গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়
অভ্যন্তরীণ সম্পদ বিভাগ
জাতীয় রাজস্ব বোর্ড

(আয়কর)

প্রজ্ঞাপন

তারিখ: ১৮ জ্যৈষ্ঠ, ১৪২৯ বঙ্গাব্দ / ০১ জুন, ২০২২ খ্রিষ্টাব্দ।

এস. আর. ও. নং ১৫৬-আইন/আয়কর/২০২২।– Income-tax Ordinance,1984 (Ordinance No. XXXVI of 1984) এর section 185, section 18 এর sub-section (2) এর clause (c) এর সহিত পঠিতব্য, এ প্রদত্ত ক্ষমতাবলে জাতীয় রাজস্ব বোর্ড নিম্নরূপ বিধিমালা প্রণয়নের প্রস্তাব করিয়া এতদ্দারা উহা প্রাক্-প্রকাশ করিল, যথা:-

"The Offshore Indirect Transfer Rules, 2022

1. **Short title.-** These rules may be called the Offshore Indirect Transfer Rules, 2022
2. **Definition.-** In these rules, unless there is anything repugnant in the subject or context-
   (a) "accountant" means an accountant referred to clauses (17) and (22) of section 2 of the Income-tax Ordinance, 1984 and includes any valuer recognized for undertaking similar valuation by the Government of the country where a foreign company registered with or incorporated in any of its agencies, who has professional experience of not less than ten years.
   (b) "balance sheet" means,-
      (i) in relation to a Bangladeshi company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
      (ii) in any other case, means the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date and submitted to the

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relevant authority outside Bangladesh under the laws in force of the country in which the foreign company is registered or incorporated:

Provide that where the balance sheet as on the specified date is not drawn up, pending finalization of accounts, as mentioned in clauses (i) and (ii), the balance sheet shall mean an interim balance sheet drawn up as on the specified date and approved by the board of directors of the company or an equivalent body in case of any other entity;

(c) "book value of the liabilities" means the value of liabilities as shown in the balance sheet of the company as the case may be, excluding the paid-up capital in respect of equity shares or members' interest and the general reserves and surplus and security premium related to the paid up capital;

(d) "company" shall have the same meaning as defined in clause 20 of section 2 of the Ordinance;

(e) "constituent entity" shall have the meaning as-

(i) any separate entity of an international group that is included in the consolidated financial statement of the said for financial reporting purpose, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;

(ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or

(iii) any permanent establishment or any separate business entity of the international group included in sub-clause (i) or sub-clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

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(f) "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes-

(i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or

(ii) would have been required to be prepared had the equity shares of any of the enterprise were listed on a stock exchange in the country or territory of which the parent entity is resident;

(g) "immediate holding company" means the company that directly maintains the controlling interest in the Bangladeshi concern;

(h) "intermediate holding company" means a company that has controlling interest in another company and is itself controlled by, or is subsidiary of, another company;

(i) "merchant banker" shall mean merchant banker registered with Bangladesh Securities and Exchange Commission;

(j) "observable price" in respect of share quoted on a stock exchange shall be the higher of the following:-

(i) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the six months period preceding the specified date;

(ii) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the two weeks preceding the specified date:

Provided that where, on the specified date, the share is listed on more than one recognized stock exchange, the observable price of the share shall be computed with reference to the stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

(k) "Ordinance" means the Income-tax Ordinance, 1984 (XXXVI of 1984);

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(l) "recognized stock exchange" means stock exchange registered under section 4 of the Securities and Exchange Ordinance, 1969;

(m) "right of management or control" shall include the right to appoint majority of the directors or to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements on in any other manner;

(n) "share" includes an interest in partnership firm or any other entity;

(o) "specified date" means-

(i) the date on which the accounting period of the company ends preceding the date of transfer of a share; or

(ii) the date of transfer, where the book value of the assets of the company, on the date of transfer, exceeds the book value of the assets as on the date referred to in sub-clause (i), by fifteen percent;

(p) "ultimate holding company" means a company that has ultimate control of the Bangladeshi concern directly or indirectly and such company is not itself controlled by, or is subsidiary of, any other company;

(q) "Value" means fair market value as calculated in the manner prescribed in this rule.

3. Computation of fair market value of assets of Bangladeshi Company.- (1) Where the asset is a share of a Bangladeshi company listed on a recognized stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange.

(2) Where the asset is a share of a Bangladeshi company listed on a recognized stock exchange and the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following (A+B)/C formula, where-

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A= the market capitalization of the company on the basis of observable price of its shares quoted on the recognized stock exchange;

B= the book value of liabilities of the company as on the specified date;

C= the total number of outstanding shares.

(3) Where the asset is share of a Bangladeshi company not listed on a recognized stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by the liability, if any, considered in such determination.

(4) The fair market value of the asset other than those referred to in sub-rules (1), (2) and (3) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased as increased by the liability, if any, considered in such determination.

(5) For determining the fair market value of any asset situated in Bangladesh, being a share of a Bangladeshi company, all the assets and business operations of the said shall be taken into account irrespective of whether the assets or business operations are situated in Bangladesh or outside.

4. Computation of fair market value of assets of foreign Company.- (1) Where share of the foreign company is listed on a stock exchange on the specified date, the fair market value of all the assets owned by the foreign company shall be determined in accordance with the following A+B formula, where:

A= Market capitalization of the foreign company computed on the basis of the observable price of the share on the stock exchange where the share of the foreign company is listed;

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B= book value of the liabilities of the company as on the specified date.

(2) Where the share in the foreign company is not listed on a stock exchange on the specified date, the value of all the assets owned by the foreign company shall be determined in accordance with the following A+B formula, where:

A= fair market value of the foreign company as on the specified date as determined by a merchant banker or an accountant as per the internationally accepted valuation methodology;

B= value of liabilities of the company if any, considered for the determination of fair market value in A.

5. Determination of Income attributable to assets in Bangladesh.-(1) The income from transfer outside Bangladesh of a share of a company referred to in clause (c) of explanation of subsection 2 of section 18 of the Ordinance, attributable to assets situated in Bangladesh, shall be determined in accordance with the following D x (E/F) formula, where:

D= Income from the transfer of the share of the company computed in accordance with the provisions of the Ordinance, as if, such share is situated in Bangladesh;

E= Fair Market Value of assets situated in Bangladesh as on the specified date, from which the share referred to in clause (c) of explanation of subsection (2) of section 18 of the Ordinance, derives its value, computed in accordance with rule 3;

F= Fair Market Value of all the assets of the company as on the specified date, computed in accordance with rule 4.

(2) Where the transferor of the share of the company fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets situated in Bangladesh shall be determined in such manner as the Deputy Commissioner of Taxes may deem fit.

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(3) The transferor of the share of a company that derives its value from assets situated in Bangladesh, shall furnish along with the return of income a report in the form No. OIT-1 duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets situated in Bangladesh has been correctly computed.

6. De minimis threshold.- The asset being the share referred in clause (c) of explanation of subsection (2) of section 18 of the Ordinance shall be deemed to derive, directly or indirectly, its value from the assets in Bangladesh, if, on the specified date, the value of such asset-

(i) exceeds Taka fifteen crore; and

(ii) represents at least fifty percent of the value of all the assets owned by the foreign company that directly holds the asset being share in Bangladesh.

7. Exemption from offshore indirect transfer.- (1) No income shall be deemed to accrue or arise to a non-resident from transfer, outside Bangladesh, of share of -

(a) A, if the transferor (whether individually or along with its associated enterprises), at any time preceding the specified date, does not hold in A-

(i) right of management or control; or

(ii) the voting power exceeding 5% of the total voting power; or

(iii) share capital exceeding 5% of the total share capital; or

(b) B, if the transferor (whether individually or along with its associated enterprises), at any time preceding the specified date, does not holds the right of management or control in B and through B in A-

(i) the right of management or control; or

(ii) the voting power exceeding 5% of the total voting power; or

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(iii) share capital exceeding 5% of the total share capital;

Explanation: In this sub-rule- A means a company registered or incorporated outside Bangladesh and directly owns the assets situated in Bangladesh; and

B means a company registered or incorporated outside Bangladesh and does not directly owns the assets situated in Bangladesh.

(2) No income shall be deemed to accrue or arise to a non-resident from the redemption of shares, bonds, debentures or other redeemable shares outside Bangladesh by foreign investment funds including private equity funds and venture capital funds.

8. Arrangement to avoid tax.- Where involving transfer of share in a foreign company, arrangement has been made in such a manner that the tax payable in Bangladesh would be avoided consequentially, the Deputy Commissioner of Taxes shall not take into consideration such arrangements and shall proceed to recover the amount of tax due as if no such arrangement has been made.

9. Information or documents to be furnished.- (1) Where any share of a company registered or incorporated outside Bangladesh derives its value from assets in Bangladesh as referred to in clause (c) of explanation of subsection (2) of section 18 of the Ordinance, the Bangladeshi concern that holds such assets in Bangladesh shall, for the purpose of the Rule, maintain and furnish the information and documents in accordance with this rule.

(2) The information shall be furnished in Form OIT-2, within ninety days of such transfer, to the Deputy Commissioner of Taxes having jurisdiction over the Bangladeshi concern along with its return of income applicable for the income year in which any transfer of the share of a company incorporated outside Bangladesh (hereafter referred to as "foreign company") referred to in Explanation (c) to clause (2) of section 18 of the Ordinance has taken place.

(3) The Bangladeshi concern shall maintain the following along with its English translation, if the documents originally prepared are in foreign languages and produce the same when called upon to do so by any

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income-tax authority in the course of any proceeding to substantiate the information furnished under sub-rule (2), namely:-

(i) details of the immediate holding company, intermediate holding company or companies or entity or entities and ultimate holding company of the Bangladeshi concern;

(ii) details of other entities in Bangladesh of the group of which the Bangladeshi concern is a constituent;

(iii) the holding structure of the shares of the foreign company before and after the transfer;

(iv) any transfer contract or agreement entered into in respect of the share of, any foreign company that holds any asset in Bangladesh through, or in, the Bangladeshi concern;

(v) financial and accounting statement of the foreign company which directly or indirectly holds the assets in Bangladesh through, or in, the Bangladeshi concern for two years prior to the specified date of the share;

(vi) information relating to the decision or implementation process of the overall arrangement of the transfer;

(vii) information in respect of the foreign company and its subsidiaries, relating to,-

(a) the business operation;

(b) personnel;

(c) finance and properties;

(d) internal and external audit or the valuation report, if any, forming basis of the consideration in respect of share;

(viii) the asset valuation report and other supporting evidence to determine the place of location of the share being transferred;

(ix) the details of payment of tax outside Bangladesh, which relates to the transfer of the share or interest;

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(x) the valuation report in respect of Bangladesh asset and total assets duly certified by a merchant banker or accountant with supporting evidence;

(xi) documents which are issued in connection with the transaction under the accounting practice followed;

(xii) where there are more than on Bangladeshi concerns that are constituent entities of a group, the information may be furnished by any one Bangladeshi concern, if,-

(i) the group has designated such Bangladeshi concern to furnish information on behalf of all other Bangladeshi concerns that are constituent of the group; and

(ii) information regarding the designated Bangladeshi concern has been conveyed in writing on behalf of the group to the Deputy Commissioner of Taxes:

Provided that nothing contained in this sub-rule shall have effect if the designated Bangladeshi concern fails to furnish the information in accordance with the provisions of this rule.

(4) The information and documents specified in sub-rule (3) shall be kept and maintained for a period of six years from the end of relevant assessment year.

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FORM No. OIT-1

[rule 5(3)]

Income attributable to assets situated in Bangladesh under section 18 of the Income-tax Ordinance, 1984

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1. Name of Company/Assessee:
2. Taxpayer's Identification Number:
3. Name of the Company referred in section 18(2):

I/We…….. certify that-

(i) all the accounts and records of the assessee have been examined;

(ii) all the information and explanations necessary for the purpose of ascertaining the income of the said assesse attributable to the assets situated in Bangladesh is obtained;

(iii) in respect of the assessment year ……the income deemed to accrue or arise in Bangladesh to the assesse on transfer of share in the above mentioned company is taka …….. which has been worked out on the basis of the details given in the Annexure to this form. Particulars given in the Annexure are correct and complete.

Date.

Signed

(Accountant)

ANNEXURE

[Form OIT-1]

1. Company wise breakup of consideration received for transfer of share:

Sl. No	Name of the Company	Quantum of share transferred	Cost of acquisition of share	Date of transfer	Consideration received

2. Income derived from transfer of share (company wise details): BDT…….

3. Value of assets situated in Bangladesh from which the share derives its value (company wise details): BDT…….

4. Value of global assets of the company or the entity (company wise details): BDT…….

5. Income attributable to assets situated in Bangladesh (company wise breakup and aggregate) BDT……..

6. Details of the method employed for arriving at the value of assets in item 3 and 4.

7. Details of the documents and valuation report, if any, replied upon

8. Remarks including any assumption made.”.

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FORM No. OIT-2

[rule 9]

Information and documents to be furnished by a Bangladeshi concern

To,

The Deputy Commissioner of Taxes,

_____

_____

PART A

1	Name and address of the Bangladeshi Concern	
2	Status of the Assessee	
3	Residential status	
4	Taxpayer's Identification Number	
5	Income Year	
6	Assessment Year	
7	Details of all Bangladesh concerns, if any, which are constituent of the group.	
8	Details of immediate holding entity, intermediate holding entity and ultimate holding entity and their tax residency.	
9	Wherer share in any company derives its value from assets situated in Bangladesh, which are held in, or through, the Bangladeshi concern; give details of the company (ies)	

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PART B

[To be filled in to report the transaction resulting in transfer of right of management or control]

10	Provide the following details where any transaction in respect of share in any company referred to in 9 has the effect of transferring the right of management or control over the Bangladeshi concern: (i) Name of the company (ii) Details of the transaction including consideration for such transaction (iii) Name of transferor along with address (iv) Percentage share transferred including percentage holding of transferor during the period of 12 months preceding the transfer (v) Details of the transferee along with address (vi) Holding structure in respect of shares of the company before and after the transfer (vii) Financial and accounting statements of the company or the entity (viii) Basis of determining the location of share or interest being transferred (ix) Value and breakup of assets of the Bangladeshi concern immediately before the date of transfer (x) Basis of valuation of assets of the company (xi) Details of supporting documents in respect of items (viii) and (x)	

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PART C

[To be filled for reporting the information in respect of transfer of share during the income year]

11	Provide the following details where share of the company referred to in 9 has been transferred during the income year, the income from which is deemed to accrue or arise in Bangladesh under the provisions of section 18(2): (i) Name of the company (ii) Details of the transaction(s) (iii) Name of transferor along with address (iv) Percentage share transferred including holding percentage of transferor during the period of 12 months preceding the transfer (v) Value of total assets of the company (vi) Details of transferee along with address	
12	Provide the following details where any transaction in respect of shares of, any company referred to in 9 has the effect of transferring right of management or control over the Bangladesh concern: (i) Name of the company (ii) Details of the transaction including consideration (iii) Name of transferor along with address (iv) Percentage share transferred including holding percentage of transferor during the period of 12 months preceding the transfer (v) Details of transferee along with address	
13	Value and breakup of assets of the Bangladeshi concern,- (i) at the beginning of the year (ii) at the end of the year	

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14	Basis of valuation of assets referred to in items 11(v), 12(b) (iii) and (iv) and 13.	
15	Details of supporting documents in respect of items 11(v), 12(b) (iii) and (iv) and 13.	

Signature of Authorized Person

Name:……

16	Verification I solemnly declare that- (a) to the best of my knowledge and belief the information given in this form and statements and documents annexed or attached herewith are correct and complete; (b) I am signing this form in my capacity as ..... and I am competent to sign this form and verify it.	
	Name	Signature
	Designation	
	Date of Signature (DD-MM-YYYY) 2 0	Place of Signature

For official use only

Return Submission Information

Date of Submission (DD-MM-YYYY)	**Tax Office Entry Number**
2 0	

২। এই প্রজ্ঞাপন ১ জুলাই, ২০২২ খ্রিস্টাব্দ তারিখ হইতে কার্যকর হইবে।

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৩। উপরি-উক্ত সংশোধনী প্রস্তাব সম্পর্কে কাহারও কোনো আপত্তি এবং পরামর্শ থাকিলে সংশ্লিষ্ট ব্যক্তিকে উহা, এই প্রজ্ঞাপন সরকারি গেজেটে প্রকাশের তারিখ হইতে আগামী ৩০ জুন, ২০২২ খ্রিস্টাব্দ তারিখের মধ্যে, নিম্নস্বাক্ষরকারীর নিকট পৌঁছানোর জন্য অনুরোধ করা যাইতেছে এবং উক্ত সময়ের মধ্যে সংশোধনী প্রস্তাব সম্পর্কে কোনো ব্যক্তির নিকট হইতে কোনো আপত্তি বা পরামর্শ পাওয়া গেলে জাতীয় রাজস্ব বোর্ড উহা বিবেচনাক্রমে চূড়ান্ত করিবে এবং উক্ত সময়ের মধ্যে কোনো আপত্তি বা পরামর্শ পাওয়া না গেলে উক্ত Ordinance এর section 185 এর sub-section (4) এর proviso অনুযায়ী এই প্রাক্-প্রকাশনার প্রজ্ঞাপনটি উহার চূড়ান্ত প্রকাশনা বলিয়া গণ্য হইবে।-

জাতীয় রাজস্ব বোর্ডের আদেশক্রমে,

সামস উদ্দিন আহমেদ
সদস্য (কর নীতি)

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