

# **VALUE ADDED TAX ACT, 2011**

## **ACT NO. X OF 2011**

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# VALUE ADDED TAX ACT, 2011

## ACT NO. X OF 2011

[DATE]

*An Act to consolidate the law relating to value added tax, supplementary duties, and turnover tax*

WHEREAS it is expedient to consolidate the law relating to the imposition and collection of value added tax, supplementary duties, and turnover tax so as to transform the value added tax into a broad based transaction tax, the burden of which falls on final consumption in Bangladesh, and to provide for allied matters;

It is hereby enacted as follows:—

### CHAPTER 1 PRELIMINARIES

#### 1. Short title and commencement.—

- (1) This Act may be cited as the Value Added Tax Act, 2011.
- (2) It extends to the whole of Bangladesh and, except as provided in subsection (3), comes into force on such date as the Government may, by notice in the Official Gazette, appoint.
- (3) Chapter 2 and sections [others to be specified once final draft is ready for submission to Parliament] come into force on the date on which this Act receives Presidential assent.

#### 2. Dictionary.—

In this Act, unless the context indicates otherwise,—

- (1) “adjustment event” has the meaning given in section 67(1);
- (2) “advance tax” means the tax payable on a taxable import under section 28;
- (3) “aircraft’s stores” has the meaning given in section 54;
- (4) “AIT” means advance income tax payable under the Income Tax Ordinance, 1984;
- (5) “ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported;



- (6) “Appellate Tribunal” means the Customs, Excise, and Value Added Tax Appellate Tribunal formed under section 196 of the Customs Act, 1969;
- (7) “apply to a private use” has the meaning given in section 70;
- (8) “approved non-profit body” means a person designated as such in the Rules;
- (9) “assessment” includes a self-assessment, an amended assessment, and a nil assessment and means the entering into the records of the Department of the amount of a taxpayer’s liability to pay, for a specific tax period, any or all of the following—
  - (a) VAT (including VAT withheld from another person);
  - (b) supplementary duty;
  - (c) turnover tax;
- (10) “asset” means any personal or immoveable property, whether tangible or intangible;
- (11) “associate” has the meaning given in section 4;
- (12) “association of persons” includes a partnership, a trust, a Hindu undivided family, and a body of persons formed, organized, established, or recognised in Bangladesh or elsewhere, but does not include a company or an unincorporated joint venture;
- (13) “authorised officer”, with respect to a function, means the officer of the Department authorised to carry out that function;
- (14) “Bill of Entry” means a bill of entry as defined in section 2(c) of Customs Act, 1969 (IV of 1969);
- (15) “Board” means the National Board of Revenue constituted under the National Board of Revenue Order, 1972 (PO no. 76 of 1972);
- (16) “capital asset”, in relation to something acquired or imported by a person, means an asset, whether tangible or intangible, which has a useful life that is estimated to extend over a period longer than one year, but does not include:
  - (a) consumables or raw materials; or
  - (b) an asset acquired for the principal purpose of resale in the ordinary course of carrying on the person’s economic activity, whether or not the asset is to be sold in the form or state in which it was acquired;
- (17) “commencement day” means the day on which this Act comes into force under section 1(3);

- (18) “commercial accommodation” means—
- (a) accommodation in a building (including part of a building or a group of buildings) operated as a hotel, motel, inn, boarding house, guest house, hostel, or similar establishment in which lodging is regularly or normally provided to four or more persons for a periodic charge; or
  - (b) other accommodation offered for short term occupation by individuals other than as their main residence;
- (19) “Commissioner of Customs” means the individual appointed to that position under section 3 of Customs Act, 1969;
- (20) “company” means an incorporated body or association of persons formed, organized, established, or recognised under a law in force in Bangladesh or elsewhere;
- (21) “consideration” has the meaning given in section 5;
- (22) “control” has the meaning given in section 4(5);
- (23) “credit note” means a document that a supplier is required to issue under section 67;
- (24) “customs laws” means Customs Act, 1969 and any other law relating to customs, and includes a proclamation, rule, resolution, or order made under the authority of a law relating to customs;
- (25) “debit note” means a document that a supplier is required to issue under section 67;
- (26) “Department” means the Department of Value Added Tax established under this Act;
- (27) “Divisional Officer” means a VAT Officer, not being an officer below the rank of Assistant Commissioner,—
- (a) who is in charge of a Value Added Tax Divisional Office (including the Large Taxpayers Unit of Value Added Tax); or
  - (b) who is assigned to discharge a function of such Divisional Officer;
- (28) “document” includes—
- (a) anything expressed or stated with the help of a letter, number, symbol or sign on paper or any other material; and
  - (b) any kind of electronic data, computer program, computer tape, computer disk, or other kind of media that holds data;
- (29) “dutiable goods” means goods specified in the Third Schedule;
- (30) “dutiable services” means services specified in the Third Schedule;

- (31) “economic activity” has the meaning given in section 6;
- (32) “electronic services” means any of the following, when provided or delivered on or through a telecommunications network, a local or global information network, or similar means—
  - (a) websites, web-hosting, or remote maintenance of programmes and equipment;
  - (b) software and the updating thereof delivered remotely;
  - (c) images, text, and information delivered;
  - (d) access to databases;
  - (e) self-education packages;
  - (f) music, films, and games, including games of chance, and
  - (g) political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, including broadcast television;
- (33) “enlistment number” means the unique number issued to a person enlisted for turnover tax under this Act;
- (34) “entertainment” has the meaning given in section 64(5);
- (35) “exempt”, in relation to a supply or import, has the meaning given in section 21;
- (36) “export”, in relation to a supply of goods, means the removal of goods from a place in Bangladesh to a place outside Bangladesh, and for this purpose evidence of—
  - (a) the consignment or delivery of goods to an address outside Bangladesh; or
  - (b) the delivery of the goods to the owner, charterer, or operator of a ship or aircraft engaged in international transport for the purpose of carrying the goods outside Bangladesh,

shall be considered sufficient evidence that the goods have been exported, in the absence of proof to the contrary;
- (37) “fair market value” has the meaning given in section 7;
- (38) “finance lease” means a lease that is treated as a finance lease under international financial reporting standards, but does not include a hire purchase agreement;
- (39) “financial services” means—
  - (a) the granting, negotiating, and dealing with loans, credit, credit guarantees, and security for money, including management of loans, credit, or credit guarantees by the grantor;

- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, but not including custody services;
- (e) the grant or transfer of ownership of an interest in a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund or preservation fund,

but does not include a supply of the services of arranging for or facilitating any of the above services;

- (40) “fixed place”, in relation to the carrying on of an economic activity in Bangladesh or outside Bangladesh, means a place at or through which the activity is carried on, being—
  - (a) a place of management;
  - (b) a branch, office, factory, or workshop;
  - (c) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; or
  - (d) a building site or construction or installation project;
- (41) “full input tax credit”, in relation to a person and in relation to a supply or import, means a credit for all of the VAT payable on that supply or import;
- (42) “goods” means all kinds of tangible moveable property, excluding shares, stocks, securities, or money;
- (43) “government entity” means—
  - (a) the Government of Bangladesh or a Ministry, Division, or attached Department of the Government of Bangladesh;
  - (b) a semi-government entity or autonomous body of Bangladesh;
  - (c) a State-owned enterprise of Bangladesh; or
  - (d) a local authority, council, or similar body in Bangladesh,

whether or not that Ministry, division, department, body, enterprise, authority, or council would otherwise be treated as a separate person;

- (44) “Hindu undivided family” does not include a family in respect of which a partition order has been made under the Income Tax Ordinance, 1984;
- (45) “immoveable property” means anything that can be the subject of a supply of immoveable property, as defined in section 29(6), irrespective of whether what is supplied constitutes property or is merely a chose in action;
- (46) “import” means to import goods by bringing them into Bangladesh from a place outside Bangladesh;
- (47) “imported services” means services supplied to a registered person, the supply of which is not made in Bangladesh;

Note: In limited circumstances, a supply of imported services is a taxable supply: section 30(3). VAT on imported services is reverse charged to the recipient of the supply: section 19(1)(c). Additional rules relating to imported services appear in section 52.

- (48) “importer” means—
  - (a) where imported goods are entered or cleared for home-consumption, the person making the entry or clearance in accordance with the Customs laws; or
  - (b) in any other case where goods are imported, the person who brings the goods into Bangladesh;
- (49) “individual” means a natural person;
- (50) “input tax”, in relation to a person, means:
  - (a) VAT imposed on a taxable supply of goods, services, or immoveable property made to the person, including VAT payable by the person on a taxable supply of imported services; and

Note: VAT on a taxable supply of imported services is reverse charged to the recipient of the supply: section 19(1)(c).

  - (b) VAT imposed on an import of goods by the person;
- (51) “input tax credit”, in relation to a person, means a credit allowed for input tax incurred by the person;
- (52) “international assistance agreement” means an agreement between the Government of Bangladesh and a foreign government or a public international organisation for the provision of financial, technical, humanitarian, or administrative assistance to Bangladesh;
- (53) “international transport” means—

- (a) the services, other than ancillary transport services, of transporting passengers by road, water, or air—
    - (i) from a place outside Bangladesh to another place outside Bangladesh;
    - (ii) from a place outside Bangladesh to a place in Bangladesh; or
    - (iii) from a place in Bangladesh to a place outside Bangladesh;
  - (b) the services of transporting passengers from a place in Bangladesh to another place in Bangladesh to the extent that those services are supplied as part of the supply of services to which paragraph (a) applies and by the same supplier;
  - (c) the services, including ancillary transport services, of transporting goods from a place in Bangladesh to another place in Bangladesh to the extent that those services are supplied as part of the supply of services to which paragraph (a) applies and by the same supplier;
- (54) “invoice” means a document notifying an obligation to make a payment;
- (55) “Large Taxpayers Unit” or “LTU” means a unit constituted under section 108(5);
- (56) “lay-by agreement” has the meaning given in section 40(2);
- (57) “Local Value Added Tax Office or Circle” means an office of a Revenue Officer, any branch under the control of a Revenue Officer of an LTU, or any other office specified as such by the Board by notification in the Official Gazette;
- (58) “manufacture”, in relation to dutiable goods, means make or produce the goods, and includes:
- (a) all processes, including intermediate or incomplete processes, undertaken in making or producing the goods;
  - (b) filtering, diluting, or blending dutiable goods with other goods (including other dutiable goods);
  - (c) putting dutiable goods, for the first time, into a container in which they may be presented for sale or from which they may be dispensed; and
  - (d) labelling or marking, for the first time, containers filled with dutiable goods;
- (59) “manufacturer” means a person who manufactures goods;
- (60) “money” means—
- (a) any coin or paper currency that is legal tender in Bangladesh or another country;

- (b) a negotiable instrument used or circulated, or intended for use or circulation, as currency (whether of Bangladesh or of another country);
- (c) a bill of exchange, promissory note, bank draft, postal order, money order, or similar instrument; or
- (d) whatever is supplied as payment by way of:
  - (i) credit card or debit card; or
  - (ii) crediting or debiting an account,

but does not include a collector's piece or an item of numismatic interest;

- (61) "Minister" means the Minister of Finance;
- (62) "net amount of tax", in relation to a tax period, means the amount of VAT and supplementary duty due and payable for the tax period after taking account of all output tax and all increasing and decreasing adjustments allowed for the tax period;
- (63) "NGO" or "non-government organisation" means an entity registered as such with the NGO bureau or with the Social Welfare Department;
- (64) "non-resident" has the meaning given in section 8;
- (65) "output tax", in relation to a registered person, means VAT payable by the person for—
  - (a) taxable supplies of goods, services, or immoveable property by the person; and
  - (b) taxable supplies of imported services to the person;
- (66) "partnership" means two or more persons carrying on an economic activity jointly;
- (67) "passenger vehicle" has the meaning given in section 64(5);
- (68) "person" means—
  - (a) an individual;
  - (b) a company;
  - (c) an association of persons;
  - (d) a government entity;
  - (e) a foreign government or a political subdivision of a foreign government; or
  - (f) a public international organization;
- (69) "prepaid telecommunications product" means a phone card, prepay card, recharge card, or other prepayment, however described and in whatever form, for

telecommunications services, including but not limited to airtime, internet access time, or download capacity;

(70) “prescribed” means prescribed by rules made under this Act;

(71) “progressive or periodic supply” means-

(a) a supply made progressively or periodically under an agreement or law that provides for progressive or periodic payments; or

(b) a supply by way of lease, hire, or licence (including a finance lease);

(72) “purchase” means an acquisition of something, the supply of which was by way of sale;

(73) “recipient” means the person to whom a supply is made;

Note: The person to whom a supply is made is the person with whom the agreement for the supply is made and is normally the person who is liable to pay the consideration (if any) for the supply. Goods, services, or immoveable property may be supplied to a recipient but actually provided or delivered to another person. This is because VAT is, in form, a tax on transactions.

Examples: A son may pay a florist to deliver flowers to his mother. The supplier is the florist, the recipient is the son, but the flowers are delivered to the mother. Similarly, an organisation may engage a hire car and driver to provide transport to a foreign visitor while the visitor is in Bangladesh. The supplier is the car hire firm and the recipient is the organisation but the transport services are actually provided to the visitor.

(74) “registered” means registered under Chapter 2 of this Act;

(75) “registered person” means:

(a) a person who is registered; and

(b) subject to the limitations set out in section 12(6), a person who is required to be registered;

(76) “registration threshold” means the threshold set out in section 9(2);

(77) “relative” has the meaning given in section 4(6);

(78) “relevant turnover”, in relation to a person required to pay turnover tax, has the meaning given in subsection 91(5);

(79) “representative” means,—

(a) for an individual under a legal disability: a guardian or manager who receives or is entitled to receive income on behalf of, or for the benefit of, the individual;



- (b) for a company, other than a company in liquidation: the chief executive officer of the company;
- (c) for a partnership: a partner in the partnership;
- (d) for a trust:—
  - (i) a trustee of the trust;
  - (ii) if the trust is the estate of a deceased person, an executor or administrator of the estate;
- (e) for a Hindu undivided family:—
  - (i) the Karta, manager, or a male member of the family; or
  - (ii) if this Act applies to something done by a Hindu undivided family that has since been partitioned under section 90 of the Income Tax Ordinance, 1984, the last Karta or manager of the family, or an adult male person who was a member of the family immediately before the partition;
- (f) for an association of persons not mentioned in paragraph (c), (d), or (e):—
  - (i) a person who holds office as chairman, president, treasurer, secretary, or similar officer of the body; or
  - (ii) if there is not such officer, a member of the committee of management of the affairs of the body; or
  - (iii) if no such person can be identified under sub-paragraph (i) or (ii), a member of the body;
- (g) for a government entity: an individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the entity;
- (h) for a foreign government or a political subdivision of a foreign government: an individual responsible for accounting for the receipt or payment of moneys or funds in Bangladesh on behalf of that government or political subdivision of government;
- (i) for a non-resident person that carries on an economic activity at a fixed place in Bangladesh: a person controlling the person's affairs in Bangladesh, including a manager or similar person in Bangladesh;
- (j) for a non-resident person that does not carry on an economic activity at a fixed place in Bangladesh: the person's VAT representative in Bangladesh;
- (k) for any person for whom a representative cannot be determined under the paragraphs above: a person who is responsible for accounting for the receipt or payment of moneys or funds on behalf of the person;

- (k) for any person: a receiver or agent of the person; and
  - (l) for any person: a person that a Commissioner has, by notice in writing, declared to be a representative of the person for the purposes of this Act;
- (80) “resident” has the meaning given in section 8;
- (81) “residential premises” means premises that—
- (a) are occupied as a residence; or
  - (b) although not occupied, are intended to be and are capable of being occupied as a residence,
- but does not include premises used to provide commercial accommodation;
- (82) “return” means a return that a person is required to file with the Commissioner, in which information about that person’s or some other person’s tax liability is provided;
- (83) “reverse charge”, in relation to an acquisition of services, means that the recipient of the supply is liable for VAT on the supply of the services;
- (84) “Rule” means a Rule made under this Act and when used in the plural means all Rules at force at the relevant time;
- (85) “sale” means an agreement of purchase and sale, or any other transaction (including a barter transaction) under which ownership of goods or immoveable property, or the right to dispose of goods or immoveable property as owner, passes or is intended to pass from one person to another for consideration;
- (86) “scheme” has the meaning given in section 106(4);
- (87) “second-hand goods” means goods that have previously been used but does not include—
- (a) precious metals or goods made of precious metals, being—
    - (i) gold (in an investment form);
    - (ii) silver (in an investment form);
    - (iii) platinum (in an investment form);
    - (iv) goods to the extent that they would fall within (a), (b), or (c) if they were of the required fineness;
  - (b) diamonds, rubies, emeralds, or sapphires that are not mounted, set, or strung; or
  - (c) animals or plants;

- (88) “services” means anything that is not goods immovable property, or money;
- (89) “services directly related to land” include:
  - (a) services physically performed on land;
  - (b) services of experts and estate agents relating to specific land; and
  - (c) services relating to construction work undertaken or to be undertaken on specific land;
- (90) “ship’s stores” has the meaning given in section 54;
- (91) “Special Judge” means a Special Judge appointed under section 3(1) of Criminal Law Amendment Act, 1958 (XL of 1958);
- (92) “stores” has the meaning given in section 54;
- (93) “supplementary duty” means the tax imposed under section 83;
- (94) “supplier”, in relation to a supply, means the person who makes the supply;
- (95) “supply” has the meaning given in section 29;

Note: The person who makes a supply is the person who has agreed with the recipient to make the supply and is normally the person to whom the consideration (if any) for the supply will be paid. Goods, services, or immovable property may be supplied by a supplier but actually provided or delivered by another person. This is because VAT is in form a tax on transactions.

Examples: A non-resident manufacturer has provided a warranty over goods in Bangladesh. The goods need to be repaired under the warranty but the non-resident has no presence in Bangladesh so it sub-contracts the repair services to a local person. The supply of the repair services is made by the non-resident, who is the supplier, even though it is performed by the local person. There are in fact two supplies, the performance of which is the same: the local person (supplier) makes a supply of repair services to the non-resident (as recipient) and the non-resident (as supplier) supplies repair services to the owner of the goods (the recipient). The performance of the repair services constitutes the performance of both supplies.

- (96) “supply of goods” has the meaning given in section 29(5);
- (97) “supply of immovable property” has the meaning given in section 29(6);
- (98) “supply of services” has the meaning given in section 29(7);
- (99) “tax” means a tax, fee, duty, or levy imposed under this Act or the Rules and, unless the context otherwise requires, includes any interest, fine, or penalty payable under this Act or the Rules in relation to that tax;

(100) “tax benefit” has the meaning given in section 106(5);

(101) “tax fraction” means the amount worked out in accordance with the following formula—

$$\frac{R}{100 + R}$$

where “R” is the rate of tax (expressed as a percentage) specified in section 18(3);

Example: If the rate of VAT is 15 per cent, the tax fraction is 15/115 whereas if the rate of VAT is zero per cent, the tax fraction is 0/100 = 0.

(102) “tax invoice” means a document that a supplier is required to issue under section 77;

(103) “tax period” means—

- (a) in relation to VAT and supplementary duty: a calendar month; or
- (b) in relation to turnover tax: a three month period ending on 31 March, 30 June, 30 September, or 31 December;

(104) “taxable import” means an import of goods, other than an exempt import;

(105) “taxable supply” has the meaning given in section 30;

(106) “taxpayer” means—

- (a) a person who is required to pay tax under this Act; and
- (b) a person who is required, under section 61, to withhold VAT from a payment to another person and to account for and pay the amount withheld;

(107) “telecommunications intermediary” means a person who acts as a distributor, agent, or other intermediary in relation to the supply of a prepaid telecommunications product, whether by buying and on selling the product or by providing services to another person in relation to the sale of the product;

(108) “telecommunications service” means a transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic or similar system, and includes:

- (a) a transfer or assignment of the right to use capacity for such transmission, emission, or reception; and
- (b) the provision of access to global or local information networks,

but does not include the supply of the underlying writing, images, sounds, or information;

Note: The underlying writing, images, sounds, or information are classified as electronic services for the purposes of this Act.

(109) “telecommunications supplier” means a supplier of telecommunications services;

(110) “time of supply” means—

- (a) in relation to a supply of goods: the time (as appropriate in the context of the supply) at which the goods are delivered, removed, or made available;
- (b) in relation to a supply of services, the time (as appropriate in the context of the supply) at which the services are—
  - (i) rendered, provided, or performed; or
  - (ii) created, transferred, assigned, or granted;
- (c) in relation to a supply of immoveable property: the earliest time (as appropriate in the context of the supply) at which the property is—
  - (i) delivered or made available; or
  - (ii) created, transferred, assigned, or granted;

(111) “trust”, in the context of the definition of a person, means the person or persons acting from time to time in the capacity of trustee or trustees of a particular trust estate;

(112) “trust estate”, means property held by a person or persons acting as trustee;

(113) “turnover tax” means the tax imposed under section 91;

(114) “unregistered” means not registered;

(115) “Upazila Value Added Tax Office” means an office of an Assistant Revenue Officer or any other Value Added Tax office specified as such by the Board by notification in the Official Gazette **[NB: This term is currently not used in the Act; delete from final version if never used];**

(116) “value”,—

- (a) in relation to an import, has the meaning given in section 25;
- (b) in relation to a supply, has the meaning given in section 32;

(117) “VAT” or “Value Added Tax” means the tax imposed under section 18;

(118) “VAT Authority” or “Value Added Tax Authority”, means a person referred to in section 108(2);

- (119) “VAT Officer” or “Value Added Tax Officer, means a person appointed in accordance with this Act to a position designated as such under section 108(2)(b) or the Rules;
- (120) “voucher” means a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder for supplies of goods, immoveable property, or services, but does not include a postage stamp;
- (121) “VRN” or “VAT Registration Number”, means the unique registration number issued to a person registered under this Act;
- (122) “withheld”, in relation to VAT, means deducted at source, i.e. deducted by the recipient of a supply from a payment to the supplier of the consideration for the supply;
- (123) “withholding certificate” means a document that a withholding entity is required, under section 61(4), to issue to a supplier;
- (124) “withholding entity” has the meaning given in section 61(1);
- (125) “zero-rated” in relation to a supply, has the meaning given in section 20.

### **3. Principles of interpretation.—**

#### *Modifications to the General Clauses Act 1987*

(1) For the purpose of interpreting this Act, the General Clauses Act 1987 is modified and extended by this section.

(2) This Act includes:

- (a) the headings to the chapters, parts, sections, subsections or groups of subsections, and other subdivisions into which the Act is divided;
- (b) the examples and notes; and
- (c) the Schedules to the Act, including any headings within the Schedules.

(3) Within a section—

- (a) a subsection heading refers to all the subsections occurring between that heading and either the next subsection heading or the end of the section; and

Note: The subsection headings in this section provide an example of this principle.

- (b) one subsection may, by implication, carry on dealing with a matter covered by the preceding subsection.

Note: Subsections (5) and (6) provide an example of this principle, since they elaborate on what is said in subsection (4).

*Inconsistency*

(4) A provision should be construed so as to be consistent with the example or examples that illustrate the provision, but if this is not possible, the provision shall prevail.

*The dictionary*

(5) Section 2 is named “The dictionary” because it includes—

- (a) definitions of terms used in this Act; and
- (b) cross-references to definitions found in other parts of this Act,

But the absence of a cross-reference to a term defined elsewhere does not invalidate the definition.

*Explanatory provisions*

(6) The notes are part of this Act but are explanatory provisions.

Note: This section includes notes to illustrate how they are used in this Act.

(7) A section is an explanatory provision if it includes a subsection stating that it is an explanatory provision.

Note: For example, section 44 is an explanatory provision that sets out a principle for interpreting Chapter 6. Sections 58 and 59 are explanatory provisions of a different kind because they simply list the sections under which adjustments are required or allowed to be made to the amount of output tax in a tax period.

(8) Explanatory provisions may be used as aids to the interpretation of this Act.

**4. Associate.—***General meaning*

(1) Two persons are “associates” if the relationship between them is such that one can reasonably be expected to act in accordance with the intentions of the other, or both persons can reasonably be expected to act in accordance with the intentions of a third person.

*Clarifications*

(2) An employment relationship does not, on its own, make two persons associates of each other.

(3) The fact that one person is the sole agent, sole distributor, or sole concessionaire, however described, of the other does not, on its own, mean that the two persons are associates.

*Specific meanings*

(4) Without limiting subsection (1), the following are associates:—

- (a) an individual and a relative of the individual;
- (b) a partner in a partnership and the partnership, if the partner, either alone or together with persons who are related to the partner under another paragraph of this definition, controls 50 per cent or more of the rights to income or capital of the partnership;
- (c) a shareholder in a company and the company, if the shareholder, directly or indirectly, either alone or together with persons who are related to the shareholder under another paragraph of this definition, controls 50 per cent or more of:
  - (i) the voting power in the company; or
  - (ii) the rights to distributions of income or capital by the company;
- (d) two companies, if a person, directly or indirectly, either alone or together with persons who are related to the person under another paragraph of this definition, controls 50 per cent or more of the voting power or the rights to distributions of income or capital in both of them;
- (e) a trust and a person who is or may be a beneficiary of that trust or, in the case of an individual, whose relative is or may be a beneficiary of the trust.

*Meaning of control*

(5) One person “controls” another if the former is legally or operationally in a position to exercise restraint or direction over the latter.

*Meaning of relative*

(6) A “relative” of an individual is—

- (a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual; or
- (b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
- (c) a spouse of the individual or of any person specified in paragraph (a) or (b).

**5. Consideration.—***Meaning of consideration*

(1) “Consideration”, in relation to a supply, means the sum of the following amounts:



- (a) the amount in money paid or payable by any person, whether directly or indirectly, in respect of, in response to, or for the inducement of the supply; and
- (b) the fair market value of anything paid or payable in kind, whether directly or indirectly, by any person in respect of, in response to, or for the inducement of the supply.

#### *Clarifications*

(2) The consideration for a supply does not include a price discount or rebate allowed and accounted for at the time of the supply.

(3) The consideration for a supply includes any duties, levies, fees, charges, and taxes (including taxes imposed under this Act) that are—

- (a) payable by the supplier on, or by reason of, the supply; and
- (b) included in or added to the amount charged to the recipient.

Example: A manufacturer is required to pay supplementary duty of 20% and VAT of 15% in relation to a supply of goods to a wholesaler. The manufacturer charges the wholesaler taka 100,000 *plus* taka 20,000 to cover the manufacturer's liability for supplementary duty *plus* taka 18,000 for VAT (which is imposed on the both the 100,000 and the supplementary duty). The total consideration is thus taka 138,000.

(4) The fact that an amount is calculated or expressed by reference to costs incurred by the supplier does not prevent it from being consideration under subsection (1).

Example: If a supplier of services charges for faxes, photocopies, printing, telephone calls and other costs it incurs, those charges form part of the consideration for the services.

(5) The fact that an amount payable is expressed to be a service charge does not prevent it from being consideration under subsection (1).

Example: A hotel charges a 10% service charge for all its supplies. The service charge forms part of the consideration for the supply in relation to which it is charged and VAT must be calculated after including the service charge. This is the case even if the hotel sets the amount aside to be distributed to employees.

#### *Finance leases and hire purchase*

(6) The consideration for a supply of goods under a finance lease or hire purchase agreement includes any amount payable in relation to a supply of credit under the lease or hire agreement.

#### *Costs incurred as agent*

(7) A reimbursement of costs incurred as agent for the payer does not form part of the consideration for a supply made by the payee.

*Burden of proof*

(8) The supplier shall bear the burden of proving that the consideration for a particular supply of goods or services is less than the price at which the supplier ordinarily supplies those goods and services.

**6. Economic activity.—***Meaning of economic activity*

(1) “Economic activity” means—

- (a) an activity that is carried on continuously or regularly by a person and which involves or is intended to involve the supply of goods, services, or immoveable property, including but not limited to—
  - (i) an activity carried on in the form of a business, profession, vocation, trade, manufacture or undertaking of any kind, whether or not the activity is undertaken for profit; and
  - (ii) a supply of property by way of lease, licence, or similar arrangement; and
- (b) a one-off adventure or concern in the nature of a trade.

*Inclusions*

(2) Anything done or undertaken during the commencement or termination of an economic activity is part of the economic activity.

*Exclusions*

(3) An economic activity does not include—

- (a) the activities of an employee providing services in that capacity to an employer;
- (b) activities performed as a director of a company, except where the person accepts such office in carrying on a business and supplies services as the holder of that office, in which case those services are regarded as being supplied in the course of the business;
- (c) a private recreational pursuit or hobby of an individual;
- (d) an activity of a person other than an individual, which is essentially carried on as a private recreational pursuit or hobby of a member, owner, or associate of the person;
- (e) an activity carried on without a reasonable expectation of profit by an individual or an association of persons, all of the members of which are individuals;

- (f) activities carried on by the Government, other than activities that involve making supplies of goods, services, or immoveable property that are also supplied, or likely to be supplied, in Bangladesh on a commercial basis by persons other than the Government.

## **7. Fair market value.—**

### *Fair market value of supplies*

(1) The fair market value of a supply, including a supply given as in-kind consideration for another supply, is:

- (a) the consideration the supply would fetch in an open market transaction freely made between persons who are not associates; or
- (b) if it is not possible to determine an amount under paragraph (a), the consideration a similar supply would fetch in an open market transaction freely made between persons who are not associates, adjusted to take account of the differences between such supply and the actual supply.

### *Fair market value of goods, services or immoveable property*

(2) The fair market value of particular goods, services, or immoveable property (“things”) at a particular time is what would have been the fair market value of a supply of those things by a registered person at that time.

### *Clarifications*

(3) The fair market value of a supply is determined on the basis of the market conditions, including the registration status of the supplier, prevailing at the time and place of the actual supply.

(4) One supply is similar to another if it is the same as, or closely resembles, the other supply in character, quality, quantity, functionality, materials, and reputation.

### *Fall back rule*

(5) If the fair market value of a supply cannot be determined under subsection (1), it may be determined using any method approved by the Board for calculating an objective approximation of the consideration the supply would fetch in an open market transaction freely made between persons who are not associates.

## **8. Resident and non-resident.—**

### *Meaning of resident for an individual*

(1) An individual is a resident at a particular time if—

- (a) the normal place of abode of the individual is in Bangladesh;

- (b) the individual has been or will be present in Bangladesh on more than 182 (one hundred and eighty-two) days in the current calendar year; or
- (c) the individual is or will be present in Bangladesh on more than 90 (ninety) days in the calendar year and was present in Bangladesh on more than 365 (three hundred and sixty-five) days during the four immediately preceding calendar years.

*Meaning of resident for a company*

- (2) A company is a resident at a particular time if—
  - (a) it is incorporated under a law of Bangladesh; or
  - (b) its centre of control and management is in Bangladesh.

*Meaning of resident for trusts*

- (3) A trust is a resident of Bangladesh if—
  - (a) a trustee of the trust is a resident of Bangladesh; or
  - (b) the centre of control and management of the trust is in Bangladesh.

*Meaning of resident for other associations of persons*

- (4) An association of persons other than a trust is a resident at a particular time if—
  - (a) it is formed in Bangladesh; or
  - (b) its centre of control and management is in Bangladesh.

*Meaning of resident for government entities*

- (5) A government entity is a resident of Bangladesh.

*Meaning of non-resident*

- (6) A person that is not a resident is a non-resident.

## CHAPTER 2

### REGISTRATION AND ENLISTMENT

#### 9. Persons required to be registered

*Suppliers exceeding the registration threshold.—*

(1) A person is required to be registered under this Act from the first day of any month if:—

- (a) the person exceeds the registration threshold in the period of twelve months ending at the end of the previous month;
- (b) the person exceeds one half of the registration threshold in the period of six months ending at the end of the previous month; or
- (c) there are reasonable grounds to expect that the person will exceed the registration threshold in the twelve month period commencing at the beginning of that month.

(2) A person exceeds the registration threshold in a particular period if the sum of the following amounts is equal to or greater than Taka 60 (sixty) lakhs—

- (a) the total value of supplies made, or to be made, by the person in the course of an economic activity during that period; and
- (b) the total value of supplies of imported services made, or to be made, to the person during that period that would be taxable supplies under section 30(2) if the person were registered during that period.

(3) For the purpose of this section, the following shall not be counted in the total value of a person's supplies—

- (a) the value of a supply that would not be taxable if the person were registered;
- (b) the value of a sale of a capital asset of the person;
- (c) the value of a supply made solely as a consequence of selling an economic activity or part of that economic activity as a going concern; or
- (d) the value of supplies made solely as a consequence of permanently ceasing to carry on an economic activity.

*Suppliers liable for supplementary duty*

(4) A person is required to be registered if the person carries on an economic activity involving—

- (a) the manufacture of dutiable goods in Bangladesh; or

- (b) the supply of dutiable services in Bangladesh.

Note: A person who is registered is liable to pay both VAT and, if applicable, supplementary duty. Thus, a person who, because of this subsection, is required to be registered will be required to pay both VAT and supplementary duty even if the person is under the registration threshold.

### *Specified industries*

(5) A person who carries on an economic activity of a type specified in the First Schedule is required to be registered irrespective of whether the person exceeds the registration threshold.

## **10. Voluntary registration.—**

(1) A person who carries on an economic activity but is not required to be registered may apply for voluntary registration at any time if the person is making, or will make, supplies that would be taxable if the person were registered.

(2) If a person who is not required to be registered applies for voluntary registration, the Divisional Officer may register the person if the Divisional Officer is satisfied that—

- (a) the person is, or will be, carrying on an economic activity and making supplies that would be taxable if the person were registered;
- (b) there are reasonable grounds to believe that the person will keep proper records and file regular and reliable VAT returns; and
- (c) if the person has commenced carrying on an economic activity, the person has—
  - (i) kept proper records in relation to its economic activity; and
  - (ii) complied with its obligations (if any) under other taxation laws, including the customs laws.

## **11. Separate registration of branches and divisions .—**

### *General rule*

(1) Except as provided in this section, a person shall have only one registration, which shall cover all economic activities carried on by the person.

### *Conditions for branch registration*

(2) A person may be registered separately in respect of its branches or divisions if the relevant branches or divisions—

- (a) maintain independent systems of accounting; and

- (b) can be separately identified by reference to:
  - (a) the nature of the activities carried on through the branch or division; or
  - (b) the location of the branch or division.

*Voluntary branch registration*

(3) The Board may, on application in writing, allow a person to register separately in respect of its branches or divisions if the Board is satisfied that the person meets the requirements of subsection (2).

*Compulsory branch registration*

(4) The Board may make Rules prescribing for any person or class of persons to be compulsorily registered separately in respect of its branches or divisions and for that purpose shall require the person to maintain independent systems of accounting in respect of taxable activities carried on at or through such branches or divisions.

*Entire person must be registered*

(5) Where a person is allowed or required to be registered separately in respect of its branches or divisions, the person must be registered in respect of all its branches, divisions, and economic activities.

*Clarification*

(6) Whether a person exceeds the registration threshold is determined by considering the economic activities of the whole person, irrespective of whether the person is separately registered in respect of its branches or divisions.

*Effects of registering branch or division*

(7) Except as provided in subsection (8), a branch that is separately registered is treated for the purposes of this Act as if it were a separate person

(8) Except as provided in section 52, dealings between branches, including the movement of goods between one branch and another, or the provision of services by one branch to another, shall not be treated as supplies or acquisitions, and no output liability or input tax deduction shall arise in respect of such dealings.

## **12. Applications for registration.—**

*Persons required to be registered*

(1) A person who is required to be registered shall apply for registration in the manner and mode specified in the Rules no later than 15 (fifteen) days after the day on which the person becomes required to be registered.

(2) If the Divisional Officer is satisfied that the person is required to be registered, the Divisional Officer shall, within 10 (ten) days of receiving the application, register the person and:—

- (a) notify the person of the registration, the day on which it takes effect, and the VRN issued to the person; and
- (b) issue the person with a registration certificate.

#### *Voluntary Registrants*

(3) Where a person who is not required to be registered applies for registration, the Divisional Officer shall, within 10 (ten) days of receiving the application, make a decision on the application and notify the person of that decision.

(4) If the Divisional Officer registers an applicant for voluntary registration—

- (a) the notice of decision shall state the day on which the registration takes effect, and the VRN issued to the person; and
- (b) the person shall be issued with a registration certificate.

(5) If the Divisional Officer rejects an application for voluntary registration, the notice of decision shall state the reasons for the decision and outline the person's rights to object and appeal against the decision.

#### *Deemed registration*

(6) A person who is not registered but is required to be registered shall be treated as a registered person unless the Divisional Officer has failed to process an application submitted in accordance with subsection (1).

### **13. Compulsory registration.—**

(1) If a Divisional Officer is satisfied that a person is required to be registered and that person has not applied for registration, the Divisional Officer shall register the person and shall, , no later than 21 (twenty-one) days before the day on which the registration takes effect, notify the person of the registration, the day on which it takes effect, and the VRN issued to the person.

(2) No person may be registered compulsorily without being given advance notice and an opportunity of being heard.

### **14. Obligations of registered persons.—**

(1) A registered person must display in a prominent position:—

- (a) at the principal place in Bangladesh at which the person carries on an economic activity, the person's original VAT registration certificate; and



- (b) at every other place in Bangladesh from which the person carries on its economic activity, an attested copy of the certificate, issued by a Divisional Officer.

(2) Subsection (1) does not apply to a non-resident who makes taxable supplies but does not have a fixed place in Bangladesh through which it carries on its economic activity.

(3) A registered person must notify a Divisional Officer in writing within 15 (fifteen) days of any of the following changes occurring:—

- (a) a change in the name (including business name or other trading name) of the person;
- (b) a change in the address or other contact details of the person;
- (c) a change in one or more of the places through which the person carries on an economic activity in Bangladesh;
- (d) a change in information relating to any bank account maintained by the person;
- (e) a change in the nature of one or more of the economic activities carried on by the person; or
- (f) any other information prescribed by the Board.

(4) A registered person who manufactures goods shall, in the manner and mode prescribed by the Board, submit to the Divisional Officer sufficient information to enable the officer to ascertain at any time while the person is registered—

- (a) the current price at which the person sells the products it manufactures;
- (b) the current input-output coefficient for all such products; and
- (c) current discounts or rebates offered by the manufacturer for all such products.

## **15. Cancellation of registration.—**

### *Persons no longer making taxable supplies*

(1) A registered person shall, within 15 (fifteen) days of the date on which the person ceases making taxable supplies, apply in the manner and mode prescribed by the Board, for the cancellation of its registration.

### *Persons falling below the threshold*

(2) A registered person who is no longer required to be registered but continues to make taxable supplies may apply to a Divisional Officer to cancel its registration.

*Cancellation on application*

(3) If the Divisional Officer is satisfied that a person applying to cancel its registration is not required to be registered, the Divisional Officer shall, by notice, cancel the person's registration.

(4) The Divisional Officer may require a person who has applied for voluntary registration to remain registered for at least one year from the day on which the registration commenced, unless the person has ceased all its economic activities.

*Compulsory cancellation*

(5) A Divisional Officer may, by notice, cancel the registration of a person who is not required to be registered, if the Divisional Officer is satisfied that—

- (a) the person has not kept proper records of its business;
- (b) the person has not filed regular and reliable VAT returns;
- (c) the person has not complied with its obligations under other taxation laws, including the customs laws, and there are reasonable grounds to believe that the person will not keep proper records or file regular and reliable VAT returns; or
- (d) the person obtained registration by providing false or misleading information.

(6) A Divisional Officer shall, by notice, cancel the registration of a person who has not applied for cancellation if the Divisional Officer is satisfied that the person is not carrying on an economic activity.

*Enlistment for turnover tax*

(7) A Divisional Officer shall enlist as a turnover taxpayer a person whose registration is cancelled, unless the Divisional Officer is satisfied that the person is not required to be enlisted, and the enlistment shall take effect immediately after the registration is cancelled.

*Date of effect*

(8) The cancellation of a person's registration takes effect from the day set out in the notice of cancellation.

*Obligations of a person whose registration is cancelled*

(9) A person whose registration is cancelled shall:—

- (a) immediately cease to hold out in any way that the person is a registered person;
- (b) immediately cease to use or issue any documents (including tax invoices, receipts, credit notes, and debit notes) that identify the person as a registered person; and

- (c) within 30 (thirty) days after the date of cancellation of the person's registration,—
  - (i) return the person's VAT registration certificate and any certified copies thereof to the Divisional Officer; and
  - (ii) file a final VAT return and pay all tax due.

Note: In the final VAT return the person will be required to account for decreasing adjustments under section 71 in relation to assets on hand when the registration is cancelled.

#### **16. List of persons registered.—**

(1) The Board must maintain an accurate and up to date register of all persons registered under this Act, which must include:—

- (a) the name and address of the registered person;
- (b) the trading name or names, if any, under which the registered person carries on its economic activities;
- (c) the VRN of the person;
- (d) if the person is separately registered in respect of its branches or divisions, the trading name, address, and VRN of each branch or division; and
- (e) the date on which the registration took effect.

(2) The Board shall publish the list of persons registered under this Act:—

- (a) electronically: online on the web site of the National Board of Revenue; and
- (b) in hard copy: at offices of the Department.

(3) The Commissioner shall keep a complete historical record of persons registered under this Act at any time, which shall be available to members of the public on request.

(4) It shall not be reasonable for a person to believe that another person is registered under this Act if that other person is not on the published list.

(5) It shall be reasonable for a person to believe that another person is registered under this Act if that other person is listed on the published list.

## **17. Enlistment of turnover taxpayers.—**

### *Requirement to be enlisted*

(1) Every person who carries on an economic activity in Bangladesh and who is not registered or required to be registered under this Chapter, shall apply to be enlisted as a turnover taxpayer with the Divisional Officer.

(2) Every person enlisted for turnover tax who ceases to be required to pay turnover tax shall apply to the Divisional Officer for cancellation of the enlistment.

### *Procedure for enlistment and cancellation*

(3) A person who is required to be enlisted for turnover tax shall apply for enlistment in the manner and mode specified in the Rules no later than 15 (fifteen) days after the day on which the person becomes required to be enlisted.

(4) If the Divisional Officer is satisfied that a person applying for enlistment is required to be enlisted, the Divisional Officer shall, within 10 (ten) days of receiving the application, enlist the person and notify the person of the enlistment number issued to the person.

(5) The enlistment shall have effect retrospectively from the later of:—

- (a) the day on which the person commenced carrying an economic activity in Bangladesh; or
- (b) if the person was previously registered for VAT: the day following the day on which the registration ceased.

(6) An application for registration under this Act shall be treated as an application for cancellation of enlistment and on registration of a person the Divisional Officer shall cancel the person's enlistment for turnover tax.

### *Notification of changes*

(7) A person who is enlisted for turnover tax shall notify the Divisional Officer if any of the changes specified in section 14(3) occur.

## **CHAPTER 3**

## **IMPOSITION OF VALUE ADDED TAX**

## **18. Imposition of Value Added Tax.—**

### *Imposition of VAT*

(1) Value Added Tax is imposed and payable on —

- (a) taxable supplies; and

- (b) taxable imports.

#### *Amount of VAT payable*

(2) The amount of VAT payable is calculated by multiplying the value of the taxable supply or import by the VAT rate.

Example: If the value is taka 100 and the VAT rate is 15%, the VAT payable is  $100 \times 15\%$  = taka 15.

#### *VAT rate*

- (3) The VAT rate for a taxable supply or import is—
  - (a) if the supply or import is zero-rated, zero per cent;
  - (b) in any other case, 15 (fifteen) per cent.

#### *Change of rate*

- (4) Where there is a change in the VAT rate, the rate to be applied is,—
  - (a) for an import of goods: the rate applicable at the time the VAT becomes payable under section 24; or
  - (b) for a supply of goods, services, or immoveable property: the rate applicable at the time of supply.

### **19. Person liable to pay VAT.—**

- (1) The person liable to pay the VAT imposed under section 18 is:—
  - (a) in the case of a taxable import: the importer;
 

Note: “Taxable import” is defined in section 2. The importer is liable for VAT even if the importer is not a registered person.
  - (b) in the case of a taxable supply that is made in Bangladesh: the supplier;
 

Note: “Taxable supply” is defined in section 30. A supply that is made in Bangladesh is only taxable if the supplier is a registered person.
  - (c) in the case of a taxable supply of imported services: the recipient of the supply.
 

Note: Imported services are services supplied to a registered person, the supply of which is not made in Bangladesh: section 2. In limited circumstances, a supply of imported services is a taxable supply: section 30(3). VAT on imported services is reverse charged to the recipient of the supply: section 19(1)(c). Additional rules relating to imported services appear in section 52.

(2) Subsection (1) does not prevent the collection of VAT from a different person if that person is made separately, or jointly and severally, liable for the VAT under another provision of this Act.

(3) The Board may make rules prescribing for the payment of VAT by an auctioneer selling goods on behalf of a registered person.

Example: The Board may make rules prescribing that tea auctioneers or brokers selling tea on behalf of a tea estate are liable to pay the VAT payable on such sales.

## **20. Zero-rating.—**

### *Zero-rated supplies*

(1) A supply is “zero-rated” if:—

- (a) it is zero-rated under Part C of Chapter 6 or under a schedule to this Act; or
- (b) it is a supply of a right or option to receive a supply that will be zero-rated.

Note: Where a supply is zero-rated, it is effectively exempt with credit. This means that zero-rated supplies should bear no VAT, because the tax on inputs to the supply is refunded to the supplier and the supply itself is not taxed. A zero-rated supply is thus fully exempt from VAT.

### *Tie-breaker*

(2) If, but for this subsection, a supply would be both exempt and zero-rated, the supply is zero-rated rather than exempt.

## **21. Exemptions.—**

### *Exempt supplies*

(1) A supply is “exempt” if:—

- (a) it is listed as exempt under a schedule to this Act; or
- (b) it is a supply of a right or option to receive a supply that will be exempt.

Note: Where a supply is exempt, it is exempt without credit. This means that exempt supplies are partly taxed, because the inputs to the supply are taxed but the supply itself is not. Since the supplier can be expected to pass on the non-creditable input tax in the price of its supplies, there is a hidden VAT burden on exempt supplies. An exempt supply is thus an “input taxed” supply. In contrast, an exempt import is a non-taxable import, which means that no VAT is payable on the import. (Note, however, that something which is exempt when imported will not necessarily be exempt if it is subsequently supplied in Bangladesh.)

*Exempt imports*

- (2) An import is “exempt” if it is listed as exempt under a schedule to this Act.

Note: An exempt import is a non-taxable import, which means that no VAT is paid on the import. Exempt imports are therefore equivalent to zero-rated imports.

**22. Exemptions and rates only as provided by law.—***Limitation on exemptions and rate changes*

- (1) Except as expressly provided in this Act,—
- (a) no supply, class of supplies, import, or class of imports is exempt from VAT, zero-rated, or subject to a higher or lower rate; and
  - (b) no person or class of persons is exempt from the payment of all or part of, or required to pay more than, the VAT imposed under this Act.

- (2) No promise or commitment made, or understanding given, whether in writing or otherwise, by any person or any Government department, authority, or employee over-rides subsection (1).

*Exceptional circumstances*

- (3) Despite subsections (1) and (2), the Board may, on receiving a request to do so from the Cabinet, make Rules granting such exemptions, zero-ratings, or lower rates as the Cabinet considers necessary in order to respond to a situation of critical national importance, including but not limited to emergency measures relating to a natural disaster, and such rules may have retrospective effect if so requested by the Cabinet.

Note: The intention is that exemptions and rates should be determined by Parliament. Flexibility is given to the Cabinet to request the Board to implement exemptions and changes in rates, but if Parliament does not confirm the exemption or rate change by including it in this Act or in a schedule, it should lapse.

- (4) The Board shall, at the time and in the manner requested by the Minister, present a report to the Minister listing the rules issued under subsection (3) since the previous Finance Act, assessing the performance and revenue effect of each rule, and recommending to the Minister—

- (a) which (if any) of such rules should be incorporated into this Act or into a schedule to the Act;
- (b) in respect of each such rule, whether it should be retained on a permanent basis or merely continued for a temporary basis, and if the latter, for how long.

*Exemptions under international agreements*

(5) Where a supply or person is expressed to be exempt under an agreement entered into between the Government of Bangladesh and another Government or an international agency,

- (a) in the case of imports: the exemption may be effected by exempting the imports; and
- (b) in the case of supplies: the exemption shall be effected by refund under section 101 and not by exempting the supply itself or supplies to the exempt person.

**23. This Act to over-ride other laws purporting to provide exemptions from tax.—**

(1) Any provision of an existing law which exempts or purports to exempt any person, including a government entity, from the payment of tax shall, to the extent that it is inconsistent with this Act, be deemed to be void to the extent of that inconsistency on the commencement of this Act.

(2) A law passed after the commencement of this Act shall be deemed not to over-ride section 22 or subsection (1) of this section unless that law makes an express amendment to this Act.

## CHAPTER 4

### VAT ON IMPORTS

**24. Payment and collection of VAT on imports.—**

(1) VAT payable on taxable imports shall be paid—

- (a) if the goods are entered for home consumption under the Customs Act, 1969: at the same time and place, and in the same manner, as if it were a duty of customs payable under that Act; and
- (b) in any other case where goods are imported for use in Bangladesh: on the day the goods are brought into Bangladesh.

(2) The liability to pay VAT on taxable imports arises by operation of this section and does not depend on the making of an assessment of the amount of VAT due by the Commissioner of Customs.

(3) The Commissioner of Customs —

- (a) shall collect the VAT due under this Act on an import of goods, including any advance tax payable under section 28; and



- (b) shall, at the time of import, obtain the name and VRN (if any) of the importer, the import declaration for the import, and the amounts relevant to the determination of the value of the import; and
- (c) may make arrangements for such functions to be performed in respect of imports through the postal services.

(4) Unless a contrary intention appears, in relation to goods imported into Bangladesh, the provisions of the customs laws apply, so far as they are relevant, and with such exceptions, modifications, and adaptations as are necessary, as if the VAT payable on imports were an import duty.

## **25. Value of Import.—**

Unless otherwise specified, the value of an import of goods is the sum of —

- (a) the value of the goods for the purposes of customs duty under the customs laws, whether or not duty is payable on the import;
- (b) to the extent not included under paragraph (a)—
  - (i) the cost of insurance and freight incurred in bringing the goods to Bangladesh; and
  - (ii) the cost of services that have been treated as part of the import of the goods because of section 34(2); and
- (c) the amounts, if any, of customs duty, supplementary duty, or other tax, levy, fee, or fiscal charge (other than VAT and AIT) payable on the import of the goods.

## **26. Value of returning goods.—**

Where goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import of the goods is the amount of the increase in their value that is attributable to the repair, renovation, or improvement process, and the cost of related freight and insurance so long as the form or character of the goods has not been changed by the repair, renovation, or improvement.

## **27. Import without entry for home consumption.—**

An import of goods is not taxable if the goods are entered for export without first being entered or cleared for home-consumption.

## 28. Advance payment at time of import.—

(1) A registered or enlisted person who makes a taxable import shall make an advance payment (referred to in this Act as “advance tax”) for the VAT or turnover tax that may become payable by the person on—

- (a) in the case of a registered person: —
  - (i) a subsequent supply of the goods imported; or
  - (ii) other supplies that will be made by the person using or incorporating the goods imported; or
- (b) in the case of an enlisted person: turnover tax that will be payable by the person.

Note: Advance payment is not required for imports made by private persons (i.e. where the import is not made in the course of an economic activity). Such imports are rare and occur mostly when travellers bring accompanied baggage into Bangladesh.

(2) The advance tax shall be payable—

- (a) at the rate of 3 (three) percent of the value of the taxable import; and
- (b) at the same time and place, and in the same manner as the VAT is payable on the taxable import.

### *Adjustments for tax paid in advance.—*

(3) A registered person who has made a payment of advance tax under this section is allowed a decreasing adjustment equal to the amount paid.

(4) The adjustment shall be made in the VAT return for the tax period in which the advance tax is paid.

Note: VAT paid in advance is a pre-payment of, and not in lieu of, output tax that will become payable by the registered person. Thus, the person is allowed an adjustment for the amount prepaid. Advance payment of VAT therefore acts as an incentive for taxpayers to file returns and comply with their VAT obligations.

Note 2: In the rare case where advance tax is charged to an enlisted person, that tax reduces the amount of turnover tax payable by the person: see section 91(3).

(5) To avoid doubt, because advance tax is a payment in lieu of future output tax or turnover tax, the adjustment for advance tax is not an input tax credit and is not subject to the restrictions or limitations in Part C of Chapter 7.

(6) A person who has paid advance tax and who is neither a registered person nor a person required to be enlisted for turnover tax may apply to the Commissioner for a refund of the advance tax paid.

Example 1: Zakia imports a car in the course of carrying on her economic activity, which is a fitness and beauty spa for women. At the time of import, Zakia must pay 15% VAT on the car and 3% advance tax in lieu of future output tax. Zakia is not allowed an input tax credit for the car because such credits are denied under section 64(4)(a). Zakia is allowed a decreasing adjustment for the 3% advance tax because this was a prepayment of future output tax payable on the supplies made at the spa.

Example 2: Quasem imports a non-airconditioned mini-bus in the course of carrying on an economic activity involving the supply of local transport services. At the time of import, Quasem must pay 15% VAT on the mini-bus and 3% advance VAT in lieu of future taxes. However, all of Quasem's economic activities are exempt (domestic transport being exempt when provided in a mini-bus, so long as it is not airconditioned). This means that Quasem is not required to be registered and is not entitled to apply for voluntary registration: see sections 9(3)(a) and 10(2)(a). Although Quasem is required to be enlisted for turnover tax, because he only makes exempt supplies, he will generally have no relevant turnover and so no turnover tax to pay. Under subsection (6), Quasem is entitled to claim a refund of the advance tax paid on the import of the mini-bus.

## CHAPTER 5

### VAT ON SUPPLIES

#### *Part A – General*

#### **29. Supply.—**

##### *Basic rules*

(1) According to the context, the word “supply” is used in this Act to refer to either or both of the following—

- (a) the subject matter of a supply;
- (b) the means by which that subject matter is supplied.

(2) When used to refer to the means by which a supply is made, “supply” means any kind of supply whatsoever.

Example: Both a sale of goods and a lease of goods are supplies of goods. The subject matter of both types of supply is the same (goods) but the means by which they are supplied differs (in one case the supply is by way of sale, in the other it is by way of lease.)

(3) Anything, except money, that is capable of being supplied may be the subject matter of a supply.

Note: This reflects the intention that VAT should be a broad based tax on all consumption in Bangladesh.

### *Subcategories of supply*

(4) Every kind of supply that is capable of being made is:

- (a) a supply of goods;
- (b) a supply of immoveable property;
- (c) a supply of services; or
- (d) a combination of the above.

Note 1: Some provisions deal only with particular subcategories of supply. For example, the place of taxation rules differ for supplies of goods, immoveable property, and services and there are also some special place of taxation rules.

Note 2: Some rules specifically address subsets of the above categories. For example, some rules apply specifically to telecommunications supplies, which are services.

Note 3: Section 34 explains how supplies referred to in paragraph (d) should be treated for the purposes of this Act.

### *Supply of goods*

(5) “Supply of goods” means—

- (a) a sale, exchange, or other transfer of the right to dispose of goods as owner, including under a hire purchase agreement; or
- (b) a lease, hire, or other right of use granted in relation to goods, including a supply of goods under a finance lease.

### *Supply of immoveable property*

(6) “Supply of immoveable property” means a supply of—

- (a) an interest in or right over land;
- (b) a personal right to call for or be granted an interest in or right over land;
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land, including a supply of accommodation; or
- (d) a right or option to acquire anything mentioned above.

### *Supply of services*

(7) “Supply of services” means any supply that is not a supply of goods, money, or immoveable property, including but not limited to:

- (a) a grant, assignment, termination, or surrender of a right;

- (b) the making available of a facility, opportunity, or advantage;
- (c) an agreement to refrain from or tolerate an activity, a situation, or the doing of an act; and
- (d) the issue, transfer, or surrender of a licence, permit, certificate, concession, authorisation, or similar right.

### **30. Taxable supply.—**

#### *Supplies made in Bangladesh*

(1) Except to the extent that it is an exempt supply, a supply is a “taxable supply” if it is made—

- (a) in Bangladesh;
- (b) by a registered person; and
- (c) in the course of an economic activity.

#### *Imported services*

(2) A supply of imported services is a “taxable supply” if:—

- (a) the recipient of the supply is a registered person who acquires the services in the course of an economic activity; and
- (b) had the supply been made in Bangladesh by a registered person in the course of an economic activity—
  - (i) it would have been taxable at a rate other than zero; and
  - (ii) the recipient of the supply would not have been entitled to a credit for all of the VAT imposed on the supply.

Note: Imported services are services supplied to a registered person, the supply of which is not made in Bangladesh: section 2. VAT on imported services is reverse charged to the recipient of the supply: section 19(1)(c). Additional rules relating to imported services appear in section 52.

#### *Clarification*

(3) Whether or not a supply is a taxable supply should be determined by applying the criteria in subsections (1) or (2), as applicable, on the basis of the conditions existing at the time of supply.

### **31. When VAT becomes payable on supplies.—**

(1) The VAT imposed on a taxable supply becomes payable at the earliest of—

- (a) the time of supply;
- (b) the time when an invoice for the supply is issued by the supplier; or
- (c) the time when any part of the consideration for the supply is paid.

(2) Where a progressive or periodic supply is treated as a series of separate supplies, any VAT imposed on each such supply becomes payable on the earliest of—

- (a) if separate invoices are issued for each such supply, the day on which the applicable invoice is issued;
- (b) the day on which any part of the payment corresponding to the supply is received;
- (c) the day on which the payment corresponding to the supply is due; or
- (d) if the amount payable is known at that time, the first day of the period to which the progressive or periodic payment relates.

(3) The VAT imposed on a progressive or periodic supply that consists of a supply of water, gas, oil, electricity, or thermal energy through a distribution network becomes payable two calendar months after the day on which the invoice for the supply is issued if the supplier is a government entity.

## **32. Value of supply.—**

### *Taxable supplies made in Bangladesh*

(1) The value of a taxable supply that is made in Bangladesh is the consideration for the supply, reduced by an amount equal to the tax fraction of that consideration.

Note: In the definition of consideration, subsection 5(3) makes it clear that the consideration for a supply is inclusive of VAT.

Example: If the total amount of consideration payable for a taxable supply, including all taxes, is taka 11,500, paid in cash, and the applicable rate is 15 per cent, the value of the supply is  $11,500 - (11,500 \times 15/115) = 11,500 - 1,500 = \text{taka } 10,000$ .

### *Imported services*

- (2) The value of a taxable supply of imported services is—
- (a) if the supplier and recipient are related persons, the fair market value of the supply; or
  - (b) in any other case, the consideration for the supply.

Example: A registered person acquires services that are not “made in Bangladesh” from an offshore service supplier. The consideration for the supply is taka 10,000. The value of the

supply is taka 10,000. Because the supply is a taxable supply (section 30), the VAT will be “reverse charged” to the recipient (section 19(1)(c)) and so the supplier will not have included the VAT payable in the consideration.

#### *Non-taxable supplies*

- (3) The value of a supply that is not a taxable supply is the consideration for the supply.

#### *Supplies for no consideration*

- (4) For the avoidance of doubt, unless otherwise specified, the value of a supply for no consideration is nil.

#### *Gifts to approved non-profit bodies*

- (5) Where an approved non-profit body (“the donee”) gives an insignificant recognition or acknowledgement in response to an unconditional gift of goods, services, immoveable property or money by a registered person (“the donor”), the value of the supplies by the donor and the donee is nil.

#### *Supplies to associates*

- (6) The value of a taxable supply a registered person makes to an associate is the fair market value of the supply, reduced by the tax fraction of that value, if—

- (a) the supply is made for no consideration, or for a consideration that is lower than the fair market value; and
- (b) the associate would not be entitled to a credit for all of the input tax incurred on the acquisition of the thing supplied.

### **33. Progressive or periodic supply.—**

- (1) Each progressive or periodic part of a progressive or periodic supply is treated as a separate supply.

- (2) If the progressive or periodic parts of a progressive or periodic supply are not readily identifiable, the supply is treated as a series of separate supplies each corresponding to the proportion of the supply to which each separate part of the consideration relates.

- (3) The following shall be treated as progressive or periodic supplies:—

- (a) a lease of, or other supply of a right to use property, including under a finance lease;
- (b) a supply made directly in the construction, major reconstruction, or extension of a building or engineering work.

(4) For the purpose of determining the time of supply for each part of a lease or other supply of a right to use property, the supply is treated as being made continuously over the period of the lease or right of use.

### **34. Single and multiple supplies.—**

*One supply or more than one supply?*

(1) Where a supply consists of more than one element, the following criteria should be taken into account to determine how this Act applies to the supply:—

- (a) every supply should normally be regarded as distinct and independent;
- (b) a supply that comprises a single supply from an economic point of view should not be artificially split;
- (c) the essential features of the transaction should be ascertained in order to determine whether the recipient is being supplied with several distinct principal supplies or with a single supply;
- (d) there is a single supply if one or more elements constitute the principal supply, in which case the other elements (“the ancillary or incidental supplies”) shall be treated as part of the principal supply;
- (e) a supply must be regarded as ancillary or incidental to a principal supply if it does not constitute for recipients an aim in itself, but is merely a means of better enjoying the principal thing supplied.

*Services ancillary or incidental to imports*

(2) A supply of services that is ancillary or incidental to an import of goods is treated as part of the import of goods.

### ***Part B – Special cases***

### **35. Sale of an economic activity as a going concern.—**

(1) A registered person (“the transferor”) shall not transfer an economic activity as a going concern without first making full payment of all taxes due and payable under this Act by the transferor in respect of that activity.

(2) Despite subsection (1), the Commissioner may allow the transfer, subject to such conditions as the Commissioner determines, if the purchaser submits an unconditional bank guarantee from a scheduled bank for full payment of all taxes due and payable under this Act by the transferor in respect of the economic activity.

(3) Where supplies are made in Bangladesh as part of a transaction for the sale of an economic activity as a going concern by a person who is registered to another person who is registered, the supply is treated as a single supply made in Bangladesh.



(4) Part of an economic activity is itself an economic activity, if that part is capable of separate operation.

### **36. Rights, options, and vouchers.—**

(1) If a right or option is exercised, the consideration for the supply made on exercise of the right or option is limited to the additional consideration, if any, given for that supply or in connection with the exercise of the right or option.

(2) If a voucher is accepted, in part or in full, as payment for the making of a supply, the consideration for that supply is limited to the additional consideration, if any, given for the supply or in connection with acceptance of the voucher.

(3) Subsection (2) does not apply if the supply of the voucher was not a taxable supply.

### **37. Prepaid telecommunications products.—**

#### *Application*

(1) This section applies to—

- (a) a supply of a prepaid telecommunications product by a telecommunications supplier or a telecommunications intermediary; and
- (b) a supply by a telecommunications intermediary in relation to a supply of a prepaid telecommunications product,

but does not apply to a supply by one telecommunications supplier to another.

Note: “Telecommunications intermediary”, “telecommunications product”, and “telecommunications supplier” are defined terms: section 2.

#### *Intermediaries acting as principal*

(2) Where a telecommunications supplier supplies a prepaid telecommunications product at a discount to a telecommunications intermediary, the consideration for the supply is calculated without taking into account the discount.

Note: This has the effect of requiring the telecommunications supplier to pay VAT on retail price that will be paid by the consumer (i.e. on both its own value added and the value added by telecommunications intermediaries who on-sell the telecommunications products).

Example: Telco Bangla (TB) sells recharge cards for mobile phones to SuperTel (a distributor) at a 12.5% discount. SuperTel on-sells the recharge cards to smaller distributors, including Zakir, at an 8% discount. Zakir sells the cards to customers (mobile phone users) for their face value. When TB sells a recharge card with a face value of Taka 500 to SuperTel for Taka 437.50, the supply is a taxable supply and the VAT payable is Taka 65.22 (the tax fraction of Taka 500).

(3) Where a telecommunications intermediary buys and on-sells a prepaid telecommunications product—

- (a) the sale is treated as if it were not a supply; and
- (b) the acquisition is treated as if it were not an acquisition.

Note: Because, under subsection (2), the telecommunications supplier has already paid VAT on the value added by the intermediary, it would be inappropriate to again tax the value added by the intermediary. It can be expected that the telecommunications supplier will take this into account in setting the amount of the discount given to intermediaries that buy and on-selling prepaid telecommunications products.

Example: Continuing the example to subsection (2), no VAT is payable by SuperTel when it on-sells the recharge cards to Zakir for Taka 460, nor by Zakir when he on-sells the cards to consumers for Taka 500. The VAT payable on the value added by SuperTel (Taka 460 – Taka 437.50 = Taka 22.50) and on the value added by Zakir (Taka 500 – Taka 460 = Taka 40) have effectively been paid by TB.

#### *Intermediaries acting as agent*

(4) To avoid doubt, where a telecommunications supplier supplies a prepaid telecommunications product through a telecommunications intermediary who acts as an agent for the telecommunications supplier, the consideration for the supply is calculated without taking into account the commission paid to the intermediary.

Example: Telco Dhaka (TD) sells airtime for mobile phones (at face value) through small distributors, including Munir, who act as its agent in distributing the airtime to consumers. When TD sells airtime (which is uploaded to the customer's account by a text sent by Munir) with a face value of Taka 500, the supply is a taxable supply and the VAT payable is Taka 45.46 (the tax fraction of Taka 500).

(5) A supply of services by a telecommunications intermediary acting as agent, whether for a telecommunications supplier or another telecommunications intermediary, in relation to the distribution of a prepaid telecommunications product is treated as if it were not a supply.

Note: This section ensures neutrality of treatment between intermediaries that buy and on-sell telecommunication products and those that act as agent, providing 'distribution services' to the telecommunications provider. The value added by agents, like other intermediaries, will not be taxed a second time in the hands of the agents. It can be expected that the telecommunications supplier will take this into account in setting the amount of the commission paid.

Example: Continuing the example to subsection (4), TD pays Munir a commission for acting as its agent in selling airtime. For each Taka 500 uploaded to customers accounts, Muni receives a commission of Taka 40. Munir is treated as if he did not make a supply, and so does not make a taxable supply, when supplying agency services in relation to the distribution of the airtime. The VAT on the value added by Munir (the tax fraction of Taka 40) has effectively been paid by TD.

*Decreasing adjustments in some situations*

(6) A telecommunications supplier who supplies a prepaid telecommunications product and pays VAT in accordance with the requirements of this section is allowed a decreasing adjustment if—

- (a) part or all of the face value of the product is used to purchase something from a person other than the telecommunications supplier;
- (b) the other person—
  - (i) makes the supply through an economic activity it carries on in Bangladesh; or
  - (ii) is registered; and
- (c) the telecommunications supplier pays an amount of money to that other person in respect of that supply.

(7) The amount of the decreasing adjustment is equal to the tax fraction of the amount paid to the other person and is allowed in the tax period in which the payment is made.

Example: Babul uploads Taka 15,000 to his mobile phone account and his provider pays VAT on that amount at the time of the upload. Later, Babul pays his electricity bill using part of the credit on the phone and his provider takes the relevant amount from his account and pays the cash equivalent to the electricity company. At the time of making that payment, Babul's provider is allowed a decreasing adjustment equal to the tax fraction of the amount paid. This ensures that there is no double taxation because the amount paid by his provider on Babul's behalf is consideration for the electricity supplied to Babul.

*Regulations*

(7) The Board may prescribe rules specifying alternative means of evidencing a right to an input tax credit for a person who uses a prepaid telecommunications product to acquire telecommunications services or other things for which the person would, but for the requirement to hold a tax invoice, be entitled to an input tax credit.

Note: This is necessary because the purchase of the value used to acquire telecommunications or other services may have been supplied to the person by a telecommunications intermediary whose supplies were being ignored under this section.

**38. Lotteries, lucky draws, raffles, and similar undertakings.—**

(1) Where a registered person runs a lottery, lucky draw, raffle, or similar undertaking (“the undertaking”), the value of tickets (however described) sold by the person is the ticket price, where “ticket price” means the consideration that will be payable by a person seeking to hold the ticket and participate in the undertaking with a chance to win.

(2) Tickets sold at a discount to distributors or agents are valued without taking into account the discount.

Note: This section has the effect of treating the services of the distributors or agents as part of the value added by the operator of the undertaking, in the same way as if they had been employees rather than independent contractors.

### **39. Value of in-kind benefits given to an employee or office-holder.—**

#### *Goods*

(1) A supply of goods by a registered person (the employer) to an employee or office-holder as an in-kind benefit shall be treated as an application of the goods by the employer to a private use.

Note: As a result, the employer will have an increasing adjustment under section 70. For goods acquired or imported by the employer, the adjustment will simply undo any input tax credit claimed. For goods produced by the employer, the adjustment will be equivalent to taxing the supply of the goods at their fair market value.

#### *Services and immoveable property*

(2) The value of a supply of services or immoveable property by a registered person to an employee or office-holder for no consideration or for less than fair market value shall be the fair market value of the supply.

### **40. Lay-by sales.—**

#### *Accounting on a cash basis*

- (1) Where a supply of goods is made under a lay-by agreement,—
- (a) the output tax payable on the supply becomes payable when payments for the supply are made under the agreement and shall be accounted for in each tax period in which a payment is made; and
  - (b) the amount of output tax to be accounted for in each tax period shall be the tax fraction of the payments made in that period.

Note: This modifies the combined effect of sections 31 and 57.

Example: Sakira wishes to buy a 3 piece salwar kameez costing taka 3,450 (including taka 450 for VAT). As she cannot afford to pay this amount all at once, she pays a deposit of taka 1,000 on July 20th and subsequently makes three further payments: taka 1,000 on August 14th, another taka 1,000 on August 28th, and the final taka 450 on September 15th. The store keeps possession of the outfit until September 15th when she makes the final payment. The time of supply is September 15th, which is when the outfit is finally delivered to Sakira (definition of “time of supply” in section 2). Ordinarily, all of the VAT would become payable on July 20th when the first payment is made, at which time the store

will presumably issue an invoice to Sakira indicating the final amount payable and showing the deposit paid. However, under this section, VAT will be payable in respect of the following amounts and accounted for as follows: taka 1,000 in July; taka 2,000 in August, and taka 450 in September.

#### *Tax invoices*

(2) The Board may prescribe special tax invoice requirements for a supplier who makes a supply under a lay-by agreement, which may include a requirement that separate tax invoices be issued for each payment made.

#### *Definition*

(3) “Lay-by agreement” means an agreement for the sale and purchase of goods under which,—

- (a) the price is payable by at least one additional payment after the payment of a deposit;
- (b) delivery of the goods takes place at a time after payment of the deposit; and
- (c) ownership of the goods is transferred by delivery.

#### **41. Cancelled transactions.—**

(1) If a transaction for supply is cancelled and part of the consideration previously paid is retained by the supplier, any adjustments allowed or required under section 67 because of the cancellation are reduced to take account of the amount retained.

(2) If a transaction for supply is cancelled and the supplier recovers an amount from the recipient as a consequence of the cancellation, the amount recovered is treated as consideration received for a supply made in the tax period when the amount is recovered.

(3) Subsections (1) and (2) apply whether or not the cancellation has the effect that no supply is made, and any references to supplier and recipient in those subsections refer to the persons who would have been the supplier and recipient had the transaction not been cancelled.

**Note:** Although the cancellation is an adjustment event (see section 67), these provisions prevent the supplier reclaiming the previously paid VAT through a decreasing adjustment if, and to the extent that, the supplier retains/receives a payment from the customer in relation to the cancelled supply. This may apply, for example, where a lay-by sale is cancelled before it is completed. Similarly, where a sale of goods agreement is cancelled after a deposit is taken but before the supply is made, if the intended supplier is entitled to keep part or all of the deposit, the tax fraction of the amount kept will be the VAT payable.

**Example:** Varying the example of Sakira (see the note to section 40): in August, shortly after making the first payment, Sakira changes her mind and decides to cancel the purchase. The store’s agreement with Sakira entitles it to keep 10% of the price (taka 345) if the sale is cancelled so Sakira receives a refund of (taka 655) the difference between that and her

initial deposit of taka 1,000. Because the supply has been cancelled (and so the supply of goods has not been made), section 67 would normally entitle the store to take a decreasing adjustment for the VAT it has paid to date (the tax fraction of taka 1,000, which is taka 130.44). However, because the store keeps part of the deposit, it is only allowed to reclaim the tax fraction of the amount refunded (which is taka 85.44). The final VAT payable by the store is thus the tax fraction of the 10% that it retains (the store kept 345, which includes VAT of 45). Even though the supply of goods was not made, the VAT reflects the expenditure incurred by Sakira and the revenue received by the store.

#### **42. Sale of property in satisfaction of a debt.—**

(1) Where a person (“the creditor”) makes a supply of the property of another person (“the debtor”) in full or partial satisfaction of a debt owed by the debtor to the creditor—

- (a) the supply is deemed to have been made by the debtor;
- (b) the creditor is liable to pay the VAT, if any, payable on the supply; and
- (c) the VAT is payable in priority to the satisfaction of the debt and the return to the debtor of any part of the proceeds that is surplus to the debt.

(2) The debtor is jointly and severally liable with the creditor for the VAT payable.

(3) A creditor who is not registered but is required to pay VAT because of this section shall pay the VAT at such time, and in such manner and mode, as the Board prescribes.

#### **43. Vending machines.—**

(1) Where a taxable supply is made through a vending machine, meter, or other automatic device (not including a pay telephone) that is operated by a coin or note, the tax becomes payable when the coin or note is taken from the machine, meter, or other device by or on behalf of the supplier.

(2) Where a taxable supply is made through a vending machine, meter, or other automatic device and payment is made by short messaging service (SMS), the tax becomes payable when the supplier is paid an amount by any person in respect of the supply.

**Note:** This section modifies the effect of section 29 and therefore alters the tax period when the tax is accounted for under section 57.

**Example:** Customers buy cans of soft drink from a vending machine between March 20<sup>th</sup> and April 2<sup>nd</sup>, when the supplier removes money from the machine and restocks it. The tax payable on the supplies made between March 20<sup>th</sup> and April 2<sup>nd</sup> becomes payable on April 2<sup>nd</sup> and is accounted for in the April return and paid when that return is filed (which will be in May).

## CHAPTER 6

### PLACE OF TAXATION

#### *Part A - Explanation*

#### **44. Destination principle.—**

(1) This Act applies the destination principle, under which the objective is to impose VAT only on consumption in Bangladesh.

(2) This is achieved by:

- (a) imposing VAT on imports of goods;
- (b) imposing VAT on some supplies of imported services;
- (c) imposing VAT on supplies made in Bangladesh; and
- (d) zero-rating exports and other supplies for consumption outside Bangladesh.

(3) This Act does not require suppliers to determine where a particular supply will be consumed.

(4) Instead, proxies are used to predict the place where particular goods, services, or immoveable property will be consumed.

Note: For example, some of the proxies used in this Act are the residence of the supplier and customer, the location of land or goods, the location of the customer, the place of initiation of a telecommunications service, and the place where certain rights are to be used. This list is not exhaustive.

(5) This section is an explanatory provision.

#### *Part B – Supplies made in Bangladesh*

#### **45. Supply by a resident**

A supply by a resident is made in Bangladesh.

Note 1: This makes the residence of the supplier the primary proxy for determining the place of taxation of supplies by residents. However, under Part B of this Chapter, some supplies by resident suppliers are zero-rated if they are for use outside Bangladesh (for example, exports of goods or services supplied for use outside Bangladesh). For these supplies, other proxies will over-ride the residence proxy.

#### **46. Supply by non-resident established in Bangladesh**

A supply by a non-resident is made in Bangladesh if—

- (a) the non-resident carries on an economic activity at or through a fixed place in Bangladesh; and
- (b) the supply is made—
  - (i) in the course of that economic activity; or
  - (ii) at or through that fixed place.

Note: This section puts a non-resident on an equal footing with a resident if the non-resident carries on economic activities through a fixed place in Bangladesh. It uses the place of the economic activity as the primary proxy for determining the place of taxation of supplies associated with that place. However, as for residents, under Part B of this Chapter, the supplies are zero-rated if they are for use outside Bangladesh (for example, exports of goods). For these supplies, other proxies over-ride the place of business proxy

#### **47. Supply by non-resident not established in Bangladesh**

*Who this section applies to*

(1) This section applies to a supply by a non-resident if the supply is not made in Bangladesh under section 46.

*Supply of real property*

(2) A supply of immoveable property by a non-resident is made in Bangladesh if the land to which the immoveable property relates is in Bangladesh.

*Supply of goods*

(3) A supply of goods by a non-resident is made in Bangladesh if—

- (a) the goods are delivered or made available in Bangladesh; or
- (b) the supplier installs or assembles the goods in Bangladesh.

(4) Goods supplied by a non-resident after they are imported but before they are entered for home consumption are entered for export or delivered or made available outside Bangladesh.

*Supply of services*

(5) A supply of services by a non-resident is made in Bangladesh if the recipient of the supply is not registered and—

- (a) the services are physically performed in Bangladesh by a person who is in Bangladesh at the time of supply;



Note: The services may be performed by the non-resident supplier or its employees, or by someone else engaged by the supplier to perform the services.

- (b) the services are directly related to land located in Bangladesh;
- (c) the services are radio or television broadcasting services received at an address in Bangladesh;

Note: It does not matter whether it is the recipient or a third party who receives the services in Bangladesh.

- (d) the services are electronic services delivered to a person located in Bangladesh at the time of supply; or

Note: It does not matter whether it is the recipient or a third party who receives the services in Bangladesh.

- (e) the supply is of a telecommunications service that is initiated by a person who is located in Bangladesh at the time of supply, other than—
  - (i) a telecommunications supplier; or
  - (ii) a person who is global roaming while temporarily in Bangladesh.

Note: Subsection (6) explains how to determine who initiates a supply of telecommunications services.

Note: The rules in this subsection do not apply if the recipient is registered. Services supplied by a non-resident to a person who is registered may be defined as “made in Bangladesh” under another provision of this Act (see sections 46 and 48). If they are not made in Bangladesh, they will still be taxable supplies if they are taxable imported services under section 30(2). VAT on imported services is reverse charged to the recipient of the supply: section 19(1)(c). Additional rules relating to imported services appear in section 52.

- (6) The person who initiates a supply of telecommunications services is—
  - (a) the person identifiable by the supplier of the services as being—
    - (i) the person who controls the commencement of the supply;
    - (ii) the person who pays for the services; or
    - (ii) the person who contracts for the supply; and
  - (b) if more than one person satisfies paragraph (a), the person who appears highest on that list; and
  - (c) if the supplier cannot identify any of the persons listed because it is impractical to determine the physical location of a person due to the type of service, or to the class of customer to which the person belongs, then in respect of all supplies

of telecommunications services made for that type of service or that class of customer, the supplier shall treat the supply as being made where the physical residential or business address for the person receiving invoices from the supplier is located.

Note: Initiating a supply is not synonymous with initiating a telephone call: see Example 2 below. Similarly, a telecommunications service should not be equated with a telephone call. While often one call equals one supply, in some cases there is more than one supply involved in the making of a call: see Examples 2 and 3.

Example 1: A person in Bangladesh makes a call from a mobile phone, using a Bangladesh SIM card, to a person in Scotland. The person who controls the commencement of the supply is the person in Bangladesh.

Example 2: A family in Bangladesh has a child studying at University in England. The child makes a reverse charge call to the parents in Bangladesh. This involves more than one supply. A United Kingdom telecommunications supplier makes a supply for no consideration to the child. That supply involves connecting a line between the child and the parents and determining whether the parents are willing to pay for a reverse charge call. A Bangladesh telecommunications supplier makes a supply to the parents in Bangladesh. That supply involves continuing the initial call once the parents have agreed to accept the charges. The person who initiates the reverse charge call is the person who agreed to the commencement of the reverse charge. This might also be the person who pays and contracts for the supply and to whom the invoice is sent. Alternatively, it might be the child's brother or sister, or another person in the house who answered the call.

Example 3: A person in Bangladesh makes a call from a mobile phone, using a Bangladesh SIM card, to a person in the USA, who is using a US SIM card. The US telecommunications company charges its users for receiving calls as well as for making calls. There are two supplies: one by the Bangladesh company to its customer and the other by the US company to its customer. The person who controls the commencement of the first supply is the person in Bangladesh who dials the number of the US person. The person who controls the commencement of the other supply is the US person who answers the call.

#### **48. Supplier and recipient registered**

A supply of services by a non-resident who is registered to a recipient who is registered is made in Bangladesh if—

- (a) the recipient carries on an economic activity at or through a fixed place in Bangladesh; and
- (b) the supply is made—
  - (i) for the purposes of that economic activity; or
  - (ii) to that fixed place.

Note: This section merely has the effect of altering the person liable to pay tax, rather than making supplies taxable that would not have been taxable if the supplier was unregistered. Ordinarily, services supplied by non-residents to customers in Bangladesh are (if the supplier exceeds the registration threshold or chooses to be registered) considered to be “taxable supplies” in the following situations: Firstly, services supplied by non-residents at or through a fixed place of business in Bangladesh are “made in Bangladesh”. Secondly, services supplied by non-residents through a place of business outside Bangladesh are “made in Bangladesh” if the customer is not registered and the supply is of a kind listed in section 47(5). Thirdly, supplies made by non-residents through a place of business outside Bangladesh to a customer who is registered are “taxable supplies” under the “reverse charge” rule for “imported services” (see sections 30(2) and 19(1)(c)). However, in this last case, if the non-resident is registered because it makes supplies covered by section 47, then for practical reasons it is simpler to require the supplier to collect VAT on supplies of imported services to registered businesses, rather than to reverse charge the VAT.

Note 2: Paragraphs (a) and (b) ensure that a supply made to a foreign branch of a resident or non-resident does not become taxable merely because both parties are registered in respect of their activities in Bangladesh. In such cases, the supply is essentially wholly provided and used outside Bangladesh.

#### **49. Water, gas, oil, electricity, or thermal energy.—**

If a non-resident supplies water, gas, oil, electricity, or thermal energy through a distribution network to a person in Bangladesh the supply is made in Bangladesh.

Note: Irrespective of whether such supplies would be goods, services, or even immoveable property, they are taxable when supplied to a person in Bangladesh and the VAT is payable by the supplier.

#### **50. Progressive or periodic supplies.—**

If a progressive or periodic supply is deemed to be a series of separate supplies, the place where each such supply takes place is determined separately.

#### **51. VAT representatives of non-residents.—**

(1) A non-resident who makes a taxable supply in Bangladesh and does not carry on an economic activity at a fixed place in Bangladesh must—

- (a) appoint a VAT representative in Bangladesh in accordance with the requirements of the Board; and
- (b) if required to do so by the Board, lodge a security with the Board.

(2) The VAT representative of a non-resident shall—

- (a) have the responsibility for doing all things required of the non-resident under this Act; and

- (b) shall be jointly and severally liable for the payment of all taxes, fines, penalties, and interest imposed under this Act.
- (3) The VAT registration of a VAT representative shall be in the name of the principal.
- (4) The mode, manner, and requirements for appointment of a VAT representative, and the responsibilities of the representative, shall be prescribed by the Board.

## **52. Imported services reverse charged to recipient.—**

### *Scope of the section*

- (1) This section applies in respect of a supply of imported services.

Note: Imported services are taxed to ensure that there is no incentive to purchase services from offshore service suppliers in order to avoid the imposition of VAT. A registered recipient acquiring imported services must reverse charge the VAT to itself: section 19(1)(c).

### *Input and output tax*

- (2) VAT payable by the recipient of a taxable supply of imported services is both output tax and input tax of that person.
- (3) If an adjustment event occurs in relation to a supply of imported services that is, or would be because of the adjustment event, a taxable supply, the recipient of the supply of services is treated as if it were also the supplier of the services.

Note: These provisions are required because the recipient is paying the VAT imposed on a supply made to it by the non-resident supplier.

### *Supplies from a foreign branch*

- (4) For the purposes of the definition of “imported services”, and of the application of this Act in relation to such services, if a registered person carries on economic activities both at a fixed place in Bangladesh and at one or more fixed places outside Bangladesh—
  - (a) the person is treated as two separate persons corresponding respectively to the taxable activities the person carries on inside and outside Bangladesh;
  - (b) the person outside Bangladesh is deemed to have made a supply of services to the person inside Bangladesh consisting of any benefit in the nature of services (as defined for the purposes of this Act) that is received by the person in Bangladesh through or as a result of the activities carried on by the person outside Bangladesh;
  - (c) the time of the supply is determined on the assumption that a supply has been made; and

- (d) the value of the services is determined on the assumption that the supply was made by a non-resident outside Bangladesh to an associate in Bangladesh.

Note: This rule prevents a registered person from circumventing these “reverse charge” rules by purchasing services offshore through an offshore branch.

***Part C – Supplies for consumption outside Bangladesh***

**53. Land outside Bangladesh.—**

A supply of immoveable property is zero-rated if the land to which the immoveable property relates is outside Bangladesh.

**54. Goods supplied for consumption outside Bangladesh.—**

*Goods never in Bangladesh*

(1) A sale of goods is zero-rated if the goods are located outside Bangladesh at the time of supply and will not be imported into Bangladesh, or installed or assembled in Bangladesh, by the supplier.

(2) Goods supplied after they are imported but before they are entered for home consumption are deemed to have been located outside Bangladesh at the time of supply.

*Goods exported.—*

(3) A sale of goods is zero-rated if—

- (a) the supplier has entered or will enter the goods for export under the customs laws and the goods have been or will be exported;
- (b) the consideration is paid in foreign currency under a back to back letter of credit or similar instrument for ultimate exportation to a place outside Bangladesh and the Board is satisfied that the goods have been or will be exported from Bangladesh; or
- (c) the goods are sold, under such conditions as the Board may prescribe, to a tourist or visitor by a licensed duty-free vendor who holds documentary evidence, collected at the time of the supply, which establishes that the goods will be removed from Bangladesh without being effectively used or enjoyed in Bangladesh.

(4) A sale of goods is not zero-rated if the goods have been or will be re-imported into Bangladesh by the supplier.

*Leased goods used outside Bangladesh*

(5) For each part of a lease, hire, license, or other supply of the use of goods that is treated as a separate supply, the supply is zero-rated if the goods are outside Bangladesh for the whole of that period.

(6) Leased goods are treated as being in Bangladesh during a period of time when they are in international territory if the goods are in Bangladesh immediately before and after that time.

*Goods used to repair temporary imports*

(7) A supply of goods is zero-rated if it is made in the course of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting other goods if: —

- (a) those other goods are—
  - (i) temporarily imported into Bangladesh under a special regime for temporary imports under the customs laws; or
  - (ii) brought temporarily into Bangladesh for the purpose of receiving the services, so long as the goods are removed from Bangladesh after the services have been performed and have not been used in Bangladesh for any purpose other than to enable the services to be performed; and
- (b) the goods supplied are attached to or become part of those other goods, or become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.

*Goods supplied to non-resident warrantor*

(8) A supply of goods is zero-rated if it relates to the repair or replacement of goods under warranty and—

- (a) the supply is provided under an agreement with, and for consideration given by, the warrantor, who is a non-resident and is not a registered person; and
- (b) the goods are repaired or replaced without charge to the owner.

*Goods for use in international transport*

(9) A supply of goods in the course of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting an aircraft or ship engaged in international transport is zero-rated.

(10) A supply of aircraft's stores or ship's stores, or of spare parts for an aircraft or ship, is zero-rated if the stores or parts are for use, consumption, or sale on the aircraft or ship during a flight or voyage that constitutes international transport.

(11) The following definitions apply:—

- (a) “aircraft’s stores” means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft;
- (b) “ship’s stores” means stores for the use of the passengers or crew of a ship, or for the service of a ship;
- (c) “stores,” in the definitions of “aircraft’s stores” and “ship’s stores,” includes goods for use in the aircraft or ship, fuel, and spare parts, and other articles or equipment, whether or not for immediate fitting.

## **55. Services supplied for consumption outside Bangladesh.—**

### *Services connected with land outside Bangladesh*

- (1) A supply of services directly related to land outside Bangladesh is zero-rated.

### *Services performed on goods outside Bangladesh*

- (2) A supply of services physically performed on goods situated outside Bangladesh at the time the services are performed is zero-rated.

### *Services connected with temporary imports*

- (3) A supply of services directly in connection with goods temporarily imported into Bangladesh under a special regime for temporary imports specified in the customs laws is zero-rated.

- (4) A supply of services is zero-rated if it consists of the repair, maintenance, cleaning, renovation, modification, or treatment of goods brought temporarily into Bangladesh, so long as the goods are removed from Bangladesh after the services have been performed and are not used in Bangladesh except to the extent required to perform the services.

### *Services performed outside Bangladesh*

- (5) A supply of services is zero-rated if the services are performed outside Bangladesh and the services are of a kind that is typically received by an individual at the time and place where it is performed.

Examples: Examples of such services include services physically performed on an individual, such as hairdressing, massage therapy, beauty therapy, or surgery (not including remote surgery). Other examples include services that can only be meaningfully consumed by individuals who are physically present, such as cultural performances (plays, concerts, ceremonies, films, exhibitions, and similar things) and access to sporting events such as cricket matches.

*Services supplied to persons outside Bangladesh*

- (6) Subject to subsection (7), a supply of services is zero-rated if—
- (a) the recipient of the supply is—
    - (i) a non-resident who is outside Bangladesh at the time of supply; or
    - (ii) a resident who is outside Bangladesh at the time of supply and who will effectively use or enjoy the services outside Bangladesh; and
  - (b) the services are not—
    - (i) directly related to land situated in Bangladesh;
    - (ii) physically performed on goods situated in Bangladesh at the time of supply; or
    - (iii) global roaming services provided to a person temporarily outside Bangladesh.
- (7) A supply of services is not zero-rated under subsection (6) if:—
- (a) the supply is of a right or option to receive a subsequent supply (which would not be exempt or zero-rated) of something else in Bangladesh; or
  - (b) the services are supplied under an agreement with a non-resident but are or will be rendered to an unregistered person in Bangladesh.

*Intellectual property rights for use outside Bangladesh*

(8) A supply of services that consist of the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of intellectual property rights for use outside Bangladesh is zero-rated.

*Inter-carrier telecommunications services*

(9) A supply of telecommunications services by a telecommunications supplier to a non-resident telecommunications supplier is zero-rated, including but not limited to a supply involving the termination of calls in Bangladesh or the transmission of signals through Bangladesh.

*Services supplied to non-resident warrantor*

- (10) A supply of services is zero-rated if it relates to the repair or replacement of goods under warranty and—
- (a) the supply is provided under an agreement with, and for consideration given by, the warrantor, who is not resident in Bangladesh and is not a registered person; and



- (b) the goods are repaired or replaced without charge to the owner.

*International transport and related services*

(11) The following supplies are zero-rated:—

- (a) a supply of international transport;
- (b) a supply that would be international transport under paragraph (b) or (c) of the definition of international transport but for the fact that it is not supplied by the same supplier as the transport referred to in paragraph (a) of that definition if, despite the fact that the services are provided to a person in Bangladesh or performed on goods in Bangladesh, the supply is made to a person who is a non-resident and is not registered;
- (b) a supply of insuring the international transport of goods;
- (c) a supply of the services of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting an aircraft or ship engaged in international transport;
- (d) a supply to a non-resident who is not a taxable person of services that—
  - (i) consist of the handling, pilotage, salvage, or towage of a ship or aircraft engaged in international transport; or
  - (ii) are provided directly in connection with the operation or management of a ship or aircraft engaged in international transport;

***Part D – Special cases***

**56. Travel agents and tour operators.—**

*Inbound tourism*

- (1) A supply is not made in Bangladesh if—
  - (a) the supply is of a right to receive tourism supplies in Bangladesh; and
  - (b) the supplier—
    - (i) makes the supply through a fixed place outside Bangladesh at which it carries on its economic activity; and
    - (ii) is not registered.

Note: This subsection effectively excludes the profit margin of foreign travel agents and tour operators because of the impracticality of expecting them to register, and the difficulty of enforcing tax against them. To make such a supply, the supplier will need to source the tourism supplies referred to in paragraph (a) directly or indirectly from Bangladesh. A

supply of tourism supplies, or the right to receive such supplies, by a person in Bangladesh to a person outside Bangladesh will be taxable because it will be both made in Bangladesh (see Part B of this Chapter) and not zero-rated (see Part C of this Chapter), provided of course that the supplier is registered.

(2) A supply that is made in Bangladesh is not zero-rated if it is a supply of arranging for a person to receive tourism supplies in Bangladesh (whether alone or as part of a holiday or tour package).

#### *Outbound tourism*

(3) A supply that is made in Bangladesh is not zero-rated if it is a supply of arranging for a person to receive tourism supplies outside Bangladesh (whether alone or as part of a holiday or tour package).

(4) A supply that is made in Bangladesh is not zero-rated if it is a supply of a right to receive tourism supplies outside Bangladesh (whether alone or as part of a holiday or tour package).

(5) The value of a supply that is not zero-rated because of subsection (4) is calculated on a global basis for each tax period and is equal to the amount calculated accordingly to the following formula—

$$(C-P) \times (1-T)$$

Where —

**C** is the consideration for all tourism supplies made by the registered person in that tax period that are not zero-rated because of subsection (4); and

**P** is the consideration paid by the person for the acquisition in that tax period of such tourism supplies for the purpose of on-supply; and

**T** is the tax fraction.

(5) If **P** exceeds **C** in the calculation in subsection (5) for a particular tax period, the excess is included in the value of **P** for the following tax period.

Note: For suppliers established in Bangladesh, this section has the effect of treating the profit margin of travel agents and tour operators who act as principal in the same way as if the profit margin were in fact a commission for acting as agent. The travel agents and tour operators effectively provide services in Bangladesh to their customers (who will mostly be in Bangladesh) and will be taxed accordingly. The goods, services, and immoveable property supplied outside Bangladesh will be subject to the tax regime of the country where they are supplied.

*Definition*

(6) “Tourism supplies” means accommodation, meals, tours, entertainment, and similar things commonly provided to tourists or international visitors.

**CHAPTER 7****CALCULATION AND PAYMENT OF TAX FOR TAX PERIOD***Part A - Calculation and payment of net tax payable***57. Payment of VAT payable on supplies.—**

*When output tax on supplies is accounted for and paid*

(1) Output tax payable by a registered person shall be accounted for and paid at the time of filing the VAT return for the tax period during which the output tax becomes payable.

Note: Supplementary duty is also required to be accounted for and paid at the same time and in the same manner as if it were output tax: section 88.

Note 2: Amounts withheld under section 61 must also be accounted for and paid at the same time.

*Adjustments to the amount payable*

(2) Unless otherwise provided, the amount payable under subsection (1) shall be adjusted by—

- (a) adding all increasing adjustments required to be made in the tax period by the registered person; and
- (b) subtracting all decreasing adjustments allowed to be made in the tax period by the registered person.

*Method of payment*

(3) The resulting amount shall be paid in such manner and mode as prescribed in the Rules.

*Assessment not required*

(4) The liability to pay an amount under this section arises by operation of this section and does not depend on the making of an assessment by a Divisional Officer of the amount due.

## 58. Adjustments increasing the amount payable.—

**[Note: before finalising the Act check that all relevant adjustments are included in the list]**

(1) The following are increasing adjustments that are added to the output tax payable by a taxpayer in a tax period in accordance with section 57(2)(a):

- (a) an amount the person is required under section 61 to withhold from a payment to another person;

Note: This is an adjustment a withholding entity must make to account for and pay VAT it has withheld from a payment to another person of the consideration for a supply by that person.

- (b) an increasing adjustment required under section 67 for an adjustment event, including an increasing adjustment required under section 68 in relation to a bad debt;

Note: Such adjustments reflect a change in the correct amount of VAT payable on a supply or acquisition.

- (c) an increasing adjustment required under section 69 when payment is not made through banking channels;

Note: This adjustment requires input tax credits to be repaid because of a failure to meet a key pre-requisite for claiming input tax credits.

- (d) an increasing adjustment required under section 70 for goods applied to a private purpose;

Note: This adjustment requires input tax credits to be repaid because the goods will be consumed privately rather than being used to make taxable supplies.

- (e) an increasing adjustment allowed under section 71 on becoming registered;

Note: This adjustment prevents non-taxation by requiring the newly registered person to account for VAT in the first tax period for any supplies that were invoiced or paid for before the person became registered but are made after the registration takes effect.

- (f) an increasing adjustment required under section 72 on cancellation of registration;

Note: This adjustment requires input tax credits to be repaid because assets acquired while registered will be no longer be used to make taxable supplies

- (g) an increasing adjustment required under section 76 where there is a change in the VAT rate;

Note: This adjustment is a transition rule.

- (h) supplementary duty payable for the tax period under section 90;

Note: This adjustment provides for payment of the supplementary duty payable on supplies of dutiable goods or services.

- (i) interest, or a fine, penalty, fee, or other sum, imposed and payable under this Act.

(2) This section is an explanatory provision and the failure to mention an increasing adjustment in this section should not be taken to mean that the adjustment is not required.

## **59. Adjustments decreasing the amount payable.—**

**[Note: before finalising the Act check that all relevant adjustments are included in the list]**

(1) The following are decreasing adjustments that are subtracted from the output tax payable by a taxpayer in a tax period in accordance with section 57(2)(b):

- (a) the amount of an advance tax paid by the person in accordance with section 28;

Note: This is an adjustment for output tax prepaid by the taxpayer at the time of import.

- (b) a decreasing adjustment allowed under section 37 to a telecommunications supplier;

Note: This is an adjustment to pay back VAT remitted by the telecommunications supplier on a prepaid telecommunications product if part or all of the value of the product is paid to another supplier as consideration for a supply made by that other supplier to the customer of the telecommunications supplier.

- (c) an amount withheld from a payment to the person in accordance with section 61;

Note: This is an adjustment for output tax prepaid on behalf of the taxpayer by a withholding entity who withheld the amount from the consideration paid to the taxpayer.

- (d) an amount equal to the input tax credit to which the person is entitled in that tax period in accordance with Part B of this Chapter;

Note: This is an adjustment to allow input tax to be offset against output tax.

- (e) a decreasing adjustment allowed under section 67 for an adjustment event including a decreasing adjustment allowed under section 68 in relation to a bad debt;

Note: Such adjustments reflect a change in the correct amount of VAT payable on a supply or acquisition.

- (f) a decreasing adjustment allowed under section 71 on becoming registered;

Note: These adjustments prevent double taxation on the input side (by allowing the deduction of input tax incurred on stock on hand at the time of registration) and on the output side (by refunding any turnover tax that has been paid on turnover received before registration for supplies that are made after registration.)

- (g) a decreasing adjustment allowed under section 73 in relation to second-hand goods purchased for re-sale;

Note: Such adjustments ensure that the VAT payable by a dealer in second-hand goods properly reflects its value added.

- (h) a decreasing adjustment allowed under section 73 in relation to an indemnity payment under a policy of insurance;

Note: Such adjustments ensure that the VAT payable by an insurer properly reflects its value added.

- (i) a decreasing adjustment allowed under section 75 in relation to a monetary prize paid for a lottery, lucky draw, raffle, or similar undertaking;

Note: Such adjustments ensure that the VAT payable by a person running the lottery etc. properly reflects its value added.

- (j) a decreasing adjustment allowed in accordance with a decision of the Commissioner under section 90 to refund supplementary duty overpaid;

Note: Such adjustments deal with overpaid supplementary duty, dutiable goods used to manufacture other dutiable goods, and dutiable goods exported.

- (k) a decreasing adjustment allowed for a negative amount carried forward from a previous tax period in accordance with section 98;

Note: Such adjustments limit the extent to which refunds need to be paid while protecting the right of the taxpayer to take advantage of other decreasing adjustments.

- (l) a decreasing adjustment allowed in accordance with a decision of the Commissioner under section 100(3);

Note: Such adjustments deal with small value refund entitlements.

- (m) a decreasing adjustment allowed in accordance with a decision of the Commissioner under section 102 for VAT overpaid in a previous tax period;

Note: Such adjustments allow an adjustment for VAT erroneously overpaid in lieu of a refund of that VAT.

- (n) a decreasing adjustment allowed in accordance with a notice given by the Commissioner under section 127 in relation to the application of a refund;

Note: Such adjustments allow an adjustment when a security is no longer required and after the Commissioner has applied the security against other amounts (if any) owed by the registered person.

- (o) a decreasing adjustment allowed under section 145 or 146 in accordance with the exercise of a discretion by the Commissioner to remit all or part of an amount of interest or penalty previously paid.

(2) This section is an explanatory provision and the failure to mention a decreasing adjustment in this section should not be taken to mean that the adjustment is not allowed.

#### **60. Extension of time to pay.—**

(1) A registered person may, in writing, request the Commissioner to grant an extension, or a further extension, of time to pay the amount due for a tax period.

Note: An extension of time to pay can be granted with, or independently of, a permission under section 94 for late filing of the VAT return.

(2) If the Commissioner thinks it appropriate, the Commissioner may grant the requested extension, or a different extension, or make other arrangements to ensure payment of the amount, including arrangements requiring the person to pay the amount due in such instalments as the Commissioner determines.

Example: A natural disaster, such as a flood, may hinder a taxpayer's ability to file returns and pay the net amount of tax due. Similarly, a personal tragedy, such as the death of a child residing overseas may make a call on the taxpayer's resources that would make an extension of time to pay tax appropriate.

(3) The Commissioner shall, within 15 (fifteen) days of receiving the request, give his response in writing.

(4) If the Commissioner grants an extension of time to pay all or part of an amount due for a tax period, or makes other arrangements for payment of an amount, the person's liability, if any, for a default surcharge under section 159 is waived.

Example: The liability for interest on the unpaid amount will not be waived.

(5) The grant of an extension of time, or the grant of permission to pay all or part of an amount due for a tax period by instalments, does not prevent interest from accruing from the original date the amount was due to be paid.

(6) If a person is permitted to pay all or part of a net amount by instalments and the person defaults in payment of an instalment, the whole balance of the amount outstanding at the time of the default becomes immediately payable.

Example: A natural disaster, such as a flood, may hinder a taxpayer's ability to file returns and make payment of the tax. Similarly, a personal tragedy, such as the death of a child residing overseas may make a call on the taxpayer's resources that would make an extension of time to pay tax appropriate.

### ***Part B –Withholding***

#### **61. Withholding of VAT by recipient.—**

##### *Meaning of withholding entity*

- (1) “Withholding entity” means—
  - (a) a government entity;
  - (b) an NGO;
  - (c) a bank, insurance company, or other financial institution;
  - (d) a limited company; or
  - (e) a post-secondary educational institution.

##### *Relevant supply*

- (2) For the purposes of this section, the following are relevant supplies, except to the extent that they are exempt or zero-rated:—
  - (a) a supply under an agreement by tender;
  - (b) a supply made under an ongoing supply agreement; and
  - (c) a supply or set of related supplies for which consideration exceeds Taka 25,000 (twenty-five thousand).

##### *Prohibition*

- (3) A person shall not make a relevant supply to a withholding entity unless the person—
  - (a) is registered; and
  - (b) has a valid VAT honour card issued under section 185(4).
- (4) Paragraph (b) of subsection (3) does not apply to a newly registered person during the fiscal year in which the person is first registered.



*Obligation to withhold*

(5) A withholding entity shall—

- (a) withhold from a payment made to a registered person (“the supplier”) as consideration for a relevant supply, one third of the amount of VAT payable on the supply; and
- (b) issue to the supplier a serially numbered true and correct withholding certificate complying with the requirements of section 79.

Example: Builder has been engaged to build a high rise building to serve as the new head office in Dhaka for Smart Bank Limited. Smart Bank is a withholding entity because it is a bank. Builder bills Smart Bank for work in progress on a monthly basis. On January 31<sup>st</sup>, Builder sends its invoice for work in progress, which is for taka 11,500,000 (one crore fifteen lakhs). Smart Bank has 30 days in which to pay the amount invoiced. Smart Bank withholds taka 5 lakhs (one third of the total VAT payable) from its payment to Builder, which is made on March 1<sup>st</sup>. The remaining two-thirds of the VAT payable (taka 10 lakhs), as well as the remainder of the outstanding price, is paid to Builder. The amount that Smart Bank actually pays to Builder is 1 crore 10 lakhs, because it withholds one-third of the VAT payable. At the time of making the payment, Smart Bank issues a withholding certificate to Builder stating the relevant information, including the amount of VAT payable on the supply (taka 15 lakhs), the amount of VAT withheld (taka 5 lakhs), and the total consideration payable for the supply (1 crore 15 lakhs, including VAT).

*Accounting for and payment of amounts withheld*

(6) VAT withheld by a withholding entity shall be accounted for and paid, —

- (a) in the case of a withholding entity that is registered: at the time of filing the VAT return for the tax period during which the VAT on the supply to the entity became payable; and

Note: Section 31 determines when VAT becomes payable on taxable supplies.

Example: Continuing the example in subsection (5), Smart Bank is registered and so must include the withheld VAT of taka 5 lakhs in its VAT return for January and pay the amount along with its own VAT at the time when the return is filed.

- (b) in the case of a withholding entity that is not registered: at the time, and in the manner and mode, prescribed by the Board.

*Joint and several liability*

(7) To the extent of the amount required to be withheld, the withholding entity is jointly and severally liable, with the supplier, to pay the VAT imposed on the supply.

(8) The VAT payable by a supplier that is withheld by a withholding entity must nonetheless be accounted for as VAT payable by the supplier in accordance with section 57.

Note: VAT withheld is a pre-payment of one-third of the output tax that is payable by the registered person making the taxable supply to the withholding entity. It is not in lieu of output tax. Thus, the supplier must account for the full amount of VAT payable on the supply and is entitled, under section 62, to a decreasing adjustment for the VAT withheld.

## **62. Supplier's adjustment for VAT withheld.—**

(1) A registered person from whom part of a payment for a supply has been withheld under section 61 is allowed a decreasing adjustment equal to the amount withheld.

(2) The adjustment shall be made—

- (a) in the tax period in which the VAT payable on the supply is accounted for and paid; or
- (b) if the person did not claim the adjustment in that period, in any one only of the subsequent six tax periods.

(3) No decreasing adjustment is allowed unless the person holds, at the time of filing the return in which the adjustment is claimed, a withholding certificate issued by the withholding entity, or an attested copy of the certificate, to evidence the amount withheld.

Example: Continuing the example in section 61, in February Builder submits its VAT return for January, which includes the taka 15 lakhs payable on the supply to Smart Bank, as well as all of the other output tax, input tax, and other increasing or decreasing adjustments Builder must account for in the January tax period.. Although the time referred to in subsection (2)(a) was in January, Builder cannot claim the decreasing adjustment of taka 5 lakhs for the VAT that will be withheld from the payment to be made by Smart Bank because Builder does not hold a withholding certificate at the time of submitting the return for January. It is not until the March tax period, when Smart Bank pays for the supply and withholds 5 Lakhs, that Builder receives the withholding certificate. Thus, since the March tax period is within the time allowed by subsection (2)(b), Builder can claim a decreasing adjustment for the VAT withheld in its return for March. The net effect of the withholding is that amount of VAT paid by Builder is 10 lakhs, although there is a time lag between before credit for the amount withheld is received..

## ***Part C – Input tax credits***

## **63. Credit for input tax.—**

(1) Except as provided otherwise, a registered person is entitled to an input tax credit for the VAT imposed on a taxable supply or import if, and to the extent that,—

- (a) the supply was made to, or the import was made by, the person—
  - (i) in the course of the person's economic activity; and

- (ii) for the purpose of taxable supplies made, or to be made by, the person; and
- (b) the person paid, or is liable to pay, the consideration for the supply.

Note: Input tax does not include supplementary duty or turnover tax imposed under this Act.

(2) The purpose for which a person makes an acquisition or import is determined at the time of supply or, in the case of an import, at the time when the VAT on the import becomes payable, but the person may take account of actual use or a change in intention that occurs before the date on which the VAT return for the tax period in which the acquisition or import took place is required to be filed.

(3) Where an approved non-profit charitable organisation purchases goods or services, or imports goods, for a purpose other than exempt supplies made or to be made by such organisation, the Board may, subject to such conditions, limitations, or restrictions as it determines, treat the goods or services as having been purchased or imported for the purpose of making taxable supplies.

#### **64. Prohibition on input tax credits.—**

##### *Documentary evidence*

(1) A registered person is not entitled to an input tax credit unless, at the time of filing the VAT return in which the input tax credit is claimed, the person claiming the credit holds—

- (a) in the case of goods imported by the person: a bill of entry or a goods declaration bearing the name and registration number of the importer and duly cleared by customs for home consumption;
- (b) in the case of a supply of goods or immoveable property to the person: a valid tax invoice issued by the supplier;
- (c) in the case of a supply of services to the person, if the supply is made in Bangladesh: a valid tax invoice issued by the supplier.

##### *Supplies of services not made in Bangladesh*

(2) Where a supply of imported services is a taxable supply, the recipient of the supply is not entitled to an input tax credit for that supply unless the recipient has also paid the output tax imposed on the supply.

##### *Money not paid through banking channels*

- (3) If—
  - (a) the value of a taxable supply exceeds taka fifty thousand (50,000); and

- (b) all or part of the consideration for the supply is payable in money; and
- (c) all or part of the money is paid otherwise than through a verifiable banking instrument (including on-line or credit card payment showing the transfer of money from a bank account of the recipient to a bank account of the seller),

no input tax credit is allowed for that part of the taxable supply to which the money so paid relates.

Note: In a barter transaction, where one supply is consideration for the other, this rule will not apply. However, it does apply in relation to supplies paid by instalments. If one or more of the instalments is not paid through appropriate banking channels, the input tax credit will be reduced (if it has not already been claimed) or, if the credit has already been claimed, the payment will result in an adjustment under section 69.

#### *Specific restrictions*

(4) No credit is allowed for input tax incurred on an acquisition or import if, or to the extent that,—

- (a) the acquisition or import is of a passenger vehicle, or of spare parts or repair and maintenance services for a passenger vehicle, unless the person's economic activity involves dealing in, hiring out, or providing transport services in passenger vehicles and the vehicle was acquired for that purpose;
- (b) the acquisition or import is of entertainment or is used to provide entertainment, to the extent of that use, unless the person's economic activity involves providing entertainment and the entertainment is provided in the ordinary course of that economic activity;
- (c) the acquisition is of a membership or right of entry for any person in a club, association, or society of a sporting, social, or recreational nature;
- (d) the acquisition is of transport services, other than when supplied as an in-kind benefit to an employee and subject to tax under section 39; or
- (e) the acquisition is of dutiable goods that are subject to a special scheme imposed by the Board under section 86.

Note: These prohibitions relate to things for which it is difficult to distinguish between private and business consumption and for which even business consumption includes a private element.

(5) The following definitions apply—

- (a) “passenger vehicle” means an on-road or off-road vehicle designed or adapted for the transport of 9 or fewer seated passengers; and

- (b) “entertainment” means the provision of food, beverages, tobacco, amusement, recreation, or hospitality of any kind, whether or not the provision of such entertainment is lawful.

**65. When input tax credits may be claimed.—**

- (1) The tax period in which an input tax credit may be claimed is the later of—
- (a) the tax period in which the tax became payable on the supply or import to which it relates; or
  - (b) if the person did not claim the input tax credit in that period, any one only of the three succeeding tax periods.

(2) The Commissioner may disallow all or part of an input tax credit if the Commissioner is satisfied that the person deferred the claiming of an input tax credit in order to increase the amount of the input tax credit available.

Note: Deferring an input tax credit could increase the amount of the credit if the proportion of taxable supplies made in the later period is higher than in the period referred to in subsection (1)(a).

**66. Partial input tax credit.—**

*Credit must reflect expenditure incurred*

(1) Where a registered person pays or is liable to pay only part of the consideration for a taxable supply, any input tax credit to which the person is entitled shall be calculated only by reference to the amount the person pays or is liable to pay.

*Inputs not used wholly for taxable supplies*

(2) A registered person who, in a tax period, is entitled to an input tax credit for an import or acquisition but is not entitled to the full input tax credit, shall determine its entitlement to input tax credits for all such imports or acquisitions under subsection (3).

(3) For each tax period, the sum of the input tax credits allowed for the imports or acquisitions to which this section relates is calculated according to the following formula—

$$I \quad \times \quad \frac{T}{A}$$

where—

**I** is the total amount of input tax incurred on imports or acquisitions to which this subsection relates and for which a credit is sought in the tax period;

**T** is the value of all the taxable supplies made by the registered person during the tax period; and

A is the value of all the supplies made by the registered person during the tax period;

- (4) In applying subsection (3), including as specified in subsection (5),—
- (a) supplies made through an economic activity carried on at a fixed place outside Bangladesh shall not be included in A or T in the formula unless, under Chapter 6, those supplies are made in Bangladesh; and
  - (b) the fraction T/A shall be rounded as follows—
    - (i) if it is more than 0.90, by rounding up to one;
    - (ii) if it is less than 0.10, by rounding down to zero;

Example: X is a company that supplies both taxable and exempt supplies. In May, X's total revenue from supplies made in that month is taka 16.5 lakhs, including VAT. Of this, taka 5 lakhs is consideration for exempt supplies, and so includes no VAT. The remaining taka 11.5 lakhs is the total consideration for taxable supplies, and so includes taka 1.5 lakhs for VAT imposed on the supplies. The value of these supplies is thus taka  $(11.5 - 1.5) = 10$  lakhs. X makes no supplies that are neither taxable nor exempt.

During May, X also paid taka 9.2 lakhs, including VAT, on taxable acquisitions. Its input tax from acquisitions was thus the tax fraction of 9.2 lakhs, or taka 1.2. In addition, X paid taka 15,000 lakhs VAT on taxable imports of goods. X's total input tax for May is thus taka 1.35 lakhs.

X is able to identify that some of the imports and acquisitions relate solely to making taxable supplies. The input tax on these, which is fully creditable, is 85,000 lakhs.

None of the imports or acquisitions relates solely to making exempt supplies. Thus, X must apportion the remaining taka 50,000 lakhs input tax because it relates to both the taxable and the exempt supplies X makes. The amount that X can apportion, using the formula above, is—

$$\begin{aligned}
 & 50,000 \times \frac{(15 - 5)}{15} \\
 = & 50,000 \times 0.67 \\
 = & 33,334
 \end{aligned}$$

- (5) The input tax credits allowed to a person under subsection (3) for a tax period shall be provisional, and at the end of each calendar year, an annual adjustment shall be made, which shall be calculated as follows:

- (a) add up all the amounts allowed as input tax credits under subsection (3) in each of the twelve tax periods occurring during that calendar year;
- (b) apply the formula in subsection (3) as if references in the definitions of “T”, “A”, and “E” to “the tax period” were a reference to the relevant calendar year;
- (c) work out the amount of the adjustment by subtracting the amount worked out under paragraph (b) from the amount worked out under paragraph (a);
- (d) if the adjustment so calculated is a positive amount, an increasing adjustment equal to that amount must be made in the taxable person’s VAT return for the third tax period in the following calendar year, or such earlier tax period as the Board prescribes;
- (e) if the adjustment so calculated is a negative amount, the person is allowed a decreasing adjustment for that amount in the VAT return for the third tax period in the following calendar year, or such earlier tax period as the Commissioner reasonably allows.

(6) Where a registered person supplies financial services that are partly taxable and partly exempt because the consideration for the services is partly an explicit fee and partly an implicit profit made on the spread between transactions with different persons, the amount to be included in both T and A in the formula in paragraph (3) must be such as to give a true and accurate reflection of the extent to which the person’s inputs are used to make taxable supplies.

(7) The Board may prescribe methods for suppliers of financial services to calculate what proportion of their input tax is reasonably attributable to the making of taxable supplies, and such prescribed methods shall prevail over the method in this section.

### ***Part D – Other adjustments***

#### **67. Post-supply adjustments for adjustment events.—**

##### *Adjustment events*

- (1) An “adjustment event” occurs in relation to a supply if—
  - (a) the supply is cancelled;
  - (b) the consideration for the supply is altered;
  - (c) the thing supplied (or part thereof) is returned to the supplier; or
  - (d) the nature of the supply is fundamentally varied or altered in a such a way that the supply becomes, or ceases to be, a taxable supply.

##### *VAT payable increases*

- (2) If an adjustment event occurs and the VAT previously accounted for by the supplier is less than the VAT properly payable on the supply, the supplier shall—

- (a) make an increasing adjustment, equal to the amount of the difference, in the tax period in which the adjustment event occurs; and
  - (b) issue a valid debit note to the recipient of the supply.
- (3) If the recipient is a registered person, the recipient is allowed a decreasing adjustment in the tax period in which the debit note is received or one only of the following 3 (three) months.
- (4) The amount of the decreasing adjustment is equal to—
- (a) if the recipient was entitled to a full input tax credit for the original acquisition: the amount of the difference;
  - (b) if the recipient was entitled to a credit for only part of the input tax on the original acquisition: a proportion of the amount of the difference worked out using the fraction  $T/A$  calculated under section 66(3) for the month in which the adjustment is claimed; or
  - (c) if the recipient was not entitled to an input tax credit for the original acquisition: nil.

*VAT payable decreases*

- (5) If an adjustment event occurs and the VAT actually accounted for by the supplier exceeds VAT properly payable on the supply, the supplier:—
- (a) shall issue a valid credit note to the recipient of the supply; and
  - (b) subject to subsection (7), is allowed a decreasing adjustment, equal to the amount of the difference, in the tax period in which the adjustment event occurs or, if the person did not make the decreasing adjustment in that period, any one only of the 3 (three) succeeding tax periods.
- (6) If the recipient is a registered person:—
- (a) the recipient shall make an increasing adjustment in the earlier of the tax period in which the adjustment event occurs or the tax period in which the credit note is received; and
  - (b) the amount of the increasing adjustment is—
    - (i) if the recipient was entitled to a full input tax credit for the original acquisition: the amount of the difference;
    - (ii) if the recipient was entitled to a credit for only part of the input tax on the original acquisition: an appropriate proportion of the amount of the difference; or
    - (iii) if the recipient was not entitled to an input tax credit for the original acquisition: nil.



- (7) The decreasing adjustment is not allowed unless—
  - (a) if the recipient is a registered person, the supplier holds evidence that the recipient received the credit note; or
  - (b) if the recipient is not a registered person, the supplier has repaid the excess VAT to the recipient, whether in cash or as a credit against any amount owing to the supplier by the recipient.
- (8) For the purposes of subsection (7)(b):—
  - (a) if a supplier refunds part or all of the price paid because of an adjustment event covered by subsections (1)(a) to (c), unless there is evidence to the contrary, the amount refunded should be presumed to include an amount of VAT equal to the tax fraction of the amount refunded;
  - (b) if a supplier refunds an amount because of an adjustment event covered by subsection (1)(d), unless there is evidence to the contrary, the amount refunded should be presumed to be the amount of VAT that is no longer payable.

## **68. Post-supply adjustments for bad debts.—**

### *When this section applies*

- (1) This section applies if all or part of the consideration for a taxable supply has not been paid to the supplier.

### *Decreasing adjustments for supplier*

- (2) If all or part of the consideration payable to the supplier for a taxable supply has been overdue for more than twelve months and the supplier has, in its books of account, written off the amount unpaid as a bad debt, the supplier may make a decreasing adjustment under section 67 as if there had been an adjustment event altering the consideration for the supply.

- (3) The adjustment is allowable in the later of the tax period in which—
  - (a) the amount first becomes overdue by more than twelve months; or
  - (b) the debt is written off as bad.

### *Increasing adjustments for recipient*

- (4) To the extent, if any, that:—
  - (a) all or part of the consideration payable to a supplier for a taxable supply has been overdue for more than twelve months; and
  - (b) the recipient of the supply claimed a deduction for the input tax relating to the supply,

the recipient shall make an increasing adjustment under section 67 as if there had been an adjustment event altering the consideration for the supply.

(5) The adjustment must be made in the tax period in which the amount first becomes overdue by more than twelve months.

*Effect of subsequent payments*

(6) If, after a supplier has made an adjustment for a bad debt, or a recipient has made an adjustment for an overdue debt, the recipient pays to the supplier part or all of the previously unpaid amount, further adjustments shall be made in order to ensure that—

- (a) for the supplier: the output tax paid is equal to the tax fraction of the consideration actually received; and
- (b) for the recipient: the input tax credit is the appropriate proportion of the tax fraction of the consideration actually paid.

*No credit note required*

(7) A supplier is not required to give a recipient a credit note in relation to a bad or overdue debt and a recipient's obligation to make an increasing adjustment does not require a credit note to have been issued.

*Burden of proof*

(8) The burden of proving that an amount was not paid and the debt is bad shall be on the supplier.

**69. Payment not made through banking channels.—**

(1) A registered person has an increasing adjustment in relation to the acquisition of a taxable supply if—

- (a) as required by section 57(1) and section 29(1)(a), the person accounted for the input tax in a tax period before any of the consideration for the supply had been paid;
- (b) section 64(3) required the person to make payment for the taxable supply through a verifiable banking instrument; and
- (c) the person subsequently paid the consideration for the supply otherwise than through a verifiable banking instrument.

(2) An increasing adjustment required under subsection (1) shall be made in the tax period in which the person pays any of the consideration for the supply otherwise than through a verifiable banking instrument.

## **70. Adjustments for assets applied to a private purpose.—**

### *Goods acquired or imported*

- (1) A registered person has an increasing adjustment if the person,—
  - (a) is or has been allowed an input tax credit in respect of part or all of the input tax incurred on an acquisition or import of an asset; and
  - (b) applies that asset to a private use.

(2) The amount of the increasing adjustment is equal to the amount of the input tax credit the person was allowed for the acquisition or import of the asset.

### *Assets produced*

- (3) A registered person has an increasing adjustment for an asset the person produced if—
  - (a) the person applies the asset to a private use; and
  - (b) the supply of the asset by the person would have been a taxable supply.

(4) The amount of the increasing adjustment is the tax fraction of the fair market value of the asset.

### *When the adjustment is made*

(5) The increasing adjustment shall be made in the tax period in which the asset is first applied to a private purpose.

### *Meaning of apply to a private use*

(6) A person applies an asset to a private use if the person uses or consumes the asset otherwise than for the purpose of the person's economic activity.

Example: Giving goods to another person, other than an associate, for a purpose unrelated to the person's economic activity is applying the goods to a private use. For example, a registered person who gives the goods to a friend applies those goods to a private use by making the gift.

Note: Goods given to an associate will be taxed at market value because of section 32(6).

Note: Providing goods to an employee as an in-kind benefit is treated as an application to private use: see section 39.

## **71. Adjustments on becoming registered.—**

### *Decreasing adjustments for stock-in-hand*

(1) A person who is enlisted for turnover tax and subsequently becomes registered may apply to the Commissioner for a decreasing adjustment in relation to goods in the person's possession at the end of the last day before the registration takes effect if:—

- (a) in the 3 (three) months prior to the person becoming registered, the goods—
  - (i) were imported by the person and the person paid VAT on the import; or
  - (ii) were supplied to the person and the person holds a tax invoice for the supply;
- (b) the person acquired the goods—
  - (i) in course of and for the purposes of its economic activity; and
  - (ii) for the purpose of on-supply; and
- (c) the person would have been entitled to an input tax credit for the import or acquisition if it had occurred on the day the person became registered.

(2) The maximum amount of the decreasing adjustment that the Commissioner may allow is equal to the lesser of—

- (a) the amount of VAT paid by the person on the import, or payable by the supplier who made the supply to the person;
- (b) the tax fraction of the market value of the goods at the time the person becomes registered.

### *Prevention of double taxation*

- (3) Where a person who was enlisted for turnover tax—
  - (a) becomes registered and subsequently makes a taxable supply; and
  - (b) the consideration for that supply was previously included by the person in a turnover tax return for a tax period ending before the person became registered,

the person may apply to the Commissioner for permission to make a decreasing adjustment equal to the amount of the turnover tax the person paid in relation to that supply.

### *Applications*

(4) Only one application may be made for decreasing adjustments under this section, and must be—

- (a) made within 6 (six) months of becoming registered;

- (b) in the form and manner prescribed by the Board; and
- (c) accompanied by sufficient documentary evidence to establish the facts specified in subsections (1) to (3), as applicable.

(5) The Commissioner shall, within two (2) months of receiving the application, notify the person of the total amount (if any) of the decreasing adjustments the person is allowed under this section and the tax period in which the adjustments may be made.

*Decreasing adjustments for other acquisitions*

- (5) Despite section 65,—
  - (a) where a person becomes registered and a taxable supply is made to the person on or after the person's registration takes effect; and
  - (b) an invoice was issued, or all or part of the consideration for the supply was paid, before the person's registration took effect,

the time at which the person is allowed an input tax credit (if applicable) is determined as if the VAT payable on the supply became payable on the day on which the person's registration took effect.

Note: This means that if the person is allowed an input tax credit, it will be allowed in the person's first VAT return, or in such later period as the person holds a tax invoice or claims the credit (as allowed in accordance with Chapter 7 Part C).

*Increasing adjustments for supplies made*

- (6) Despite section 31,—
  - (a) where a person becomes registered and makes a supply on or after the person's registration takes effect; and
  - (b) an invoice was issued or all or part of the payment for the supply was made before the person's registration took effect,

the VAT payable on the taxable supply becomes payable on the day on which the person's registration takes effect.

Note: This means that the person must account for the VAT in its first VAT return, which will be due in the following month.

**72. Adjustments on cancellation of registration.—**

(1) A person whose registration is cancelled has an increasing adjustment in relation to assets on hand at the time the registration is cancelled if the person was allowed an input tax credit in respect of the acquisition or import of those assets, or for something that has been subsumed into those assets.

(2) The amount of the adjustment is equal to the tax fraction of the fair market value of the assets on the day immediately preceding the cancellation.

(3) The adjustment shall be made in the VAT return for the final tax period.

### **73. Adjustments for second-hand goods purchased for re-sale.—**

(1) A registered person (“the dealer”) is allowed a decreasing adjustment in relation to second-hand goods purchased for the purpose of sale or exchange (but not for manufacture) in the ordinary course of a trade or business of selling second-hand goods, if all of the following conditions are met:—

- (a) the goods are purchased from a person who is not registered or enlisted;
- (b) the supply of the goods to the dealer would not have been zero-rated or exempt if it had been made by a registered person;
- (c) the goods are not imported by the dealer;
- (d) the re-sale of the goods by the dealer is a taxable supply; and
- (e) the dealer has kept such books and records relating to the purchase and on-sale as are prescribed by the Board.

(2) The amount of the decreasing adjustment is the tax fraction of the consideration paid by the dealer for the purchase of the second-hand goods, calculated using the VAT rate applicable to the re-sale of the goods by the dealer.

(3) The decreasing adjustment is allowed—

- (a) in the tax period in which the dealer re-sells the goods; or
- (b) in such earlier tax period as is prescribed by the Board.

(4) Where second-hand goods are given by a person who is not registered or enlisted as part payment for new goods of a similar kind, the fair market value of the traded-in goods used to determine the consideration for the new goods must be the same as the consideration referred to in subsection (2).

### **74. Adjustments relating to insurance.—**

#### *Adjustments on making insurance payments*

(1) A registered insurer has a decreasing adjustment if the person makes a payment to another person under a contract of insurance and all of the following conditions are met:—

- (a) the supply of the contract of insurance was a taxable supply;
- (b) the payment is not made in respect of a supply to the insurer or an import by the insurer;

- (c) the payment is not made in respect of a supply to another person, unless that supply is a taxable supply, on which VAT is imposed at a rate other than zero; and
- (d) the person to whom the payment is made is not an unregistered non-resident.

(2) The amount of the adjustment is equal to the tax fraction of the payment made and the adjustment shall be made in the VAT return for the tax period in which the payment is made.

Note: Insurance is a risk intermediation service, in which the insurance brings together many people willing to pool their funds to hedge against the risk of suffering a loss. The decreasing adjustment ensures that the insurer pays net VAT only on its insurance margin, which reflects the difference between the amounts it receives for premiums and the amounts it is required to pay out when insured persons suffer losses. This is the amount that represents the value added by the insurer across all insured persons.

Example 1: An insurer makes a payment of Taka 5.75 lakh to an insured person whose boat was destroyed in an accident. The insurer is entitled to a decreasing adjustment of Taka 75,000, which is the tax fraction of the amount paid under the policy. If the insured person buys a new boat using the insurance payment, the output tax of the seller (or if the boat is imported, the tax payable on the import) will approximate the adjustment allowed to the insurer. This is because the cost of replacing the boat is effectively a cost of the insurer's business and has already been effectively taxed when the insurance premiums were taxed.

#### *Adjustments on receiving subrogation payments*

- (3) A registered insurer has an increasing adjustment if—
  - (a) the insurer recovers an amount (other than aggravated or exemplary damages) as a result of the exercise of rights acquired by subrogation under a contract of insurance; and
  - (b) a deduction under subsection (2) has been allowed to the insurer for the payment to which the recovered amount relates.

(4) The amount of the adjustment is equal to the tax fraction of the payment made and the adjustment shall be made in the VAT return for the tax period in which the payment is received.

Example 2: The insurer in example 1 exercises its rights of subrogation and sues the third party who cause the accident in which the insured person's boat was destroyed. That person is also insured and the second insurer pays Taka 75,000 to the first insurer. Under subsection (1), the second insurer is allowed a decreasing adjustment equal to the tax fraction of the amount paid. Under subsection (2), that decreasing adjustment for the second insurer is matched by an increasing adjustment for the first insurer. These adjustments ensure that the insurer that ultimately bears the loss is the person who is entitled to the decreasing adjustment and prevents both insurers claiming the adjustment.

*Adjustments on receiving insurance payments*

- (5) A registered person has an increasing adjustment if—
  - (a) the person receives a payment under a contract of insurance, whether or not the person is a party to the contract;
  - (b) the payment relates to a loss incurred—
    - (i) in the course of the person’s economic activity; or
    - (ii) in relation to an asset used wholly or partly in the person’s economic activity; and
  - (c) the supply of the contract of insurance was a taxable supply.
- (6) The amount of the adjustment is equal to the tax fraction of the payment received, reduced to the extent that:
  - (a) the economic activity in which the loss was incurred involves the making of exempt supplies; or
  - (b) the asset to which the loss relates was used in making exempt supplies or for private purposes; and
  - (c) if both paragraph (a) and paragraph (b) apply, whichever is most appropriate in the context of the payment received.

Example 3: Continuing examples 1 and 2, the insurer person whose boat was destroyed uses the boat predominantly in the course of providing cruises in the Bay of Bengal to tourists visiting Bangladesh. However, on occasions, the boat is used for private purposes and the person has to date claimed only 85 percent of the input tax credits relating to the purchase, repairs and maintenance, and improvements to the boat on the basis that it is used 15 percent for private purposes. The amount of output tax payable by the person is 85 percent of 75,000, which is Taka 63,750.

Note: The net effect of the adjustments under this section in respect of the examples given is that the two insurers pay out VAT-inclusive amounts under the policy, the first insurer receives a decreasing adjustment equal to the VAT included in the payout but later repays that amount by making an increasing adjustment equal to the decreasing adjustment allowed to the second insurer. Having received a payment of Taka 5 Lakh, the insured person makes an increasing adjustment of Taka 63,750. When the insured person buys (or imports) a replacement yacht for the same value, the supplier (or the insured person as importer) pays VAT of 75,000 and the insured person claims an input tax credit of Taka 63,750. The remainder of the undeductible input tax is covered by the insurers, and is ultimately paid by the second insurer, who is allowed a decreasing adjustment for the full tax fraction in reflection of the fact that the cost of the input tax that cannot be deducted by the insured person is a cost of the insurer’s business and has been effectively taxed. The adjustment required under subsection (6) ensures that that insured person does not receive a



double benefit by being paid the VAT-inclusive price of the replacement boat and an input tax credit when it purchases that replacement boat.

**75. Adjustments relating to lotteries, lucky draws, raffles, and similar undertakings.—**

(1) A registered person who runs a lottery, lucky draw, raffle, or similar undertaking (“the undertaking”) has a decreasing adjustment equal to the tax fraction of the amount of any monetary prize paid by the person because of the outcome of the undertaking.

(2) The decreasing adjustment is allowed only if all of the supplies of tickets in the undertaking were made while the person was registered.

(3) It is allowed in the tax period in which the monetary prize is paid.

**76. Adjustments when rate changes.—**

(1) A registered person shall make an increasing adjustment if, because of section 57(1) and section 29(1)(b) and (c), the registered person has accounted for VAT in relation to a particular supply at a different rate than the rate actually applicable to the supply.

(2) The amount of the increasing adjustment is the difference between the amount of VAT actually accounted for and the amount of VAT that is correctly payable in relation to the supply.

Note: Under section 18(4), the rate of VAT applicable to a particular supply is the rate in force at the time of supply.

## **CHAPTER 8**

### **TAX INVOICES AND OTHER DOCUMENTS**

**77. Tax Invoices.—**

(1) A registered person who makes a taxable supply shall issue a serially numbered true and correct tax invoice for the supply.

(2) A tax invoice shall include the following information—

- (a) the date on which it is issued;
- (b) the name and registration number of the supplier;
- (c) the description, quantity and other relevant specifications of the things supplied;
- (d) the total amount payable for the supply;
- (e) the rate of VAT applicable to the supply;
- (f) the amount of VAT payable; and

- (g) if the value of the supply exceeds taka 50,000, the name and (if applicable) registration number of the customer;
- (h) such other information as the Board prescribes.

(3) A tax invoice is not invalid merely because it does not comply with the requirement in paragraph (2)(g) but cannot be used to support a claim for an input tax credit unless it does so comply.

#### **78. Credit and debit notes.—**

(1) A debit or credit note issued in accordance with the requirements of section 67 shall include the following information—

- (a) the date on which it is issued;
- (b) the name and registration number of the supplier;
- (c) the date and serial number of the original tax invoice;
- (d) the nature of the adjustment;
- (e) the effect on the amount of VAT payable on the supply; and
- (f) if the effect on the VAT payable on the supply exceeds taka 5,000, the name and registration number (if applicable) of the customer; and
- (g) such other information prescribed by the Board as necessary to identify the amount of any increasing or decreasing adjustments required or allowed because of the adjustment event.

(2) A credit note is not invalid merely because it does not comply with the requirement in paragraph (1)(f) but cannot be used to support a claim for a decreasing adjustment unless it does so comply.

#### **79. Withholding certificates.—**

A withholding certificate that a withholding entity is required to issue to a person from whom it has withheld an amount under section 61, shall include the following information—

- (a) the name, address, and BIN of the supplier;
- (b) the name, address, and BIN (if applicable) of the withholding entity;
- (c) the amount of VAT payable on the supply and the amount of VAT withheld;
- (d) the total consideration for the supply (including VAT); and
- (f) any other information prescribed by the Board,

and the withholding entity shall keep a copy of the certificate issued along with its own records.

**80. Requests for VAT documentation.—**

(1) A registered recipient who has not received a tax invoice, credit note, or debit note the supplier was required to issue, may within six months of making an acquisition, make a written request to the supplier to issue the document.

(2) A registered person who has not received a withholding certificate that a withholding entity was required to issue, may within six months of making the supply make a written request to the withholding entity to issue the document.

(3) The supplier or withholding entity, as applicable, must comply with the request within 15 (fifteen) days of receiving it.

**81. Documentation issued by or to agents.—***Selling agents*

(1) If a taxable supply is made by an agent on behalf of a principal and both the agent and principal are registered, any documentation required to be issued by the principal, including a tax invoice, or a credit or debit note, may be issued by the agent, but must be issued in the name, and showing the address and registration number, of the principal.

*Buying agents*

(2) If a taxable supply is made to an agent acting on behalf of a principal and both the agent and principal are registered, any documentation required to be issued to the principal, including a tax invoice, or a credit or debit note, may be issued to the agent, but must use the name, address, and registration number of the principal.

**82. Prohibitions.—**

(1) Only one original tax invoice may be issued for a taxable supply, but the person who issued the original may provide a copy clearly marked “duplicate” to a registered recipient who claims to have lost the original.

(2) Only one original credit or debit note may be issued for a particular adjustment event in relation to a supply, but the person who issued the original may provide a copy clearly marked “duplicate” to a registered recipient who claims to have lost the original.

## CHAPTER 9

### SUPPLEMENTARY DUTY

#### **83. Imposition of supplementary duty and person liable.—**

##### *Imposition of supplementary duty*

- (1) Supplementary duty is imposed and payable on—
  - (a) an import of dutiable goods;
  - (b) a supply of dutiable goods manufactured in Bangladesh; and
  - (c) a supply of dutiable services in Bangladesh.

##### *Exemption for exports*

(2) No supplementary duty is imposed on an import of dutiable goods if the goods are entered for export without first being entered for home-consumption.

(3) No supplementary duty is imposed on a supply of dutiable goods or services if the supply is zero-rated under Part C of Chapter 6 of this Act.

##### *Single stage tax*

(4) Supplementary duty is payable only once in relation to particular dutiable goods or services.

##### *Amount of supplementary duty payable*

(5) The amount of supplementary duty payable is calculated by multiplying the dutiable value of the goods or services by the rate of supplementary duty applicable for those goods or services.

##### *Supplementary duty rate*

(6) The rate of supplementary duty applicable for particular dutiable goods or services is the rate specified in the Third Schedule for those goods or services.

##### *Change of rate*

- (7) Where there is a change in the rate of supplementary duty, the rate to be applied is,—
  - (a) for an import of dutiable goods: the rate applicable at the time the duty becomes payable; or
  - (b) for a supply of dutiable goods or services: the rate applicable at the time of supply.

**84. Person liable to pay supplementary duty.—**

(1) The person liable to pay the supplementary duty imposed under section 83 is:—

- (a) in the case of an import of dutiable goods: the importer;
- (b) in the case of a supply of dutiable goods manufactured in Bangladesh: the manufacturer;
- (c) in the case of a supply of dutiable services: the supplier.

(2) Subsection (1) does not prevent the collection of supplementary duty from a different person if that person is made separately, or jointly and severally, liable for this tax under another provision of this Act.

**85. Dutiable value.—***Dutiable value of imports*

(1) The dutiable value of an import of dutiable goods is the value of the taxable import of the goods, as determined under section 25, minus the supplementary duty payable on the import.

*Dutiable value of supplies*

(2) Except as provided in subsection (3) or (4), the dutiable value of a supply of dutiable goods or services is the value of the taxable supply of the goods or services, as calculated under section 32, minus the supplementary duty payable on the supply.

Example: A manufacturer sells dutiable goods that are subject to both 20% supplementary duty and 15% VAT for a total consideration of taka 138,000. This value of the supply for VAT purposes is the consideration minus the tax fraction of that consideration ( $138,000 - 18,000 = 120,000$ ). The dutiable value of the supply is the VAT value minus the supplementary duty payable ( $120,000 - 20,000$ ). Thus, the dutiable value is taka 100,000. In practice, manufacturers will work this out in reverse, as follows. The manufacturer wishes to charge a price of taka 100,000 before any taxes are applied. The 20% supplementary duty is added first ( $100,000 + 20,000$ ) to get to the value on which VAT should be applied. The VAT is added last ( $120,000 + 18,000$ ) to get to the total consideration that must be charged to the customer.

(3) The dutiable value of a supply of dutiable goods or services for no consideration, or for inadequate consideration, is the fair market value of the supply.

(4) The dutiable value of a supply of dutiable goods or services to which a special scheme applies, is the value specified by the Board in respect of that supply.

**86. Special schemes for tobacco and alcohol.—**

(1) The Board may impose a special scheme for the payment of supplementary duty on a supply of dutiable goods manufactured in Bangladesh if the goods are:—

- (a) cigarettes, tobacco, or similar products, including blended products; or
  - (b) alcoholic beverages, ingredients for alcoholic beverages, or similar products.
- (2) A special scheme imposed by the Board under this section shall include provisions:—
- (a) requiring the manufacturer to print a maximum retail price on the goods;
  - (b) setting the minimum level at which that maximum retail price should be set; and
  - (c) specifying that:—
    - (i) the value of the goods for the purposes of calculating VAT is equal to the maximum retail price printed on the goods, minus the tax fraction of that amount; and
    - (ii) the dutiable value of the goods is the value determined under subparagraph (i), minus the supplementary duty payable by the manufacturer.

Note: This means that the price is quoted inclusive of both VAT and supplementary duty.

(3) A special scheme imposed by the Board under this section may, in addition to the matters referred to in subsection (2), include provisions requiring the manufacturer to affix on or to the body of the package, pot, bottle, or other container a stamp, banderol, or special sign or mark of a particular size and design, manifesting measures of security and for that purpose the Board may determine all procedures relating to scheme, including in relation to the use, distribution, preservation, supervision, observation, accounting, and packaging of stamps, banderols, or special signs or marks.

(4) A supply of dutiable goods which are subject to a special scheme imposed by the Board under this section is zero-rated for the purposes of the VAT imposed under this Act if:—

- (a) the supplier is a person other than the manufacturer of the goods;
- (b) the goods are supplied in the packaging on which the manufacturer printed the maximum retail price;
- (c) the goods have not been opened, subdivided, or removed from the packaging on which the maximum retail price was marked and have not been mixed or blended with other products or otherwise altered in any way since they were supplied by the manufacturer; and
- (d) if the goods are required to be sold with a stamp, banderol, or special sign or mark, that stamp, banderol, or special sign or mark is on the goods at the time of supply.

Note: The supply by the manufacturer will not be zero-rated. Under the scheme, the manufacturer will charge both VAT and supplementary duty on the basis of retail prices. No input tax credits are allowed for VAT charged on dutiable goods subject to a special scheme established under this section: section 64(4)(e).

### **87. Payment and collection of supplementary duty on imports.—**

(1) The supplementary duty imposed on an import of dutiable goods shall be paid by the importer at the same time, and in the same manner and mode, as the VAT imposed on the import of the goods.

Note: Section 24 thus applies both for VAT and supplementary duty.

(2) The liability to pay supplementary duty arises by operation of this section and does not depend on the making of an assessment of the supplementary duty payable by the Commissioner of Customs.

(3) All powers and duties conferred on or granted to the Commissioner of Customs under this Act in relation to VAT imposed on imports are also conferred and granted in relation to the supplementary duty imposed on imports under this Chapter.

### **88. Payment and collection of supplementary duty on supplies.—**

*When supplementary duty becomes payable*

(1) Supplementary duty imposed on a supply of dutiable goods or services becomes payable at the same time that VAT becomes payable on the supply.

Note: Section 31 thus applies both for VAT and supplementary duty.

(2) The liability to pay supplementary duty arises by operation of this section and does not depend on the making of an assessment of the supplementary duty payable by the Commissioner.

*Accounting for and paying supplementary duty*

(3) The supplementary duty imposed on—

- (a) a supply, by the manufacturer, of dutiable goods manufactured in Bangladesh: must be accounted for and paid by the manufacturer at the same time, and in the same manner and mode, as the output tax payable on the taxable supply of the goods;
- (b) a supply of dutiable services in Bangladesh: must be accounted for and paid by the supplier at the same time, and in the same manner and mode, as the output tax payable on the taxable supply of the services.

Note: Section 57 thus applies both for VAT and supplementary duty.

(4) All powers and duties conferred on or granted to the Commissioner under this Act in relation to VAT are also conferred and granted in relation to the supplementary duty imposed under this Chapter.

#### *Returns*

(5) A person who is liable for supplementary duty shall file a return for each tax period under and in accordance with the requirements of Chapter 11.

(6) The VAT return shall also be a supplementary duty return.

### **89. Deemed supply of dutiable goods.—**

(1) If a person who manufactures dutiable goods cannot, to the satisfaction of the Commissioner, account for a quantity of dutiable goods manufactured by the person in Bangladesh, the person is deemed to have supplied the goods for their fair market value.

(2) However, no supplementary duty shall be imposed if the goods□

(a) are destroyed by fire or other natural causes; or

(b) have deteriorated, or been damaged, and have been disposed of without being supplied to another person.

### **90. Decreasing adjustments for supplementary duty paid.—**

#### *Preconditions*

(1) No entitlement of a person under this section to a decreasing adjustment for supplementary duty paid may be exercised without prior approval from the Commissioner.

(2) The person must apply to the Commissioner, in the mode and manner prescribed and providing the information required, for permission to make the decreasing adjustment.

(3) If the Commissioner is satisfied that part or all of the decreasing adjustment should be allowed, the Commissioner shall, by notice in writing, inform the applicant that the adjustment has been allowed, the amount of the adjustment, and the tax period in which it may be claimed.

(4) The Commissioner must respond to an application under this section within 30 (thirty) days of its receipt.

#### *When decreasing adjustments are allowed*

(5) The decreasing adjustment is allowed in the tax period specified in the notice issued by the Commissioner.



*Overpayments*

(6) A person who has paid supplementary duty that exceeds the amount payable under this Act is entitled to a decreasing adjustment equal to the amount of the excess.

(7) An application for the decreasing adjustment must be made within 6 (six) months from the end of the tax period in which the duty was overpaid.

*Raw materials*

(8) A manufacturer who uses dutiable goods as raw materials in the manufacture of other dutiable goods in Bangladesh, is entitled to a decreasing adjustment for the supplementary duty, if any,—

- (a) paid by the manufacturer in respect of the import of those raw materials; or
- (b) that the Commissioner is satisfied was paid by a person who supplied those raw materials to the manufacturer.

(9) An application for the decreasing adjustment must be made within 6 (six) months from the date on which the dutiable goods were used as raw materials in the manufacture of other dutiable goods.

*Decreasing adjustment for supplementary duty paid on exports*

(10) A person who imported dutiable goods is entitled to a decreasing adjustment for the supplementary duty paid by the person on the import if the goods are in compliance with the conditions for payment of a drawback of duties under the Customs Act.

(11) An application for the decreasing adjustment must be made within 6 (six) months from the date on which the goods are exported or put on board a ship or aircraft in which they are exported and must be accompanied by such evidence as is prescribed by the Board to show that the duty was paid and that the goods were exported.

## CHAPTER 10

### TURNOVER TAX

#### **91. Imposition of turnover tax.—**

*Imposition*

(1) Turnover tax is imposed on the turnover of a person who carries on an economic activity in Bangladesh if the person is not registered or required to be registered under section 9.

Note: Such persons are required to be enlisted for turnover tax: see section 17.

*Definition*

(2) An economic activity is carried on in Bangladesh if it is carried on at or from a fixed place in Bangladesh.

*Amount of turnover tax*

(3) The amount of turnover tax payable is 4 per cent of the relevant turnover of the person liable, reduced by the amount of any advance tax paid by the person under section 28 on taxable imports made by the person.

Example: A person who meets the requirements of subsection (1) has a turnover of taka 2 lakhs in the June tax period. The turnover tax payable by the person is 4% of the turnover, which is taka 8,000.

*Person liable*

(4) The person liable for turnover tax is the person referred to in subsection (1).

*Meaning of relevant turnover*

(5) “Relevant turnover”, in relation to a tax period, means the total consideration received during that tax period for supplies made by the person in the course of an economic activity but does not include:

- (a) consideration for supplies that would be exempt if the person were registered;
- (b) the sale by the person of a capital asset;
- (c) the value of a supply made solely as a consequence of the person selling the person’s economic activity or part of that economic activity; or
- (d) the value of supplies made solely as a consequence of the person permanently ceasing to carry on its economic activity.

*When turnover tax is payable*

(6) The turnover tax payable by a person for a tax period shall be paid at the time of filing the turnover tax return for that tax period.

## CHAPTER 11

### RETURNS

**92. VAT returns.—**

(1) A registered person shall file a VAT return for each tax period no later than 15 (fifteen) days after the end of the period.

(2) A VAT return must—

- (a) be filed with the Commissioner;
- (b) be in the form prescribed by the Board, which may include electronic filing; and
- (c) contain the information prescribed by the Board.

(3) For a person required to pay supplementary duty, a VAT return shall also be a supplementary duty return.

**93. Turnover tax returns.—**

(1) For each tax period, a person liable for turnover tax must submit a turnover tax return to the Commissioner within—

- (a) 15 (fifteen) days after the end of the tax period; or
- (b) such longer period as is allowed by the Rules.

(2) The turnover tax payable by a person for a tax period shall be paid at the time of filing the turnover tax return for that tax period.

**94. Late filing.—**

(1) The Commissioner may, on application in the prescribed mode and manner, grant a person permission to file a return late, but the permission does not alter the due date for payment of the net amount of tax due for the tax period or suspend the liability to pay interest:

(2) A permission granted under subsection (1) shall not permit a person to file a return more than three months after the original due date for filing the return.

Note: A person filing a late VAT return will probably also want to request an extension of time to pay the tax due for the relevant period (see section 60). For a turnover taxpayer, late filing permission will automatically constitute permission for late payment (see section 91(6)).

**95. Amended returns.—**

(1) If a taxpayer who has filed a VAT or turnover tax return requests the Commissioner to amend the return to correct any genuine omission or incorrect declaration made therein, the Commissioner may amend the original return or accept filing of an amended return.

(2) The request must be in writing, specifying in detail the grounds on which it is made, and must be made within 4 (four) years after the end of the tax period to which the return relates.

(3) Where, before the receipt of notice for audit, a request for an amendment to a return is filed by a taxpayer and any unpaid net amount of tax is paid, along with the applicable default surcharge and interest, no other penalty shall apply.

**96. Minor corrections.—**

(1) Subject to such conditions and limitations as the Board prescribes, a taxpayer is allowed, without the imposition of any interest or penalty, to correct minor errors—

- (a) in a VAT return for a tax period, by making an increasing or decreasing adjustment in the return for the subsequent tax period; or
- (b) in a turnover tax return for a tax period, by making such alterations to the amount of turnover tax due for the subsequent tax period as the Board prescribes.

(2) Such adjustments or alterations are not allowed if the total effect of such errors on the amount of tax payable in the tax period exceeds taka 50,000 (fifty thousand).

**97. Fuller, additional, or alternative returns.—**

(1) The Commissioner may, by notice, require a person, whether on that person's own behalf or as agent or trustee of another person, to file, within such time as the Commissioner considers appropriate, such fuller, additional, or alternative returns for a tax period as the Commissioner requires, and such notice may be given even if the registered person has not filed an original return for the period.

(2) The Board may make rules specifying when returns may or should be required under this section.

## **CHAPTER 12**

### **REFUNDS**

**98. Carry forward and refund of negative net amount for a tax period.—**

*Carry forward period*

(1) If, in any tax period, the amount payable under section 57 would be a negative amount because the sum of all the decreasing adjustments allowed in the tax period exceeds the sum of all the amounts of output tax and increasing adjustments for the tax period,

- (a) in respect of an economic activity involving construction, building, or property development: the excess shall be carried forward indefinitely and may be deducted in subsequent tax periods in accordance with this section; and
- (b) in any other case: the excess shall be carried forward and may be deducted over the following 6 (six) tax periods in accordance with this section.

*Indefinite carry forward*

(2) In respect of an economic activity involving construction, building, or property development, a registered person shall be allowed a decreasing adjustment for an excess carried forward from the previous tax period.

*Six month carry forward*

(3) Where subsection (2) does not apply, a registered person shall be allowed a decreasing adjustment for excess amounts carried forward from earlier tax periods as follows:—

- (a) in a subsequent tax period, the amount payable for the period shall be determined by taking account of all output tax and all adjustments other than adjustments allowed under this section;
- (b) if the result is a positive amount—
  - (i) the person shall be allowed a decreasing adjustment for such part of an excess amount carried forward from earlier tax periods as would reduce the amount payable to nil; and
  - (ii) the excess amounts shall be taken into account in chronological order, with the adjustment for the oldest being taken into account first and the most recent being taken into account last;
- (c) amounts from earlier tax periods that cannot be adjusted under paragraph (b) are carried forward again until—
  - (i) all of the excess amount carried forward for a period has been deducted; or
  - (ii) part or all of the excess amount for a particular period has been carried forward for six tax periods.

(4) If part or all of the excess amount has been carried forward for 6 (six) tax periods without being credited—

- (a) if the amount does not exceed taka fifty thousand (50,000), the amount shall continue to be carried forward until it is reduced to nil; or
- (b) in any other case, the Commissioner shall refund the amount, on application in the form and manner prescribed, within 3 (three) months after the date of the application.

*Mixed activities*

(5) Where a person carries on both economic activities involving construction, building, or property development and other economic activities, all negative net amounts shall be carried forward under the rules in subsection (2) unless the person is separately registered under

section 11 in respect of those construction, building, or property development activities and those other economic activities.

### *Rules*

(6) The Board may make rules prescribing a phased reduction in the number of tax periods for which negative amounts must be carried forward, including rules prescribing for the phased inclusion of the construction, building, and property development sector in the rules applicable to other sectors.

## **99. Refunds without carry forward.—**

(1) Notwithstanding section 98, a registered person shall be entitled to a refund of a negative amount payable under section 57 if the Commissioner is satisfied that,—

- (a) fifty per cent or more of the person's turnover is or will be from supplies that are zero-rated under Part B of Chapter 6;
- (b) fifty per cent or more of the person's expenditure on inputs is from acquisitions or imports that relate to making supplies that are zero-rated under Part B of Chapter 6; or
- (c) in any other case, the Commissioner is satisfied that the nature of the person's economic activity (not being an economic activity to which section 98(2) applies), regularly results in excess input tax credits.

Note: Part B of Chapter 6 zero-rates exports and other supplies for consumption outside Bangladesh, such as international transport and services supplied to persons outside Bangladesh. Other persons who might regularly be in a net refund position include charities who are allowed credits under section 63(3).

(2) On application in the form and manner prescribed for a refund under this section,—

- (a) if the amount does not exceed taka fifty thousand (50,000), the amount shall be carried forward as a decreasing adjustment in the next tax period; or
- (b) in any other case, the Commissioner shall refund the amount within 3 (three) months after the date of the application.

## **100. Application and payment of refunds.—**

(1) No refund is payable to a person under section 98 or 99 unless and until the applicant has filed all VAT returns up to the current tax period.

(2) If a refund is payable to a person, the Commissioner may apply the refund first in reduction of any outstanding liability of the person for taxes payable under this Act, including any interest, penalties, or fines payable under this Act.

(3) If the amount remaining after applying subsection (2) does not exceed taka fifty thousand (50,000), the Commissioner may choose not to refund the amount and may instead require the registered person to treat the amount as a decreasing adjustment in a tax period prescribed by the Board.

**101. Refunds to diplomats, non-profit bodies, and other international bodies.—**

(1) The Commissioner may authorise the granting of a refund of part or all of the input tax incurred in relation to an acquisition or import by:

- (a) a person who is a public international organization, NGO, foreign government, or other person prescribed by the Board, to the extent that the person is entitled to exemption from VAT under an international assistance agreement;
- (b) a person to the extent that the person is entitled to exemption for VAT under the Vienna Convention on Diplomatic Relations, or under another international treaty or convention having force of law in Bangladesh or to which Bangladesh is a signatory, or under recognized principles of international law; or
- (c) a diplomatic or consular mission of a foreign country established in Bangladesh, relating to transactions concluded for the official purposes of such mission.

(2) Exemptions from VAT referred to in subsection (1), shall be dealt with by refund and not by exempting or zero-rating the supply made to the relevant person.

(3) A claim for a refund under subsection (1) must be made in the form and manner, and at the time prescribed by the Board, and must be accompanied by such supporting documentation as the Board may require.

(4) The Commissioner shall within 3 (three) months after the date on which an application for a refund is made under this section—

- (a) make a decision in relation to the application and give the applicant notice of the decision, stating the amount refundable and providing reasons for any difference between that amount and the amount for which a refund was requested; and
- (b) pay the amount refundable to the applicant.

**102. VAT or turnover tax erroneously overpaid to be refunded by adjustment.—**

*Overpaid VAT and supplementary duty*

(1) A person who has paid a net amount of VAT for a tax period that exceeds the amount payable under this Act is not entitled to a refund of the amount overpaid but is instead entitled to a decreasing adjustment equal to the amount of the excess.

(2) However, if the reason why the registered person overpaid the amount payable for the tax period was because the person treated a supply as taxable, at a rate other than zero, when the supply was not in fact taxable,—

- (a) if the recipient of the supply was a registered person, the decreasing adjustment is only allowed if the Commissioner is satisfied that the registered person has refunded the amount of overpaid VAT to the recipient of the supply; or
- (b) if the recipient of the supply was not a registered person, no decreasing adjustment is allowed to the person.

#### *Overpaid turnover tax*

(3) A person who has paid an amount of turnover tax for a tax period that exceeds the amount payable under this Act is not entitled to a refund of the amount overpaid but is instead entitled to a deduction equal to the amount of the excess.

#### *Conditions*

(4) No entitlement of a person under this section to a decreasing adjustment or a deduction for an amount overpaid may be exercised without prior approval from the Commissioner.

#### *Procedure*

(5) The person must, within 6 (six) months from the end of the tax period for which the amount was overpaid, apply to the Commissioner for permission to make the decreasing adjustment or deduction.

(6) The application shall be made in the mode and manner prescribed by the Board, and shall be accompanied by such information in support of the request as is prescribed..

(7) The Commissioner shall, by notice in writing, respond to an application under this section within 3 (three) months of its receipt informing the applicant of—

- (a) if the Commissioner is satisfied that part or all of the decreasing adjustment or deduction should be allowed: the amount allowed and the tax period in which it may be claimed;
- (b) if the Commissioner is not satisfied that part or all of the decreasing adjustment or deduction should be allowed: the amount disallowed, the reasons for the decision, and the rights of the taxpayer to a review and appeal of the decision under Chapter 19.

(8) The decreasing adjustment or deduction is allowed in the tax period specified in the notice issued by the Commissioner.



## CHAPTER 13

### ASSESSMENTS

#### 103. Assessments.—

##### *Original assessment*

(1) The Commissioner may make an assessment of an amount payable by a person under this Act if—

- (a) the Commissioner is not satisfied as to the accuracy of a return filed by the person for a particular tax period because the Commissioner reasonably believes that:—
  - (i) on a VAT return, the person has understated an amount of output tax, supplementary duty, or another increasing adjustment required for the tax period, overstated an amount of input tax or another decreasing adjustment the person is allowed in the tax period, or claimed an amount of input tax or a decreasing adjustment the person is not allowed in the tax period; or
  - (ii) on a turnover tax return, the person has understated the person's turnover for the tax period;
- (b) the person fails to file a return as required under this Act; or
- (c) the person, not being required to file a return, fails to pay an amount payable by the person under this Act; or
- (d) the person has been paid a refund to which the person was not entitled.

##### *Amended assessment*

(2) The Commissioner may, within 4 (four) years after making an original assessment, amend the assessment by making such alterations or additions to the assessment as are considered necessary.

(3) An amended assessment shall be treated in all respects as an assessment.

##### *Power to make default assessment*

(4) For the purposes of making an assessment under this section, the Commissioner may estimate the amount of tax payable by a person based on the information available to him at the time of making the assessment

Note: This subsection does not restrict the powers of a VAT Officer to conduct audits or make inquiries into a taxpayer's affairs. It's purpose is to allow the Commissioner to make

an assessment without compelling the Commissioner to make further investigations if, for example, it has been difficult to get additional information from the taxpayer.

*Time limit*

(5) The Commissioner may not make an assessment, including an amended assessment, more than 4 (four) years after the end of the tax period to which the assessment relates.

(6) The time limit in subsection (5) does not apply if—

- (a) the registered person committed fraud or wilful neglect in furnishing the return, not furnishing the return, or applying for a refund, for the tax period; or
- (b) the assessment or amended assessment gives effect to a decision of the Appellate Tribunal or a Court.

*Notice of assessment*

(7) The Commissioner shall, within 45 (forty five) days of making an assessment or amended assessment, serve notice of the assessment on the person assessed, stating—

- (a) the reason for the assessment, the amount of tax payable as a result of the assessment, and the basis on which that amount was determined;
- (b) the date on which that tax is due and payable, which shall be no earlier than 15 (fifteen) days after the date on which the notice is served; and
- (c) the time, place, and manner of appealing against the assessment.

(8) Nothing in this section prevents any interest or penalty payable —

- (a) being computed from the original due date for payment of the VAT, supplementary duty, or turnover tax payable; or
- (b) in respect of an assessment in relation to an application for a refund, from being computed from the date on which a refund was paid to the person.

**104. Assessment of recipient of supply.—**

(1) If a supplier incorrectly treats a taxable supply as an exempt or zero-rated supply because of a fraudulent misrepresentation by the recipient of the supply, the Commissioner may assess the recipient of the supply for payment of the VAT due in respect of the supply, including any interest or penalty payable as a result of the late payment of the VAT, and the assessment is treated as an assessment of VAT payable by the recipient for all purposes of this Act, whether or not the recipient is a registered person.

(2) The Commissioner must serve notice of the assessment on the recipient specifying—

- (a) the reason for the assessment;

- (b) the amount of VAT payable as a result of the assessment;
- (c) the date on which that VAT is due and payable; and
- (d) the time, place, and manner of appealing against the assessment.

(3) Subsection (1) does not prevent the Commissioner from recovering from the supplier the VAT, interest, or penalty due in respect of the supply and—

- (a) the Commissioner may recover part of the amount from the supplier and part from the recipient; but
- (b) the Commissioner shall not recover more than the total amount of VAT, interest, and penalty payable in relation to the supply.

(4) If a supplier who incorrectly treated a taxable supply as an exempt or zero-rated supply because of misrepresentation or fraud by the recipient of the supply has paid to the Commissioner an amount of the VAT, interest, or penalty for the supply, the supplier may recover that amount from the recipient of the supply.

#### **105. Misrepresentation by supplier.—**

(1) Where a person who is not registered makes a supply and issues the recipient a document purporting to be a tax invoice or other document representing that the supply is a taxable supply, for both the supplier and the recipient—

- (a) the supply is deemed to be a taxable supply; and
- (b) the rate of VAT applicable to the supply is deemed to be the higher of—
  - (i) the rate stated on the face of the document, or implied from what is stated thereon; or
  - (ii) the rate that would have been applicable to the supply if the person had been registered.

(2) The Commissioner may make an assessment in relation to the supply as if the person were a registered person and the supply were a taxable supply, with VAT chargeable at the rate represented.

#### **106. Negation of tax benefit from a scheme.—**

##### *Power to determine tax liability*

(1) Notwithstanding anything in this Act, if the Commissioner is satisfied that a scheme has been entered into or carried out and —

- (a) a person has obtained a tax benefit in connection with the scheme in a manner that constitutes a misuse or abuse of the provisions of this Act; and

- (b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Commissioner may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as the Commissioner considers appropriate for the prevention, negation, or reduction of the tax benefit.

(2) For the purposes of determining a person's liability under subsection (1), and for the purposes of ensuring the prevention, negation, or reduction of the tax benefit, the Commissioner may do any or all of the following —

- (a) treat a particular event that actually happened as not having happened;
- (b) treat a particular event that did not actually happen as having happened, and if appropriate, treat the event as:
  - (i) having happened at a particular time; and
  - (ii) having involved particular action by a particular person;
- (c) treat a particular event that actually happened as:
  - (i) having happened at a time different from the time it actually happened; or
  - (ii) having involved particular action by a particular person (whether or not the event actually involved any action by that person).

#### *Notice of determination*

(3) The Commissioner must notify a person whose liability has been determined under subsection (1) of the determination either by serving notice of the determination on the person or by issuing an assessment to the person in relation to one or more tax periods.

#### *Definitions.—*

(4) “Scheme” includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied and whether or not legally enforceable.

(5) “Tax benefit” includes—

- (a) a reduction in the liability of a person to pay output tax;
- (b) a reduction in the liability of a person to pay VAT on an import of goods;
- (c) a reduction in the amount a person is liable to pay under section 57 for a particular tax period, including an increase in an excess carried forward;

- (d) an increase in the entitlement of a person to a decreasing adjustment allowed under this Act;
- (e) a decrease in an increasing adjustment a person is required to make under this Act;
- (f) an entitlement to a refund;
- (g) anything that has the effect of postponing a liability of a person to pay output tax or bringing forward an entitlement of a person to claim an input tax credit;
- (h) any other benefit arising because of a delay in accounting for output tax or an increasing adjustment or an acceleration of entitlement to an input tax credit or other decreasing adjustment;
- (i) anything that causes what is in substance and effect a taxable supply or import not to be a taxable supply or import;
- (j) anything that gives rise to a credit for input tax incurred on an acquisition or import that is in substance and effect an acquisition or import for which an input tax credit would not otherwise be allowed; or
- (k) anything that causes the turnover of a turnover taxpayer to be understated.

**107. General provisions relating to assessments.—**

(1) The original or an attested copy of a notice of assessment is receivable in proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings in relation to the assessment under Chapter 19 of this Act, that the amount and all particulars of the assessment are correct.

(2) No assessment purporting to be made, issued, or executed under this Act may be—

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person assessed or intended to be assessed is designated in it according to common understanding.

## CHAPTER 14

### ADMINISTRATION

#### **108. Value Added Tax Department, Authorities, and Officers.—**

##### *Department of Value Added Tax*

(1) There shall be a Department of Value Added Tax, which shall be administered by the Value Added Tax Authorities.

##### *Value Added Tax Authorities*

(2) The following shall be Value Added Tax Authorities for the purposes of this Act:

- (a) the National Board of Revenue, established under Presidential Order Number 76 of 1972; and
- (b) the following classes of Value Added Tax Officer—
  - (i) Commissioner, Value Added Tax;
  - (ii) Commissioner (Appeal), Value Added Tax;
  - (iii) Commissioner (LTU), Value Added Tax;
  - (iv) Director General (Central Intelligence Unit Cell), Value Added Tax;
  - (v) Director General (Audit, Intelligence, and Investigation Department), Value Added Tax;
  - (vi) Additional Commissioners or Additional Director General, Value Added Tax;
  - (vii) Joint Commissioner or Joint Director General, Value Added Tax;
  - (viii) Deputy Commissioner or Deputy Director General, Value Added Tax;
  - (ix) Assistant Commissioner or Assistant Director General, Value Added Tax;
  - (x) Revenue Officer, Value Added Tax;
  - (xi) Assistant Revenue Officer, Value Added Tax; and
  - (xii) Value Added Tax Officers with any other designation.

### *Appointment of Value Added Tax Officers*

(3) The Board may, by notification in the Official Gazette, appoint such officers and persons as may be necessary for the administration of this Act to any of the positions listed in subsection (2)(b) in respect of any area or function designated by the Board.

(4) Subject to the rules and orders of the Government regulating the terms and conditions of service of persons in public services and posts, the appointment of Value Added Tax Officers shall be made in accordance with the provision of this Act.

### *Formation of large taxpayers unit*

(5) The Board may, by notification in the Official Gazette, constitute one or more Large Taxpayers Units, which may be charged with the responsibility for administering all aspects of this Act in relation to taxpayers of a specified size or class, whether in relation to the whole of the country or a specified area.

## **109. Powers and Duties of Value Added Tax Officers**

(1) The Officers of the Department of Value Added Tax shall be responsible, subject to the general control and supervision of the Board,—

- (a) for collecting and accounting for taxes to which this Act applies; and
- (b) for the general administration and application of the provisions of this Act and the Rules.

(2) Subject to any limitations or conditions prescribed by the Board by general or special order, a person appointed to a position under section 108—

- (a) shall exercise the powers conferred on, and perform all the duties assigned to, the person in the notice of appointment and those powers and duties delegated to the person by a superior officer; and
- (b) may exercise the powers conferred on and perform all the duties assigned to a subordinate officer.

## **110. Delegation of Power—**

(1) In respect of any powers under this Act or the Rules, the Board may, by notification in the Official Gazette, subject to such limitations or conditions (if any) mentioned in the notification, authorise, by name and designation, any officer of a rank specified in the first column of the following table to exercise, in respect of any area or function specified by the Board, the powers of a person designated in the second column to the table under this Act or the Rules:—

**The Table**

<b>Rank of Officer</b>	<b>Rank of Authorisation</b>
1	2
Additional Commissioner or Additional Director General, Value Added Tax	Commissioner, Commissioner (Appeal), or Director General, Value Added Tax
Joint Commissioner or Joint Director, Value Added Tax	Additional Commissioner, Additional Director General, Commissioner, Commissioner (Appeal), or Director General, Value Added Tax
Deputy Commissioner or Deputy Director, Value Added Tax	Joint Commissioner, Joint Director, Additional Commissioner, or Additional Director General, Value Added Tax
Assistant Commissioner or Assistant Director, Value Added Tax	Deputy Commissioner or Deputy Director, Value Added Tax
Value Added Tax Officer of any other rank	Assistant Commissioner or Assistant Director, Value Added Tax

(2) Except where the Board directs otherwise, a Commissioner or Director General may, in respect of the whole or any specified area of the jurisdiction of that Commissioner or Director General, exercise a power of delegation in accordance with the table in subsection (1) in respect of any officer subordinate to that Commissioner or Director General.

#### **111. Assistance to VAT Authorities.—**

(1) Powers are conferred on and duties are assigned to any member of Police, Bangladesh Rifles, Bangladesh Coast Guards and Ansars and the authorities of Union Parishad, Upazila Parishad, Municipalities, Zila Parishad, City Corporations and any government officer, including all officers controlling and directing activities relating to Excise, Customs, Income Tax and Narcotics and all officers of Bank to assist VAT authorities in the performance of their duties under this Act.

(2) A person mentioned in subsection (1)—

- (a) may be requested by a VAT Officer not below the rank of Assistant Commissioner to provide assistance in accessing accounts of tangible and intangible assets, statements of Bank Accounts or any other documents of any person; and
- (b) shall comply with the request for assistance.



**112. Assistance by VAT Authorities.—**

A VAT Officer shall supply all necessary information relating to VAT to the authority enforcing and implementing the Customs Act, 1969 (IV of 1969), Gift Tax Act, 1963 (XIV of 1963) or Gift Tax Act, 1990 (XXII of 1990) Wealth Tax Act, 1963 (?? of 1963) and Income Tax Ordinance, 1984 (XXXVI of 1984) for fulfilment of the purposes of the said laws.

**113. Power to issue Summons.—**

(1) Any VAT Officer, not below the rank of a Revenue Officer, may issue a summons, stating in writing the reasons for the issue of the summons, to a person whose presence is considered by him to be necessary to give evidence or to submit documents or any other thing in connection with any investigation conducted by him under this Act.

(2) Any person summoned under subsection (1), shall be compelled to appear personally or through duly authorised representative as per direction of the said officer.

**114. Power of Adjudication.—**

The power of adjudication in relation to cases of confiscation of property, execution against property, or levy of a monetary penalty under this Act shall be done—

- (a) in the case of taxes payable under this Act on a taxable import: in accordance with the provision of section 179 of the Customs Act; and
- (b) in the case of taxes payable under this Act on a supply of goods, services, or immoveable property: by a VAT Officer according to the following table, namely:—

**The Table**

<b>Officer</b>	<b>Power</b>
<b>(1)</b>	<b>(2)</b>
Commissioner	Value of the assets or amount of the monetary penalty exceeds Tk. 15.00 Lakh
Additional Commissioner	Value of the assets or amount of the monetary penalty does not exceed Tk. 15 Lakh
Joint Commissioner	Value of the assets or amount of the monetary penalty does not exceed Tk. 10 Lakh
Deputy Commissioner	Value of the assets or amount of the monetary penalty does not exceed Tk. 5 Lakh
Assistant Commissioner	Value of the assets or amount of the monetary penalty does not exceed Tk. 3 Lakh
Superintendent	Value of the assets or amount of the monetary penalty does not exceed Tk. 1 Lakh

**115. Powers and duties of the Commissioner of Customs.—**

(1) The Commissioner of Customs shall have the responsibility for the administration and enforcement of this Act, and for carrying out the provisions of this Act, in respect of:—

- (a) VAT payable under this Act on taxable imports; and
- (b) supplementary duty payable on imports of dutiable goods,

and for these purposes may exercise any power conferred on the Commissioner of Customs by the Customs laws as if a reference to customs duty in those laws included a reference to VAT imposed under this Act on a taxable import and supplementary duty imposed under this Act on an import of dutiable goods.

**116. Confidentiality.—**

(1) Except as provided in subsection (3), every person having an official duty under this Act or being employed in the administration of this Act shall regard as secret and confidential all information and documents the person has received in an official capacity in relation to a specific taxpayer, and may disclose that information only to the following persons:—

- (a) employees of the VAT and Customs Departments in the course, and for the purpose, of carrying out their duties;
- (b) the tax authorities of a foreign country, in accordance with an international agreement to which Bangladesh is a signatory;
- (c) law enforcement agencies, for the purpose of the prosecution of a offence under a criminal law;
- (d) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence under a taxation law.

(2) If a person is permitted to disclose information under subsection (1), the person must maintain secrecy except to the minimum extent necessary to achieve the object for which disclosure is permitted.

(3) Information concerning a taxpayer may be disclosed to another person with the taxpayer's written consent.

## **CHAPTER 15**

### **AUDIT, INVESTIGATION, AND ENFORCEMENT**

**117. Audit and Investigation of Taxpayer's Tax Affairs.—**

(1) A Commissioner may select any taxpayer for an audit and investigation of the taxpayer's tax affairs in respect of tax payable under this Act, having regard to—

- (a) the taxpayer's history of compliance or non-compliance with this Act or with any other revenue law administered by the Board;
- (b) the registration or enlistment status of the taxpayer;
- (c) the type of economic activity conducted by the taxpayer; or
- (d) any other matter that the Commissioner considers relevant to ensuring the collection of tax due under this Act.

(2) The Board shall establish practices and procedures, consistent with the provisions of this Act and the Rules, for the conduct of audits and investigations under this section and shall publish them in an Audit Manual to be followed by VAT Officers.

(3) A VAT Officer empowered by the Commissioner to conduct an audit and investigation under subsection (1) shall do so in accordance with the Audit Manual and shall submit an Audit Report to the Commissioner after completing the audit and investigation.

(4) After receipt of an audit report under subsection (3), the Commissioner shall—

- (a) make an assessment, if appropriate, of the taxpayer's liability for taxes payable under this Act in respect of the periods audited, including any applicable interest owing in relation to that tax; and
- (b) if any evasion of taxes or other irregularity was detected by the audit, initiate action to impose any applicable penalty or penalties in accordance with the provisions of Chapter 16.

(5) The fact that a person has been audited and investigated in relation to a tax period does not prevent the person from being audited and investigated again in relation to a different tax period or periods if there are reasonable grounds for the audits and investigations, having regard to the matters referred to in subsection (1).

## **118. Powers of VAT Officers.—**

### *Power to call for information or documents.—*

(1) In respect of an authorised purpose, a VAT Officer not below the rank of Assistant Commissioner may, by giving reasonable notice in writing, require any person, whether a taxpayer or not—

- (a) to furnish the information that is required by the notice, including information concerning another person; or
- (b) to appear at the time and place designated in the notice for the purpose of being examined or of producing documents or other evidence in the control of that person which are described in the notice.

(2) In respect of an authorised purpose, a VAT Officer not below the rank of Assistant Commissioner may call for any information or assistance from any Government department, local bodies, autonomous bodies, corporations, financial institutions, associations or trade bodies or similar other organizations or institutions.

*Power to enter and search premises*

(3) The Revenue Officer in charge of a Local Value Added Tax Office or Circle, or any other VAT Officer duly authorised, may, without a warrant, enter any business premises, or premises open to the public, without prior notice, for an authorised purpose—

- (a) during normal business hours, or
- (b) at any other time in execution of an authority to enter and search at that time, granted by a VAT Officer who is authorised to grant the authority.

(4) An authorised VAT officer may, without a warrant, enter a taxpayer's dwelling, or other premises not described in subsection (3), for an authorised purpose—

- (a) with the consent of the taxpayer, or
- (b) in pursuance of an authority issued by an authorised VAT Officer allowing entry and search of premises at the time specified, subject to any conditions or limitations specified in the authority.

*Power to make copies or retain originals*

(5) An authorised VAT Officer who is lawfully upon premises or in a dwelling in accordance with subsections (3) or (4) may—

- (a) make a copy of any record;
- (b) seize a record or other item that appears to be relevant to an authorised purpose; and
- (c) seal records or other items.

(6) If the authorised VAT Officer seizes a record or other item, a VAT Officer not below the rank of Assistant Commissioner may make a copy of the record or other item and must return the original to the person in the shortest time practicable, unless otherwise permitted by court order.

*Production of copy in court*

(7) A copy of a document made pursuant to the power conferred by this section may be produced in Court and has the same evidentiary value as if it were an original.

*Power to detain and seal*

(8) In respect of an authorised purpose, a VAT Officer not below the rank of Assistant Commissioner may detain goods and put business premises under lock and key.

*Power to intercept vehicles*

(9) Within the region specified by a VAT Officer not below the rank of Assistant Commissioner, an authorised officer, on production of proper identification and authority and without a warrant,—

- (a) may intercept, enter and search any vehicle loaded with goods and ask the person in charge of the vehicle to show documentary evidence, including invoices, relating to the ownership of the goods; and
- (b) if the VAT Officer is not satisfied as to the ownership of the goods and has reasonable grounds to believe that VAT that is, or will become, payable in respect of the supply of those goods has not been, or will not be, paid, may seize the goods and shall deal with them in such manner as may be specified by the Board.

*Delegation of the power of Magistrate to VAT Officer*

(10) To achieve the objectives of this Act and the Rules, the Government may, by notification in the Official Gazette, delegate to a VAT Officer not below the rank of Assistant Commissioner, the powers of a First Class Magistrate specified in Schedule III to the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code of Criminal Procedure, to exercise the powers under section 36 of the Code of Criminal Procedure.

*Power of arrest*

(11) A VAT officer may, if authorised to do so by the Board, arrest any person who the officer believes, or has reason to believe, has committed an offence punishable under this Act.

(12) All search and arrest powers exercised under this Act or the Rules shall be conducted in accordance with the provisions of the Code of Criminal Procedure relating to search and arrest.

*Power to freeze bank accounts*

(13) In respect of an authorised purpose, a VAT Officer not below the rank of Assistant Commissioner may give order to freeze the bank account of a person. **[Comment: The circumstances under which this may be done should be spelled out.]**

*Privilege*

(14) If a person asserts privilege under law over documents or other evidence which an authorised officer wishes to seize or examine pursuant to this section, the materials over which privilege is claimed shall be deposited into envelopes which shall then be sealed and retained

unopened by a VAT Officer pending an application by the Commissioner to a court of competent jurisdiction to determine whether the items in question are privileged.

*Consequence of non-disclosure*

(15) Except with the agreement of a VAT Officer not below the rank of Assistant Commissioner, documents specifically requested by an authorised officer under this section and which a taxpayer or other specified person fails to provide, cannot be used by the taxpayer or other person in judicial proceedings challenging an assessment.

*Definition*

(16) In this section, “authorised purpose” means:

- (a) the collection of information for the purpose of determining the liability of a specific person for a tax imposed under this Act;
- (b) the collection of information for the purpose of collecting such tax from a specific person; or
- (c) the prevention of tax evasion.

*Savings*

(17) This section has effect notwithstanding—

- (a) any Act relating to privacy or the public interest with respect to access to premises or places, or the production of property, books, records, or computer-stored information; or
- (b) any contractual duty of confidentiality.

(18) This section does not authorise access to premises of a diplomatic, consular, or other mission of a foreign country or international organisation which enjoys immunity from such investigations under international law.

**119. Provision of general information.—**

For the purposes of better administration of this Act, the Board may make rules prescribing for the provision of information by a registered or enlisted person relating to the operation of the person’s taxable activity, whether or not the information is relevant to an audit or investigation relating to the ascertainment of that person’s liability for tax under this Act.

**120. Supervised supply, Observation and Surveillance.—**

(1) If the Commissioner has sufficient reason to believe that a taxpayer has not complied with the provisions of this Act with a view to avoiding a liability for tax payable under this Act, the Commissioner may appoint one or more VAT officers and give them necessary directives for

ensuring supervised supply, observation, and surveillance in any place relating to the economic activity of that taxpayer in order to determine the person's actual tax liability.

(2) A VAT Officer appointed under subsection(1) shall submit a report to the Commissioner mentioning all information necessary to determining the tax liability of the taxpayer.

(3) On the basis of the report submitted under subsection (2) and any other information collected under this Act, the Commissioner may, after giving the taxpayer an opportunity of being heard, make an assessment of the tax liability of the person.

#### **121. Special audit.—**

(1) The Board may, on such terms and conditions as may be agreed upon with the accountant, appoint an accountant to conduct a special audit, including a forensic audit, of records or refund claims of any registered or enlisted person or class of such persons, whether or not such person or class of persons has been previously audited by a VAT authority.

(2) The accountant appointed under subsection (1) shall have such powers of a VAT officer as may be specified by the Board.

#### **122. No multiple departmental audits in normal circumstances.—**

No registered or enlisted person shall be audited twice for the same period unless the Commissioner—

- (a) has reliable information or other genuine cause to believe that the person has committed a tax fraud in relation to the audited period; and
- (b) specifically orders the re-audit.

### **CHAPTER 16**

#### **COLLECTION AND RECOVERY**

#### **123. Recovery of tax.—**

(1) Any amount due and payable under this Act, including an amount of VAT, supplementary duty, turnover tax, interest, or a monetary penalty or fine imposed under this Act, is a debt due to the Government and is payable to the Commissioner.

(2) An amount is considered to be payable for the purposes of subsection (1) if:—

- (a) the amount is shown as payable on a return and remains unpaid;
- (b) the amount is shown in a notice of assessment served on the taxpayer and the taxpayer has failed to pay it within the deadline specified in the notice; or

(c) the amount otherwise becomes payable by operation of this Act.

(3) If a person who is liable to pay an amount fails to do so by the due date, the Commissioner may commence proceedings against the person to recover the debt outstanding in respect of the amount owing.

(4) In any proceedings under this section, the production of a certificate signed by the Commissioner, stating the name of the person and the amount of tax owing, is sufficient evidence that the amount is due and suffices for the court to give judgment in that amount.

(5) Except in cases of fraud, proceedings under this section must be commenced within four years of the date on which it was established that the tax was due.

(6) Where an amount of tax is due from a person under this Act, a VAT Officer not below the rank of Assistant Commissioner may take all or any of the following actions to recover such amount:—

- (a) deduct the amount from any money owing to the defaulter that is at the officer's disposal, under his control, or under the control of any other authority of VAT, Customs, or Income Tax;
- (b) require any person who holds or may subsequently hold any money for or on account of the defaulter to pay the amount;
- (c) stop the removal of any goods from the business premises of the defaulter or an associate of the defaulter, until such time as the recoverable amount is paid or recovered in full;
- (d) require any person to stop clearance of imported goods or manufactured goods or lock the BIN/VRN to stop the clearance;
- (e) attach bank accounts of the defaulter or an associate of the defaulter;
- (f) seal the business premises of the defaulter until such time as the recoverable amount is paid or recovered in full;
- (g) attach and sell, or sell without attachment, any moveable or immoveable property of the defaulter; or
- (h) recover such amount by attachment and sale of any moveable or immoveable property of a guarantor, person, company, bank or financial institution that fails to make payment under a guarantee, bond, or instrument.

(7) All requisitions or orders under this section shall be issued in writing giving all relevant particulars of the defaulter.

(8) For the purpose of attachment under this section, the concerned moveable or immoveable property may be seized and dealt with in such manner, including auction, as may be specified by the Board.



(9) If the money due relates to a company and the ownership of the company is transferred, the money is recoverable from the person to whom the company has been transferred.

(10) If the Commissioner is unable to recover an amount due and payable by a person under this Act, the Government may order the extinguishment of the liability as a debt due to the State.

(11) If the Commissioner determines that a person whose debt was extinguished under subsection (10) has assets that may be attached to recover all or part of the unpaid amounts, the liability for the debt may be reinstated by an order of the Government revoking the order made under subsection (10).

(12) This section does not apply to VAT collected by the Commissioner of Customs, which is recoverable under the procedures for recovery of customs duty.

#### **124. Officer of the Value Added Tax Department to act as Court in recovery matters.—**

For the purpose of recovery of unpaid amounts of tax recoverable under this Act or the Rules, a Value Added Tax Officer shall have the same powers which a Civil Court has for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure, 1908 (V of 1908), provided that if there is conflict or variance between the Code and this Act or the Rules, this Act and the Rules shall prevail.

#### **125. Change in jurisdiction for recovery.—**

(1) Where any defaulter resides in or has property situated in the jurisdiction of another Commissioner of Value Added Tax, the Commissioner in whose jurisdiction the arrears are due may authorise such other Commissioner to recover part or all of the amount of arrears as if the amount was due in that other Commissioner's jurisdiction, provided that once recovered the amount shall be transferred to the Commissioner in whose jurisdiction the arrears were due.

(2) Nothing in subsection (1) shall prohibit any defaulter from paying the arrears, at any stage of the process of proceedings for recovery by the other Commissioner, to the Commissioner in whose jurisdiction the arrears were due.

#### **126. Allocation of payments.—**

If, in addition to an amount of VAT, supplementary duty, or turnover tax that is due and payable by a person under this Act, an amount of interest or a monetary penalty or fine is payable, a payment made by the person that is in respect of but less than the total amount due, shall be applied in the following order—

- (a) first, to reduce the amount of interest due and payable;
- (b) then, to the extent that the payment exceeds the amount of interest, to reduce the amount of penalty or fine due and payable; and

- (c) then, to the extent that the payment exceeds the sum of the penalties, fines, and interest, to reduce the amount of VAT, supplementary duty, or turnover tax due and payable.

### **127. Power to require security.—**

(1) To secure payment of tax that is or may become due under this Act, the Commissioner may, by notice in writing, require a person to give security in such amount and manner as the Commissioner thinks fit, by the date specified in the notice.

(2) A person who is required to give security under subsection (1) shall give the security in the amount and manner and on the date specified in the notice.

(3) If security has been given in cash and the Commissioner is satisfied that the security is no longer required, the Commissioner shall apply the amount of the security against amounts due and payable by the person under this Act, in the following order—

- (a) first, in reduction of any interest due and payable;
- (b) then, in reduction of any monetary penalty or fine payable;
- (c) then, against any VAT, supplementary duty, or turnover tax due and payable;
- (d) then, against payment of any other taxes, levies, or duties collected by the Board, including any unpaid amounts payable under the Value Added Tax Act, 1991; and
- (e) then, by refunding the amount to the person in accordance with subsection (4).

(4) Where a security is applied in accordance within subsection (3), the Commissioner shall, within 1 (one) month thereafter, give notice to the person who gave the security, stating the amount applied under each category and the amount remaining and—

- (a) if the person is a registered person, other than a person to whom section 99 applies, notify the person that the remaining amount may be taken as a decreasing adjustment, specifying the tax period in which the adjustment is allowed; or
- (b) in any other case, pay the amount to the registered person within 2 (two) months after the date of the notice.

### **128. Execution against Taxpayer's Property.—**

#### *Lien*

(1) If a taxpayer fails to pay a tax by the due date, a lien in favour of the Government is created in the amount owing (together with any costs of collection that may accrue) on all property belonging to the taxpayer.

(2) The lien arises at midnight at the end of the due date and continues until the liability is satisfied or becomes unenforceable by reason of lapse of time.

(3) The lien has priority against all other rights, except the interest of a purchaser from the taxpayer, a holder of a security interest granted by the taxpayer, or another lien holder prescribed by the Board, if such interest arises before the earlier of the day on which—

- (a) such person has actual knowledge of the lien; or
- (b) notice of the lien has been duly registered with the High Court Division of the Supreme Court.

#### *Release of Lien*

(4) An affected person may apply to the Commissioner for a release of the lien on the person's property.

#### *Enforcement against property*

(5) The Commissioner may file an action to enforce the lien or may, after serving notice on the taxpayer of intention to do so, attach the taxpayer's property in order to realise the amount payable if it remains outstanding more than one month after service of the notice:

(6) Despite subsection (5), the Commissioner may seize the taxpayer's property without giving notice if—

- (a) recovery proceedings have been commenced under section 123; or
- (b) the Commissioner believes on reasonable grounds that the collection of tax is in jeopardy.

#### *Property in possession of third parties*

(7) A person (including a bank or other financial institution) in possession of, or holding security over, property of the taxpayer must, on demand of an authorised officer, surrender the property, or discharge the security, to the Commissioner, except in respect of such part of the property as is already subject to attachment or execution under judicial process.

(8) A bank or other financial institution must refrain from allowing withdrawals or other payments from the taxpayer's bank account after receiving notice of intention to attach that account.

(9) A person who fails to comply with such demand is liable to pay to the Commissioner an amount equal to the lesser of—

- (a) the value of the property or security that was or is held; or
- (b) the amount for the collection of which the attachment is made.

*Time limits*

(10) An attachment under this section must be commenced within four years of the date of the issuance of the notice of assessment pursuant to which the tax is levied.

*Tools of trade*

(11) Tools used in the taxpayer's trade are exempt from a levy, up to an aggregate value of taka 50,000 (fifty thousand), and the taxpayer's personal effects and furnishings are exempt from a levy, up to an aggregate value of taka 50,000 (fifty thousand).

**129. Sale of Seized Property.—**

(1) Property seized under section 128 must be taken to a place approved by the Commissioner for the storage of such goods.

(2) If the property was seized immediately and without notice, the Commissioner shall, as soon as practical after seizure of the goods, serve notice of the seizure on—

- (a) the owner of the goods;
- (b) the person who had custody or control of the goods immediately before seizure; or
- (c) if no such person can be identified, a person claiming the goods who provides sufficient information to enable such notice to be served, provided that if no person claims the goods, no notice need be served.

(3) Prior to sale, the Commissioner may authorise the delivery of goods seized to the taxpayer, or to a person on whom a notice was served under subsection (2), if that person has, to the satisfaction of the Commissioner:

- (a) given, or made an arrangement to give, security for payment of the amount for the collection of which the attachment is made; or
- (b) agreed to pay by instalments the amount for the collection of which the attachment is made.

(4) If payment has not been made, a security has not been accepted, and no agreement to pay by instalments has been agreed, the Commissioner may store the seized goods—

- (a) in the case of perishable goods, only for such period as is reasonable having regard to the condition of the goods; or
- (b) in any other case, for up to one month after the seizure of the goods,

and thereafter the Commissioner shall sell the goods by public auction or in such other manner as the Board prescribes.

- (5) The proceeds of the sale of the seized goods shall be applied as follows—
- (a) first toward the cost of seizing, keeping, and selling the goods;
  - (b) then towards payment of the amount for the collection of which the goods were seized;
  - (c) then towards payment of any other taxes, levies, or duties collected by the Board, including any amounts owing under the Value Added Tax Act, 1991; and
  - (d) the balance, if any, shall be paid to the owner of the goods.

(6) Nothing in this section precludes the Commissioner from commencing or pursuing proceedings to recover any balance owed, if the proceeds of disposal are not sufficient to meet the costs referred to in paragraphs (a) and (b) of subsection (5).

(7) During the course of a an appeal, by the Commissioner (Appeal), of the assessment on the basis of which goods have been attached, or an appeal to the Appellate Tribunal or a Court in relation to the assessment, sale of the taxpayer's property is suspended, except for—

- (a) property which is subject to spoilage; and
- (b) property which the taxpayer directs the Commissioner to sell.

### **130. Third Parties.—**

Pursuant to a levy of execution against a taxpayer under section 128 the Commissioner may issue a notice to any person (including an employer or bank or other financial institution) requiring such person to make direct payment to the Commissioner of any amount that that person owes to the taxpayer, or holds on account of the taxpayer, on the date of service of the notice of execution.

### **131. Indemnity.—**

A person complying with the requirements of section 128 or 130 is, from the time of compliance, discharged from any obligation to the taxpayer or any other person to the extent of the value of property surrendered, or the security discharged, to the Commissioner and is hereby indemnified for any loss or damage incurred as a consequence of compliance.

### **132. Transferees.—**

Where a taxpayer's liability has not been satisfied after levy of execution on property known to the Commissioner, a person who has received assets of the taxpayer in a transaction that is not at arm's length in the period of one year preceding the date of the levy is secondarily liable for the tax to the extent of the value of the assets received.

### **133. Liabilities and obligations of representatives.—**

(1) Every representative of a person is responsible for performing the duties or obligations imposed by this Act on that person, including the payment of amounts due and payable under this Act.

(2) The amount payable by the representative is recoverable from the representative only to the extent of assets, if any, of the person that are in the possession, or under the control, of the representative

(3) Every representative is personally liable for the payment of amounts due from the representative in that capacity if, while the amount remains unpaid, the representative —

- (a) alienates, charges or disposes of money received or accrued in respect of which the amount is payable; or
- (b) disposes of or parts with money or funds belonging to the person that are in the possession of the representative or which come to the representative after the amount is payable, if such amount could legally have been paid from, or out of, such money or funds.

(4) Nothing in this section relieves a person from performing duties or obligations imposed on the person by this Act that the representative of the person has failed to perform.

(5) If there are two or more representatives of a person, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(6) This section does not apply to a person who is a representative only because the Commissioner had declared the person to be a representative unless and until the Commissioner gives notice to the person of the declaration, and includes in the notice a statement that one consequence of the declaration is that this section will apply.

### **134. Duties of Receivers.—**

(1) In this section, “receiver” means a person who, with respect to an asset in Bangladesh is—

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for a bankrupt person;
- (d) a mortgagee in possession;
- (e) an executor of the estate of a deceased person; or
- (f) any other person conducting business on behalf of a person who is legally incapacitated.

(2) A receiver shall notify the Commissioner in writing within 21 (twenty-one) days after the earlier of being appointed to the position or taking possession of an asset of a person liable to tax under this Act.

(3) The Commissioner may in writing notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver —

- (a) shall set aside, out of the proceeds of sale of an asset of the person whose assets are in the possession of the receiver, the amount notified by the Commissioner under subsection (3), or such lesser amount as is subsequently agreed on by the Commissioner; and
- (b) shall be liable, to the extent of the amount set aside, for tax payable by the person who owned the asset.

(5) A receiver may pay a debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(6) A receiver shall be personally liable, to the extent of an amount required to be set aside under subsection (4), for the tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

### **135. Directors of companies.—**

(1) If a company fails to pay an amount required to be paid by this Act, the persons who were directors of the company at the time the company was required to pay the amount are jointly and severally liable, together with the company, to pay that amount and any interest thereon and penalties relating thereto.

(2) A director of a company is not liable under subsection (1) to pay an amount the company failed to pay if the director exercised the degree of care, diligence, and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) A director of a company may not be assessed for an amount under this section more than five years after the end of the tax period in which the import, supply, or event to which the amount relates occurred, or in the case where an assessment had been made, not more than five years after the date of the assessment.

(4) A director who makes a payment under this section is entitled to a contribution from the other directors who were liable to make the payment.

### **136. Representatives of associations of persons.—**

(1) A liability or obligation imposed by or under this Act or the Rules on an association of persons is imposed on the association and on any person who is a representative of the

association at the time the liability or obligation is imposed, and the association and each such representative is jointly and severally liable for that liability or obligation.

(2) For the purposes of this Act, anything done or engaged in by a person in the person's capacity as a representative of an association of persons is treated as being done by the association and not by the representative, including but not limited to—

- (a) carrying on a economic activity or part of the activity;
- (b) making a supply, import, or acquisition in the course of the economic activity carried on by the association;
- (c) manufacturing goods or supplying services on which supplementary duty is imposed;
- (d) receiving service of a notice;
- (e) filing a return, notice, or request with the Commissioner;
- (f) paying a tax payable under this Act; or
- (g) providing information.

(3) A person who is a trustee of more than one trust is treated as a separate person in relation to each trust.

(2) A document which is required to be served on an association of persons may be served on a representative of the association.

(4) An offence under this Act committed by an association of persons is taken to have been committed by the representatives of the association.

### **137. Continuity of partnerships or unincorporated associations.—**

If—

- (a) a partnership or other association of persons is dissolved or otherwise ceases to exist because of the retirement or withdrawal of one or more, but not all, of its partners or members, or because of the admission of a new partner or member; and
- (b) apart from the provisions of this Act a new partnership or association, consisting of the remaining members, or of the existing or remaining members and one or more new members, thereby comes into existence; and
- (c) the new partnership or association continues to carry on the economic activity that was carried on by the dissolved partnership or association,



the dissolved partnership or association and the new partnership or association are, for the purposes of this Act, deemed to be one and the same, unless the Commissioner, having regard to the circumstances of the case, otherwise directs.

**138. Death or insolvency of registered person; mortgagee in possession.—**

(1) If, after the death of a registered person or the sequestration of a registered person's estate—

- (a) an economic activity previously carried on by the registered person is carried on by or on behalf of the executor or trustee of the person's estate; or
- (b) anything is done in connection with the termination of the economic activity,

the estate of the registered person, as represented by the executor or trustee, is deemed for the purposes of this Act to be the registered person in respect of the economic activity.

(2) If a mortgagee takes possession of land or other property previously mortgaged by a mortgagor who is a registered person and, while in possession of the land or property, the mortgagee carries on the economic activity previously carried on by the mortgagor in relation to the land or other property, the mortgagee shall, to the extent of and for the duration that it carries on that economic activity, be deemed to be the mortgagor.

**139. Recovery of VAT from persons leaving Bangladesh.—**

(1) If the Commissioner has reasonable grounds to believe that any person may leave Bangladesh without paying an amount due under this Act from the person, or from a company or association of persons controlled by the person, the Commissioner may, by notice in writing served on that person, require the person within the timeframe specified in the notice to—

- (a) make payment in full; or
- (b) make arrangements satisfactory to the Commissioner for the payment of the amount, or to secure the amount that is or will become owing.

(2) If any person fails to make payment in full or give satisfactory security as required under subsection (1), the Commissioner may issue a Certificate of Non-Compliance, stating that the person has an outstanding tax debt, and a copy of the Certificate must be given to the person and to the Immigration Officer, who shall not permit the person to leave Bangladesh until the Commissioner revokes the certificate because the debt has been paid or appropriate security has been given.

(3) Where a certificate is given under subsection (2)—

- (a) the Commissioner may revoke the certificate at any time; and
- (b) the Commissioner shall revoke the certificate within 24 hours of the person complying with the notice given under subsection (1).

**140. Instalments of arrears.—**

The Commissioner may grant permission to a defaulter to pay any arrears outstanding under this Act in suitable instalments, along with default surcharge (if applicable) and may cancel such permission in case of default in payment of any instalment.

**CHAPTER 17****FORMS, NOTICE AND RECORD-KEEPING****141. Records and accounts.—**

(1) A registered person shall keep such accounts, documents, and other records prescribed by the Board as are necessary to permit ready ascertainment of the person's tax liability and other obligations under this Act, and shall retain those records for:—

- (a) at least six years from the end of the tax period to which they relate; or
- (b) until the final decision is made in any audit, recovery proceedings, dispute, prosecution, or other proceedings under this Act relating to that tax period.

(2) Without limiting subsection (1), the records kept shall include :—

- (a) statement of purchase of goods, services, or immoveable property, whether taxable or exempt, and challans related thereto;
- (b) statement of supply of goods or rendering of services, taxable and exempted or export of those goods or services and challans related thereto;
- (c) all tax invoices, credit notes, debit notes, and withholding certificates issued and received by the person;
- (d) all customs documentation relating to imports and exports of goods by the person;
- (e) all records relating to the manufacture and supply of dutiable goods or the performance and supply of dutiable services;
- (f) treasury challans showing the deposit of tax imposed under this Act; and
- (g) any other documents or records as prescribed by the board.(e.g. summary of the days transaction);

**142. Forms, notices, and authentication of documents.—**

(1) Forms, notices, returns, and other documents prescribed or published by the Board for the purposes of this Act may be in such form as the Board determines for the efficient administration of this Act and are valid whether or not published in the *Gazette*.

(2) The Board shall make the documents referred to in subsection (1) available to the public at the offices of the Department, and may also make the documents available by any other means and at any other locations the Commissioner thinks appropriate, including but not limited to:

- (a) by posting electronic versions of the documents on the official web site of the Board; or
- (b) by making hard copies available for collection from offices of the Department.

(3) A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or a VAT officer authorised for that purpose, is printed, stamped, or written on the document.

#### **143. Service of notices.—**

(1) Subject to this Act, a notice or other document required to be served on a person for the purposes of this Act is treated as properly served on the person if it is —

- (a) personally served on the person or his representative;
- (b) left at the person's usual or last known place of abode or business in Bangladesh; or
- (c) sent by registered post to his last known address;
- (d) sent by any authorized electronic means; or
- (e) displayed in the notice board of the local VAT office, if the order, decision or notice cannot be served in any of the manners laid down.

(2) The validity of service of a notice under this Act shall not be challenged after the notice has been wholly or partly complied with.

#### **144. Validity of documents.—**

(1) A notice or other document issued, served, or given by a VAT Officer under this Act is sufficiently authenticated if the name or title of the Commissioner or the authorised officer is printed, stamped, or written on the document.

(2) No document purporting to be made, issued, or executed under this Act shall be—

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person affected by the document is designated in it according to common understanding.

## CHAPTER 18

### INTEREST, OFFENCES AND PENALTIES

#### *Part 1: Interest*

#### **145. Imposition of interest for late payments.—**

(1) A person who fails to pay a tax (including a monetary penalty), payable to the Commissioner under this Act on or before the due date for payment is liable to pay interest, which is calculated as a percentage of the amount unpaid at the rate of two per cent per month or part thereof, calculated from the date the payment was due to the date the payment is made.

(2) The interest payable may be recovered by the Commissioner from the person in the same way as tax payable by the person.

(3) If a person has paid interest and an amount to which the interest relates is found not to have been payable, the interest paid on that amount must be refunded to the person.

(4) Interest payable under this section is payable in addition to the default surcharge imposed under section 159 and any other penalty or fine imposed under this Act.

#### *Part 2: General provisions*

#### **146. Penalties.—**

(1) The Commissioner may make an assessment or may impose a monetary penalty under this Act as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable, which must not be less than 30 (thirty) days from the date on which the notice of assessment is issued.

(2) A notice of an assessment of a monetary penalty must be served on the person subject to the penalty, stating the grounds on which the decision to impose the penalty was based, the amount of the penalty payable, the provision under which it is payable, and the due date for payment, and on service of the notice—

- (a) the notice and the assessment are treated as if they were a notice and assessment of tax payable under this Act;
- (b) the amount of the penalty specified in the notice is treated as tax payable under this Act; and
- (c) the due date for payment is the date specified in the notice.

(3) The period between the date of issue of the assessment and the due date for payment of the penalty shall be the show cause period and if, prior to the due date, the person assessed provides the Commissioner with information sufficient to convince the Commissioner that all or part of the penalty should not be assessed, the Commissioner may cancel or amend the

assessment accordingly, provided that if the amount payable is modified the due date shall be the date specified in the initial notice of assessment.

(4) A person's liability to pay a monetary penalty arises on the making of an assessment by the Commissioner under subsection (1).

(5) The time limit for assessing a monetary penalty is:

- (a) if the amount of the penalty may be calculated by reference to the tax payable for a tax period, whether or not it has been calculated in that way, the same time limit as applies for assessing the tax to which the penalty relates; or
- (b) in any other case:
  - (i) if the penalty is payable because of the doing of an act, within three years after the doing of the act;
  - (ii) if the penalty is payable because of the failure to do an act, within three years after the failure to do the act;
  - (iii) if the penalty is payable because of the non-disclosure or incorrect disclosure by a person of information relating to that person's liability to tax for a tax period, within three years after the person failed to disclose, or to correctly disclose, the information.

(6) For the purpose of this section no penal action against any person shall be taken without giving him the opportunity of being heard, himself or by a person authorised by the person.

#### **147. Sanction for prosecution.—**

No prosecution for an offence punishable under any provisions of this Chapter shall be instituted except with the previous sanction of the Board.

#### **148. Power to compound offences.—**

(1) The Board may, either before or after the institution of any proceedings or prosecution for an offence punishable under this Chapter, compound such offence.

(2) The Board shall not delegate this power to a VAT Officer.

#### **149. Trial by Special Judge.—**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, an offence punishable under this Chapter, other than an offence under section 168, shall be tried by a Special Judge appointed under the Criminal Law Amendment Act, 1958 (XL of 1958), as if such offence were an offence specified in the Schedule to that Act.

(2) A Special Judge shall take cognizance of, and have jurisdiction to try, an offence triable by the judge under subsection (1) only upon a complaint in writing made, after obtaining the sanction under 169, by the Deputy Commissioner of Taxes—

- (a) who is competent to make assessment under this Ordinance in the case to which the offence alleged to have been committed relates, and
- (b) whose office is situated within the territorial limits of the jurisdiction of the Special Judge.

#### **150. Special Jurisdiction of Special Judge.—**

(1) A Special Judge may pass such order as it thinks fit, including to impose an applicable monetary penalty, as the case may be, further inquiry, freeze for asset, croke or confiscation under this Act.

(2) If the Special Judge passes an order of further inquiry of any case submitted under this Act, shall give a time limit, not exceeding 6 (six) month, to the inquiry officer for submitting inquiry report.

#### **151. Penalties or offences for acts or omissions by companies.—**

- (1) Subsection (2) applies if—
  - (a) an act has been committed, or an omission has been made, by a company; and
  - (b) because of the act or omission the company is liable to a monetary penalty or to prosecution for an offence in relation to the act or omission.
- (2) Every person who, at the time of the act or omission—
  - (a) was a director or other similar officer of the company; or
  - (b) was acting or purporting to act in such capacity,

is liable to a monetary penalty and may be prosecuted for an offence under Division 3 as if the person were the company.

#### **152. Aiding and abetting.—**

A person who aids, abets, assists, counsels, incites, or induces a contravention of this Act or the commission of an offence under this Act, commits that contravention or offence and is liable to the same penalty or fine, and subject to the same term of imprisonment, as a person committing the offence.

#### **153. Independence of penalties and offences.—**

(1) Where, in respect of a single act, omission, or course of conduct, a monetary penalty may be imposed on a person under more than one section of this Act the person's liability to pay

a monetary penalty under each such section is separate and distinct from the person's liability under each other such section.

(2) Where, in respect of a single act, omission, or course of conduct, a person is convicted of more than one offence under this Act—

- (a) the person's liability to pay a fine for each offence is separate and distinct from the person's liability to pay a fine for each other such offence;
- (b) the maximum term of imprisonment imposed for offences arising out of the act, omission, or course of conduct must not exceed a term of 5 (five) years; and
- (c) the person must not subsequently be prosecuted for additional offences in relation to the same act, omission, or course of conduct.

(3) Except as provided in section 159, no monetary penalty is payable in respect of an act, omission, or course of conduct by a person if—

- (a) the person has been convicted of an offence under that section in respect of the same act, omission, or course of conduct; or
- (b) the offence has been compounded by the Board.

**154. Fines and penalties are in addition to tax payable.—**

For the avoidance of doubt—

- (a) the liability of a person to pay VAT, supplementary duty, or turnover tax due under this Act is independent of the person's liability to pay a monetary penalty or fine imposed under this Part; and
- (b) where a monetary penalty or fine is calculated by reference to the amount of VAT, supplementary duty, or turnover tax payable, that penalty or fine is payable in addition to the VAT, supplementary duty, or turnover tax payable.

***Part 3: Penalties and Offences***

**155. Authority for imposition of fine, penalty and imprisonment.—**

(1) This Division specifies certain acts, omissions, or courses of conduct that are offences and in relation to which a person committing the act or omission, or engaging in the course of conduct—

- (a) is liable to pay a monetary penalty imposed by a VAT Officer in accordance with the provisions of this Act or the Rules; or
- (b) on conviction in a Court, is liable to pay a fine or be subject to a term of imprisonment, or both.

- (2) In respect of each act, omission, or course of conduct, the following are specified—
- (a) the monetary penalty that the VAT Officer may impose; and
  - (b) the fine that may imposed on the person, and the term of imprisonment to which the person may be subject, upon conviction for the offence.

**156. Offences relating to registration.—**

*Failure to apply for registration*

- (1) A person who is required to be registered and does not apply for registration within the required time—
- (a) is liable to be imposed a monetary penalty not less than taka 100,000 (one lakh) but not exceeding taka 200,000 (2 lakhs); and
  - (b) commits an offence, for which the person is liable on conviction to either or both of the following:
    - (i) a fine not exceeding taka 200,000 (2 lakhs); and
    - (ii) imprisonment for a term not exceeding 5 (five) years.

*Failure to display registration certificate*

- (2) A person who fails to display, as required by section 14, its VAT Registration Certificate or an attested copy thereof issued by the Commissioner, whichever is applicable—
- (a) is liable to be imposed a monetary penalty not less than taka 50,000 (50 thousands) but not exceeding taka 100,000 (one lakh); and
  - (b) commits an offence, for which the person is liable on conviction to either or both of the following:
    - (i) a fine not exceeding taka 100,000 (one lakh); and
    - (ii) imprisonment for a term not exceeding 6 (six) months.

*Failure to notify changes affecting registration*

- (3) A person who fails to notify the Commissioner of changes relating to the person's registration, as required by section 14 —
- (a) is liable to be imposed a monetary penalty not less than taka 50,000 (50 thousands) but not exceeding taka 100,000 (one lakh); and
  - (b) commits an offence, for which the person is liable on conviction to either or both of the following:
    - (i) a fine not exceeding taka 100,000 (one lakh); and



- (ii) imprisonment for a term not exceeding 6 (six) months.

*Failure to apply for cancellation*

(4) A person who fails to apply for cancellation of the person's registration when required to do so—

- (a) is liable to be imposed a monetary penalty not less than taka 50,000 (50 thousands) but not exceeding taka 100,000 (one lakh); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding 6 (six) months.

*Failure to comply with requirements on cancellation of registration*

(5) A person who fails to comply with the requirements of section 15 in relation to the cancellation of the person's registration—

- (a) is liable to be imposed a monetary penalty not less than taka 50,000 (50 thousands) but not exceeding taka 100,000 (one lakh); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding one (1) year.

**157. Offences relating to enlistment.—**

*Failure to apply for enlistment*

(1) A person who is required to be enlisted for turnover tax and does not apply for enlistment when required—

- (a) is liable to be imposed a monetary penalty not less than taka 25,000 (25 thousands) but not exceeding taka 50,000 (50 thousands); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 50,000 (50 thousands); and
  - (ii) imprisonment for a term not exceeding 1 (one) year.

*Failure to notify changes affecting enlistment*

(2) A person who fails to notify the Commissioner of changes relating to the person's registration or enlistment, as required by section 17 —

- (a) is liable to be imposed a monetary penalty not less than taka 25,000 (25 thousands) but not exceeding taka 50,000 (50 thousands); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 50,000 (50 thousands); and
  - (ii) imprisonment for a term not exceeding 3 (three) months.

**158. Failure to file return.—***VAT returns*

(1) A person who fails to file a VAT return by the due date as required in Chapter 11—

- (a) is liable to an automatic monetary penalty of taka 25,000 (twenty-five thousand);
- (b) is liable to be imposed an additional monetary penalty not less than taka 50,000 (fifty thousand) but not exceeding taka 100,000 (one lakh); and
- (c) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding one year.

(2) If the return is the person's final return because the person's registration has been cancelled, the person is liable to double the penalty, fine, or term of imprisonment specified in subsection (1).

*Turnover tax returns*

(3) A person who fails to file a turnover tax return by the due date as required in Chapter 10—

- (a) is liable to be imposed a monetary penalty not less than taka 25,000 (25 thousands) but not exceeding taka 50,000 (50 thousands); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 50,000 (50 thousands); and

- (ii) imprisonment for a term not exceeding 6 (six) months.

### **159. Default surcharge and penalties for late payment.—**

(1) A person who fails to pay all or part of the tax due for a tax period by the due date, or who fails to otherwise pay an amount under this Act by the due date, is liable to a default surcharge of ten percent (10%) of the tax due but not paid.

Example 1: For the January tax period, a registered person is liable to pay a net amount of Taka 2 Lakh (after taking account of all the person's output tax and increasing and decreasing adjustments). The person fails to pay the amount by the due date and is therefore subject to a surcharge of 10% of the amount payable. This increases the person's liability for the January tax period to Taka 2.2 lakh. The default surcharge applies automatically.

(2) Where a person to whom subsection (1) applies is required to be registered but is not registered, the default surcharge is increased to twenty percent (20%) of the tax due but not paid.

Example 2: If the reason why the person in Example 1 did not pay the net amount of tax due was because the person was not registered, even though the person was in fact required to be registered, the default surcharge is 20% of the tax payable. This means that the person's liability for the January tax period is increased from Taka 2 lakh to Taka 2.4 lakh. The default surcharge applies automatically.

(3) The default surcharge applies automatically and is imposed by operation of this Act

(4) Despite subsection (3), the Board may, under special circumstance, the reasons to be recorded in writing, remit part or all of a default surcharge imposed under this section.

(5) The power to remit a default surcharge shall not be delegated to a VAT Officer below the rank of Commissioner.

(6) In addition to, and not as an alternative to, the default surcharge imposed under subsection (1) or (2), the person commits an offence, for which the person is liable on conviction to either or both of the following:

- (a) a fine not exceeding twenty-five percent (25%) of the amount of tax due but not paid; and
- (b) imprisonment for a term not exceeding 2 (two) years.

### **160. Understatement of tax payable or improper claim for refund.—**

(1) It shall be an offence for a person to—

- (a) understate or omit to include an amount of output tax in a return submitted to the Commissioner for a tax period;

- (b) overstate the input tax credits allowed in a return submitted to the Commissioner for a tax period;
  - (c) understate the amount of an increasing adjustment or overstate the amount of a decreasing adjustment for a tax period; or
  - (d) improperly claim a refund.
- (2) A person committing an offence listed in subsection (1)—
- (a) is liable to be imposed a monetary penalty not less than equal to, and not exceeding one and half times, the amount of tax relating to the offence; and
  - (b) on conviction to either or both of the following:
    - (i) a fine not exceeding the double the amount of tax relating to the offence; and
    - (ii) imprisonment for a term not exceeding 3 (three) years.

**161. False Documentation or VRN.—**

(1) A person who uses a false VRN, or a VRN that does not apply to the person, issues a false tax invoice, credit note, debit note, or withholding certificate, or fails to provide a tax invoice, credit note, debit note or withholding certificate when required—

- (a) is liable to be imposed a monetary penalty not less than taka 300,000 (3 lakhs) but not exceeding taka 500,000 (5 lakhs); and
  - (b) commits an offence, for which the person is liable on conviction to either or both of the following:
    - (i) a fine not exceeding taka 500,000 (5 lakhs); and
    - (ii) imprisonment for a term not exceeding 2 (two) years.
- (2) Subsection (1) does not apply to a supplier if —
- (a) the only reason for the contravention or offence is that information relating to the recipient of the supply (including, but not limited to, information about the registration status or VRN of the person) is incorrect; and
  - (b) the supplier, having exercised all due care, believes on reasonable grounds that the information relating to the recipient is accurate.
- (3) Subsection (1) does not apply to a recipient if —
- (a) the only reason for the contravention or offence is that information relating to the supplier (including, but not limited to, information about the registration status or VRN of the person) is incorrect; and

- (b) the recipient, having exercised all due care, believes on reasonable grounds that the information relating to the supplier is accurate.

**162. Failure to keep records.—**

A person who fails to maintain proper records as required under section 141—

- (a) is liable to be imposed a monetary penalty not less than taka 200,000 (2 lakhs) but not exceeding taka 300,000 (3 lakhs); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 300,000 (3 lakhs); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

**163. Failure to provide facilities.—**

A person who fails to provide an authorised officer with assistance, information, or access as required under section 111 and 118—

- (a) is liable to be imposed a monetary penalty of taka 50,000 (fifty thousand); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

**164. Obligations imposed on specified persons.—**

A person who fails to comply with an obligation imposed on the person under section 130, 133, 134, 135, 136, 137, or 138—

- (a) is liable to be imposed a monetary penalty of taka 75,000 (seventy-five thousand); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

**165. Offences relating to withholding.—**

A withholding entity who fails to withhold an amount from a person as required under section 61 or who acquires something under a tender from an unregistered person—

- (a) is liable to be imposed a monetary penalty of taka 100,000 (1 lakh); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

**166. False or misleading statements.—**

(1) A person who makes a statement to an authorised officer that is false or misleading in a material particular—

- (a) is liable to be imposed a monetary penalty not less than taka 300,000 (3 lakhs) but not exceeding taka 500,000 (5 lakhs); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 500,000 (5 lakhs); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

(2) A reference in this section to a statement made to an authorised officer includes a reference to a statement made orally, in writing, or in another form to a VAT Officer acting in the performance of the officer's duties under this Act, and includes a statement made —

- (a) in an application, certificate, declaration, notification, return, appeal petition, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a VAT Officer otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by the officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to the officer.

(3) A reference in this section to a statement that is misleading in a material particular includes a reference to a statement that is so because of the omission of any matter or thing from the statement.

**167. Failure to pay security.—**

(1) A person who does not pay a security when required to do so by the Commissioner in accordance with the provision of this Act—

- (a) is liable to be imposed a monetary penalty not less than taka 50,000 (50 thousands) but not exceeding taka 100,000 (one lakh); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 100,000 (one lakh); and
  - (ii) imprisonment for a term not exceeding 6 (six) months.

**168. Impeding tax administration.—**

(1) A person who impedes or attempts to impede the VAT authority in the administration of this Act—

- (a) is liable to be imposed a monetary penalty not less than taka 500,000 (5 lakhs) but not exceeding taka 6,000,000 (6 lakhs); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:
  - (i) a fine not exceeding taka 1,000,000 (10 lakhs); and
  - (ii) imprisonment for a term not exceeding 2 (two) years.

(2) For the purposes of subsection (1), a person impedes the administration of this Act if the person—

- (a) fails to comply with a lawful request by an authorised officer to examine documents, records, documents, or data within the control of the person;
- (b) fails to comply with a lawful request by the Commissioner to have the person appear before a taxation officer authorised by the Commissioner;
- (c) interferes with the lawful right of an authorised officer to enter onto and search a business premises or a dwelling unit, to seize or make copies of documents or to seize property; or
- (d) otherwise impedes the determination, assessment, or collection of VAT.

**169. Tax evasion.—**

A person who wilfully evades, or attempts to evade the assessment, payment, or collection of tax imposed under this Act—

- (a) is liable to be imposed a monetary penalty not less than equal to, and not exceeding one and a quarter times, the amount evaded; and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following:

- (i) a fine not exceeding taka 2,500,000 (25 lakhs); and
- (ii) imprisonment for a term not exceeding 5 (five) years.

**170. General penalty.—**

(1) A person contravenes this Act and Rules made under this Act and commits an offence if the person, without lawful excuse,—

- (a) fails to do something the person is required to do under this Act;
- (b) does something the person is prohibited from doing under this Act; or
- (b) knowingly provides any information required by or under this Act that is false or misleading in any material particular.

(2) If no other penalty is prescribed in relation to the person's act or omission, the person—

- (a) is liable to be imposed a monetary penalty not less than taka 100,000 (one lakh) but not exceeding taka 200,000 (2 lakhs); and
- (b) commits an offence, for which the person is liable on conviction to either or both of the following—
  - (i) a fine not exceeding taka 200,000 (2 lakhs); and
  - (ii) imprisonment for a term not exceeding 6 (six) months.

## **CHAPTER 19**

### **APPEALS, REVISIONS AND REFERENCE**

**171. Appeal to Commissioner (Appeal).—**

(1) A person, including a VAT officer, aggrieved by a decision taken or order made by a VAT officer up to the rank of Additional Commissioner may, within 60 (sixty) days of the date of issuance or passing of such order, prefer an appeal to the Commissioner (Appeal).

(2) The Commissioner (Appeal) may, on reasonable grounds, extend the date for filing of an appeal by a further sixty days.

(3) A person, other than a VAT Officer, who prefers an appeal under subsection (1) shall, at the time of filing the appeal, pay 10 (ten) percent of the tax (if any) involved in the decision or order against which the appeal is preferred.

(4) The Commissioner (Appeal) may, after hearing the parties to the appeal,—



- (a) make a decision on the appeal; and
- (b) pass such order as the Commissioner thinks fit, confirming, varying, altering, setting aside, or annulling the decision or order appealed against,

but shall not remand the case for outright de novo consideration at original stage.

(5) In deciding an appeal, the Commissioner (Appeal) may make or cause to be made such further audit, enquiry, or verification as may be necessary.

(6) An order made under subsection (4) shall be passed no later than 270 (two hundred and seventy) days from the date on which the appeal was filed, which period may be extended further for 90 (ninety) days by the Commissioner (Appeal) for reasons to be recorded in writing.

(7) Notwithstanding anything contained in this Act, if the Commissioner (Appeal) fails to give any decision on the appeal within the time period stipulated in subsection (5), the appeal shall be deemed to have been granted by the Commissioner (Appeal).

#### **172. Power of the Board to call for records and rectify errors.—**

(1) The Board may, on its own or otherwise, examine the record of any case or proceedings for the purpose of satisfying itself as to the legality or propriety of any decision or order passed therein by any VAT officer and, subject to subsection (2), may issue such order as it deems appropriate.

(2) The Board shall not examine a case under subsection (1) if an appeal of the case is pending before the Appellate Tribunal.

(3) The Board shall not issue an order:—

- (a) imposing or enhancing a monetary penalty or fine, or requiring payment of a greater amount of tax than originally determined, without first giving the affected person an opportunity of showing cause and of being heard;
- (b) more than two years from the date of the original decision or order.

#### **173. Appeal to Appellate Tribunal.—**

(1) A person including a VAT officer not below the rank of an Additional Commissioner authorised by the Commissioner in this behalf, aggrieved by—

- (a) an order or decision passed or made by the Commissioner (Appeal);
- (b) an order or decision passed or made by a Commissioner; and
- (c) an order or decision passed or made by the Board under section 172,

may, within 60 (sixty) days of the receipt of such decision or order, prefer an appeal to the Appellate Tribunal constituted under section 196 of Customs Act 1969 (IV of 1969).

(2) The Appellate Tribunal may, on reasonable grounds, extend the date for filing of an appeal for a further 60 (sixty) days.

(3) A person, other than a VAT Officer, who prefers an appeal under subsection (1) shall, at the time of filing the appeal, pay 10 (ten) percent of the tax (if any) involved in the decision or order against which the appeal is preferred.

(4) The Tribunal, after hearing the parties to the appeal, may pass such order in relation to the matter before it as it thinks fit, including an order staying the recovery of tax.

(5) Any interim order of the Appellate Tribunal staying recovery of tax shall cease to have effect on the expiry of a period of 6 (six) months following the day on which it was made unless the case is finally decided, or the interim order is withdrawn by the Tribunal earlier.

(6) The Appellate Tribunal shall send a copy of its order disposing of the appeal to the appellant and to the concerned Commissioner.

(7) An order disposing of an appeal under this section shall be passed within 1 (one) year of the filing of the appeal.

(8) The Appellate Tribunal shall have power to regulate its own procedure and the procedure of its benches in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the benches shall hold their sittings.

(9) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Penal Code (Act XLV of 1860) and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898).

#### **174. Reference to the High Court.—**

(1) Within 90 (ninety) days of the communication of an order of the Appellate Tribunal, the aggrieved person or a VAT Officer authorised by the Commissioner in this behalf, not being an officer below the rank of Additional Commissioner, may prefer an application in the prescribed form along with a statement of the case to the High Court stating any question of law arising out of such order.

(2) The statement to the High Court shall set out the facts, the determination of the Appellate Tribunal, and the question of law that arises out of its order.

(3) Where, on an application made under subsection (1), the High Court is satisfied that a question of law arises out of the order referred to in that subsection, it may proceed to hear the case.

(4) A reference to the High Court under this section shall be heard by a bench of not less than two judges of the High Court and, in respect of the reference, the provisions of section 98 of

the Code of Civil Procedure, 1908 (Act V of 1908) shall apply, so far as may be appropriate, notwithstanding anything contained in any other law for the time being in force.

(5) The High Court, upon hearing a reference under this section, shall examine the question of law raised by the reference and deliver judgment thereon specifying the grounds on which the judgment is based and the order of the Appellate Tribunal shall stand modified accordingly.

(6) The Court shall send a copy of its judgment under the seal of the Court to the Appellate Tribunal.

(7) The cost of any reference to the High Court shall be in the discretion of the High Court.

(8) Where recovery of tax has been stayed by the High Court by an order, such order shall cease to have effect on the expiry of a period of 6 (six) months following the day on which it is made, unless the reference is decided, or such order is withdrawn, by the High Court earlier.

(9) Section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to an application made to the High Court under subsection (1)

(10) A person, other than a VAT Officer, who prefers an application under subsection (1) shall, at the time of filing the appeal, pay 10 (ten) percent of the tax (if any) involved in the decision or order in relation to which the application is preferred.

#### **175. Restrictions.—**

For the purposes of the sections 173 and 174, no appeal shall be preferred if—

- (a) it is against an order of seizure or an order of sale or execution taken under Chapter 16 of this Act; or
- (b) it is against an order issued under sections 82 and 98 of Customs Act 1969 (IV of 1969) for the purposes of this Act.

#### **176. Alternative dispute resolution.—**

(1) Notwithstanding anything contained in any other provisions of this Act, a taxpayer aggrieved in connection with any dispute in relation to—

- (a) the person's liability for tax, or entitlement to refunds, under this Act;
- (b) the extent to which a default surcharge or penalty has been remitted;
- (c) the quantum of an increasing adjustment or decreasing adjustment relating to the determination of tax payable under this Act;
- (d) the relaxation of any procedural or technical irregularities and condonation of any prescribed time limitation; and

- (e) any other specific relief required to resolve the dispute,

may apply to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application, which is under litigation in any Court or an Appellate authority, except in cases where First Information Reports (FIRs) have been filed under this Act or criminal proceedings have been initiated or where an interpretation of a question of law having large revenue impact is, in the opinion of the Board, involved.

(2) The Board may, after examination of the application of a registered person, appoint a Committee within thirty days of receipt of such application, consisting of a VAT Officer not below the rank of Additional Commissioner and two persons appointed in accordance with Rules and procedures established by the Board for the purposes of this section.

(3) Within ninety days of its constitution, a Committee constituted under subsection (2) shall examine the issue and may, if it deems fit, conduct inquiries, seek expert opinion, direct a VAT Officer or any other person to conduct an audit, and make recommendations in respect of the dispute.

(4) If the Committee fails to make recommendations within the said period, the Board may dissolve the Committee and constitute a new Committee, which shall decide the matter within a further period of ninety days.

(5) If, after the expiry of that period, the dispute is not resolved, the matter shall be taken up by the appropriate forum for decision.

(6) The Board may, on the recommendations of the Committee, pass such order, as it deems appropriate within forty-five days of the receipt of the recommendations of the Committee.

(7) The registered person may make payment of tax as determined by the Board in its order under subsection (6) and such order of the Board shall be submitted before the forum, Tribunal or the Court where the matter is sub judice for disposal thereof.

(8) The Board shall prescribe the procedure for carrying out the purposes of this section.

### **177. Bar of suits, prosecution and other legal proceedings.—**

(1) No suit shall be brought in any Court, including the High Court in its original civil jurisdiction, to set aside or modify any order passed, any assessment made, any tax levied, any penalty imposed, any collection of tax made, or any audit, enquiry or investigation conducted under this Act or the Rules, or against any action taken by a VAT Officer in connection with such matters.

(2) No suit, prosecution, or other legal proceeding shall lie against the Board, the Government, or a VAT Officer in respect of any order passed or action taken in good faith under this Act or the Rules.

(3) Under no law for the time being in force, shall any investigation or inquiry be undertaken or initiated by any government agency against a VAT Officer for anything done in the person's official capacity under this Act, the Rules, or orders, instructions, or directions made or issued thereunder, unless prior written approval is given by the Board for reasons to be recorded in writing, and the Board may decline to give such approval in any case or class of cases.

**178. Appearance by authorised representative and licensed VAT consultant.—**

(1) A registered person required to appear before the Appellate Tribunal or a VAT Officer in connection with any proceedings under this Act and the Rules may, in writing, authorise any person having such qualification or qualifications as may be prescribed by the Board to represent him or appear on his behalf.

(2) The Board may issue a license to any person to plead as VAT consultant to appear as representative for the purpose of subsection (1).

**179. Correction of clerical errors, etc.—**

Clerical or arithmetical errors or other bona fide mistakes in any notice, assessment or adjudication order or decision may, at any time, be corrected by the VAT Officer who issued or made such notice, order or decision or by his successor in office, after giving a notice to the person affected by such correction.

**180. Bar to the jurisdiction of the Courts.—**

No appeal shall lie to any civil court by any person aggrieved by an assessment, decision, or order made by the Commissioner or a VAT Officer before appealing to and getting a decision or order thereon from the Commissioner (Appeal) or the Appellate Tribunal, as the case may be.

**181. Evidence and burden of proof.—**

(1) In proceedings under this Act,—

- (a) the facts necessary to establish compliance by the Commissioner with this Act and default by a person under this Act are sufficiently proved in the Appellate Tribunal or any Court by an affidavit of the Commissioner or authorised VAT Officer; and
- (b) the burden of proof will rest on the taxpayer to rebut the contents of the affidavit deposed to by the Commissioner.

Example: In an appeal against an assessment, the person assessed will have the burden of proving matters such as that a supply made in Bangladesh was zero-rated, or that the supply was made for a consideration less than that on which the assessment was based. Similarly, a supplier claiming a decreasing adjustment for a bad debt will have the burden of proving that the debt was overdue for more than 12 months and was written off as bad by the supplier (see section 68).

(2) The affidavit must have attached to it a copy of any notice or other document issued by the Commissioner to which it relates.

## **CHAPTER 20**

### **MISCELLANEOUS**

#### **182. Online filing and payment etc**

(1) Anything that is required to be done under this Act may, if the Board requires, be done online or electronically in accordance with the requirements of the Board.

(2) Without limiting subsection (1), the Board may prescribe rules relating to the electronic filing of returns and the making of online payments, including refunds, and may require or allow only such persons as the Board considers appropriate to use such means of filing or payment.

(3) If a return or other document has been transmitted by a registered or enlisted person to a computer account of the Board using the authentication code assigned to the person for that purpose—

- (a) with or without the authority of the person; and
- (b) before the person has applied to the Board for cancellation of the authentication code,

the return or other document shall, for the purposes of this Act, be presumed to have been filed by the person, unless the person proves otherwise.

(4) For the purposes of this Act, an electronic tax return, notice, or other document, or a copy thereof, or electronic confirmation of an electronic payment, must not be ruled inadmissible in evidence merely on the basis that it was filed or served without the filing or delivery of an equivalent document or counterpart in paper form.

(5) If an electronic tax return, notice, other document, or copy therefore, is admissible because of subsection (5), it shall be presumed, until the contrary is proved, that the contents of the electronic return, notice or other document have been accurately transmitted.

(6) Section 107 applies to –

- (a) a tax assessment given electronically by the Board; and
- (b) a return filed electronic by a registered or enlisted person.

(7) A person filing an electronic tax return or other document on behalf of another person must not divulge or disclose the contents of the return or document, or a copy thereof, without the prior written consent of the Board.

**183. Attested copies of documents.—**

(1) On application by payment of the relevant fee, an authorised VAT Officer may issue an attested copy of a document—

- (a) provided to the Commissioner by the applicant under this Act;
- (b) provided to the Commissioner by a person who has withheld VAT in accordance with this Act from a payment to the applicant, provided that the document relates to the withheld amount; or
- (c) provided by the Commissioner to the applicant.

(2) An attested copy shall not be issued unless the authorised officer is satisfied that the documents requested are relevant to the applicant and that the applicant has not committed, and has no intention to commit, any fraud in relation to this Act.

(3) The Board shall, by order published in the Gazette, determine the scale of fees to be paid, the current version of which at any particular time shall be published —

- (a) on the web site of the Board; and
- (b) at each office of the Department at which applications for copies can be made.

**184. Currency.—**

(1) An amount taken into account under this Act must be expressed in Bangladesh taka.

(2) If an amount is expressed or paid in a currency other than Bangladesh taka—

- (a) if the amount relates to an import of goods, it must be converted into Bangladesh taka at the exchange rate applicable under the customs laws for the purposes of computing the customs duty payable on the import; and
- (b) if no such provisions apply, and in any other case, the amount must be converted to Bangladesh taka at the Bangladesh Bank mid-exchange rate applying between the foreign currency and Bangladesh taka on the date the amount is taken into account for the purposes of this Act.

**185. Tax Clearance Certificate and VAT Honour Card.—***Tax Clearance Certificate*

(1) A taxpayer may request a Tax Clearance Certificate from the Commissioner.

(2) The Commissioner may provide a taxpayer with a Tax Clearance Certificate only if the Commissioner is satisfied that—

- (a) the taxpayer does not have any tax due and outstanding; or

- (b) the taxpayer has made arrangements that the Commissioner believes will result in the payment of tax due and outstanding.

(3) Where a taxpayer has tax due and outstanding, the Commissioner may request that a person or authority otherwise authorised by law to issue a licence, permit, registration certificate, visa, or other empowering document not issue the document to the taxpayer until the taxpayer applying for the document produces a valid Tax Clearance Certificate issued by the Commissioner.

#### *VAT Honour Card*

(4) A taxpayer may request a VAT Honour Card from the Commissioner for a financial year.

(5) A person who submits all returns of the previous financial year shall be entitled to a VAT Honour Card.

#### *Fees and Uses of Tax Clearance Certificate and VAT Honour Card*

(6) The Board may fix a reasonable amount of fees to issue a Tax Clearance Certificate and VAT Honour Card.

(7) The Board may set a precondition of having updated Tax Clearance Certificate and VAT Honour Card to get certain Government services and determine the other uses of Tax Clearance Certificate and VAT Honour Card by the notification in the Official Gazette.

### **186. Translation of records.—**

If a book, record, or computer-stored information referred to in this Act is not in Bangla or English, the Commissioner may, by notice in writing, require the person keeping the book, record, or computer-stored information to provide, at the person's expense, a translation into either Bangla or English, whichever the person chooses, by a translator approved by the Commissioner.

### **187. Reward.—**

#### *Reward for unearthing of tax evasion, law violation, etc.-*

(1) Notwithstanding anything contained to the contrary in this Act or in any other law for the time being in force, the Board may in such circumstances, in such manner and to such extent as maybe prescribed by rules, grant reward to the following person: —

- (a) any person who supplies to a Value Added Tax officer information about violation of any provisions of this Act or of any other law for the time being in force or in regard to evasion or attempt of evasion of tax or revenue payable thereunder; or



- (b) any Value Added Tax officer who detects or unearths the evasion or attempted evasion of tax or revenue payable under this Act or any other law for the time being in force or identifies violation of any provision thereof and, as a result of supply of such information, detection or unearthing if leads to the following situations, namely—
  - (i) the seizure and confiscation of goods or other things in relation to which such evasion or attempted of tax evasion or revenue or violation of the provisions of law takes place; or
  - (ii) the Value Added Tax or relevant revenue is collected or, as the case may be, the fine charged upon the person liable is collected under this Act or any other law for the time being in force.

*Financial incentives for exceeding collection target*

(2) The Board may, in such cases, in such manner, and subject to such limit as is prescribed in the Rules, reward an amount of the excess collection of target set by Government for a financial year as financial incentives to all VAT officer and staff of the Board and the Office thereunder.

**188. Rules.—**

*Power to make rules*

- (1) The Board may make Rules—
  - (a) for any matter in respect of which this Act requires or allows Rules to be prescribed; or
  - (b) for any matter that is necessary or convenient to be prescribed in order to better carry out or give effect to the purposes of this Act.
- (2) Without limiting subsection (1), the Board may make Rules prescribing for—
  - (a) transitional or saving provisions consequent on the coming into force of this Act or on any change in the VAT rate or the tax base under this Act;
  - (b) the remedy (in manner and or form) of any deficiency in this Act arising from the absence or insufficiency of provisions to deal with any thing that is necessary to give effect to this Act;
  - (c) ensuring that the provisions of this Act do not inappropriately result in the application of VAT more than once (or, unless clearly intended by this Act, less than once) to a particular type of transaction;
  - (d) the appointment of VAT Officers or other persons in accordance with the requirements of this Act and the specification of the duties, and functions of persons appointed or employed under this Act;

- (e) the form of returns to be made, the particulars to be included in the returns, the persons by whom, and the time when or within which such returns are to be made;
- (f) the form of assessments, notices, tax invoices, debit notes, credit notes, withholding certificates, tax clearance certificates, VAT honour cards, and other documents that are referred to in this Act or are necessary in order to give effect to this Act;
- (g) the record-keeping requirements to be complied with taxpayers in relation to matters dealt with in this Act;
- (h) procedures to be followed in relation to applications for, and the payment of, refunds;
- (i) procedures for the conduct of audits and other investigations to be conducted by VAT Officers
- (j) procedures for alternative dispute resolution;
- (k) registration and cancellation of registration;
- (l) recovery of arrears,
- (m) the compounding of offences.
- (n) methods for the storage, removal, and transportation of goods;
- (o) processes for the collection and storage of information;
- (p) requiring that particular goods must be supplied only in particular packets, bags, or containers and for compulsory printing, inscribing, or knitting of the retail price on the packets, bags, or containers containing the goods;
- (q) processes for the confiscation of any goods in relation to which any provision of this Act or the Rules is contravened;
- (r) the collection and examination of samples;
- (s) authorising a Commissioner, Value Added Tax to issue a written order on any matter arising out of any Rule; and
- (t) procedures relating to the collection of taxes payable under this Act by retailers.

*Limitation on the power to make rules*

- (3) A rule that has the effect of making—
  - (a) a supply or import exempt, zero-rated, or subject to a lower or higher rate than applies under this Act; or

- (b) a person or class of persons exempt from the payment of a tax imposed under this Act,

shall be made only in accordance with section 22 and shall automatically lapse on the passing of the next Finance Act by the Parliament.

(4) Subsection (3) does not apply to a rule made for the purposes of specifying the scope of an exemption that is listed in the Schedule but at the end of each financial year the Board must submit a report to the Minister, in such manner and mode as the Minister may request. on any changes made to such rules during a financial year .

*Rules prescribing forms and documents*

(5) The specification and description of the nature and form of filing and documentation requirements and approved forms may be made by the Board by way of notice in the Gazette.

*Power to issue orders, instruction, etc.*

(6) The Board may issue standing orders, public notices or other instructions to ensure smooth and efficient functioning of the work under this Act or the Rules within the scope of this Act.

*Power to make special provision for specific industry*

(7) The Board may make special procedures for collecting VAT from any specified industry including, but not limited to, seasonal brick kilns, tea estates, brokers, and agents, ship breaking yards, natural gas suppliers, oil and fuel suppliers, and mechanical water boat **[manufacturers? Operators?]**.

**189. Establishment of accounts for refunds and rewards.—**

*Charges upon Consolidated Fund*

(1) The following amounts shall, in accordance with the provisions of Article 88(f) of the Constitution of the People’s Republic of Bangladesh, be charged upon the Consolidated Fund:—

- (a) the Reserve for Refunds Amount; and
- (b) the Reserve for Rewards Amount.

(2) The Finance Division shall establish the following accounts, which shall be established under the name of the Board:—

- (a) an account, to be named the “Reserve for Refunds”, into which the Reserve for Refunds amount shall be paid and from which, on authorisation by a VAT Officer not below the rank of Assistant Commissioner, refunds payable under this Act shall be paid; and

- (b) an account, to be named the “Reserve for Rewards”, into which the Reserve for Rewards amount shall be paid and from, which, on authorisation by the Board, rewards provided for under section 187 shall be paid.

#### *Status of funds*

(4) To avoid doubt, the Reserve for Refunds and the Reserve for Rewards shall be separate and distinct from the annual grants made to the Board and the Department of Value Added Tax under the Appropriation Act of the relevant year.

#### *Deficit or surplus in Reserve for Refunds*

(4) If there is a deficit in the Reserve for Refunds, it shall be covered by a charge against the Consolidated Fund, and made up by increasing the percentage used to calculate the Reserve for Refunds Amount.

(5) If amounts set aside in the Reserve for Refunds become larger than needed to satisfy anticipated tax refund claims, no further amounts shall be set aside from gross daily tax revenues, until the amount in the reserve returns to the required level.

#### *Deficit or surplus in reserve for rewards*

(6) Any amount remaining in the Reserve for Rewards at the end of a financial year shall be transferred to the Consolidated Fund unless, no later than three months after the end of the year, it is paid as a reward in relation to tax collections under this Act in that year.

#### *Definitions*

(7) The following definitions apply for the purposes of this section:—

(a) “Reserve for Refunds Amount” means

- (i) during the first year after the commencement day, 5 (five) percent of gross tax revenues collected under this Act; and
- (ii) during any subsequent year, the percentage of gross tax revenues collected under this Act determined by the Board as being reasonably required to be set aside for the satisfaction of refund claims that the Board anticipates, from past experience, will arise during that year:

Provided that at any time in the first year after the commencement day, if it becomes apparent that the fund will not be sufficient to cover anticipated refund claims, the Board may increase the percentage;

(b) “Reserve for Refunds reserve amount” means one tenth (1/10<sup>th</sup>) of one percent of gross tax revenues collected under this Act.

## CHAPTER 21

### TRANSITION

#### 190. Repeal.—

(1) The Value Added Tax Act, 1991 is repealed with effect from the end of the day immediately preceding the commencement day of this Act.

(2) Except as provided otherwise, the provisions of the Value Added Tax Act, 1991 continue to apply on or after the commencement day in respect of—

- (a) a supply made before the commencement day;
- (b) an import entered for home consumption before the commencement day;
- (c) in the case of an import that is not entered for home consumption, an import made before the commencement day.

#### 191. Transition.—

##### *Continuity of appointments*

(1) All appointments made under the Value Added Tax Act, 1991 and subsisting at the VAT commencement day shall be treated as appointments made under this Act and an oath of secrecy taken under that Act shall be treated as having been taken under this Act.

##### *Continuity of the Department*

(2) The Department of Value Added Tax established for the purposes of the Value Added Tax Act, 1991 shall become the Department of Value Added Tax for the purposes of this Act on the commencement day.

##### *Continued use of forms etc*

(3) Until prescribed otherwise by the Board, all forms and documents used in relation to the Value Added Tax Act, 1991 may continue to be used for the purposes of this Act, and all references in those forms and documents to provisions of and expressions appropriate to the Value Added Tax Act, 1991 are taken to refer to the corresponding provisions and expressions used in this Act.

##### *Continuity of registration and enlistment*

(4) Every person who, at the end of the day before the commencement day, is registered for VAT or enlisted for turnover tax under the Value Added Tax Act, 1991, shall be treated as having been registered or enlisted, as appropriate, under this Act and the person's registration or enlistment shall continue until modified or cancelled under this Act.

*Cancellation of continuation of separate branch registrations*

(5) Where a person was registered under the Value Added Tax Act, 1991 separately in respect of different branches and becomes so registered under this Act because of subsection (4)—

- (a) the person may remain so registered but shall, after the commencement day, comply with subsections (2) and (5) of section 11; or
- (b) unless the person is required to be so registered under section 11(4), the person may apply to the Commissioner to have a single registration from a day on or after the commencement day, as requested in the application.

(6) The Commissioner shall, for any person whose branches are separately registered because of subsection (4)—

- (a) in respect of persons who have applied for a single registration under subsection (5)(b): process the applications in accordance with the provisions of Chapter 2; and
- (b) in respect of persons who have not so applied: notify the persons of the requirements of subsections (2) and (5) of section 11 and of their right (if applicable) to apply for a single registration.

*Input tax incurred under previous law*

(7) A person who paid VAT on an import or acquisition under the Value Added Tax Act 1991 (“the previous law”) and who would have been entitled to an input tax credit for all or part of that VAT in a tax period ending after the commencement day of this Act if the previous law had continued in force is allowed a decreasing adjustment under this Act for the amount that would have been allowed under the previous Act.

(8) The decreasing adjustment may be claimed in one only of the first 3 (three) tax periods ending after the commencement of this Act.

(9) The person give notice to the Commissioner stating the amount that is to be claimed, the tax period in which it is to be claimed, and such other information as the Board prescribes and the Commissioner may disallow all or part of the amount if not satisfied that the person incurred the VAT and would have been entitled to a credit under the previous law.

**192. Accounting rules for transition.—**

(1) Despite section 31, the VAT imposed on a taxable supply becomes payable on the commencement day if—

- (a) the supply is, or will be, made after the commencement day; and
- (b) before that day an invoice for the supply was issued or a payment for the supply was made, or both,

but no VAT is payable if the Commissioner is satisfied that the person has already paid VAT on the supply under the Value Added Tax Act, 1991 and included that VAT in a return submitted to the Commissioner under that Act.

(2) Subsection (1) applies separately to each part of a progressive or periodic supply that is treated as a separate supply.

**193. Agreements entered into after VAT announced.—**

Where a contract is concluded after the commencement day and the contract does not include a provision relating to VAT or supplementary duty,—

- (a) the contract price shall be deemed to include the VAT and supplementary duty, if any, payable on the supply; and
- (b) the supplier under the contract shall be required to account for the VAT and any supplementary duty imposed on supplies made under the contract, whether or not the supplier took its liability for those taxes into account when setting the price for the supplies.

## FIRST SCHEDULE

(see section 9)

### Persons required to be registered irrespective of turnover

**[ INCOMPLETE ]**

(1) Irrespective of whether they exceed the registration threshold, persons are required to be registered if they independently carry on an economic activity of a type listed, or make supplies of a type listed, in the second column of following table:

Item	Type of economic activity or supply
(1)	(2)
<b><i>Professional services:</i></b>	
1	Audit & accounting firms
2	Barristers-at-law
3	Legal advisors and lawyers, or firms providing the services of such persons
4	Specialist Doctors
<b><i>Property and construction:</i></b>	
5	Brick manufacturers and brick kiln operators
6	Quantity surveyors or firms providing the services of such persons
7	Engineers and firms providing engineering services
8	Building and other property developers
9	Construction firms
10	Ijaradar: Head lessors sub-leasing public property
11	Land developers
12	Leasing of commercial space and installations
13	Mild Steel product manufacturers



Item	Type of economic activity or supply
(1)	(2)
14	PVC pipe manufacturers
<b><i>Financial services and insurance suppliers:</i></b>	
15	Banks and non-bank financial service providers
16	Credit card providing institutions
17	Money changing agencies or institutions
<b><i>Hotels, Restaurants, and Public entertainment providers:</i></b>	
18	Events management
19	Health Clubs and Fitness Centres
20	Hotels & restaurants [add capacity limitation to exclude smaller operators]
21	Organiser of cultural program [with participation of foreign artists]
22	Organisers of sports or games [add limitation to exclude small clubs etc]
<b><i>Other:</i></b>	
23	Tea auctioneers and brokers

## SECOND SCHEDULE

(see section 21)

### Supplies and imports exempt from VAT

#### First Part

**[ INCOMPLETE ]**

(1) The following are exempt for the purposes of this Act:

Item No.	Description
1.	A supply or import of basic food for human consumption, as prescribed in the Rules.
2.	A supply or import of medicine, as prescribed in the Rules.
3.	A supply of unprocessed agricultural or fishing products if the supplier is the producer of the goods.
4.	A supply of goods, if the goods were used by the registered person solely in connection with making exempt supplies, or if the goods are a passenger vehicle on which the person incurred input tax and was denied a credit under section 64.
5.	A sale of vacant land.
6.	A supply of land to the extent that it is to be used for agriculture, horticulture, or fisheries.
7.	A lease, licence, hire or other form of supply, to the extent that it is a supply of the right to occupy and reside in residential premises.
8.	<p>A sale of immovable property, to the extent that the property relates to:</p> <ul style="list-style-type: none"> <li>(a) residential premises, including any garage, storage space, or other space associated with the premises ,so long as that space is of a type commonly considered to be part of residential premises; and</li> <li>(b) land that is reasonably attributable to the premises,</li> </ul> <p>if the premises have been occupied as a residence for more than 5 (five) years.</p>

Item No.	Description
9.	A supply by a flat or apartment owner's association to a member of the association, if the flat, unit, or apartment that is owned by the member, or the property the member is entitled to occupy as a consequence of its membership, constitutes residential premises (including any garage, storage space, or other space associated with the premises, so long as that space is of a type commonly considered to be part of residential premises).
10.	<p>The sale of an economic activity as a going concern by a registered person to another registered person if:</p> <ul style="list-style-type: none"> <li>(a) everything necessary for the continued operation of the economic activity is supplied to the person to whom the economic activity is sold;</li> <li>(b) the parties have agreed that the recipient will carry on the economic activity after the sale.</li> </ul>
11.	A supply made by an approved non-profit body, as prescribed by the Board, if the supply is made for a prescribed purpose.
12.	<p>A supply of the transportation of passengers within Bangladesh by taxi, bus, mini-bus, or ferry, not being—</p> <ul style="list-style-type: none"> <li>(a) transportation provided in a vehicle that is air conditioned; or</li> <li>(b) a supply of a chartered tour of a kind ordinarily provided to tourists or other visitors to Bangladesh.</li> </ul>

Item No.	Description
13.	<p>A supply of any of the following services essential for human life—</p> <ul style="list-style-type: none"> <li>(i) Preparation and cultivation of land for use in agriculture, horticulture, or fisheries;</li> <li>(ii) Irrigation of land for agricultural, horticultural, or fisheries use;</li> <li>(iii) Application or usage of insecticides and pesticides;</li> <li>(iv) Preservation and storage of agricultural goods (Excluding: cold storage and warehousing);</li> <li>(v) Cutting, sorting, and packing of food, grains, and vegetables;</li> <li>(vi) Seed preservation and distribution (Excluding: cold storage and warehousing);</li> <li>(vii) Preservation and storage of poultry and cattle meat (Excluding: cold storage and warehousing);</li> <li>(viii) Fishing and other means of acquiring marine animals and plants;</li> <li>(ix) Preservation and storage of fish, marine animal, and plants (Excluding: cold storage and warehousing).</li> </ul>
14.	<p>A supply of the following services relating to social welfare activities—</p> <ul style="list-style-type: none"> <li>(i) Public health care and medical services;</li> <li>(ii) Public education and training;</li> <li>(iii) Environmental pollution prevention activities;</li> <li>(iv) Child care activities and residential care facility for aged, indigent, infirm, or disabled persons who need permanent care;</li> </ul>

Item No.	Description
15.	<p>A supply of any of the following cultural services—</p> <ul style="list-style-type: none"> <li>(i) Publishing books, magazines and activities of organisations publishing government gazette;</li> <li>(ii) Arts and basic artistic activities, cultural activities, and non-professional games &amp; sports (other than organising games and sports, film studio, cinema hall, cinema distributors);</li> <li>(iii) A supply by a library, museum of any kind, art gallery, zoo, or botanical garden (other than an Ijarader);</li> <li>(iv) Exhibitions, fairs and entry fees thereof, where the exhibition or fair is of agricultural goods, birds &amp; animals, marine animals and plants, industry, literature, or technology and engineering (Other than the activities of an Izarader, hotel or restaurant, decorator or caterer, community centre, Sweetmeat seller, cinema hall, beauty parlour, health club and fitness centre, or rental of sound and lighting equipment);</li> <li>(v) The provision by an individual of journalism services or services as a singer, writer, professional athlete, or dancer.</li> </ul>
16.	A supply of financial services, except to the extent that a specific fee is charged for the service.
17.	<p>A supply of any the following ‘other services’—</p> <ul style="list-style-type: none"> <li>(i) All types religious occasion, place, religious establishment;</li> <li>(ii) Mail services (Excluding :Courier service and express mail service);</li> <li>(iii) All types of charitable and scientific services carried out for public interest;</li> <li>(iv) Services provided by government, local government agencies or organisations (Excluding: WASA, electric distribution agencies, construction farm, land developers &amp; building construction, sale of immovable property, bank and insurance companies, and activities carried on in competition with the private sector);</li> <li>(v) Charitable services provided to government, local government and government welfare agencies or organisations;</li> <li>(vi) Insect and pest control services;</li> <li>(vii) Stevedoring services.</li> </ul>

(2) For the purposes of item 12:—

“bus” means a motor vehicle for the transport of persons, having a seating capacity of more than 40 persons including the driver; and

“mini-bus” means a vehicle for the transport of persons, having a seating capacity of not less than 15 and not more than 40 persons, including the driver.

## Second Part

**[ INCOMPLETE ]**

(1) The following imports are exempt for the purposes of this Act:

Item No.	Description
1.	An import of goods if a supply of the goods in Bangladesh would be an exempt or zero-rated supply
2.	An import of goods given, otherwise than for the purposes of sale, as an unconditional gift— <ul style="list-style-type: none"> <li>(a) to an approved non-profit body; or</li> <li>(b) to the State, if the Commissioner of Customs has written notification from the Board that the goods are to be exempt from VAT.</li> </ul>
4.	An import of goods (including an import of a container) that have been exported and then returned to Bangladesh by any person without have been subjected to any process of manufacture or adaptation and without a permanent change of ownership, but not if at the time when the goods were exported: <ul style="list-style-type: none"> <li>(a) they were the subject of a supply that was zero-rated; or</li> <li>(b) they were the subject of a supply that occurred before this Act commenced.</li> </ul>
5.	An import of goods shipped or conveyed to Bangladesh for trans-shipment or conveyance to any other country.
6.	An import of goods made available free of charge by a foreign government or an international institution with a view to assisting the economic development of Bangladesh, as approved by the Board.
7.	An import of clothing donated for free distribution in Bangladesh, as approved by the Board.
8.	An import of goods for the provision of emergency and disaster relief, as approved by the Cabinet.
9.	An import that is exempt under an agreement entered into between the Government of Bangladesh and another Government or an international agency.

### THIRD SCHEDULE

(see section 83)

**[ INCOMPLETE ]**

#### GOODS AND SERVICES SUBJECT TO SUPPLEMENTARY DUTY

(1) —The rate of supplementary duty specified in the fourth column of the table in the first part of this schedule applies in respect of dutiable goods referred to in the second and third columns of the table.

(2) The rate of supplementary duty specified in the third column of the table in the second part of this schedule applies in respect of dutiable services referred to in the second column of the table

(3) The H.S. Code and Description of goods in this Schedule are those referred to in the Bangladesh Customs Tariff established the Customs Act, 1969 (“the Customs Tariff”).

#### First Part

##### Goods on which supplementary duty is to be imposed:

Heading No.	H.S.Code	Description of goods	Rate of supplementary duty (%)
(1)	(2)	(3)	(4)



### Second Part

**Services on which supplementary duty is to be imposed:**

<b>Item No.</b>	<b>Item (description of services)</b>	<b>Rate of duty (%)</b>
(1)	(2)	(3)