedings?
- What would be the timelines for filing the appeal and getting the order?

Requirements:

i) Draft an email on behalf of local finance director to the group tax manager of FGL addressing the questions raised by him. 8

ii) Discuss the ethical issues associated with the placement offer made by the tax official and should it be communicated with the group tax manager? 5

b) Mr. A, a foreign national employed in XYZ's quality assurance department, receives a monthly salary of Tk. 800,000. As per his employment condition, he periodically returns to his home country (every four months) for a week and renews his tourist visa before returning to Bangladesh. However, XYZ has employed Mr. A without obtaining any work permit from the Bangladesh Investment Development Authority (BIDA), which is a mandatory requirement for employing foreign nationals in Bangladesh. Consequently, Mr. A is unable to remit funds to his family under the official quota allowed by law. As a result, he resorts to purchasing cash dollars from the curb market and carries them while traveling back to his home country. Additionally, for the income year 2023-24, XYZ has an assessed payable tax of Tk. 100 million.

Requirements:

Considering provisions of the Income Tax Act 2023 and the Finance Act 2023 (ignoring the provisions of the tax laws related to the assessment year 2024-25):

i) Describe the potential tax liabilities and legal consequences for XYZ if it is discovered that they have employed Mr. A without the necessary work permit and how this may impact their assessed payable tax for the income year 2023-24 from a tax law perspective. 3

ii) Describe from a tax law standpoint, the potential consequences Mr. A may face for working without a work permit include potential penalties, deportation, and restrictions on future entry into Bangladesh. 2

2. Mr. Saiful Islam is a veteran Freedom Fighter (Gazetted) and a dual citizen (Bangladeshi by birth and USA nationality through immigration), worked as a contractual employee in a development organization in Nepal from 1st January 2019 to 30th November 2023. After completing his stint in Nepal and a short vacation, Mr. Islam returned to Bangladesh on 1st December 2023. He started a consultancy and supply business in Bangladesh from 1st February 2024. As part of his consultancy business, Mr. Islam often travels abroad. He seeks your advice on how to file his tax return in compliance with the tax laws related to the assessment year 2023-24. To assist you, Mr. Islam has provided the following information:

Income from abroad:	
Description	**Amount (Taka)**
Ex-employer in Nepal remitted for Employee Share Option Scheme (ESOP) granted earlier:	
Gross amount accrued for the period July 2022 to June 2023:	2,500,000
Gross amount accrued for the year July 2023 to 30th November 2023:	2,000,000
The amount was remitted to his bank in USA on 15th January 2024 after withholding tax @ 25%, (Bangladesh and Nepal have a double tax avoidance treaty)	
Consultancy fees remitted net-off tax @ 10% by an Indian Company on 30th April 2024 for services provided for an Indian company in February 2024 credited to his bank account in USA (Bangladesh and India have a double tax avoidance treaty)	900,000

Consultancy services provided in Bangladesh:	
Description	**Amount (Taka)**
For consultancy services provided during 1st February 2024 to 30th June 2024 fees earned from a public limited company on which, the company deducted tax at source @ 12% u/s 90 of the Income Tax Act 2023 and Withholding Tax Rules 2023	2,000,000
Supply of chemicals to Company Y up to 30 June 2024 (Tk. 100,000 being 5% was already deducted as tax u/s 120 of the Income Tax Act 2023 by Customs authorities at port point on 1st March 2024 and Company Y deducted @ 7% on the total supply value taking into account the tax already collected by Customs authorities at port point). Note: This Supply business will be assessed u/s 163 of the Income Tax Act 2023.	4,000,000

Expenses made by Mr. Islam during 2023-24 income year	
Description	**Amount (Taka)**
Expenses relevant for supply business including material cost	2,800,000
Expenses relevant for non-supply business	1,000,000
Bank interest for working capital for non-supply business	300,000
On account of purchase of Bangladesh Shanchaya Patra on 25th June 2024	3,000,000

Requirements:

Considering the withholding tax provisions as per the Income Tax Act 2023 and individual tax rate as per Finance Act 2023 (ignoring the provisions of the tax laws related to the assessment year 2024-25), compute:

a) Total income for the income year 2023-2024. 7

b) Tax liability for the income year 2023-2024 considering the withholding taxes deducted. 3

3. Oracle Ltd ("Oracle" or "the company") is a publicly listed limited company on two stock exchanges in Bangladesh. The company has been involved in the manufacturing and marketing of consumer goods for the past 15 years. Oracle operates its own manufacturing unit for its manufactured goods and also imports finished goods for its trading unit.

For the fiscal period ended on 30 June 2023, following information were disclosed in the financial statement of the company, which are relevant for computing income tax for Oracle for the income year 2022-2023 (A/Y 2023-2024):

Particulars	Amount in Crores Taka
Turnover (including Turnover of Trading unit and exports)	2,000
Net Income before tax	200

In addition to the above, following information were also made available relevant for its tax assessment:

1) During the fiscal period 2022-23, the company out of its own manufactured goods, made exports to Sri Lanka, Maldives, and Nepal
2) Profit before tax includes Tk. 3 crores as gain on sale of fixed asset. The asset was sold at Tk. 5 crores, whose original cost was Tk. 3 crores and written down value was 2 crores as per book, while the value was Tk. 1 crore as per tax.
3) The company maintains a funded gratuity scheme for its permanent employees and for the year 2022-23 it created a provision for Tk. 9 crores based on actuarial valuation, out of which it paid Tk. 8 crore to the fund. From the fund Tk. 2 crores were paid to 4 outgoing employees.
4) Interest on foreign loan was Tk. 3 crores. The rate of interest charged by the offshore bank is 6% per annum. The arm's length rate in this regard is to be considered as LIBOR+3% (assume the LIBOR rate will be 1% throughout the period).
5) Excess perquisite was Tk. 3 crores and Royalty expenses charged was 100 crores.
6) Depreciation charged as per book was Tk. 20 crores (Tk. 1 crore included on account of fixed asset sold during the year), whereas tax depreciation was 25 crores.
7) The Gross Profit ratios between manufacturing, Trading unit and Export unit were 65%:25%:10% which was allowed by tax authority to allocate common business profit between these units.
8) For the fiscal period 2022-23, Customs authority collected Tk. 15 crores as advance tax u/s 120 of ITA 2023 on account of goods traded under Trading unit.
9) Due to the ongoing liquidity crisis in financial sector, for the fiscal period 2022-23, Oracle distributed only stock dividend of Tk. 14 crore, which was around 10% of the net income after tax, rest it transferred to general reserve for distribution of dividend in the coming years, when the situation will be normal.
10) Oracle Ltd fulfils all the conditions to qualify for the lowest corporate tax rates applicable for a publicly traded company.

Requirements:

Determine the following for Oracle for the income year ended on 30 June 2023:

a) Total Income 8

b) Gross Tax liability 3

4. a) You have been working as the lead tax consultant at MMH Chartered Accountants and contacted by some foreign investors for providing tax advice. The investors would incorporate a subsidiary company in Bangladesh. The company would manufacture high quality tires for different types of vehicles. The potential investors have incorporated companies in country A, country B and country C. Any of the companies set up in these countries may be holding company of the Bangladesh subsidiary and investment can come from any of these countries. Bangladesh has double taxation avoidance agreement with country B and country C but not with country A. Corporate tax rates in Country B and Country C are 25% and 17% respectively whereas Country A is tax heaven country having no tax exposure. The investors would inject both equity and loan. The Bangladesh subsidiary would also pay a fixed amount of royalty. Distribution of dividend to shareholders is exempt from tax in each of the countries. Details of projected income and withholding tax rates have been provided below.

Projected Income

Particulars	Amounts in USD
Earnings before interest, royalty and taxes	600,000
Royalty	(100,000)
Interest	(150,000)
Profit before tax	350,000

Particulars	Percentage of withholding taxes as per DTAA		
	Country A	Country B	Country C
Dividend	No DTAA	10%	15%
Royalty	No DTAA	10%	15%
Interest	No DTAA	10%	15%

Requirement:

Considering the above mentioned information, calculate the effective tax rate on earnings before interest, royalty and taxes for the ultimate shareholders with regard to investment from country A, country B and country C and suggest from which country the investment may come. For the sake of calculation assume that 100% of after tax profit will be available for distribution as dividend. Credit of tax withheld in Bangladesh will be available (to the extent of tax liability) in the country of the holding company. There is no need to convert USD into Taka. 8

b) Nixon GMBH, Germany is a leading manufacturer of garments and textile machineries and equipment in the world. It incorporated a subsidiary company in Bangladesh and completed constructed of factory back in May 2023 for manufacturing high quality sewing, cutting, dying machineries and spare parts and selling the same in the readymade garments and textile industry of Bangladesh. The factory of the company is located at Bangabandhu Sheikh Mujib Shilpa Nagar, commonly known as Mirsarai Economic Zone and started commercial production from July 2023. The company needs to import materials from its parent in Germany. In addition, it takes technical assistance and remits technical knowhow fee quarterly to its parent company in Germany. Since the income of the company is 100% exempt from income tax for the first three years vide SRO No. 104-law/Income tax/2020 dated 25 March 2020, the management of the company believes that it does not have any obligation for transfer pricing study and documentation. The CFO of the company has approached you for validation of the same.

Requirement:

Briefly evaluate the position of the management of Nixon GMBH mentioning the tax exposure, if any. 3

5. Wolverine Bangladesh PLC ("Wolverine"), a manufacturing concern operating in the FMCG sector since 2017, recently in July 2024 underwent a VAT return review by Divisional VAT authority for the fiscal period 2023-2024. Wolverine received a show cause notice from the divisional team, requiring a response within seven (7) working days. The VAT issues and relevant facts are as follows:

a) **Issue:** Wolverine claimed input tax credit of Tk. 65 million. However, the Divisional VAT authority alleges that Tk. 25 million of this amount should be canceled. This is because the Divisional VAT authority discovered that the respective VAT challans lacked the proper address of Wolverine, although the registration number was properly mentioned. In support of this, the Divisional VAT authority shared a statement of all purchase challans, where the address is different from the address mentioned in the existing BIN.

Facts: Wolverine changed its registered premises address effective from 1st January 2024, and completed all necessary formalities as per the law. The challans identified by the Divisional VAT authority contain previous registered addresses, as they were procured prior to the change of registered address.

b) **Issue:** Wolverine claimed input tax credit of Tk. 34 million for VAT paid on packaging materials used in a special promotional campaign. The Divisional VAT authority contends that this amount should be canceled as the packaging materials used for the promotional campaign should be considered as promotional materials and therefore fall outside the definition of input under the law.

Facts: Wolverine argues that the packaging materials used for this special promotional campaign were included in Musak 4.3, and a revised input-output coefficient was submitted. Therefore, Wolverine believes that these packaging materials should be eligible for input tax credit.

c) **Issue:** The Divisional VAT authority summarized that during this period, the cost of the main raw materials used by Wolverine had increased on average by 15%, which is more than the allowable limit of 7.5%. As per them, unless a revised Input Output Coefficient is submitted, Wolverine cannot claim input tax credit for the additional cost. The Divisional VAT authority computed that as such Tk. 13 million was claimed in excess of their legitimate entitlement and therefore recommended its cancellation.

Facts: Wolverine did not submit any revised Input Output Coefficient as the total cost of the input did not exceed 7.5%, even though the raw material price had increased on average by 15%.

d) **Issue:** Tk. 5 million paid as VAT at the time of remittance of technical knowhow fee was shown in the VAT return in January 2024 as an increasing adjustment instead of Output VAT, and input tax credit was also claimed based on the deposited challan. The Divisional VAT authority argues that this is an import of service and there is a procedural lapse under section 46(1) (KHA) of the VAT & SD Act 2012. Therefore, the input tax credit should be canceled.

Facts: Wolverine believes that there is no difference in whether the amount is shown under increasing adjustment or under Output VAT, as the financial result will be the same. Therefore, Wolverine sees no issue in claiming the input tax credit of Tk. 5 million.

Requirement:

As consultant, assess the matter and provide arguments and remedies for Wolverine in accordance with the VAT & SD Act 2012, considering the provisions of the Finance Act 2023(not the Finance Act, 2024), if applicable. 10

6. a) Illuminating Bangladesh Limited(IBL) manufactures and distributes different types of lamps in Bangladesh. A summary of assets and liabilities of the company as on 30 June 2023 is provided as below.

Assets	Figures in BDT	Liabilities and equity	Figures in BDT
Property plant and equipment	35,000,000	Share capital	50,000,000
Inventories	120,000,000	Retained earnings	75,700,000
Trade receivables	40,000,000	Trade payable	8,600,000
Advance, deposits and prepayments	15,000,000	Provision for tax	8,700,000
Advance income tax	3,500,000	Deferred tax liability	5,500,000
Cash and cash equivalents	5,000,000	Loan from bank	70,000,000
Total	**218,500,000**		**218,500,000**

The company has signed an agreement to transfer the whole business (i.e. all the assets, production facilities and human resources) to a competitor lamp manufacturer namely, Dhaka Lamp Company Limited (DLCL). It has offered a transfer price of BDT 150,000,000 and will also take over all the liabilities of the company. DLCL would utilize all the assets of IBL and continue to run the production facility under its own brand name. All the goods will also be marketed under the brand of DLCL. VAT authority has a disputed demand against IBL for BDT 4,000,000 which is pending for adjudication before the VAT Appellate Tribunal. IBL is yet to recognize any provision for the same.

Requirement:

Considering the above, explain the VAT implication of transfer of all the assets and liabilities from IBL to DLCL. Briefly explain if there is any condition in the VAT laws to effect such transfer. 5

b) The factory manager of Angel informed its management that its Boiler used in the factory requires certain repairs, which is not possible in Bangladesh and therefore it needs to be sent to the supplier in Italy. Accordingly, the Boiler is to be re-imported to Bangladesh after being exported for repairs, however there will be no change in its forms, features, characteristics, and the qualitative standards.

Requirement:

Quoting the reference of law, describe how the value for assessment of VAT on such Boiler shall be determined when it will be re-imported back to Bangladesh. 4

7. ABC Trading Ltd. ("ABC") is a diversified trading company based in Dhaka, Bangladesh, engaged in importing and distributing various goods including electronics, textiles, and industrial machinery. ABC is registered under the VAT & SD Act, 2012, and complies with VAT regulations applicable in Bangladesh. The company sources products from suppliers across Asia and Europe and distributes them to local wholesalers, retailers, and also exports to neighbouring countries. During the VAT period ending June 30, 2023, ABC had the following transactions and records:

Sales:

1. Sales of electronics to local retailers: Taka 40,000,000 (including VAT at 15%).
2. Sales of textiles to local wholesalers: Taka 30,000,000 (excluding VAT at 15%).
3. Sales of industrial machinery to local factories: Taka 20,000,000 (including VAT at 15%).
4. Export sales of electronics to India: Taka 15,000,000 (zero-rated).
5. Export sales of textiles to Nepal: Taka 10,000,000 (zero-rated).

Purchases:

1. Purchase of electronics from suppliers in China: Taka 25,000,000 (excluding VAT at 15%).
2. Purchase of textiles from local manufacturers: Taka 20,000,000 (including VAT at 15%).
3. Purchase of industrial machinery from suppliers in Germany: EUR 1,000,000 (including VAT, converted to BDT).

Expenses:

1. Freight and logistics expenses for imported goods: Taka 5,000,000 (including VAT at 15%).
2. Advertising and promotional expenses: Taka 3,000,000 (excluding VAT at 15%).
3. Staff salaries and benefits: Taka 8,000,000 (not subject to VAT).

ABC applied for a VAT refund on export sales for the previous period amounting to Taka 2,500,000, which was approved and received during the current month. During the VAT audit by the internal auditor for the previous months, it was identified that ABC had incorrectly calculated VAT on certain imports, resulting in an underpayment of VAT.

Requirements:

Considering the above circumstances and the VAT regulations in Bangladesh, answer the following questions:

a) Calculate the output VAT liability for ABCTL for the period ending June 30, 2023. 4

b) Calculate the input VAT that ABCTL can reclaim for the period ending June 30, 2023. 4

c) Discuss the corrective measures ABCTL should take regarding the incorrect VAT calculation on imports identified during the previous periods' audit. How should ABCTL rectify this error? 4

d) Explain the VAT implications and compliance requirements for ABCTL's export sales to India and Nepal under the Bangladesh VAT & SD Act, 2012. 4

8. Pharma World Ltd., a multinational pharmaceutical company, is planning to expand its operations into Bangladesh. The company intends to import raw materials, semi-finished products, and specialized machinery for its new manufacturing plant in Dhaka. Pharma World Ltd. has partnered with a local pharmaceuticals company, Bionic Medicine Bangladesh Ltd., to facilitate the import process and ensure compliance with Bangladesh customs regulations.

- Pharma World Ltd. has received an initial shipment consisting of the following items:
- Active Pharmaceutical Ingredients (API): 500 kg of a patented API, invoiced at $100 per kg.
- Semi-finished Products: 2000 units of semi-finished tablets, invoiced at $5 per unit.
- Specialized Machinery: A state-of-the-art tablet pressing machine, invoiced at $50,000.

During the customs clearance process, Pharma World Ltd. and Bionic Medicine Bangladesh Ltd. encountered several challenges, including issues related to customs valuation, applicable duties and taxes, and the classification of goods under the Harmonized System (HS) code. Additionally, they need to consider potential delays and penalties due to non-compliance with customs regulations.

Requirements:

a) Calculate the customs value of the total shipment if Bangladesh Customs decides to use the transaction value method. Include relevant duties and taxes such as customs duty, VAT, and any other applicable charges. Assume the following rates: 5

i) Customs Duty on API: 10%
ii) Customs Duty on Semi-finished Products: 5%
iii) Customs Duty on Machinery: 15%
iv) VAT: 15% on all items
v) AT:5% for all items
vi) AIT:5% for all items
vii) Landing Charges: 1%.

b) Explain the methods of customs valuation that may be used to determine the value if transaction value method is not appropriate. 3

c) Describe the importance of correctly classifying goods under the Harmonized System (HS) Code. 2

d) Outline the key compliance requirements Pharma World Ltd. must meet to avoid delays and penalties during the customs clearance process in Bangladesh. 2

e) Suggest strategies Pharma World Ltd. and Bionic Medicine Bangladesh Ltd. can implement to mitigate risks associated with customs clearance, including potential non-compliance and logistical challenges. 3

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