

Government of Pakistan
Federal Board of Revenue,
(Revenue Division)

Circular No. 03 of 2009
INCOME TAX

C.No.ITP/B-2009-10-170/EC

Islamabad the July 17th July, 2009

Subject: FINANCE ACT, 2009 – EXPLANATION REGARDING IMPORTANT AMENDMENTS MADE IN THE INCOME TAX ORDINANCE, 2001.

Several amendments have been made in the Income Tax Ordinance, 2001 through Finance Act, 2009. The important amendments are explained as under.

1. TAXATION OF BRANCH PROFIT AS DIVIDEND.
[Section 2(19)(F)]

Through Finance Act, 2008 remittances of after tax profit by a branch of foreign company operating in Pakistan were taxed as dividend income @ 10%. However, due to absence of word "remittance" in the newly inserted sub-section 2(19)(f), a mistaken view could have been taken to the effect that merely showing of accumulated profits of a branch are taxable as dividend income, whereas the intention of the legislature was to deem the remittance of after tax profit, by a branch to its head office, outside Pakistan, as dividend income. In order to remove this ambiguity amendment has been made in the said clause by virtue of which the "remittance of after tax profit" would be treated as dividend income.

1.1 Apart from above, petroleum exploration and production (E&P) companies operating in Pakistan also became liable to pay tax on such remittances treated as 'dividend' whereas their rate of tax was frozen by Petroleum Concession Agreements signed between the Government of Pakistan and E&P Companies. In view of this international commitment, such companies have been excluded from the purview of aforesaid clause. a new sub-clause (iv) in Clause (f) of sub-section (19) of section 2 of the Ordinance has been inserted by virtue of which the remittances of

after tax profit by a branch of non-resident Petroleum Exploration and Production Company operating in Pakistan has been excluded from the ambit of the dividend.

1.2 Consequential amendment has also been made in subsection (1) of section 5, which imposes a tax on dividend income.

2. **DEFINITION OF KIBOR**
[Section 30AA]

Definition of the term “KIBOR” has been provided to mean Karachi Interbank Offered Rate applicable on first day of each quarter of the financial year. This change was required since KIBOR is now to be used for the purpose of applying the rate of compensation on delayed refunds u/s 171 as well as the rate of additional tax u/s 205 of the Ordinance.

3. **DEFINITION OF TURNOVER**
[Section 2(70A)]

Previously the term “turnover” had been defined in section 113 of the Ordinance which was deleted through Finance Act, 2008. Consequently, the provisions of law (e.g. section 113A) where turnover was defined by reference to definition of turnover in section 113 became meaningless. Moreover in certain sections such as 113B, turnover was not defined. Through Finance Act, 2009, the term turnover has been defined in section 2 of the Ordinance which will be applicable to the whole of the Ordinance.

4. **TAXATION OF BONUS PAID TO CORPORATE EMPLOYEES.**
[Section 12 – First Schedule]

A proviso has been inserted in Clause (a) of sub-section (2) of section 20 whereby any bonus paid or payable to a corporate employee receiving salary income of Rs. One million or more (excluding bonus) shall be chargeable to tax at the rate of 30%. This is a one time levy and payable for the tax year 2010 only, so as to support the internally Displaced People (IDPs) for their rehabilitation.

Example-1—where salary excluding bonus is above 1 million

| | | |
|--|--|--|
| Salary income of a corporate employee in tax year 2010 | | Rs.1,300,000 (including bonus of Rs.300,000) |
| <u>Working of Tax</u> | | |
| Salary income other than bonus | | Rs.1,000,000 |
| (A) Tax thereon @ 9% | | Rs.90,000 |
| Bonus income for the year | | Rs.300,000 |
| (B) Tax thereon @ 30% | | Rs.90,000 |
| Total Tax (A+B) | | Rs.180,000 |

Example-2—where salary excluding bonus is below 1 million

| | | |
|--|--|--|
| Salary income of a corporate employee in tax year 2010 | | Rs.1,000,000 (including bonus of Rs.100,000) |
| <u>Working of Tax</u> | | |
| Salary income other than bonus | | Rs. 900,000 |
| Bonus | | Rs. 100,000 |
| Salary income including bonus | | Rs. 10,00,000 |
| Tax thereon @ 9% | | Rs.90,000 |

5. **DEDUCTIONS IN COMPUTING BUSINESS INCOME.**
[Section 20(1A)]

A new sub-section (1A) has been inserted in section 20 to allow deduction to a person using animals for the purpose of the business or profession otherwise than as stock-in-trade where such animals have died or become permanently useless for such purposes. The amount of deduction to be allowed is not to exceed the difference between the actual cost of the animals and the amount, if any, realized in respect of the carcasses of animals. The amendment has been made to encourage dairy farming businesses which has become very attractive venture for the corporate sectors and will help in boosting foreign direct investment in the country.

6. **ADMISSIBILITY OF DEPRECIATION ON PASSENGER TRANSPORT VEHICLES**
[Section 22(13)(a)]

The cost of passenger transport vehicles not plying for hire was restricted to Rs. 1 million for the purpose of claiming depreciation by amendment made through Finance Act, 2002. Subsequently, through Finance, Act, 2005, this restriction was removed for the vehicles acquired

on or after the first day of July, 2005. Resultantly, the taxpayers were claiming huge depreciation in respect of luxurious vehicles mostly used for personal purposes at the cost of revenue. In view of this, the said proviso has been omitted; however, the limit has been enhanced to Rs. 1.5 million keeping in view the increase in the prices of vehicles.

7. **ACCELERATED DEPRECIATION TO ALTERNATE ENERGY PROJECTS.**
[Section 23B, section 57 and Third Schedule]

A new section 23A has been inserted whereby First Year Allowance (FYA) at the rate of 90% of the cost of plant, machinery and equipment has been allowed. The plant, machinery and equipment has to be installed in Pakistan by a company set up for the purpose of alternate energy power generation. The FYA will be allowed in lieu of initial allowance allowed u/s 23 in respect of "eligible depreciation assets" put to use after July 01, 2009. This has been done to encourage investment in this sector both by residents and non-residents. The amendment has also been made in section 57 to allow carry forward of losses for indefinite period.

8. **PROVISION REGARDING CONSUMER LOANS.**
[Section 29A]

Prior to Finance Act 2009, a banking company or non-banking finance company or house building finance corporation were allowed deductions not exceeding 3% of the income for the tax year arising out of consumer loans for creation of a reserve to setoff bad debts arising out of such loans.

8.1 Since special provisions for computation of income of a banking company will be operative through Seventh Schedule to the Income Tax Ordinance, 2001, from tax year 2009, therefore, the banking companies have been excluded from section 29A. Such companies would not be entitled to any provision regarding consumer loans with effect from July 1, 2009. However, they would be entitled to make provisions in accordance with Rule 1(c) of the Seventh Schedule for total advances and off balance sheet items as provided therein.

9. **TAX CREDIT ON ADMISSIBLE DONATIONS.**
[Section 61(2)(b)(ii)]

In the case of a company, an amount of tax credit allowed for a tax year is computed at an average rate of tax on the lesser of the amount of donations or 15% of the taxable income for the year. In order to encourage the charitable activities, the limit of 15% has been enhanced to 20%.

10. **TAX CREDIT ON PROFIT ON DEBT FOR CONSTRUCTION OF NEW HOUSE OR ACQUISITION OF HOUSE.**
[Section 64]

A person is entitled to tax credit for a tax year in respect of housing loans from a scheduled bank or non-banking finance institution or advanced by Government or Local Government which are utilized for construction of a new house or acquisition of house. The tax credit before amendment through Finance Act, 2009 was to be computed at the average rate of tax on lesser of:

- total profit on debt
- 40 percent of taxable income of taxpayer
- Rs. 500,000/-

After amendment, the above limits have been increased as under.

- The limit of 40% taxable income has been increased to 50%.
- The ceiling of Rs. 500,000/- has been raised to Rs. 750,000/-.

11. **TAX CREDIT FOR MANUFACTURER MAKING SALES TO SALES TAX REGISTERED PERSONS.**
[Section 65A]

For broadening of tax base a new section 65A has been inserted whereby every manufacturer registered under the Sale Tax Act, 1990 is entitled to a tax credit of 2.5% of tax payable for tax year if 90% of sales are made to persons who are registered under the Sales Tax Act, 1990. For claiming the tax credit, the taxpayer, will however be required to provide complete details of the persons to whom the sales were made during the tax year. The facility, however is

not allowed to a person whose income is covered under the final or minimum tax regime. However, no carry forward of such credit is allowed.

12. **ADJUSTMENT IN COST OF ASSETS ACQUIRED THROUGH FOREIGN CURRENCY LOAN.**
[Section 76(5)]

Sub-Section (5) of section 76 of the Ordinance provide for determination of cost of assets purchased through Foreign Currency Loan. It has been noticed that the tax payers take undue benefit of the devaluation of Pakistani currency and claim initial as well as normal depreciation by upward revising the Written Down Value (WDV) which also leads to litigation in the matter. In order to rectify this ambiguous situation an Explanation has been added to the said sub section providing that for the purposes of depreciation, the difference if any on account of Foreign Currency fluctuation is now to be taken into account only in year of occurrence of such fluctuation and WDV adopted in previous year will not be altered.

13. **RE-INTRODUCTION OF MINIMUM TAX ON TURNOVER DECLARED BY RESIDENT COMPANIES.**
[Section 113 & 137(1) & 147 & Clause 2A of Part-V of the Second Schedule]

Finance Act 2008 abolished minimum tax payable by a resident company @ 0.5% of the turnover over for the year where no tax was payable or paid for the relevant tax year or tax payable or paid for the relevant tax year was less than 0.5% of the turnover from all sources for the said tax year. The same has been revived. However, according to the newly inserted section minimum tax will not be payable by a resident company declaring gross loss before set off of depreciation and other inadmissible expenses under the Ordinance and also such gross loss has not been arrived at by changing the accounting pattern. In such cases the Commissioner of Income Tax has been empowered to compute the tax as per historical accounting pattern and other provisions of the Ordinance shall apply.

The turnover has been defined to mean

- a) The gross receipts from sale of goods excluding sales tax and Federal Excise Duty or trade discount shown on invoices/bills. Any amount taken as deemed income and assessed as final tax shall also be excluded.
- b) The gross fees for rendering of services or benefits including commission except those covered by Presumptive Tax Regime (PTR).
- c) The gross receipts from the execution of contracts other than those liable to final tax.
- d) The company's share of the aforesaid amounts of any Association of Person of which the company is a member.

Various exemptions which were earlier available to certain institutions from the application of section 113 have also been revived. However the exemption earlier available to a small company has not been made available.

14. **TAXATION OF INCOME OF CERTAIN RETAILERS**
[Section 113B]

A retailer being an individual or AOP, where turnover is Rs.5 million or more and who is subject to special procedure for a payment of sales tax under the Sales Tax Act is liable to pay final tax at the rates specified under section 113B on his total turnover. Such retailer is however not entitled to claim any adjustment of withholding tax collected or deducted under any other heads.

After amendment made through Finance Act 2009 the turnover chargeable to tax under this section will now exclude the sales of goods on which tax is deducted or deductible under section 153(1)(a).

15. **MANDATORY FILING OF RETURNS BY CERTAIN PERSON**
[Section 114]

In order to expand the tax base, following persons have been added to the already existing categories of taxpayer who are required to file the returns of income.

- a) Who owns immovable property with land area of 500 Square yards or more located in a rating area.
- b) Who owns a flat having covered area of 2,000 square feet or more located in a rating area.
- c) Who owns a motor vehicle having engine capacity above 1000CC.
- d) Who has obtained a National Tax Number.

16. **CONDITIONAL REVISIONING OF RETURN.**
[Section 114(6)]

Before the insertion of this amendment, a taxpayer was allowed to file revised return under the provision of sub-section (6) of section 114, at any time within five years of the filing of original return. This facility was being misused by some taxpayer who filed revised return at the time when amendment of assessment proceedings were in hand and demanded the closure of proceedings on the ground that the revised return is to be deemed amended assessment as provided under the law. To bring clarity and avoid unnecessary litigation, the said sub-section has been substituted and now the revised return is allowed to be filed within five years from the end of the financial year in which original return was filed without prejudice to any other liability which the taxpayer may incur under the Ordinance and subject to the following conditions:

- a) The revised return has to be accompanied by revised accounts or revised audited accounts as the case may be.
- b) The reason for revision of return, in writing, duly signed, has to be filed therewith.
- c) The revised return has to be filed before the issuance of the notice for amendment of assessment in respect of the relevant tax year.

Example-I---As per old provisions

| | | |
|--|------------|------------|
| Date(s) of filing of Return | 31.12.2007 | 30.09.2008 |
| Period of limitation of revision of return | 31.12.2012 | 30.09.2013 |

Example-II---As per new provisions

| | | |
|---|------------|------------|
| Date(s) of filing of Return | 31.12.2007 | 30.09.2008 |
| Financial year ending in which return was filed | 30.06.2008 | 30.09.2009 |
| Five years from the aforesaid date | 30.06.2013 | 30.06.2014 |
| More time allowed as per amended provisions as compared with old provisions | 6 months | 9 months |

17. **E-FILING OF RETURN AND WEALTH STATEMENT BY SALARIED PERSONS.**
[Section 115]

The proviso to sub section (1) of section 115 has been substituted to provide that where salary income for the tax year is Rs. 500,000/- or more, the taxpayer shall file return of income electronically in the prescribed form and it shall be accompanied by the proof of deduction or payment of tax as well as wealth statement as required u/s 116.

18. **STATEMENT OF FINAL TAXATION.**
[Section 115((4)]

By virtue of amendment made in sub-section (4) of section 115, persons deriving income from rendering or providing of services are subject to minimum tax u/s 153 and would now be required to file a return of income instead of simplified statement of final taxation.

19. **REVISION OF STATEMENT IN CASE OF FINAL TAXATION.**
[Section 115(4A)]

A new sub section (4A) has been inserted in section 115 of the Ordinance to allow a person who, having furnished statement, discovers any omission or wrong statement therein, to furnish revised statement at any time within five years from the end of the financial year in which such statement was furnished.

20. **FILING OF WEALTH STATEMENT IN FINAL TAXATION REGIME (FTR) CASES.**
[Section 115(4B)]

A new sub-section (4B) has been inserted in section 115 of the Ordinance whereby every person (other than company) filing statement under sub-section (4) of section 115 of the Ordinance, covered by Final Taxation Regime (FTR), who has paid tax amounting to Rs. 20,000/- or more for the tax year, is required to file wealth statement alongwith a wealth reconciliation statement.

21. **MANDATORY FILING OF WEALTH RECONCILIATION STATEMENT.**
[Section 116(1)]

A new Clause (e) has been inserted in section 116 to provide that every individual taxpayer required to file wealth statement u/s 116 shall also furnish Wealth Reconciliation Statement.

22. **BEST JUDGMENT ASSESSMENT IN FTR CASES.**
[Section 121(1)(aa)]

The powers of the Commissioner of Income Tax to make best judgment assessment u/s 121 of the Ordinance on the basis of available information and material have been extended to such cases where a person fails to furnish statement of final taxation under sub-section (5) of section 115 of the Ordinance.

23. **LIMITATION FOR AMENDMENT OF ASSESSMENT**
[section 122(2) and (4)]

Sub-sections (2) and (4) of section 122 of the Ordinance have been amended to provide a uniform timeline of five years reckoned from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer for amendment of assessment. Previously such limitation for finalization of assessment was to be worked out with reference to the date of filing of return which had created difficulties in ascertaining the limitation period in different cases where returns were filed on different dates during the tax year.

24. **FILING OF APPEAL BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS).**
[Section 127(1) and (4)]

Sub section (1) of section 127 has been amended providing that if an order giving effect to any findings or directions to any order is made under Part III of Chapter X by the Taxation Officer and the taxpayer is not satisfied with the order passed, the taxpayer may again contest such order before the CIT (Appeals). It was a lacuna in law which has been removed. This amendment will help the taxpayer to contest the legal issues before the appellate fora, even if no tax liability is involved in the order passed by the Taxation Officer.

Further, previously a taxpayer was not allowed to file appeal against charge of additional tax u/s 205 of the Ordinance. Now after amendment in sub-section (1) of section 127 the taxpayer can file appeal against such order u/s 205. Sub-section (4) has also been amended to fix appeal fee at Rs. 1,000/- instead of determining the fee in relation to the tax assessed.

25. **FIXING OF MAXIMUM TIME LIMIT TO PASS AN ORDER BY THE COMMISSIONER (APPEALS).**
[Section 129(4)]

A new proviso has been added to sub-section (4) of section 129 of the Ordinance by virtue of which the Commissioner (Appeals) is now required to pass an order not later than 120 days from the date of filing of appeal or within an extended period of 60 days for reasons to be recorded in writing by him. The period during which the hearing of an appeal is adjourned at the request of the appellant or is postponed due to any appeal or proceedings or stay order, remand or alternative dispute resolution proceedings or for any other reason, shall be excluded in the computation of the aforementioned period.

26. **CONSTITUTION OF BENCHES BY THE CHAIRMAN APPELLATE TRIBUNAL.**
[Section 130(8A) & (8AA)]

A new sub-section (8A) has been inserted in section 130 of the Ordinance empowering the Chairman Appellate Tribunal to constitute as many Benches consisting of a single member as he

may deem necessary to hear such cases or class of cases as the Federal Government may by order in writing specify.

Besides, a new sub-section (8AA) has also been inserted in section 130 of the Ordinance to provide that the Chairman Appellate Tribunal or any other Member of the Appellate Tribunal authorized in this behalf by the Chairman may sitting singly dispose of any case where the amount of tax or penalty involved does not exceed Rs. 5 million.

27. **FEE FOR FILING OF APPEAL BEFORE APPELLATE TRIBUNAL.**
[section 131(3)]

Upon recommendations of the committee on harmonization of different tax laws, amendment has been made in sub-section (3) of section 131 to fix the appeal fee at Rs. 2,000/- instead of determining the fee in relation to the tax assessed.

28. **STAY OF DEMAND BY THE APPELLATE TRIBUNAL.**
[section 131(5)]

A new proviso has been inserted in section 131 providing that the Appellate Tribunal may stay the recovery of tax on filing appeal which order will remain operative for 30 days during which period a notice shall be issued to the respondent and after hearing the parties order may be confirmed or altered as the Tribunal deems fit. However, stay order shall in no case remain operative for more than 180 days.

29. **ALTERNATIVE DISPUTE RESOLUTION.**
[Section 134A]

Through an amendment in section 134A(1) of the Ordinance, following conditions have been inserted which would make the section inapplicable.

- a) Where prosecution proceedings have been initiated.
- b) Applications which require interpretation of various question of law having effect on identical other cases.

Further sub-section (3) has been substituted to provide that ADRC shall submit its recommendations within 90 days of its constitution. The Committee shall be dissolved by the FBR in case it fails to submit its recommendations within the stipulated period. In such cases the Board shall then constitute another committee and the reconstituted committee will be required to submit its recommendations in 90 days. If there is no decision the taxpayer may revert back to the appellate forum where the case is pending.

Previously no time limit was specified for FBR to pass order on the recommendations made by the ADRC. Now FBR is required to pass an order as it deem appropriate within 45 days of the receipt of recommendations of ADRC.

30. **PAYMENT OF TAX U/S 113 ALONGWITH THE RETURN.**
[Section 137]

With the re-introduction of minimum tax u/s 113, taxpayers are required to pay the liability u/s 113 along with the return.

31. **PAYMENT OF ADVANCE TAX.**
[Section 147)

In case of a company, the mode of determining advance tax liability u/s 147 has been amended and now it is payable on turnover basis as per following formula.

$$(A \times B/C) - D$$

whereas:

- A is the taxpayer's turnover for the quarter;
- B is the tax assessed to the taxpayer for the latest tax year;
- C is the taxpayer's turnover for the latest tax year; and
- D is the tax paid during the quarter for which a tax credit is allowed under section 168, other than tax deducted under section 155.

Since the actual amount of turnover will not be available on the due date prescribed under sub-section (5), therefore, a new sub-section (5A) has been inserted whereby following schedule for advance tax payment has been given.

- a) in respect of the September quarter, on or before the 15th day of October.
- b) in respect of the December quarter, on or before the 15th day of January.
- c) in respect of the March quarter, on or before the 15th day of April; and
- d) in respect of the June quarter, on or before the 15th day of June.

The taxpayer shall also be required to take into consideration tax u/s 113 while computing tax liability u/s 147. Further, advance tax is also payable, in the absence of last assessed income or declared turnover on the basis of tax liability under section 113.

Example-I

| | | |
|---|---|-------------------|
| A | is the taxpayer's turnover for the quarter; | Rs.1,000,000 |
| B | is the tax assessed to the taxpayer for the latest tax year; | Rs.100,000 |
| C | is the taxpayer's turnover for the latest tax year; and | Rs. 4,000,000 |
| D | is the tax paid in the quarter for which a tax credit is allowed under section 168, other than tax deducted under section 155 | Rs. Nil |
| | Tax payable for the quarter [(A x B/C) – D] | Rs. 25,000 |

Example-II

| | | |
|---|---|-------------------|
| A | is the taxpayer's turnover for the quarter; | Rs.1,000,000 |
| B | is the tax assessed to the taxpayer for the latest tax year; | Rs.100,000 |
| C | is the taxpayer's turnover for the latest tax year; and | Rs. 4,000,000 |
| D | is the tax paid in the quarter for which a tax credit is allowed under section 168, other than tax deducted under section 155 | Rs. 15,000 |
| | Tax payable for the quarter [(A x B/C) – D] | Rs. 10,000 |

32. **WITHHOLDING TAX ON IMPORTS.**

[Section 148(7), (8) – Part-II of First Schedule – Clause (9A) of Second Schedule]

32.1 As per subclause (i) and (iii) of clause (d) of subsection (7) of section 148, large import houses having paid-up capital of more than 100m and total assets exceeding Rs. 100m are excluded from treating tax collected on imports as final tax. As per Finance Act, 2009, the limit of paid-up capital and total assets have been enhanced to Rs. 250m and 350m respectively.

32.2 Previously the tax collected from a person on the import of edible oil for a tax year was to be treated as final tax under sub-section (8) of section 148. By virtue of amendment made through Finance Act, 2009, the tax so collected shall be treated as minimum tax. However, the tax collected on import of packing material by the manufacturer of edible oil shall also be treated as minimum tax meaning thereby that from tax year 2010 and onwards manufacturer of ghee and edible oil shall file return u/s 114 instead of filing statement u/s 115.

32.3 Previously a general rate of 2% was applicable on imports. Now the same has been raised to 4% on the value of goods imported. Further a new sub-clause (9A) has been added to Part-III of

the Second Schedule wherein tax under section 148 shall be collected @ 3% on import value of raw material imported by an industrial undertaking for its own use.

Example-I

| | | |
|---|--|-----------------|
| 1 | Gross value of imports (edible oil etc and packing material) under sub section (8) of section 148.(imported for own use) | Rs. 100 million |
| 2 | Tax collected under sub section (1) of section 148, @ 3% as provided in clause (9A) of Part II of the Second Schedule | Rs. 3 million |
| 3 | Income as per return filed under section 114 | Rs. 10 million |
| 4 | Tax payable under Division II Part I of first Schedule @ 35% on the aforesaid income | Rs. 3.5 million |
| 5 | The taxpayer would be required to pay further tax | Rs. 0.5 million |

Example-II

| | | |
|---|--|------------------|
| 1 | Gross value of imports (edible oil etc and packing material) under sub section (8) of section 148.(imported for own use) | Rs. 100 million |
| 2 | Tax collected under sub section (1) of section 148, @ 3% as provided in clause (9A) of Part II of the Second Schedule | Rs. 3 million |
| 3 | Loss as per return filed under section 114 | (Rs. 10 million) |
| 4 | Tax payable under Division II Part I of first Schedule @ 35% on the aforesaid income | NIL |
| 5 | The tax collected under sub section (1) read with sub section (8) of section 148 would be 'minimum tax' | Rs. 3 million |

33. **TAX DEDUCTION BY NON-RESIDENT COMPANIES FROM DIVIDENDS**

[Section 150]

Previously only resident companies were required to deduct tax at the time of making payment of dividends. By virtue of amendment in section 150, now a non-resident company will also be required to deduct tax from the gross amount of dividend paid, since remittance of after-tax profits of a branch of a non-resident company is also treated as dividend.

34. **PAYMENTS FOR GOODS AND SERVICES.**
[Section 153]

As a result of amendment made in sub-section (6), tax deducted on payments made for rendering or providing of services will be considered as minimum tax and henceforth all the taxpayers falling in the ambit of section 153(1) (b) shall file return under the normal tax regime instead of statement under final tax regime.

Sub-section (9) has also been amended to include a non-profit organization in the list of prescribed persons who are required to withhold tax at the time of making payments for sale of goods, rendering of services or contract.

Persons engaged in packing and re-packing have been excluded from the definition of "manufacturer" for the purposes of section 153. As such in view of appellate decision, persons engaged in packing and re-packing will be subject to final taxation.

Example-I

| | | |
|---|---|-------------|
| 1 | Gross amount receivable on account of rendering or providing of services under clause (b) of sub section (1) of section 153 | Rs. 300,000 |
| 2 | Tax collected under sub section (1) of section 153, @ 6% as per provision of Division III Part III of the First Schedule | Rs. 18,000 |
| 3 | Income as per return filed under section 114 | Rs. 200,000 |
| 4 | Tax payable under Division I of Part I of First Schedule @ 4% on the aforesaid income | Rs. 8,000 |
| 5 | The taxpayer would be required to pay tax | Rs. 18,000 |

Example-II

| | | |
|---|---|-------------|
| 1 | Gross amount receivable on account of rendering or providing of services under clause (b) of sub section (1) of section 153 | Rs. 300,000 |
| 2 | Tax collected under sub section (1) of section 153, @ 6% as per provision of Division III Part III of the First Schedule | Rs. 18,000 |
| 3 | Income as per return filed under section 114 | Rs. 100,000 |
| 4 | Tax payable under Division II of Part I of First Schedule @ 35% on the aforesaid income | Rs. 35,000 |
| 5 | The taxpayer would be required to pay further tax | Rs. 17,000 |

Example-III

| | | |
|---|---|--------------|
| 1 | Gross amount receivable on account of rendering or providing of services under clause (b) of sub section (1) of section 153 | Rs. 300,000 |
| 2 | Tax collected under sub section (1) of section 153, @ 6% as per provision of Division III Part III of the First Schedule | Rs. 18,000 |
| 3 | Loss as per return filed under section 114 | (Rs. 50,000) |
| 4 | Tax payable under Division II of Part I of First Schedule @ 35% on the aforesaid income | NIL |
| 5 | The taxpayer would be required to pay tax | Rs. 18,000 |

35. **COLLECTION OF TAX FROM EXPORTERS RECEIVING EXPORT PROCEEDS IN CASH.**

[Section 154 – Division-IV, Part-III of First Schedule]

Under section 154 of the Ordinance, every authorized dealer in foreign exchange is required to deduct tax at the time of realization of foreign exchange proceeds on account of export of goods. There is a special arrangement for export of goods to Afghanistan whereby goods are exported without Form "E" and export proceeds are directly received by the exporters in local currency. Such exports are allowed in terms of para (7) of SRO 759(1)/2008 dated 18.07.2008. Since the export proceeds are not realized in foreign exchange through authorized dealers, therefore, no tax is collected thereon.

In order to cover the above situation, a new sub-section (3C) has been inserted which provides that in respect of goods exported without Form "E" the Collector of Customs shall collect tax @ 1% at the time of clearing such goods for export.

36. **FILING OF COPIES OF PAID CHALLANS ALONGWITH CERTIFICATE OF DEDUCTION.**

[Section 164]

Previously a taxpayer was entitled to claim credit of tax collected/deducted on the basis of prescribed tax deduction certificate. At times withholding agents either do not deposit the tax

deducted from the taxpayers or deposit the same on behalf of other persons who may claim credit of the same. In order to rectify this anomalous situation amendment has been made in sub-sections (1) and (2) of section 164 requiring the taxpayers to furnish copies of paid challans or other equivalent documents alongwith certificate of deductions for claiming credit of the same.

37. **CLAIM OF SERVICE CHARGES ON COLLECTION/DEDUCTION OF TAX BY THE WITHHOLDING AGENTS.**
[Section 168]

Under the Income Tax Ordinance, 2001 the Withholding Agents are not entitled to receive any services charges for collection or deduction of tax as a Withholding Agent. However, it has been noticed that certain withholding agents including Provincial Governments and other autonomous organization are claiming services charges for acting as Withholding Agents. In order to expressly disallow such claims, new sub-sections (6) and (7) have been inserted in section 168 which provides that notwithstanding any thing contained in any other law or any rules, for the time being in force, no amount is to be deducted on account of service charges from the tax withheld or collected by any person under the provisions of this Ordinance. As provided in sub-section (7) in case any amount is deducted on account of services charges by the person, the said person will be liable to pay this amount to the Federal Government and all the provisions of the Ordinance shall apply in so far as they apply to the recovery of tax.

38. **TIME LIMITATION TO ISSUE REFUND ORDER.**
[Section 170(4)]

Previously, the time limitation to pass an order u/s 170 days was 45 days. It was felt that this time limitation is too short and, therefore, section 170(4) is amended to extend the limitation to 60 days.

39. **ADDITIONAL PAYMENT FOR DELAYED REFUND.**
[Section 171]

Previously the taxpayers were entitled to compensation for delayed refund @ 6% per annum. Now by virtue of amendment made in sub-section (1) of section 171, the additional payment for delayed refund shall be made at KIBOR. Further, proviso has also been inserted

which provides that where there is a reason to believe that a person has claimed refund which is not due to him, the provisions regarding payment of such additional amount shall not apply till the investigation of the claim is completed and the claim is either accepted or rejected.

40. **EMPOWERMENT OF CHARTERED ACCOUNT FIRMS FOR OBTAINING INFORMATION FOR THE PURPOSE OF INCOME TAX AUDIT.**
[Section 176 and 210(1)(b)]

A new clause (c) has been added to section 176 of the Income Tax Ordinance, 2001 whereby a firm of Chartered Accountants appointed by the Board, has been empowered with the prior approval of Commissioners concerned to enter the business premises of the taxpayer, who has been selected for audit in order to obtain any information and examine the record kept in such premises. These powers have been granted in view of the fact that the Federal Government intends to get audit conducted in a transparent manner and as such an MoU has been signed with ICAP which will be effective from 1st July, 2009.

41. **SELECTION OF CASES FOR AUDIT**
[Section 177]

Previously the Board was empowered to lay down criteria for selection of person for audit. Now section 177 has been amended to empower the Board to lay down criteria also for selection of "classes of persons" for the purposes of the income tax audit.

42. **PROSECUTION FOR NON-COMPLIANCE WITH CERTAIN STATUTORY OBLIGATIONS.**
[Section 191 & 192]

42.1 Section 191 lists offences where a person shall be treated as punishable on conviction with a fine or imprisonment for a term not exceeding one year or both. However, the quantum of fine was not provided. Now by virtue of amendment made through Finance Act, 2009, the court is empowered to impose a fine not exceeding Rs. 50,000/-.

42.2 Similarly as a result of amendment made in section 192, the amount of fine upto 100,000/- has been notified in case a person is convicted for making false statement in verification.

43. **PROSECUTION FOR CONCEALMENT OF INCOME.**
[Section 192A]

43.1 In order to overcome the menace of concealment of income by the taxpayers, a new section 192A has been inserted which provides that where a person in any proceedings or in any earlier proceedings concealed income or furnished inaccurate particulars of such income and the revenue impact of such concealment or furnishing of inaccurate particulars of such income is five hundred thousand rupees or more shall be treated as committing an offence punishable on conviction with imprisonment upto two years or with fine or both.

43.2 For the purpose of this section concealment of income or the furnishing of inaccurate particulars has been defined to include:

- a) the suppression of any income or amount chargeable to tax.
- b) the claiming of any deduction for any expenditure not actually incurred; or
- c) any act referred to in sub-section (1) of section 111.

44. **FIXATION OF PENALTY LIMIT FOR PROSECUTION FOR NON-MAINTENANCE OF RECORD AND IMPROPER USE OF NTN.**
[Section 193 and 194]

Amendment has been made in sections 193 and 194 to fix the limit of fine upto Rs. 50,000/- in case of prosecution for failure to maintain records and improper use of N.T.N.

45. **IMPOSITION OF PENALTY FOR CONVICTION IN PROSECUTION PROCEEDINGS RELATING TO DISPOSAL OF PROPERTY TO PREVENT ATTACHMENT.**
[Section 197]

Under section 197 a person is punishable on conviction with a fine or imprisonment or both in the matters relating to disposal of property after the receipt of the notice from the Commissioner, so as to prevent attachment of property. As a result of amendment the court is now empowered to impose a fine upto Rs. 100,000/- as previously no limit of fine was specified.

46. **POWER TO COMPOUND OFFENCES.**
[Section 202]

Section 202 has been substituted to empower the Director General of Income Tax with the prior approval of Board, instead of Commissioner, to compound offence subject to payment of tax alongwith additional tax and penalty to be determined under the provisions of the Ordinance.

47. **ADDITIONAL TAX FOR DELAYED PAYMENTS.**
[Section 205]

Previously a person who failed to pay any tax or penalty etc. was liable to pay additional tax @ 12% per annum of the tax not paid. After amendment, now the additional tax is to be levied at KIBOR plus 3%.

48. **APPOINTMENT OF CHARTERED ACCOUNTANTS FOR INCOME AUDIT.**
[Section 210(1B).

By addition of a new sub-section (1B) to section 210 of the Income Tax Ordinance, 2001, Commissioner has been empowered to delegate powers of carrying out audit under section 177, to a firm of Chartered Accountants appointed by the Board. The amendment seeks to complete the legal requirements necessary for Chartered Accountants to perform their audit functions under the Ordinance.

49. **CONDONATION OF TIME LIMIT.**
[Section 214A]

49.1 A new section 214A has been inserted which provides that where any time or period has been specified under any provisions of the Ordinance or rules made there-under within which any application is to be made or any act or thing is to be done, the Board may, in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate.

49.2 The Board is also empowered to allow any Commissioner or Director General to exercise the powers under this section in any case or class of cases by issuing notification in the official gazette and subject to such limitation or condition as may be specified therein.

50. **POWER OF THE BOARD TO CALL FOR RECORDS.**
[Section 214B]

A new section 214B has been introduced which empowers the Board to call for and examine record of any departmental proceedings under this Ordinance or the rules made there under for the purpose of satisfying itself as to the legality or propriety of any decision or order passed therein and may pass such order as it may think fit.

The Board shall, however, not pass any order imposing or enhancing any tax or penalty, unless the concerned person has been given an opportunity of being heard. A limitation period of 3 years starting from the date of original decision or order has been provided to pass such order by the Board.

51. **COLLECTION OF ADVANCE TAX ON PRIVATE MOTOR VEHICLES.**
[Section 231B]

Section 231B has been substituted to provided that every motor registering authority shall collect advance tax at the time of registration of a new locally manufactured motor vehicle, at the rate specified in Division-VII of Part-IV of the First Schedule. Previously the authority for collection of this tax was not specified which had created problems for field formations in enforcement of this provision. Further, the Local Government has also been included in the list of person to whom the provision of this section shall not apply.

52. **TREATMENT OF ADVANCE TAX COLLECTED ON MONTHLY ELECTRICITY BILLS IN THE CASES OF NON-CORPORATE TAXPAYERS.**
Section 235.

52.1 As a result of amendment made through Finance Act, 2008, the rate of advance tax collection on monthly bills of industrial and commercial consumers exceeding Rs. 20,000/- was

raised to 10% of the amount of bill. In the case of non-corporate taxpayers it was to be treated as minimum tax and no refund was allowed to such persons. However, in the case of a company, tax collected was adjustable against final tax.

52.2 The said amendment has led to litigations in the courts on the ground that charging of tax on utility bills being the expenditure was against the natural justice as well as constitution of Islamic Republic of Pakistan. The courts while declaring such tax as legal, however, have directed to interpret the provision in a manner to allow adjustment of tax collected from non-corporate taxpayers exceeding the minimum tax payable as per law.

52.3 In order to give effect to the courts' orders, sub-section (4) of section 235 has been amended to provide as under.

- a) in the case of a taxpayer other than a company, tax collected upto bill amount of thirty thousand rupees per month shall be treated as minimum tax on the income of such persons and no refund shall be allowed;
- b) in the case of a taxpayer other than a company, tax collected on monthly bill over and above thirty thousand rupees per month shall be adjustable.
- c) In the case of a company, tax collected shall be adjustable against tax liability.

Example-I
For tax year 2010

| | | |
|----|--|--|
| 1. | A taxpayer (other than a company) having electricity bill amount upto thirty thousand rupees per month | Tax withheld under sub-section (1) of section 235 read with Division IV of Part IV of the First Schedule = Rs.3000 per month X 12 = Rs.36000 per annum |
| 2. | Income as per return filed under section 114 | Rs.400,000 |
| 3. | Tax payable as per paragraph 1 of Division I of Part I of the First Schedule @ 7.5% on the declared income | Rs.30,000 |
| 4. | Tax withheld under sub section (1) read with provisions of sub-section (4) of section 235 shall be the 'minimum tax' | Rs.36000 |

Example-II
For tax year 2010

| | | |
|----|---|--|
| 1. | A taxpayer (other than a company) having electricity bill amount upto thirty thousand rupees per month | Tax withheld under sub-section (1) of section 235 read with Division IV of Part IV of the First Schedule = Rs.3000 per month X 12 = Rs.36000 per annum |
| 2. | Income as per return filed under section 114 | Rs.500,000 |
| 3. | Tax payable as per paragraph 1 of Division I of Part I of the First Schedule @ 10% on the declared income | Rs.50,000 |
| 4. | Further tax payable as per Ordinance by the taxpayer | Rs.14000 |

Example-III
For tax year 2010

| | | |
|----|---|--|
| 1. | A taxpayer (other than a company) having electricity bill amount over and above thirty thousand rupees per month – Say forty thousand rupees per month | Tax withheld under sub-section (1) of section 235 read with Division IV of Part IV of the First Schedule = Rs.4000 per month X 12 = Rs.48000 per annum |
| 2. | Income as per return filed under section 114 | Rs.400,000 |
| 3. | Tax payable as per paragraph 1 of Division I of Part I of the First Schedule @ 7.5% on the declared income | Rs.30,000 |
| 4. | Tax payable as per provisions of sub-section (4) of section 235 being the “minimum tax” | Rs.36000 |
| 5. | Tax collected over and above thirty thousand rupees per month X 12 = | Rs.12,000 |

Note: In this case, if the taxpayer has no tax liability for the tax year 2010, under any provision of the Ordinance, the tax withheld over and above (Rs.48,000 - Rs.36,000 treated as minimum tax) = Rs.12,000 shall be refunded to the taxpayer.

Example-IV
For tax year 2010

| | | |
|----|---|--|
| 1. | A taxpayer (other than a company) having electricity bill amount over and above thirty thousand rupees per month – Say forty thousand rupees per month | Tax withheld under sub-section (1) of section 235 read with Division IV of Part IV of the First Schedule = Rs.4000 per month X 12 = Rs.48000 per annum |
| 2. | Income as per return filed under section 114 | Rs.500,000 |
| 3. | Tax payable as per paragraph 1 of Division I of Part I of the First Schedule @ 10% on the declared income | Rs.50,000 |
| 4. | Tax payable under the Ordinance | Rs.50,000 |
| 5. | Tax collected withheld under sub-section (1) of section 235 read with Division IV of Part IV of the First Schedule | Rs.48,000 |
| 6. | Balance tax payable by the taxpayer | Rs.2000 |

Note: In this case, the taxpayer has further tax liability of Rs.2000 on the basis of income declared for tax year 2010, under the provision of the Ordinance, the taxpayer, therefore, will not be entitled to any refund, however, he will be entitled to adjustment of tax withheld over and above thirty thousand rupees per month X twelve months = X amount which has been indicated as above.

53. **ADVANCE TAX AT THE TIME OF SALE THROUGH AUCTION.**
[Section 236A]

53.1 In the past under section 50(7A) of the repealed Income Tax Ordinance, 1979, any person making sale by public auction of any property belonging to the Government, a Local Authority etc. was required to collect tax @ 3% of the sale price of such property. No such provision was, however, available in the Income Tax Ordinance, 2001. Considering the revenue importance, a new sub-section 236A has been inserted to provide that any person making sale through public auction, of any property or goods confiscated or attached either belonging to or not belonging to the:

- a) Government
- b) Local Government
- c) any authority

- d) a company
- e) a foreign association declared to be company under sub-clause (vi) of clause (b) of sub-section 2) of section 80,
- f) a foreign contractor
- g) a consultant
- h) a consortium
- i) Collector of Customs
- j) Commissioner of income tax or
- k) any other authority

shall collect advance tax, computed on the basis of sale price of such property and at the rate specified in Division VIII of Part IV of the First Schedule from the person to whom such property or goods are being sold.

53.2 The tax so collected is adjustable and taxpayer will be entitled to claim credit in the relevant tax year.

53.3 The term "sale of property" has been explained to include the award of any lease to any person, including a lease of the right to collect tolls, fees or other levies by whatever name called.

54. **WITHDRAWALS OF ACCUMULATED BALANCE FROM VOLUNTARY PENSION SCHEMES [Clause (23A) of Part I of the Second Schedule]**

Previously, out of accumulated balance, upto 25% received from the Voluntary Pension Scheme (VPS) was exempt from tax. The limit has been enhanced to 50%. This amendment will encourage investments in VPS.

55. **SENIOR CITIZENS**
[Clause (1A) of Part III of the Second Schedule]

The cost of living has increased. In view of this fact, the taxable limit, in a tax year, of a senior citizen having age of 60 years or more, has been enhanced from Rs. 500,000 to Rs. 750,000.

56. **EXEMPTIONS FROM PROVISIONS OF SECTION 153(1)(b)**
[Clause (16A) of Part IV of the Second Schedule]

Through the insertion of new clause 116A in Part IV of Second Schedule, section 153(1)(b) will not be applicable to news print media. However, for media other than print media, provisions of section 153(1)(b) shall continue to apply.

57. **SEVENTH SCHEDULE**

This schedule has been amended. In the light of amendments in Rule (1), the banking companies would be entitled to make provisions for advances and off balance sheet items upto a maximum of 1% of total advances. These companies would be under obligation to provide a certificate from the external auditor to the effect that such provisions are based upon and are in line with the Prudential Regulations of the State Bank of Pakistan. The banking companies would be allowed to carry forward provisions in excess of 1% to the succeeding years.

57.1 If the provisioning is less than 1% of the total advances, then the taxpayer would be entitled to the actual provisioning for the year.

57.2 The banking companies like other resident companies would be required to pay minimum tax under section 113 of the Ordinance as per provision of the aforesaid section.

(Malik Amjed Zubair Tiwana)
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