

TAX PLANNING & COMPLIANCE

Nov-Dec 2023

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) Orbit PLC (“Orbit”) has been successfully operating in Bangladesh for many years in logistic support service sector, having all the big MNCs in their clientele list. Based on a Long-Term Agreement (LTA) with the CBA, Orbit has been paying salary and wages to its workers in cash, where the highest range of salary and wages were Tk. 19,500 per month. For the income year 2022-23 (A/Y 2023-24), Orbit paid Tk. 90 million to its workers, all in cash. As per Income Tax Ordinance 1984, Orbit did not see this as an issue, as payment of salary or remuneration in cash to any employee having gross monthly salary less than Tk. 20,000 is considered admissible expenses. However, the Tax Manager of the company was concerned when he saw:

- (i) Section 55(ta) of the newly introduced Income Tax Act 2023 provides that any payment to employees, treated as income from salary of the employees, made otherwise than by crossed cheque or bank transfer shall be considered inadmissible expenses.
- (ii) Income Tax Ordinance 1984 was repealed upon enactment of Income Tax Act 2023 with effect from 22nd June 2023. Some tax experts are interpreting that the provisions of newly introduced Income Tax Act 2023 shall be applicable for the A/Y 2023-24, which means the entire amount of Tk. 90 million it paid to workers will become inadmissible expenses for the A/Y 2023-24.

You are the tax consultant of Orbit. The Tax Manager of Orbit approached you for your advice, explaining that Orbit was not in a position to change its salary payment policy to the workers (i.e., no cash payment) before the new tax Income Tax Act 2023 was introduced.

Requirements:

- i) Considering the relevant provisions of law (Income Tax Ordinance 1984 or Income Tax Act 2023) and subsequent clarification, if any, describe the position of Orbit, highlighting potential exposure on Tk. 90 million that it paid to its workers in cash for the income year 2022-23 4
 - ii) Do you see any difference, if going forward for the A/Y 2024-25, Orbit decides to hire a third party to continue to pay the salary and wages to its workers in cash, while it will reimburse the amount to the third party through banking channel? 2
- b) Mr. Azim Asraf Chowdhury is the CFO of Intel Cement PLC (IC PLC) and a subsidiary of Intel Cement Emirates Limited, UAE. The company is listed with the stock exchanges of Bangladesh. The shareholders of the company are dissatisfied with the declining trend in EPS. Income tax assessment of the company for the assessment year 2021-2022 has just been completed and Mr. Chowdhury detected that the Deputy Commissioner of Taxes (DCT) allowed deduction for accounting loss on disposal of fixed assets for BDT 70,751,200 instead of adding the same with the net loss before tax reported in the audited financial statements. The DCT subsequently did not add or deduct any tax gain/loss mentioning lack of documents. However, Mr. Chowdhury found that IC PLC added back the accounting loss and correctly added a tax gain of BDT 32,147,587 on disposal of fixed assets in the income tax return originally submitted to income tax authority. Mr. Chowdhury has also reviewed the transfer pricing study report prepared by the TP consultant for the year ended 30 June 2023 recommending adjusting the price of technical know-how payment to group entities mentioning that it is overpriced. The consultant submitted supporting financial and comparative data. The tax manager of the company is suggesting not to bother about the errors done by the DCT since it would help the company to reverse the income tax expense recognized and report a higher EPS. In addition, he proposed for accepting adjusted price if and only if income tax authority makes such adjustment in any transfer pricing assessment.

Requirements: As the tax consultant of the company:

- i) Calculate the amount of income tax benefit/loss to IC PLC from the assessment order and comment on its legitimacy. 3
- ii) Describe the ethical concerns and suggest appropriate course of action to Mr. Chowdhury with regard to the suggestion from the tax manager. 4

2. a) Mr. 'A' has been working as the Sales Director of Gladiator Bangladesh PLC ("Gladiator") since 2015. Gladiator is a non-listed public limited company, and has been operating in Bangladesh since 2010. Recently, as part of salary and benefit package for senior level employees, Gladiator started an Employee Share Option Scheme (ESOP) for selected employees of the company and Mr. 'A' was one of such employees, who is eligible for such ESOP. Under ESOP the shares are vested to the employees at fair market value, the employees can retain the same or instead of retaining they can opt for equivalent cash. For the Income year 2022-23 (A/Y 2023-24) the following information are relevant for Mr. 'A' in relation to ESOP:

- | | |
|---|-------------------------------|
| 1) Vesting date: | 31 st October 2022 |
| 2) Number of shares vested under ESOP: | 100 |
| 3) Fair market value on the vesting date: | Tk. 10,000 per share |
| 4) Acquisition cost per share: | Tk. 100 |

Requirements:

Assuming Mr. 'A' was in the highest slab of income tax rate and no investment tax credit was available:

- | | |
|--|---|
| i) Determine the tax liability of Mr. 'A', if he decides to retain the shares or opt for cash that was vested to him under ESOP. | 2 |
| ii) Determine the tax liability of Mr. 'A', if he decides to retain the shares on the vesting date and sell the same @ Tk. 10,000 per share on 30 th June 2023. | 2 |
| b) i) In view of introduction of General Anti-Avoidance Rules (GAAR) under new Income Tax Act 2023, describe the implication of GAAR distinguishing it from tax planning. | 4 |
| ii) From the below example, explain if it falls under the purview of GAAR and the role of DCT as per the provisions of Income Tax Act 2023. | 4 |

Platinum Ltd, a resident of Country S, wants to sell its shares in Gold Ltd, a resident of Country B, to Silver Ltd, a resident of Country I. The capital gains arising from the sale of shares are taxable in Country B at a rate of 27.5%. However, Platinum Ltd does not want to pay this tax and decides to use a tax avoidance scheme. It sets up a shell company, Iron Ltd, in Country P, which has a tax treaty with Country B that exempts capital gains from taxation. Platinum Ltd transfers its shares in Gold Ltd to Iron Ltd for a nominal consideration and then sells Iron Ltd to Silver Ltd for the same price as the original deal.

3. AB Telecommunications PLC (ABT PLC) is the fastest growing mobile telecommunication service provider in the country and listed with both the stock exchanges since December 2018. Important excerpt from the audited statement of profit or loss and other comprehensive income of the company for the year ended 30 June 2023 is provided as below.

Particulars	Amounts in BDT '000
Revenue	9,538,497
Cost of revenue	(5,989,138)
Administrative expenses	(557,031)
Operating expenses	(524,000)
Selling and distribution expenses	(1,364,323)
Profit/(loss) from operations	1,104,005
Share of profit from associate	432,000
Net finance expense	(244,320)
Foreign exchange loss	(21,300)
Non-operating income	69,039
Profit before tax	1,339,424
Income tax expense	(161,540)
Net profit for the year	1,177,884
Other comprehensive income/(expense)	-
Actuarial gain/(loss) from defined benefit plan	24,850
Related taxes	(13,720)
Total comprehensive income	1,189,014

Notes:

- i. Revenue includes revenue from sale of Subscriber's Identification Module (SIM) which on average remains useful for 04 years. According to IFRS 15, ABT PLC has started to recognize revenue from sale of each SIM over the estimated average useful life from this year. The company needs to pay BDT 200 as VAT for each of the SIMs sold. To face cutthroat competition in the industry, ABT PLC subsidizes and bears the VAT instead of collecting the same from customers. ABT PLC initially capitalizes the subsidy provided and amortizes the same over a period of 4 years. Amortization starts from the date of selling each SIM. During this year, total subsidy paid is BDT 70,000,000 and accounting amortization is BDT 11,214,546;
- ii. Cost of revenue includes depreciation of PPE and amortization of license fee of BDT 130,350,000 and BDT 110,647,000 respectively. The company paid a license fee of BDT 880,000,000 on November 2022 to BTRC for allocating Spectrum to ABT PLC for 06 years from the date of allocation;
- iii. Administrative expense includes depreciation of BDT 84,560,300 and BDT 98,756,000 on PPE and Right of Use (RoU) assets respectively. Payment for lease of RoU assets during the year is BDT 42,758,000. Interest expense on lease liability amounts to BDT 7,242,000;
- iv. The company paid perquisites exceeding the statutory limit to 12 employees pertaining to Band A and 20 employees pertaining to Band B only. Perquisite to each of the Band A and B employees amounts to BDT 2,417,000 and BDT 1,734,000 respectively. Value of perquisites allowed to CEO amounts to BDT 3,213,000. Provision for defined benefit plan/gratuity amounts to BDT 17,650,000 whereas actual transfer of fund to the benefit plan is BDT 9,000,000. The fund is approved by NBR. An amount of BDT 4,500,000 was paid to the outgoing employees.
- v. Incentive bonus during the year amounts to BDT 9,800,000. Provision for bad and doubtful debt is BDT 7,668,000 whereas a provision of BDT 8,576,000 was written off during the year. Selling and distribution expense includes commission paid to distributors and retailers of BDT 12,378,000 who do not have TIN. The company also paid salaries of BDT 6,245,000 to four employees having no TIN but properly deducted income tax at source;
- vi. Fees for technical assistance and foreign exchange loss amount to BDT 80,000,000 and 56,576,000 respectively. Foreign exchange loss of BDT 26,988,000 resulted from revaluation of foreign currency denominated monetary liability as was outstanding at the balance sheet date;
- vii. Non-operating income includes gain on sale of shares of associate private limited company. Company sold 1,000,000 shares (having acquisition cost of BDT 10 per share) in exchange of BDT 14.5 per share. The company paid professional fee and stamp duty of BDT 750,000 for executing the sale;
- viii. Opening Tax Written Down Values (WDVs) of the PPE are as below.

Machineries in BDT	Building in BDT	Computer and computer equipment in BDT	Office equipment in BDT	Vehicle in BDT	Software in BDT
698,670,950	120,340,000	62,265,000	9,787,000	74,587,965	23,450,000
Addition during the year					
345,600,000	0	8,700,000	1,200,000	12,000,000	3,000,000

Addition during the year for vehicle represents purchase of a Mercedes Benz Sedan car for the newly appointed CEO of the Company. All the software were imported.

- ix. The net profit after tax during the last year was BDT 1,029,432,000 and the company declared and distributed 12% cash dividend. Considering the capital investment required to upgrade the mobile network, the company decided to distribute 10% cash and 15% stock dividend for the year ended 30 June 2023. The Company has 200,000,000 ordinary shares of BDT 10 each. The company paid BDT 480,000,000 as advance income tax. In addition, corporate customers and other telecom operators deducted income tax at source of BDT 15,460,000 and BDT 24,580,000 from bills for postpaid connection and infrastructure sharing.

Requirements:

For the assessment year 2023-24:

- a) Compute income from business; 10
- b) Compute income from other sources of income 5
- c) Compute net income tax liability 3

4. a) Euro Dorsey Bangladesh manufactures and distributes different types of high quality office furniture. Recently, it has exported premium quality steel case ergonomic MX530 model chair to its parent company in Ireland. The terms of the transaction are FOB destination with a price of USD 265 per chair. Euro Dorsey Bangladesh has the following cost exposure to sell the chair in local market. Assume that USD 1 equals to BDT 107.

Particulars	Figures in BDT
Direct material	20,000
Direct labor	900
Manufacturing overhead	2,000
Share of administrative expense	3,000
Share of sales and marketing expense	2,000
Other indirect overhead	3,000
Total cost per unit	30,900
Selling price	36,000

The export requires a transportation cost of BDT 500, superior packaging of BDT 500 and BDT 2,000 for freight and insurance per unit of chair. Admin expense for the export would be BDT 1,000 only but no local admin or sales, marketing expense or indirect overhead would be incurred. There would also be a drawback of BDT 1,000 for duties paid for import of raw materials.

Requirement:

Considering the Transactional Net Margin Method, determine an appropriate arm's length price for Euro Dorsey Bangladesh, TP adjustment and any additional income tax exposure.

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- b) Oval Bangladesh PLC ('Oval Bangladesh') is a subsidiary of a global conglomerate Oval AG of Germany. Oval Bangladesh markets various FMCG products in Bangladesh, some of which it produces in its factory in Mirershorai and others it produces by a contract manufacturer in India, Oval India Ltd, which is a subsidiary of Oval AG as well. As per group's transfer pricing policy, the contract manufacturer Oval India sold such goods to Oval Bangladesh at cost plus 5.5 percent mark-up in 2022-2023 fiscal period.

The following table contains last three year's weighted average mark-up of uncontrollable comparable companies for contract manufacturing activities:

Company	Last 3 year's weighted average mark-up
A	9.5%
B	11.2%
C	3.8%
D	7.6%
E	5.1%
F	4.3%
G	8.8%
H	6.6%

As per the Income Tax Act 2023, Bangladesh taxing authority measures the arm's length range by the interquartile range of results, which consists of the results ranging from 30% to 70%, for which a certain number of data set is required as per the provision of Income Tax Act 2023.

Requirements:

- i) Identify the arm's length mark-up range for contract manufacturing from the above table. 4
- ii) Identify the arm's length mark-up in case the number of data set is available for 5 only instead of 8 as given in the table above i.e., data set available shall be for company A, B, C, D and E only. 2

5. The VAT authority has initiated a VAT audit, alleging that Dupont Bangladesh Limited had not deducted VAT at source amounting to Tk. 40,00,000 during the financial year 2022-23. Dupont Bangladesh Limited has provided a written response, an extract of which is as follows:

"We supplied various industrial materials to the chemical manufacturer as well as other customers in the manufacturing sector. We have been submitting VAT returns on a timely basis and are a responsible taxpayer in the country. The VAT authority, while reviewing the purchases, applies a uniform rate of 15% for all purchases and compares the VAT amount already deducted at source, claiming the balancing amount. We disagree with the position of the VAT authority and request lawful treatment because some of the items are not subject to VAT at source at the full rate; rather, a majority of items shall be taxed at 7.5%, and in some cases, even at 5%. Therefore, the company has deducted the appropriate rate of VAT at source and deposited the same to the government exchequers. However, we have examined the records and found that only in one case an amount of Tk. 50,000 has not been deducted at a rate prescribed by the law."

Requirements:

- a) Describe the factors that might increase the likelihood of a VAT audit. 4
- b) What are the compliances required for VAT at source and the penalty for the short deduction of VAT at source under the VAT & SD Act, 2012? 4

6. Magneto Bangladesh PLC ("Magneto") is a manufacturing concern, and has been operating in Bangladesh in FMCG sector since 2015. Magneto runs its business through two factories (one at Mawna, Gazipur and the other one at Rupgonj, Narsingdi), one Central warehouse at Tejgaon, Dhaka and multiple sales centers located across the country under a Central BIN it obtained under VAT & SD Act 2012. Recently, Magneto faced VAT audit by the VAT Audit team of respective Divisional Office for the fiscal period 2019-2020. Upon audit, the VAT Audit Team issued show cause notice to Magneto to provide response by seven (7) working days for certain apparent non-compliances. The issues marked as non-compliance by VAT Audit Team and the facts shared by Magneto are given below:

- i) **Issue:** Magneto claimed input tax credit of Tk. 30 million in the month of July 2019. The new VAT & SD Act 2012 was made effective from 1st July of 2019. Magneto submitted its Input Output Coefficient (Musak 4.3) only on 31st July 2019. Hence the entire amount claimed as input tax credit of Tk. 30 million is liable to be cancelled on the ground that those inputs were not included in the Musak 4.3, when the input tax credits were claimed.

Facts: The input materials against which the input rebate of Tk. 30 million was claimed, were entered into the registered premises in July'19 only and used in production post 31st July 2019.

- ii) **Issue:** During the month July'19 to June'20, Magneto claimed input tax credit of Tk. 76 million on account of VAT paid on promotional materials. As per VAT Audit team, this entire amount of Tk. 76 million claimed as input tax credit is liable for cancellation on the ground that these are not part of the definition of Input. On this, National Board of Revenue issued an order on 26th October clarifying a scope of input, which was included in the law through Finance Act 2020 effective from 1st July 2020.

Facts: Out of these Tk. 76 million, Tk. 15 million was for the period from 1st July 2019 to 25th October 2019 and Tk. 61 million was for the period from 26th October 2019 to 30th June 2020. As per Magneto promotional material cost was included in Musak 4.3, hence there was nothing wrong.

- iii) **Issue:** in December 2019 Magneto remitted Royalty of Tk. 360 million for using intellectual property rights of its parent company upon depositing VAT of Tk. 48 million through Treasury deposit. Magneto claimed this as input tax credit based on this treasury challan. VAT Audit Team pointed out that the entire amount of Tk. 48 million claimed as input tax credit is liable for cancellation on the ground that Magneto failed to comply with the provision u/s 46(1)(kha) of VAT & SD Act 2012.

Facts: Magneto included this cost in Musak 4.3 as input cost and followed the same process as it has been following as per VAT Act 1991, so as per them it is fine as there is no impact in the Govt. revenue.

- iv) **Issue:** During 2019-20 fiscal period, Magneto paid Tk. 120 million as Incentive to its distributors across the country. Considering this as service, VAT Audit Team pointed out that Tk. 18 million was to be deducted from the distributors. Hence, Magneto is liable for that amount.

Facts: Magneto has 50 distributors across the country. Under the agreement between the distributors, it pays incentives to distributors for achieving certain additional sales volumes. Magneto considers incentive payment is not a service, hence there is no VAT deduction applicable.

Requirement:

Being the consultant of Magneto, you are requested to provide assessment of the matter and possible arguments/remedies for Magneto in line with the provisions of VAT & SD Act 2012.

7. Fiesta Bread and Biscuits Limited (FFBL) is one of the leading bakery food manufacturing companies in Bangladesh. It pays VAT on sales adopting 15% output VAT rate. Mr. Rafique Azad is the VAT manager of the Company. He faced some unusual events during the month of October 2003 and became confused about their VAT implications. Please prepare a memo to Mr. Azad elaborating the VAT implications and compliance requirements.
- FFBL imported Flour of 30,000 kilograms during the month of September 2023 and claimed input tax credit for the whole of amount of VAT (BDT 225,000) and Advance Tax paid (BDT 60,000) at the time of import of the same. During the month of October 2023, there was prolonged and heavy rainfall in the country. FFBL could not imagine in advance that there would be such a heavy rainfall during the month of October and did not take adequate precautionary measures to safely store the raw flours. 50% of the flour imported got damaged and could not be used in the production process, rather the damaged stock was sold to a fish feed company for a total price of BDT 375,000. 2
 - FFBL entered into an agreement for Employee group insurance scheme for the employees of the company. Under the scheme of the agreement, FFBL would pay an amount BDT 150,000 as insurance premium to the insurance company from October 2023. The insurance company in return will compensate the employees on termination of employment or due to any physical injury in the course of their employment with FFBL. 2
 - FFBL had a long pending dispute over a popular brand of biscuits with one of its competitor companies regarding its patent. The dispute ultimately moved to the Court of law. Recently High Court Division of Bangladesh Supreme Court gave a verdict in favor of FFBL and the company received an amount of BDT 5,000,000 as compensation as for infringement of patent right. 2
 - FFBL received an amount of BDT 550,000 as advance received against sales from a reputed retail chain store in Dhaka City. Under the terms of contract, FFBL has provided a guarantee for supplying pre-determined quantities of different products of FFBL at the beginning of each month. 2
 - During the month of October 2023, FFBL purchased 15,000 kilograms of flours from a local flour mill for an amount of BDT 828,000 inclusive of 15% VAT. Considering the limitation in production capacity and the surging demand for the products of FFBL, it did not receive the flours in its warehouse. Rather it instructed the supplier to supply to flour to another non-branded manufacturer to whom FFB outsourced its manufacturing process. The other manufacturer supplied the finished goods to FFBL after manufacturing and raised a tax invoice of BDT 50,000 adding 15% VAT for the processing fee. 2
8. Sams Electronics is a registered limited company under the Companies Act, 1994. It is a trading enterprise dealing in various types of electronic items in Bangladesh. Sams Electronics has imported a container of electronic items from Thailand for sale in the local market. Below is the necessary information regarding the imported goods:
- The total invoice value for the imported electronic items is USD 150,000.
 - Additional costs incurred by Sams Electronics include shipping charges of USD 5,000 and insurance costs of USD 2,000.
 - The supplier has granted a trade discount of 10% on the total invoice value.
 - The customs authority charges a processing fee of USD 500 for handling customs clearance.
 - The applicable customs duty rate for all electronic items is 15%.
 - Value Added Tax (VAT) is levied at a rate of 15%.
 - Advance Income Tax (AIT) is 5%, and the Advance Tax (AT) rate is 5%.
- Requirements:**
- Calculate the adjusted transaction value for the imported electronics. 3
 - Determine the duties and taxes on the imported items based on the adjusted transaction value. 3
 - Sams Electronics is suspected of misdeclaring the value of certain electronic components to reduce customs duties. Discuss the relevant provisions of the law addressing misdeclaration and outline the penalties and consequences that Sams Electronics may face, if found guilty. 5
 - Some of the imported electronic components are under suspicion of being prohibited or restricted items. Explain the provisions of the Customs Act that empower customs authorities to seize goods. Outline the procedures Sams Electronics can follow to challenge the seizure and the legal recourse available to them. 5

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