



LAW ANALYSIS

On the draft income tax law

The draft law has no option for advance ruling: the benefits of scheme of advance ruling and for the determination of tax liability in advance. It can reduce litigation and attract Foreign Direct Investment (FDI). Rulings are binding on the applicant as well as the department.

MS SIDDIQUI

A draft income tax law has been pending enactment for a long time and it has many provisions which need to be evaluated and revised. The major drawback of the existing law is the lack of transparency and excessive prerogative power given to the officials. The draft law has proposed to increase the power of the NBR to deduct, reduce and exempt tax of the assessee. However, the existing law makes the responsibility of the NBR negligible as more than 90% of the tax collected by the government comes from businesses and individuals in the form of deduction at sources.

To collect tax efficiently and quickly, the Income Tax departments of the government around the world have introduced a system called Tax deduction at source (TDS) which is different in our country. The draft law set to increase the burden on the taxpayers. A major part of the draft law is on at source tax deduction proposed under sections 79 to 139. It covers all possible assesses so far and the rate of deduction from 0.30% to 20%.

In case of trade license, Municipalities and City Corporation will deduct Taka 500 to Taka 3000 depending upon categories of corporations. Under section 112, the Commissioner of Customs or his authorised officers may deduct tax at source of maximum 20%. It is interesting that the official has the discretionary power to decide the rate of tax deduction. Such

discretion may be susceptible to misuse. Again, there are some confusing clauses which state that officials will deduct 10% income tax from Clearing and Forwarding (C&F) agents during export and import (section 114). It is not clear which shall be the base price to deduct income tax. The C&F agents get their commission on the service, but shipping documents of Import and Export do not reflect the income of the C&F agents.

The law has empowered the tax officials to give decisions without explaining the reason of their action. This empowering has been done with the wording like 'if the official believes or convinced of certain fact and figure' without any explanation. Section 78 of the draft law has empowered the NBR to amend 6th schedule and to deduct, reduce and exempt tax of the assesses. It means NBR will have similar authority which is prerogative of the Parliament to exempt or reduce the taxes without referring to the Parliament. Such exercises would go beyond the Constitution.

Under the present Income Tax Ordinance, the tribunal is under the control of the NBR. The draft law has proposed to keep the provision unchanged and virtually will make the tribunal a part of the NBR. The government will nominate members from Commissioners, Chartered Accountants, Costs & Management Accountant, practicing lawyers and retired or in-service District Judges. The members

will be minimum 3 and the government will nominate any of the members as Chairman of the tribunal. The responsibility is for a certain period, not a permanent responsibility.

There is a proposed provision of ADR in section 291 about mutual agreement between representatives. There will be a Facilitator who will write down the points of agreement. The provision of the ADR should be more detailed. The ADR in the existing law is not successful as the representatives of the NBR hardly come to an agreement for reduction of revenue of the government. The ADR will remain ineffective without a major change in the law and policy.

The draft law has no option for advance ruling: the benefits of scheme of advance ruling and for the determination of tax liability in advance. It can reduce litigation and attract Foreign Direct Investment (FDI). Rulings are binding on the applicant as well as the department.

Institution of Ombudsman is as old as the tax administration department itself. Jurisdiction of the Ombudsman is usually clearly defined in a separate law. It is an independent body but not a court and accountable only to the parliament. The draft law also should have an option to facilitate the establishment of Tax Ombudsman.

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LAW LETTER

Ignorance abrogates the enjoyment of trademark protection

EMADUL HASAN

Bangladesh holds a strong legal framework on trademark protection under the Trademark Act, 2009. The Act has clear provisions about the use of trademarks, the rights and the consequence of violation of rights, etc. The significances of trademark laws are mostly unknown to the common people. The Trademark Act contains definitions of all the aspects related to trademark such as 'mark', 'registration' 'distinctive' etc., so that no confusion can arise on interpreting the trademark law.

We can find the guideline on how to register a trademark from section 3 of the Act. So, a person or a company can easily generate their own trademark for their legal entity. The company name and the signature of the applicant is necessary to apply for trademark. One or more new or novel invented word is required for the process. To make the word more distinctive, one or a few words referring to the goods or service's significance, geographical indication, surname or common name or abbreviation of cast, tribe, good or any other distinctive identity could be used according to section 6 of the Trademark Act. If we can help people know about procedure of registering their trademark and the benefits of utilising it, they may stop violating other's trademark rights and enjoy exercising their own. But the lack of knowledge regarding the trademark protection leads to violation



of the law and we can observe reluctance among the consumers about the violation of their trademark protection. We most often find tendency among people to copy other's renowned trademarks into one's business in Bangladesh. For example, numbers of restaurants addressing themselves as "Hazi Biryani" in Dhaka International Trade Fair

can be observed but the original food chain "Hazi Biryani" denies their involvement with them. But they do not take any legal actions which technically motivates these dishonest entrepreneurs to continue violating intellectual property laws. Most trademark holders are reluctant about the violation of their trademarks. One of the major reasons of their reluctance is their lack of knowledge about their rights protected in section 10 of the Act. The provision mentions that no trademark shall be registered which is similar or identical to another trademark which is registered under another proprietor's name. Not only that, the applicant has to advertise his application so that potential adversaries can oppose the claim of the trademark if their rights are violated according to section 17 of Act.

The consumers have no idea that they are entitled to remedies if trademark laws are violated. But the Trademark Act has clear provisions about falsifying and falsely applying trademarks. The consumer can compel any person falsifying or falsely applying their trademarks and they shall be punished with imprisonment extending from 6 months to 2 years or fine of 50 thousand to 2 lac taka or both according to section 73 of the Act.

Citizens of Bangladesh are quite dazzled when it comes to intellectual property law. But these laws are necessary in our day-to-day life. We should raise public awareness about intellectual property laws especially the trademark laws.

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RIGHTS WATCH

Compensation for the victims of psychological trauma

In our country, the Fatal Accidents Act, 1855 refers to compensate families for losses incurred by the death of an individual caused by the negligence or default of another person.

NOOR AFROSE

After the demise of her only daughter in the Rana Plaza tragedy, 55-year-old Rahima Begum (not her real name) has lost her psychological state and is suffering from Post Traumatic Stress Disorder (PTSD). She is currently struggling with the memory of her daughter, and all she says is, "She was my only hope and the only one who could save me." On April 24, the deadliest Rana Plaza collapse was commemorated. Despite the passage of eight years, not only the victims but also their families continue to be tormented by the incident. When it comes to compensation, only the physically injured survivors of the tragedy receive it. Now the question is, what about people like Rahima Begum who have suffered mental injuries from losing their near and dear ones? Is there any legal recourse for them?

In our country, the Fatal Accidents Act, 1855 refers to compensate families for losses incurred by the death of an individual caused by the negligence or default of another person. By this Act, a family member of a deceased

person, such as a partner, husband, parent or child, is legally entitled to sue the person who has been negligent or disregarded or caused death to, for compensation. Unfortunately, it does not provide any compensation for mental injury caused by the loss of a family member.

However, a broad umbrella of the tort of negligence provides for lawsuits by family members that have suffered psychiatric injuries from losing a loved one. In legal terms, they are referred to as secondary victims. Suppose we want to portray the concept of the secondary victim. In that case, it relates to a person who might not be directly involved in an accident but suffers psychiatric illness from witnessing a distressful incident. There is no existing legislation governing secondary victims' claims. So far, the landmark case of *Alcock v Chief Constable of South Yorkshire* is perceived as a decision representing a low watermark for secondary victim claims. In this case, a set of conditions was developed as a prerequisite for a successful secondary victim claim.



Such provisions are usually referred to as control mechanisms, including a close relationship with the deceased person or person who suffered an injury in an accident known as the primary victim. Most significantly, the claimant must suffer from recognised psychological illness such as the PTSD caused by the trauma of hearing about the incident or its aftermath. These requirements have been followed by

the majority of legal systems such as the UK, Australia, Canada, and India.

Unfortunately, the term secondary victim is still unfamiliar in our country. In two prominent cases concerning the law of tort named *CCB Foundation v Government of Bangladesh* and *Bangladesh Beverage Industries Ltd. v Rowshan Akhter and other*, the family members got compensation for losing

their loved ones. Again they did not get any compensation for their mental distress. Little use of tort law in our courtrooms, and the complexity of detecting psychological disorders may explain why this concept is unrecognised.

The history of negligence in garments factories is not something new, and before Rana Plaza, many incidents of neglect took innumerable valuable lives. The family members of the primary victim are still bearing the burden of trauma, and many of them also have developed mental illnesses. Unfortunately, the word "victim" is still only confined to those who suffered directly. As the tort of law develops, this concept of compensation for secondary victims needs to be introduced in our context. Though the compensation will not be enough to heal family members from psychiatric illness and their suffering, it may help families cope with the financial burden of such a disease.

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