Finance Act 2009 - Changes in Income Tax Laws

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After lot of discussions and debates in the parliament though mostly on whitening of black money provisions, Finance Act 2009 has been passed on 29 June 2009. There are many amendments and changes, some are timely and appropriate while others are more ritualistic and bureaucratic in flavour. In this writing an attempt has been made to discuss and explain the changes made in the Income Tax Ordinance 1984.

Sec. 2 definition - Annual Value of Property:

This has been amended to include the amount received by letting out furniture, fixtures and fittings. The amendment is appropriate since in the case of furnished lettings, the practice of showing income therefrom as property income for letting premises and business income for furniture etc give rise to many tax litigations in the past.

Sec. 11 - Appellate Tribunal:

The amendment relates to the appointment of member in the Tribunal and has been extended to include present member of NBR and holding current charge to be eligible.

Sec. 19 - Unexplained Investments, Deemed Income:

Earlier, under sub-sec. 21 amount over Tk fifty thousand shown by an assessee as loan received from any person otherwise than by a crossed cheque which has not been paid within three years used to be treated as income from other sources. The limit has been increased to Tk one lakh much to the relief of concerned assessees and tax administrators as well.

Sec. 19A - Special Tax Treatment in respect of Investment in new Industry:

This replaces the entire Sec. 19A. Under this no question about the source of any sum invested by any person in a company for setting up of new industry or physical infrastructure between 01 July 2009 to 30 June 2010 shall be raised by the tax authorities when the assessee pays 10% of the invested or investible amount as income tax before the filing of return.

The list of new industry and infrastructure referred to in this section is quite exhaustive. The assessee however would be required to furnish a declaration under IT Rule 25AA mentioning the name of the industrial undertaking in which investment is or to be made. The Rule requires the assessee to disclose the source and probable completion date of investment including no. of employees to be employed. The provisions of this section shall however not apply where proceedings under Sec. 93 for concealment of income have been initiated prior to payment of tax under this section. Further, the provisions also shall not apply if the assessee fails to fulfill the conditions as declared.

Sec. 19AAA, Special tax treatment for investment in stocks and shares:

This is also a replacement section which provides the same privilege as in 19A and 19AA above upon payment of 10% tax on any amount used for the purchase of stocks and shares of a listed company within 1 July 2009 to 30 June 2010. However, public limited companies whether listed or not have been excluded from the privilege. Moreover, the shares or stocks so purchased can not be transferred or sold within two years of purchase. Non-compliance would invite reversal. The provisions of this section would not apply in cases of detection of concealed income where proceedings under sec. 93 have been initiated prior to the tax payment.

Sec. 19BBB, Special tax treatment in respect of investment in house properties:
Under this section similar privilege has been offered for investment in building or apartment but the rate of tax is different depending on the size and location of the concerned properties. There are six rates which are summarized below:

(a) Tk 800 per square meter of a building or apartment plinth area of which does not exceed 100 square meter in Gulshan, Banani, Baridhara, DOHS, Dhanmondi, Lalmatia, Uttara, Bashundara, Dhaka Cantonment, Motijheel C/A, Dilkusha C/A, Kawran Bazar, Khulshi R/A and Panchalish R/A.

(b) Tk 1000 per square meter when plinth area exceeds 100 square meter but not 200 square meter for areas mentioned in (a) above.

(c) Tk 1500 per square meter in the case of plinth area exceeding 200 square meter for areas mentioned in (a) above.

(d) Tk 400 per square meter when the plinth area does not exceed 100 square meter for the areas other than mentioned in (a).

(e) Tk 600 per square meter when the plinth area exceeds 100 square meter but not 200 square meter for areas other than mentioned in (a).

(f) Tk 1000 per square meter when the plinth area exceeds 200 square meter for areas other than mentioned in (a) above.

However, the privilege is restricted to one flat or apartment or one floor of a building. Because of this restriction it appears that only one floor of a building, may be with multi storeyed investment plan would only qualify leaving the major portion of proposed investment questionable for tax purpose and for this the provision may not attract desired investment in construction sector.

Sec. 24: Income from house property:
Because of the amendment to sec. 2 the definition of annual value has been extended to include the income from let out furniture, fixtures and fittings along with any building, this section now incorporates that income within the meaning of property income.

Sec. 30: Inadmissible deductions (Expenses):
Royalty etc under (h) of this section earlier limit for inadmissibility was 5% of the profit for payment of royalty, technical service fee, technical know-how fee or technical assistance fee. The limit has now been raised to 8%.

Sec: 44: Exemption and Allowances:
The aggregate allowances admissible under part B of Sixth Schedule other than paragraphs 15 and 16 has now been raised to Tk 10 lakh from earlier Tk 5 lakh.

Sec. 46A, 46B: Tax exemption for newly set up industries in certain areas:
This refers to investment compulsion for exempt income which restricts any ready made garment industry from investing in stocks or strikes of a listed company for the purpose of this section, when it invests 40% of the exempt income either in the said or in any new industrial undertaking in the exemption period or within one year of such exemption.

To make it simple, exempt garment industries are not required to invest in stocks or shares when they invest 40% of exempt income within existing or new industrial undertaking. For others requirement of 30% investment in industries and 10% in stocks or shares still remains.

Sec. 49: Tax Deduction at Source (TDS):

Clause (zf) of sub-sec 1 of this section has been replaced to include income arising from shipping business both inside and outside Bangladesh to a resident assessee.

Clause (zk), income from cash subsidy has been deleted and as such there would not be any deduction thereon.

A new clause (zt), income of foreign technicians engaged in diamond cutting industry has been newly introduced.

Sec. 52: Deduction from compensation and acquisition of property.

The rate of deduction has been reduced to 2% from earlier 6%.

Sec. 52: Collection from foreign technicians engaged in diamond cutting industry:

This is a new section, the salaries of a Technician engaged in diamond cutting industry who is neither a citizen nor was resident in Bangladesh in any of the immediately preceding four years of his arrival in Bangladesh on a contract not exceeding three years from the date of his arrival in Bangladesh shall be subject to deduction of tax @ 5% at the time of payment or credit whichever is earlier. However, the provisions of this section shall not apply to foreign technician appointed after 30 June 2010.

Sec. 53AA: Collection of tax from resident shipping business of a resident:

A new proviso has been added to this section requiring collection of tax @ 3% of total freight received from services rendered between two or more foreign countries by a resident. In other case 5% deduction still remains.

Sec. 53BB: Collection of Tax from knitwear and woven garment exporter:

This section has been replaced to bring into deduction net terry towel, carton and accessories of garment industry, jute goods, frozen food, vegetables, leather goods, packet food export @ .25%. Earlier only knitwear and woven garment exports were subjected to deduction.

Sec. 53BBB: Collection of Tax from Stock Exchange Members:

The rate of deduction has been increased to .25% from .15% earlier levied on the value of transactions.

Sec. 53BBBB: Collection of tax from export of any goods other than mentioned in Sec. 53BB:

The rate of collection is .25% of the export proceeds.

Sec. 53DD: Deduction from Export Cash Subsidy:

The section has been repealed resulting in no deduction on such receipts.

Sec. 53FF: Collection of Tax from Real Estate business:

This section has been replaced with amendments for tax on land as follows:

(i) 5% of the deed value in case of transfer of land within any City Corporations, Pourashava or Cantonment Board up to 31 August 2009 and 2% from 01 September 2009. The rate was 5% earlier.

(ii) For non-agriculture land exceeding one lakh taka in value outside City corporation, Pourashava or Cantonment Board the rate of tax shall be 5% of the deed value up to 31 August 2009 and 1% after that.

Sec. 62A: Procedure for Collection or Deduction of Tax at source:

This is a new section re-confirming the procedure for tax collected or deducted at source in accordance with specifications laid down in newly included Eighth Schedule and in case any conflict provisions of Chapter VII, payment of tax before assessment shall prevail.

Sec. 74: Payment of Tax on the Basis of Return:

The scope of this section has now been expanded to include persons submitting return u/s 75, 77, 78, 89(2), 91(3) or 93(1) are required to pay tax on the basis of return. Earlier the requirement was only for persons submitting return u/s 75.

Sec. 82BB: Universal Self-Assessment:

Two new sub-sections 4 and 5 have been added to this section.

Sub-sec 4, no question as to the source of investment by a new assessee deriving income from business or profession shall be made when he shows a minimum income of 25% of invested capital and pays tax before filing of return.
Sub-sec. 5, initial capital investment shall not be transferred or let out within five years from the end of the assessment year in respect of which return of income has been filed under this section.

Sec. 82C: Tax on income of certain persons:

Clause (1g) of sub-sec 2 deemed income on export cash subsidy has been abolished since there is no deduction of tax on the amount now. Two new clauses have been added as:

(N) the amount received on account of export of certain items where tax is deductible u/s 53BB.
(O) the amount of salaries of a foreign technician serving in a diamond cutting industry where tax is deductible under sec. 52.

In other words, the amount collected or deducted under the above two clauses would be treated as final settlement.

Sec. 121A: Revisional power of Commissioner:

This is a new section that restores the power of the Commissioner, severed in the Finance Act 2007 through repealing sec. 121. The new section is similar to old section 121 except that the time limit of one year from the date of the order when the Commissioner could not on his own motion has not been included as a pre condition. As a result the Commissioner would now enjoy a free time to exercise this regained power.

Sec. 156: Appellate decisions by the A Jt. Commissioner or the Commissioner (Appeals):

The time limit to pass appellate orders by the Appellate Joint Commissioners and Appellate Commissioners has been extended to 150 days in place of earlier 90 days.

Sec. 158: Appeal to the Appellate Tribunal:

10% of the amount representing the difference between the tax as determined on the order of the Appellate Joint Commissioner or Appellate Commissioner and the amount of tax payable on the basis of return u/s 74 has to be paid by the assessee before filing an appeal to the Tribunal. This has now been reduced to 5%.

Sec. 160: Reference to the High Court Division:

Two provisos repealed in the Finance Act 1995 have been added to sub-section 1 of this section. This are:

(i) Requirement to pay of 10%; the amount representing the difference between tax as determined by the Appellate Joint Commissioner or the Commissioner (appeals) and as determined by the Appellate Tribunal has been newly imposed upon the assessee before filing a reference case.

(ii) However, the NBR may on an application made in this behalf, modify or wave such requirement.

Sec. 184A: Requirement of TIN certificate:

Two new clauses have been added to this section as follows:

(n) submitting a plan for construction of building to Rajuk, CDA and RDA.
(o) issuance of drug licence

Besides, taka one thousand for obtaining a TIN certificate has been fixed by amending this section and rule 64B.

The First Schedule, Part C: Approved Gratuity Fund:

The time limit for the approval of gratuity fund by the Board has been extended to four months from earlier three months.

The Third Schedule: Depreciation Allowance:

(i) Bangladeshi made computer software would now be entitled to 50% normal depreciation allowance
(ii) Tk 10 lakh limit as a deemed cost of a motor vehicle not plying for hire has been raised to Tk 20 lakh.

The Sixth Schedule, Part A: Exclusion from total income:

Para 38 has been replaced with a new paragraph 38 as follows:

"Any income derived from any building which at the minimum, is five storeyed having ten flats at least built between 01 July 2009 and 30 June 2014 for ten years from the date of completion excepting those buildings situated within City Corporation, Cantonment Board, Tongi Upazila, Narayangonj Pourashava, Gazipur Pourashava and any other pourashava under Dhaka district shall be excluded from total income computation."

Para 41 has been newly added as follows:

"Any income received by an assessee as interest or profit from pensioners' saving certificate."

The Sixth Schedule, Part B: Exemption and Allowances:

Paragraph 23 has been newly added as follows:

Any sum invested in the purchase of one computer or one laptop by an individual assessee.

The Eighth Schedule: Deduction and Collection at source:

This is a new Schedule summarizing the various provisions regarding collection and deduction of tax at source. Preparation and publication of this Schedule is undoubtedly a significant achievement of the Revenue. All kinds of users would be highly benefited by this inclusion.

SRO No 171-Law/2009: Presumptive tax on bus, truck etc:

Particulars	up to 10 years old yearly tax Tk	Above 10 years old yearly tax Tk
52 and above seater bus	7,000	3,500
52 or less seater bus	5,000	2,500
AC and double Decker bus	10,000	5,000
AC minibus, coaster etc	5,000	3,000
Other minibus and coaster	4,000	2,000
Prime mover used in container transport	7,000	4,000
Tank or tank lorry exceeding 5 tone capacity	5,000	3,000
Tank or tank lorry below 5 tone capacity but not below 1.5 tone	3,000	1,500
Truck, pick up, all kinds of human hauler, maxi, auto rickshaws for carrying of goods with capacity of 1.5 tone or less	1,000	500
AC taxi Cab	3,500	1,500
Non AC taxi Cab	2,500	1,000

Amount of investment in any transport referred to above shall be exempt from tax when 200% of tax as determined is paid at the time of registration. Further, income arising from any one of the transports can be shown in the return of an assessee proportionately to his income and tax in total. In case this exceeds, tax as per Schedule would be levied.

SRO No 172-Law/Income Tax 2009: Tax reduction (Tax Holiday):

The tax of newly set up industries shall be reduced on fulfillment of the following:

(a) the industry must be set up between 01 July 2009 and 30 June 2012.

(b) The industry must be a registered company under the Companies Act 1994 which shall be engaged in;
Agro-processing (fruit processing, packed baby corn processing, fruit juice, rubber products, textile spinning, textile machinery production, garment industries, backward and forward linkage to garment industries, leather goods) and such other numerous industries.

(c) Income of industries in Dhaka and Chittagong (other than Rangamati, Bhandarban and Khagrachari) shall be subject to income tax @ 5%, 10% and 15% in the first and second, third and fourth and fifth years respectively.

Industries in Rajshahi, Khulna, Sylhet, Barisal and Rangamati, Bhandarban and Khagrachari in Chittagong division shall pay tax @ 5%, 10% and 15% in the first, second and third years, fourth, fifth and sixth years and seventh year respectively.

(d) Such industries shall not be a reorganized unit of an existing one or division thereof or any new industry set up by transferring machinery or establishments from an existing industry in Bangladesh.

(e) The industry shall not also be an extended unit of an existing industry.

(f) The industry shall not be entitled to claim accelerated depreciation allowance under Third Schedule, para 7.

(g) The industry must submit income tax return every year to the concerned circle with audited accounts within time as specified in its memorandum.

SRO No 173-Income Tax/2009: presumptive tax on inland passenger vessels, cargo carriers, coasters and dump barges:

Particulars	Not exceeding 10 years old Tax (Tk)	Exceeding 10 years old tax (Tk)
(a) Inland passenger vessel	Tk 50 per passenger carried during day time	Tk 25 per passenger carried during day time
(b) Inland cargo vessel or coaster	Tk 75 per gross tonne	Tk 35 per gross tonne
(c) Inland cargo dump barge	Tk 60 per gross tonne	Tk 28 per gross tonne

(i) Above tax shall be paid before the renewal of survey certificate
(ii) registration or renewal of survey certificate shall not be issued before payment of tax as above.
(iii) Income earned from the above can be shown in the Income-tax return for which no additional tax shall be payable, but the income shall not exceed income chargeable to tax under this head.
(iv) This SRO shall not be applicable to oil tanker.

SRO No 187-Law/2009: Advance tax on private car, jeep or microbus:
Advance income tax shall be payable on the above at the time of registration or renewal of fitness certificate:

	Tax payable (Tk)
(a) Motor car up to 150 cc	3,000
(b) Motor car up to 2000 cc	4,000
(c) Motor car above 2000 cc	7,000
(d) Jeep up to 2800 cc	6,000
(e) Jeep above 2800 cc	8,000
(f) Microbus	3,000

Above tax can be adjusted against actual tax liability on total income of the concerned owners. However, Government, semi-govt; autonomous bodies and foreign embassies and missions shall be outside the provisions of this SRO.

SRO No 188-Law/Income tax 2009-tax exemption for private power generation:
This SRO replaces SRO No 114-Law/99 and exempts income of private power generation from income tax commencing commercial production within 30 June 2012.

(1) the exemption shall be granted for 15 years from the date of commercial production.
(2) Foreign nationals working in the company shall be exempt from income tax on remuneration for 3 years from the date of arrival.
(3) Interest paid in foreign debt taken by the company shall be exempt from tax
(4) Royalties and technical know-how or technical assistance fee shall also be exempt.
(5) There shall not be any capital gain tax on the transfer of shares.

SRO No 189-Law/Income-tax: Collection of tax from importers:
By replacing rule 17A with a new rule 17A income tax at the import stage has been set (as before) at 3% on the value of the imported goods excepting 215 items. Those include ICT, pisciculture, fertilizer, sugar, edible oil, fuel, leather, Ms rod, aviation and capital machinery.

Besides, another 18 items have also been exempted from AIT. These include mainly seeds, fruits, boulders, limestone, coal and timber etc.

Rule 17I: Collection of tax on transfer of property:
This rule replaces earlier rule 17I.

Rate of Tax:
Some minor changes have been made in the Finance Act 2009 on the rate of tax. These are:

(a) Tax free income limit for female assessees and others of 65 years or over age has been increased to Tk 1,80,000. Further the limit for handicaped assesees has been set at Tk 2,00,000.

(b) Tax rate for banks, insurance companies and other financial institutions has been reduced to 42.5% from 45%.

(c) Minimum tax for all limited companies shall be Tk 5,000 irrespective of profit or loss.

(d) Investment ceiling for tax rebate for individuals has been raised to Tk 10,00,000 from Tk 5,00,000.