

Time to act on the new VAT law

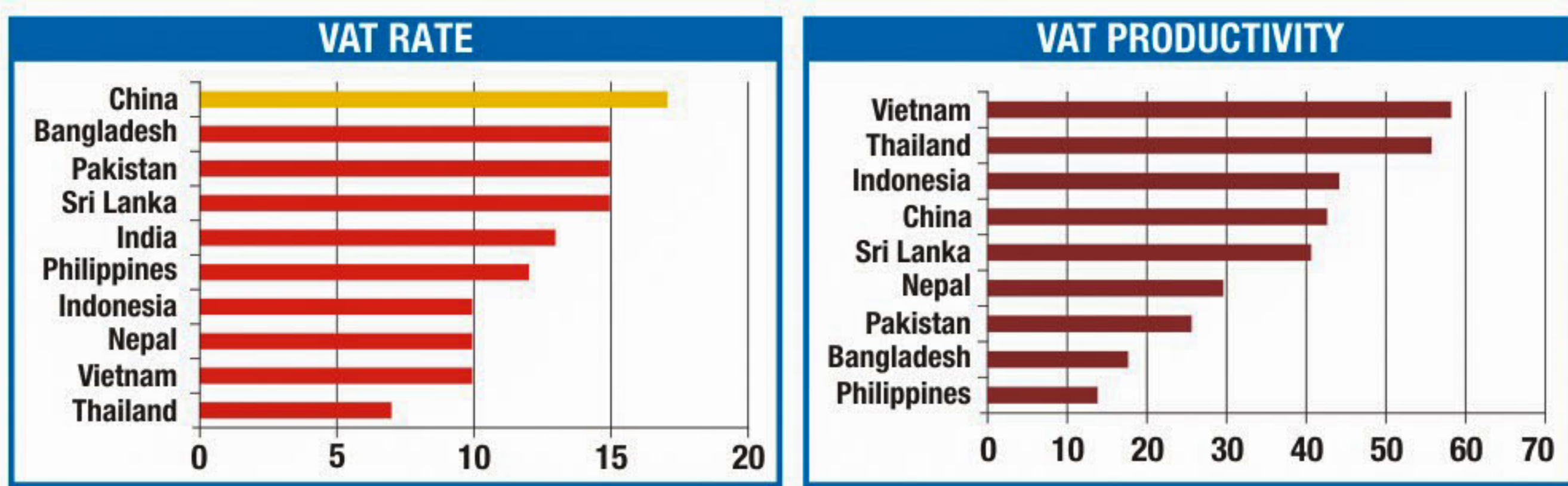
AHSAN H MANSUR

Bangladesh, despite its good track record in macroeconomic stability, faces the challenge of shifting to a higher growth trajectory through higher investment and improved quality of essential public services. Low tax revenue is limiting the ability of the government to invest in infrastructure such as roads and power and improve human capital through health and education. The underinvestment is limiting the ability of the economy to grow to its potential and unleashing the energies of the private sector. The good news is that, in the face of this dual deficit, the government is beginning to see revenue mobilisation as a potential cure. Prime Minister Sheikh Hasina's recent meeting with senior officials of the National Board of Revenue (NBR) on different ways to expand the revenue base in the country is an indication of the government's renewed focus on this issue.

Bangladesh's low revenue as shown by the tax-GDP ratio of 9 percent is stark when compared to the region being only higher than Afghanistan. It is imperative that this problem be addressed immediately so that we are not left behind in this Asian century and can capitalise on the accelerating growth of India and China by taking advantage of our strategic location.

The modernisation programme of the NBR, encompassing several far reaching reforms, is appropriate and timely in this regard. The VAT law is being modernised to incorporate

VAT rate and productivity among Asian countries



Source: Bangladesh: Key selected issues, 2009, International Monetary Fund

international best practices, improve taxpayer services, reduce distortions and improve compliance. The income tax law is being re-written to keep it up-to-date with the various changes in the economy and make it more efficient from allocative and more equitable from social perspectives. The Digital NBR programme aims to computerise the tax administration with the aim to improve taxpayer services, reduce day-to-day contact with taxpayers through e-services while also tackling tax evaders who remain outside the tax net or under report their taxes.

In this article I wish to make the case for VAT reform and dispel some of the misperceptions relating to this issue.

A new VAT Act, along the lines of the draft law posted in the NBR website, makes sense on several grounds. At the time when the VAT system was first introduced in Bangladesh, it was only targeted towards import and manufacturing sectors and was applicable to a limited number of service sectors. Attempts to expand it to the wholesale, retail, and a broad range of services over the years have created numerous distortions. This is evident in low VAT productivity of the country which is less than 20 percent of the potential revenue that can be collected.

The low productivity of the VAT is primarily attributable to structural deficiencies in tax design and outdated tax administration, followed by weak compliance by taxpayers resulting from inefficient use of information. Therefore, introducing a VAT system

that ensures efficient tax administration and at the same time improving taxpayer's services would require an overhaul of the entire VAT code, entailing a series of administrative and policy reforms. Patching up the current VAT law through the use of amendments and issuing SROs (statutory regulatory orders) will not be sufficient to simplify the VAT system and raise revenue more efficiently in a taxpayer friendly manner.

An efficient VAT system should have a broad base (for revenue collection), with fewer exemptions and lower rates. Any new VAT Act must take these lessons into account and focus on expanding the tax horizon with more deduction at source, introduce efficient valuation system using transaction value or fair market price and offer an effective 15 percent flat rate. Thus the new draft law rightly does not allow for tariff values, fixed VAT rates and the truncated base system, which lead to numerous effective rates, reemergence of cascading (tax on tax), and an uneven playing field for taxpayers.

The new draft VAT law also addresses the issue of too much contact between taxpayers and the tax officials. Currently, the VAT system suffers from excessive use of physical monitoring of businesses at all locations rather than the use of consolidated accounts and secondary information. In order to deal with this, the new VAT law proposes a central registration system, and single Business Identification Number (BIN) as

opposed to multiple registrations and BINs based on geographical location.

The VAT performance is also directly contingent on an efficient VAT payment process. The new law will make the payment system simple, safe and hassle-free. At present, the payment is confined to old-fashioned 'Treasury Chalcans', and to be paid in advance for manufacturing enterprises during clearance of goods from the factories. The modernisation of payments under the new law would allow payments of VAT through electronic bank transfers, credit cards, and certified bank checks to be paid at the time of return submission.

A centrally managed VAT administration is the backbone for these new services, which will essentially reduce the interfaces between taxpayers and tax officials, resulting in improved taxpayer's services and fewer pockets for corruption. The new VAT Act will create avenues for centrally managed database with options to outsource the database management functions to private sector firms allowing officials of the NBR to focus on core functions of VAT administration. At present, return submission and processing are channelled through local circle offices of the NBR giving them a little time to deal with their main task of revenue administration and taxpayer education/services. The fragmented structure of administration has also reduced tax compliance to such an extent that less than 50,000 out of more than 200,000 active taxpayers are submitting tax returns regularly, while the

total number of registered VAT taxpayers is believed to be about 600,000.

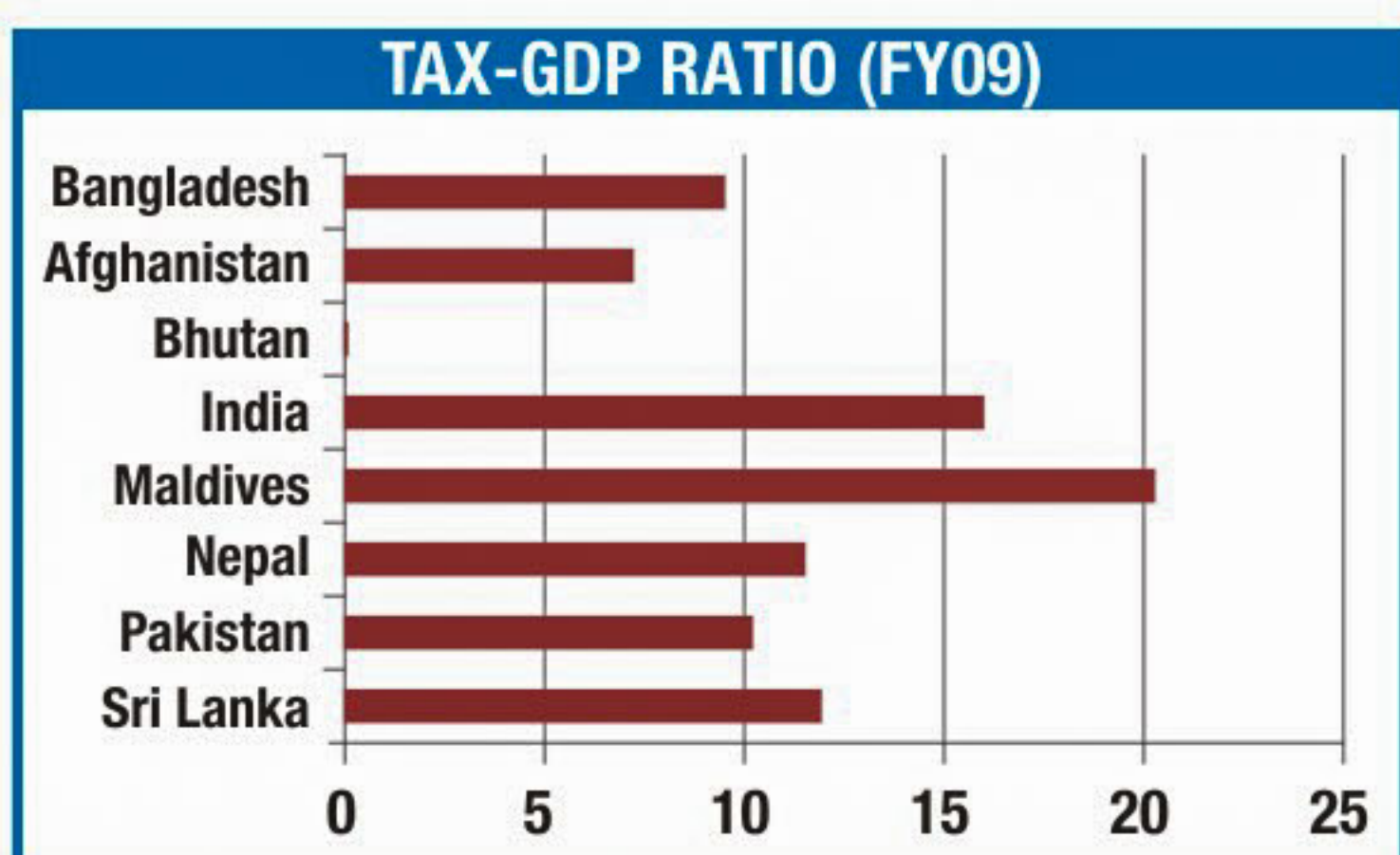
There is no doubt that the new draft VAT law, if enacted, will improve revenue performance of the NBR while making it easier for taxpayers to comply. And yet there will be many voices against the recent efforts of revamping the VAT Act. Fewer exemptions send out a cautionary message to the business community, creating the illusion that production costs will go up, although, with a simpler system and with a lower burden of complying with the VAT, businesses would be the overall beneficiaries. Consumers may also rebel against the idea, believing that inflation would hit them hard as they would end up spending a higher percentage of their income. However, when the higher revenues flow back to the economy through better infrastructure and living conditions, it would create a virtuous cycle with lower costs of doing businesses, higher private investment and jobs and resulting higher revenues and better living conditions in the future. We need to sustain the investment in infrastructure like the recent government efforts in the power sector as well as road infrastructure, the proposed Padma Bridge being a good example.

The government is making efforts to reach out to the business community, and may be more intensified education campaigns will be needed for the businesses community to realise the benefits of the new VAT Act so that they become a partner in making the new VAT system a success. To achieve this objective, the NBR would need to engage more extensively with the private sector through a series of consultations across the country.

We have to make a choice, and make it quickly. Do we aim to reform out VAT system in an efficient way or, stick to the old excise-type VAT system, which will continue the existing distortions in the economy and poor revenue performance? Our decision will determine the trajectory of the economy for the years to come.

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Source: International Monetary Fund.

Discrimination case may not go all Wal-Mart's way

REUTERS, New York

Oral arguments had barely finished in the Wal-Mart sex-discrimination case at the US Supreme Court when many commentators declared total victory for the retail behemoth. But interviews with legal scholars and civil-litigation experts suggest that the rush to judgment may have been premature, with at least a partial victory for the plaintiffs not out of the question.

The case, *Dukes versus Wal-Mart Inc.*, centres on whether a group of up to 1.5 million current and former Wal-Mart workers was properly certified as a class by US District Court in San Francisco -- a decision that created the biggest such class in US history and that was upheld by the Ninth Circuit in 2007.

Wal-Mart wants the Supreme Court to decertify the class, arguing that Wal-Mart workers in different jobs in 3,800 stores with different managers could not have faced the same pattern of discrimination in pay and promotion decisions, and therefore should not be considered one class. Written broadly, a ruling dismissing the suit could effectively overhaul class certification standards, dimming the prospects for class-action lawsuits of all kinds.

But many experts are expecting a more nuanced result. "Even if they're so inclined, it will be hard (for the Court) to find a way to completely dispose of the suit at this point," said Michael Selmi, a professor of civil rights and employment law at George Washington University Law School in Washington, DC. "It would be too inconsistent with previous case law.

Other options are on the table."

In one potential outcome, the justices could uphold the district court's decision that the plaintiffs potentially have enough in common to qualify as a class, but send it back to the district court to determine which specific rules of civil procedure apply. In this scenario, the court would provide guidance on whether a more stringent certification standard is appropriate. The plaintiffs would then have to begin anew the process of establishing class certification under these requirements, and the lower court could split the class into smaller components.

Such an outcome would be a blow to the plaintiffs, but it would not undermine this or future sex-discrimination lawsuits in a way that throwing out the case would, said Arthur Miller, professor of civil procedure at New York University School of Law. "Remanding the case might enable a district judge to take this monstrous class and subdivide it along rational lines, such as location, job description, or alleged type of discrimination," Miller said. "That way, you wouldn't have what some might call a woolly mammoth."

During the March 29 oral argument, Justices Sonia Sotomayor and Stephen Breyer hinted at another possible ruling: The court could uphold certification of the class and allow for possible injunctive relief, but not back pay or punitive damages. In this scenario, the case would return to the district court, where plaintiffs would argue that Wal-Mart must clarify how it makes pay and promotion decisions and

ensure that managers are held accountable for their decisions. Plaintiffs would have to pursue monetary claims separately. Such a ruling would make it more difficult, but not impossible, to recover back pay in class-action suits.

To be sure, Justice Anthony Kennedy, often the deciding vote when the Court splits on ideological lines, expressed deep scepticism about the plaintiffs' case. "Your complaint faces in two directions ... it seems to me there's an inconsistency there, and I'm just not sure what the unlawful policy is," Kennedy told Joseph Sellers, a partner at Cohen Milstein Sellers & Toll, who argued for the plaintiffs.

Kennedy's questioning -- along with acerbic comments by Justice Antonin Scalia -- led many observers to declare that the plaintiffs' case could be doomed. "My sense from the oral arguments is that Kennedy and others may be preparing to deliver an opinion that will have implications beyond plaintiffs in the *Dukes* case," said Katherine Kimpel, a partner at Sanford Wittels & Heisler who served as lead counsel for the plaintiffs in the *Velez v. Novartis* sex-discrimination case, which resulted in the largest-ever US employment discrimination verdict.

Kennedy may have tipped his hand, but the justices may not all end up voting as expected, said Alexandra Lahav, a civil-procedure expert and law professor at the University of Connecticut. Clarence Thomas, is a "wild card," Lahav argued, pointing to a 2002 ruling in another employment-discrimination case, *Swierkiewicz v. Sorema*, in which Thomas upheld the



REUTERS

Protesters hold signs in front of the Supreme Court while class action lawsuit *Dukes v. Wal-Mart* is being argued inside the court in Washington, March 29.

plaintiff's complaint and articulated a fairly low bar for bringing employment-discrimination lawsuits.

A statistical analysis of sex-discrimination cases before the high court also suggests that plaintiffs tend to fare well, though defendants in recent years have won several high-profile cases. Not including disability cases, plaintiffs prevailed in approximately 70 per-

cent of all employment-based discrimination cases in the last two decades, according to research conducted by George Washington University's Selmi. The Wal-Mart case is also the first major sex-discrimination case before a Supreme Court that includes three women.

Theodore Boutros, a partner at Gibson, Dunn & Crutcher who made the oral argument for the defense, did not return an e-mail

requesting comment on the case. Greg Rossiter, a spokesman for Wal-Mart, said the company declined to comment.

Lawyers for the plaintiffs, for their part, said they are prepared for a mixed result. "There is likely to be a nuanced resolution to this case," Sellers said in an interview. "The Court has a lot of options; it could go with us in one way and against us in another."

The case, Dukes versus Wal-Mart Inc., centres on whether a group of up to 1.5 million current and former Wal-Mart workers was properly certified as a class by US District Court in San Francisco -- a decision that created the biggest such class in US history and that was upheld by the Ninth Circuit in 2007