

**Presentation on**

**Complexities in the Income Tax Laws:  
A Quest for a Simpler Taxation System**

**Presentation by**

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# Introduction

**Albert Einstein** is reputed to have said that **the hardest things** in the world to understand was the income tax, although he never wrote this and it isn't entirely clear that he ever uttered it, either.

It is widely cited, though, and even if it is apocryphal it illustrates the popular view that **the income tax system can defeat even the brightest (although not necessarily the most organized) among us** (Slemrod and Bakija, 2000, pp. xi, 297).

# Complexities in Income Tax

## Second maxim of Adam Smith:

“The tax which each individual is bound to pay ought to be **certain**, and **not arbitrary**. The **time of payment**, the **manner of payment**, the **quantity to be paid**, ought all to be clear and plain to the contributor, and to every other person” (*An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776).

**When a tax system loses the certainty principle, it becomes complex.**

**Another aspect of complexities is the sheer length of the Tax Code.**

# **Costs of Complexities**

## **Resource Costs**

### **Administrative costs (Tax Collection Costs):**

**Amount: Tk. 5,705.2 million in 2007-08**

**Average Annual Tax Collection Costs (per Taka 100 of Tax) in 2007-08 :**

**Indirect Tax: Tk. 0.51**

**Direct Tax: Tk. 0.60**

**Total Tax: Tk. 1.20**

(including the NBR's Head Office costs)

# Costs of Complexities

*Cont'd*

## Resource Costs .....*cont'd*

### **Compliance costs (Taxpayers' Costs):**

#### **Out-of-pocket costs:**

- Direct monetary outlays for professional guidance
- Expenses for recordkeeping and 'supplies' (stationeries, files, etc.)
- Expenses for buying latest tax publications
- Cost of audits, appeals and lawsuits

#### **Time spent by the taxpayers on their tax affairs**

- Own time for preparing return
- For activities such as researching the tax law, meeting with an advisor, or arranging financial affairs to minimize taxes

# Costs of Complexities

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## Resource Costs .....cont'd

### **Compliance costs (Taxpayers' Costs):** .. cont'd

Time spent and costs incurred by business entities  
(usually large corporate bodies)

- More time for corporate return and returns for directors
- Complex depreciation rules
- Alternative tax rates (say, for exporters)
- Jurisdictional differences for tax treatments (EPZ, Chittagong Hill Districts, etc.)

### **Non-monetary costs :**

- Anxiety suffered by taxpayers concerned about getting their taxes done on time and done right
- Worrying about a tax audit

# Income Tax Laws in Bangladesh: What?

- Income Tax Ordinance 1984 – *the parent statute*
- Income Tax Rules 1984
- S.R.O. (Statutory Rules and Order)/ Gazette Notification
- Income Tax Circular
- General or Special Order
- Explanation/Office Memorandum
- Verdicts of Appellate Tribunal for equivalent fact
- Verdicts of the High Court Division on question of law
- Verdicts of the Appellate Division on judgment of the High Court Division

# **Length of Income Tax Code**

## **Income Tax Ordinance 1984 (01.07.2009):**

- **22 Chapters**
- **243 sections**
- **8 Schedules.**

## **Income Tax Rules 1984 (01.07.2009):**

- **99 Rules**

## **Income Tax S.R.O. (01.07.2009):**

- **287 SROs printed in Lal Bahadur Adhikary's compiled volume on SROs from 30.05.1974 to 01.07.2009; some of which already repealed.**



# **Certainty Principle under Income Tax Laws**

## **Time of Tax Payment: Certain?**

### **For Taxpayers:**

- **Pay-as-you-earn (PAYE) – Tax Deducted at Source (TDS) [sec. 48-63]**
- **Advance Income Tax (AIT), if total income exceeds Tk. 3 lakh through quarterly installments on the 15<sup>th</sup> day of September, December, March and June [sec. 48, 64-73]**
- **Payment of tax on the basis of return on or before the date of filing the return [sec. 74]**
- **Payment within the stipulated/extended time if required to pay as per notice of demand u/s 135**

# Certainty Principle under Income Tax Laws

## Time of Tax Payment: Certain?

### For Entities deducting tax at sources:

- Employer with prior permission through quarterly installments on the 15<sup>th</sup> day of Sept., Dec., March and June [rule 13]
- Double-cheque method for 4 cases (supply of goods or execution of contract u/s 52, fees for professional or technical services u/s 52A, house property for house rent above Tk. 20,000 pm u/s 53A & u/r 17B or commission or fees for distribution or marketing of manufactured goods u/s 53E) [rule 14(2)]
- Within 3 weeks from the date of deduction [rule 13]

# Certainty Principle under Income Tax Laws

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## Manner of Tax Payment: Certain?

- **Cash deposit to Treasury, if the payment does not exceed Tk. 10,000 [rule 26B]**
- **Pay order or demand draft or account payee cheque of a scheduled bank issued in favour of the Deputy Commissioner of taxes of the concerned taxes circle [rule 26B]**
- **Payment of tax on the basis of return on or before the date of filing the return [sec. 74]**
- **Payment on receiving the notice of demand [rule 26B]**
- **Payment through recovery by tax authorities [sec. 138-143; rules 68 and 69]**
- **Payment through adjustment of surplus income tax or other taxes [sec. 152]**

# **Certainty Principle under Income Tax Laws**

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## **Quantity of Tax to be Paid: Certain?**

**Probably this is the most uncertain part of the Income Tax System.**

### **Factors of uncertainties: Related to Return**

- **Total (taxable) income is to be classified into 10 heads (9 domestic heads and 1 head for foreign income), although 7 statutory heads for computational purpose [for corporate taxpayers: 6 statutory heads, except salary]**
- **Reporting the tax exempted income and tax free income [Item 18 on page 2]**
- **Tax computation [Item 13 on page 2] might be the most complicated things in some cases**
- **Tax credit on investment allowances [Item 14 on page 2] might be difficult to obtain**
- **Documents to obtain for any sort of tax benefits**

# **Certainty Principle under Income Tax Laws**

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## **Quantity of Tax to be Paid: Certain?**

### **Factors of uncertainties: Related to Return** *.. cont'd*

- **Source of income (even if it is illegal) may not be raised if you pay tax thereon, but no illegal expense is allowable**
- **If both husband and wife are taxpayers, then filling up the IT-10B and the IT-10BB might be an issue of emotional family accounting with respect to dividing the livelihood expenditures, the number of dependent members, the property under joint name, and so on**
- **One information is also different in English version and Bangla version in the IT-10B [Item 15.(b) in IT-10B: “Number of dependent children/member of the family”]**

# **Certainty Principle under Income Tax Laws**

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## **Quantity of Tax to be Paid: Certain?**

**Factors of uncertainties: Others**

**Different perspectives, different meanings:**

- **Recipient vs. Payer [Employee vs. Employer; Depositor vs. Bank]**
- **Deduction by a tax paying entity vs. that by an exempted entity**

**Same thing clarified differently:**

- **Speculation business income vs. Capital gain from sale of shares of listed company**
- **Rented building space may or may not be subject to deduction by the tenant**

# **Certainty Principle under Income Tax Laws**

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## **Quantity of Tax to be Paid: Certain?**

### **Factors of uncertainties: Others**

#### **Presence of unusual provisions :**

- **Withholding tax treated as final discharge of tax liability**
- **Prescribed rate of depreciation**
- **No depreciation on leased assets**
- **Maximum cost prescribed for depreciation purpose**
- **Depreciation not based on extent of use: Full depreciation in year of acquisition and no depreciation in year of disposal**
- **Distinction of revenue loss (deductible) and capital loss (not deductible) at the time of disposal of business/agricultural assets subject to depreciation**
- **Two capital expenditures allowed as fully deductible at the time of incurrence**
- **Fees for any “technical or consultancy” services [defined u/s 2(31)] treated as “Income from other sources” u/s 33 and fees for any “technical consultancy” services [defined as “professional services” under Explanation (a) to section 52A] treated as “Income from business or profession” u/s 28**
- **Limit for deductibility on certain business expenses**

# **Certainty Principle under Income Tax Laws**

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## **Quantity of Tax to be Paid: Certain?**

### **Factors of uncertainties: Others**

#### **Absence of provisions:**

- **Investment vs. Speculation**
- **Definition of 'capital loss'**
- **Amortization on intangible assets**

#### **Provisions only through SRO :**

- **Income tax due to ownership of a car [SRO No. 187-Ain/2009, dated 01.07.2009]**
- **Presumptive assessment for vehicles [SRO No. 171-Ain/2009, dated 30.06.2009 and SRO No. 173-Ain/2009, dated 30.06.2009]**



# Certainty Principle under Income Tax Laws

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## Quantity of Tax to be Paid: Certain?

### Factors of uncertainties: Others

#### Presence of unconstitutional provisions :

- Under section 19(13), any amount is received “by way of winnings from lotteries, crossword puzzles, card games and other games of any sort or from **gambling** or betting in any form or of any nature whatsoever” shall be deemed to be his income. Under sub-article (2) of Article 18 (Public health and morality) of our Constitution, the State shall adopt effective measures to prevent prostitution and **gambling**.

#### Ambiguous provisions :

- Title of Part B, Sixth Schedule is “Exemptions and Allowances for Assessees being Resident and Non-Resident Bangladeshi [see section 44(2)]. Is it applicable for “Resident Foreigner”?
- **Is there any loss under the head “Income from house property” u/s 24?**
- Is the deduction applicable for “Income from house property” u/s 25 for the whole house or only to the let-out portion?

# Certainty Principle under Income Tax Laws

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## Quantity of Tax to be Paid: Certain?

### Factors of uncertainties: Others

#### Overlapping provisions for deductions from

#### “Income from business or profession”:

- Expenditure incurred in connection with visits abroad [u/s 29(1) (xxv), foreign travel [u/s 30(f)(ii) and u/r 65A], and overseas travel [u/s 30(k)];
- Perquisite for one employee [u/s 30(e)], the definition of which excludes “incentive bonus not exceeding ten per cent of disclosed profit of relevant income year” also for one employee [u/s 2(45)], “any expenditure by way of incentive bonus exceeding ten per cent of disclosed net profit” as expenditure for all employees [u/s 30(j)].
- Perquisite for one employee [u/s 30(e)], the definition of which includes the benefit of “foreign travels of one employee and their dependents for holidaying and recreation” [u/s 30(f)(ii) and u/r 65A], and both have separate prescribed limit.
- Profit-based computation, but different wording for “profit” (“profit”, “net profit”, “disclosed profit” or “profit before charging the expense”)

# Tax Authorities' View

**People think taxation is a terribly mundane subject. But what makes it fascinating is that taxation, in reality, is life. If you know the position a person takes on taxes, you can tell their whole philosophy. The tax code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity. Everything's in there. That's why it's so hard to get a simplified tax code. Life just isn't simple.**

**—Former IRS Commissioner Sheldon Cohen, quoted in Jeffrey H. Birnbaum and Alan S. Murray (1987), *Showdown at Gucci Gulf***

# How to eliminate the Complexities?

## Concerns:

- Many of these complexities are beneficial for those who can exploit them.
- The livelihood of the tax lawyers and the tax practitioners is dependent on this complication of the tax code, because
  - ❖ most of the taxpayers are not willing to understand his own tax issues (which are not at all complicated) and
  - ❖ they have an unwillingness to face the perceived hassle and harassment in the tax offices.

## Way forward:

- Through the expected study, steps have to be taken to find out some ways to eliminate these complexities and to make the system simpler than before.
- Then hopefully every taxpayer will handle his own tax affairs without any fear and taking any costly favour from others.

**End of Presentation**

**Questions?????**