

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

Islamabad, the 23rd February, 2015.

NOTIFICATION
(Income Tax)

S.R.O.161(I)/2015.- In exercise of the powers conferred by sub-section (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Board of Revenue is pleased to direct that the following further amendments shall be made in the Income Tax Rules, 2002, the same having been previously published *vide* Notification No. S.R.O. 1021(I)/2014, dated the 12th November, 2014, as required by sub-section (3) of the said section, namely:-

In the aforesaid Rules,-

(1) in rule 13N,-

(a) in sub-rule (2), for the full stop, at the end, a colon shall be substituted and thereafter the following new proviso and Explanation thereto shall be added, namely:-

“Provided that in case of Foreign Institutional Investors, provisions of the said Eighth Schedule and these rules shall be applicable on capital gain derived from the first day of July, 2014.

Explanation.- For the removal of doubt, it is clarified that all Foreign Institutional Investors shall be subject to the regime as laid down in Eighth Schedule and no exemption whatsoever from withholding tax under Eighth Schedule or under these rules is available to Foreign Institutional Investors for any reason.”;

(b) in sub-rule (3),

(i) for the letters “NCPPL”, the letters “NCCPL” shall be substituted;

(ii) for the word “and” occurring for the second time a comma shall be substituted; and

(iii) after the word “Limited” the expression “and clearing members in case of Foreign Institutional Investors” shall be added.

(c) in sub-rule (15), for the words “showing computation of”, the word “verifying” shall be substituted;

(d) in sub-rule (17), after figure “13O”, the words “along with the evidence of obtaining prior approval of Commissioner under rule 5 of the said Eighth Schedule” shall be added and thereafter the following new proviso shall be added, namely:-

“Provided that the Commissioner shall not accord prior approval, unless the taxpayer is a filer.”;

(e) after sub-rule (18), the following new sub-rule shall be inserted, namely:-

“(18A) Where an irrevocable option has been filed to NCCPL by a person, after obtaining prior approval of the Commissioner to opt out of Eighth Schedule for determination and payment of capital gains tax, NCCPL shall submit to the Board details of capital gains and tax thereon of such person or persons for the tax year or part thereof in respect of which capital gain tax collection has not been made by NCCPL.”

(f) in sub-rule (23), after the word “acquisition”, occurring for the first time, a comma and the words “, except in the case of foreign institutional investors,” shall be inserted; and

(g) after sub-rule (23), the following new sub-rules shall be added, namely:-

“(24) Notwithstanding anything contained in these rules, for the purpose of computation of capital gains and collection of tax thereon with respect to foreign institutional investors, the date of acquisition and disposal, the consideration received and cost of acquisition shall be determined in the following manner, namely:-

(a) for the purpose of computation of capital gains, securities held on the 30th June, 2012 shall be deemed as having held for a period of more than two years and the cost of such securities shall be deemed to be the market price (day-end price) of the securities, as on the 30th June 2012;

(b) where securities have been acquired or disposed of between the 1stJuly, 2012 and the 30thJune, 2014 (both days inclusive), the cost of acquisition and consideration received for disposal shall be determined in the following manner, namely:-

- (i) in case of market-based transactions, the transaction price of the securities;
- (ii) in case of transactions other than market-based transactions deal price provided by the stock exchange; and
- (iii) in all other cases, the market price (day-end price);

(c) where physical securities are deposited on or after the 1st July, 2014 in an account maintained with Central Depository Company of Pakistan Limited, date and cost of acquisition shall be taken into account as follows:-

- (i) the actual date of acquisition and market price (day-end price) prevailing on such date shall be taken into account for computation of capital gains tax, where such securities are acquired after April 23, 2011; and
- (ii) the cost of such securities and date of acquisition shall be deemed to be the market price (day-end price) of the securities, as on the 23th April 2011, where such securities are acquired on or before April 23, 2011; and
- (iii) in all other cases, where actual or deal price is not known to NCCPL, the market price (day-end price) shall be taken into account for computation of capital gains tax.

(25) Foreign Institutional Investor may apply to NCCPL for separate Unique Identification Numbers(UIN) for each of its sub-funds under its umbrella.

(26) Where separate UINs have been obtained by Foreign Institutional Investor for each of the sub-funds under its umbrella, capital gain or loss shall be computed

separately for each sub-fund and loss under one UIN shall not be allowed to be set off against capital gain arising to another sub-fund with separate UIN.

(27) Where a Foreign Institutional Investor opts not to apply to NCCPL under sub-rule (25), loss arising to any sub-fund shall not be allowed to be set off against capital gain of any sub-fund. However, such loss of a sub-fund may be adjusted against gain arising to such sub-fund at the time of filing of return by the sub-fund.”;

(2) in rule 13O,-

(a) in Part-I, for Sr. No 6 and 7, the following shall be substituted:-

“6. Amount of capital gains for holding period of:

- (i) Less than 12 months Rupees _____
- (ii) 12 months or more but less than 24 months Rupees _____
- (iii) 24 months or more Rupees _____

7. Amount of capital loss for holding period of: (effective July 1, 2015)

(effective July 1, 2015)

- (i) Less than 12 months Rupees __(__)_____
- (ii) 12 months or more but less than 24 months Rupees __(__)_____
- (iii) 24 months or more Rupees __(__)_____

8. Amount of tax liability on capital gains (effective July 1, 2015)

- (i) Less than 12 months (12.5%) Rupees _____
- (ii) 12 months or more but less than 24 months (10%) Rupees _____
- (iii) 24 months or more (0%) Rupees 0
- Total Liability (i+ii) Rupees _____”;

(b) in Part-II, in the Table, for the fourth column, the following shall be substituted:-

“

<i>Net amount of capital gains as at quarter ended</i>		
Holding period of less than 12 months	Holding period of 12 months or more but less than 24 months	Holding period of 24 months or more”;

(c) in Part-IV, for the figure “2012”, the figure “20__” shall be substituted; and

(3) in rule 13P, -

- (a) in clause (m), in sub-clause (ii), for the words “Provisions of Eighth Schedule to the Ordinance shall not apply to the transactions of foreign institutional investor,” the words and letters “CGT shall be charged to the final settlement account of the person settling the underlying trade and such clearing member shall be responsible to collect and deposit with NCCPL, CGT computed on such transactions” shall be substituted and thereafter the following new sub-clause shall be added, namely:-

“(iii) Example:

ABC Company, a foreign institutional investor, sells 20,000 shares of XYZ Company on its own behalf and on behalf of other investors as follows:

Name	Qty	Capital Gain / (Loss)	Holdin g Period (days)	Rate	Capital Gain Tax	First Settlement Account	Final Settlement Account for CGT Collection
ABC Co.	8,000	Rs 35,000	300	12.5%	Rs 4,375	ABC Company – Proprietary UIN	ABC Company
Mr. P	5,000	Rs 31,000	390	10%	Rs 3,100	ABC Company – IBD UIN	Mr. P
Mr. Q	3,000	Rs (11,000)	410	NA	NA	ABC Company – IBD UIN	Mr. Q
Mr. R	4,000	Rs 27,000	750	0%	0	ABC Company – IBD UIN	Mr. R
Total	20,000				Rs 7,475		

As illustrated above, foreign institutional investors (ABC Company) sold shares, on its own behalf and on behalf of other investors. Thus, capital gain tax shall be charged to the final settlement account of the person settling the underlying trade and such clearing member shall be responsible to collect and deposit with NCCPL CGT computed on such transactions. Further, IBD UIN of foreign institutional investor used as a transitional account shall be exempt from capital gain tax.

Similarly, for purchase transactions, final settlement account shall be used for the purpose of inventory maintenance of the clients of foreign institutional investors and inventory shall not be maintained for the IBD UIN of foreign institutional investor.”;

(b) for clause (q), the following shall be substituted, namely:-

“(q) Disposal of bonus shares

(i) Details of the transaction.-

A company issues bonus shares to its shareholders, which are subsequently sold by the shareholder in the market.

(ii) Tax treatment.-

Effective from July 1, 2014 for computation of capital gain tax, the cost of bonus shares would be the price prevailing on first day of book closure (ex-bonus price). Subsequently, when such bonus shares are disposed of, such cost will be taken for computation of capital gain and tax thereon. Similarly, the cost of old shares would remain same before and after bonus shares are issued, and when the old shares are disposed of, such cost will be taken for computation of capital gain and tax thereon, even if these are sold prior to the crediting of bonus shares in the shareholder’s account, but after the date of entitlement of bonus shares.

iii) Example:-

A, being a client of a broker, has 4 shares of company A in his account. He acquired these shares on the 1st January, 2015 at Rs. 20 per share. On the same day i.e. 01-01-2015, the company declared bonus shares @ 25%, and date of entitlement of the shares was declared as 1-04-2015 and the shares were to be credited in the account of A on 15-5-2015. The market value (ex-bonus price) of these shares on 31-03-2015 is Rs. 25 per share. He disposed of 2 shares on the 15th April, 2015 at Rs. 20 per share and the remaining 3 shares (including bonus share) @ Rs.20 on the 18th May 2015.

The cost of acquisition is deemed to include 0.50% of the acquisition cost as incidental expenses incurred and sale proceeds are deemed to include 0.5% of the consideration as incidental expenses.

NCCPL shall collect CGT as per following example:

Purchases / Acquisitions				Disposal		
Date	No. of shares	Price	Cost*	15-Apr-2015	18 May 2015	Total
1-Jan-15	4	20	80	2		2
1-Jan-15	Bonus shares issued @ 25% (Date of entitlement 1-04-15) (Date of credit 15-5-2015)				3	3
1-Apr-15	4	20	80			
15-May-15	1	25	25			
				2	3	5
Selling price per share				20	20	
Sale proceed				40	60	100
Less: Cost				40	65	105
				0	(5)	(5)";

(c) in clause (v), in sub-clause (ii), for the expression “will be calculated as calculated for Bonus shares in Example 1.17.3,” the expression “of such shares shall be taken as zero” shall be substituted; and

(d) after clause (y), the following new clauses shall be added, namely:-

“(z) Free of Payment transactions (transactions executed outside Pakistan).

Certain foreign institutional investors holding shares may sell through negotiated deal at a price agreed with the buyer outside Pakistan e.g. a strategic sale and purchase of shares to acquire or dispose of controlling shares. Such transactions are reported to respective clearing member of foreign institutional investors to transfer the shares from seller account to buyer account. In such transactions, respective clearing member does not know the transaction price and merely transfers shares from one account to other on the instructions of its foreign client.

Respective clearing member receiving the instructions from foreign institutional investors shall be responsible to report such transactions in the negotiated deal market at the relevant stock exchange through a stock broker in the manner prescribed by such stock exchange or through reporting interface provided by NCCPL for this purpose. The price reported as selling price or the market price (day-end price of the date of transaction), whichever is higher, shall be taken into account to compute capital gain on the basis of holding period of such securities as illustrated in clause (d).

(za) capital gains on disposal of debt security

Tax treatment

By including debt securities in the definition of security in section 37A, the gain or loss on disposal of debt securities shall be computed, collected and paid as provided in Eighth Schedule, unless opted out with the approval of Commissioner. However companies shall not be subject to this regime and will continue to be taxed as in the past with the rates applicable to the companies and not the rates as amended in Division VII of Part I of First Schedule. Individuals on the other hand shall be subject to mechanism as laid down in the Eighth Schedule to the Ordinance, in respect of debt securities for which settlements are undertaken by NCCPL”; and

- (4) in rule 13L, in clause (d), for sub-clause (iii), the following shall be substituted, namely:-
“ (d) in case of bonus shares:

- (i) shall be ex-bonus price if tax has already been paid under section 236M;
- (ii) the value determined under section 236N, if tax is paid under section 236N; and
- (iii) shall be zero, if no tax is paid under section 236M and 236N.”.