

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

Islamabad, the 7th September, 2010

**NOTIFICATION
(Income Tax)**

S.R.O.865 (I)/2010.- The following draft of certain further amendments in the Income Tax Rules, 2002, which the Federal Board of Revenue proposes to make in exercise of the powers conferred by section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), is hereby published for the information of all persons likely to be affected thereby, as required by sub-section(3) of the said section, and notice is hereby given that the draft will be taken into consideration after fifteen days of its publication in the official Gazette.

Any objection or suggestion which may be received from any person, in respect of the said draft before the expiry of the aforesaid period, shall be considered by the Federal Board of Revenue.

DRAFT AMENDMENTS

In the aforesaid Rules, in Chapter-II, after Part-II, the following new Part shall be added, namely;-

“Part III

COMPUTATION OF CAPITAL GAIN

13A. Date of acquisition.- (1) Where acquisition of securities (including letter of rights, units of mutual funds, securities in physical form) has taken place on trading platforms (including Platform for Off Market transactions) provided by Stock Exchanges, the date of settlement of the relevant trades shall be taken as date of acquisition and broker’s bill along with broker’s generated computerized data sheet and proof of payment through cheques shall be the conclusive evidence of such acquisition.

(2) Where the title in the securities is not acquired physically through trading platforms provided by Stock Exchanges, the date on which the name of transferee is recorded in the share certificate shall be taken as date of acquisition.

(3) In case of initial public offerings, including the shares of founders or sponsors where securities are in electronic form, the date of receipt of securities into Central Depository Company (CDC) Account of the person and where shares are in physical form, the date on which the company registers the person as its share holder, shall be taken as dates of acquisition.

(4) Where the securities are bonus shares, the date of receipt of such shares in electronic form into CDC Account of the person and where shares are in physical form, the date on which the company registers the person as its share holder in respect of such bonus shares shall be taken as date of acquisition.

(5) In case of securities being “right shares” the date of receipt of such shares in electronic form into CDC Account of the person and where shares are in physical form, the date on which the company registers the person as its share holder in respect of such “right shares”, shall be taken as date of acquisition.

(6) In case of securities being units of an open end mutual fund, the date of acquisition shall be the date of purchase or conversion, in-transfer, in-switching of such units. Certified statement of account provided by Asset Management Company shall be the conclusive evidence of such acquisition.

(7) In case of securities being “letter of rights” the date of receipt of such letter of rights in electronic form into CDC Account of the person and where letter of rights is in physical form, the date on which the company registers the person as entitled to such letter of rights, shall be taken as date of acquisition.

(8) In case securities have been acquired on account of nomination under section 80 of the Companies Ordinance 1984 (XLVII of 1984), under bequest or inheritance, the date of acquisition shall be the date of death of the person making such nomination or such bequest, as the case may be.

(9) Where securities are acquired through a gift in an electronic form, date of transfer of such securities to CDC account of the donee and where it is received in a physical form, the date on which such securities are entered against the name of such donee in the register of share holders of the company through such endorsement in the share certificates, shall be taken as the dates of acquisition.

(10) In case securities have been acquired under Stock Option Scheme for employees of a company approved by Securities and Exchange Commission of Pakistan (SECP), the date on which the option is exercised shall be taken as date of acquisition.

(11) In case of Derivative products, date of entry into purchase contract or sale contract of the financial instrument shall be taken as date of acquisition.

13B. Date of disposal.- (1) In case disposal of securities (including letter of rights, securities in physical form and units of mutual funds) has taken place on trading platforms (including platform for Off Market Transactions) provided by Stock Exchanges, the date of settlement of the relevant trades shall be taken as date of disposal and broker's bill along with broker's generated computerized data sheet and proof of payment through cheques shall be conclusive evidence of such disposal.

(2) In case, title in the securities in physical form has been transferred at the end of the register of shares, the date on which name of transferee is recorded in the share certificate shall be taken as date of disposal.

(3) In case of securities being units of an open end mutual fund, the date of redemption or conversion, out-transfer, out-switching of such units, shall be taken as date of disposal and certified statement of account issued by Asset Management Company shall be the conclusive evidence of such disposal.

(4) In case of derivative products date of exit from purchase contract or sale contract of the financial instrument shall be taken as date of disposal.

13C. Holding period.- (1) Where contract for the purchase and sale of securities is periodically or ultimately settled by the actual delivery, the period between the date of acquisition and date of disposal shall be reckoned as the holding period.

(2) In case of derivative products, the period between the date of entry into contract of purchase or sale and date of exit from contract of purchase or sale shall be taken as the holding period.

(3) In case of securities not traded on trading platforms (including Platform for Off Market Transactions) provided by Stock Exchanges, the period between date of acquisition and date of disposal, shall be taken as the holding period.

(4) Securities held for a period upto a maximum of 182 days and for a period upto a maximum of 365 days shall be taken as held for six months and one year respectively.

(5) Securities held for less than one day shall be treated as held for less than six months.

13D. Derivative products.- For the purpose of section 37-A of the Ordinance "derivative products" mean various contracts traded on Stock Exchanges of Pakistan that are not necessarily settled periodically or ultimately by the actual delivery of securities and include Ready Market Contracts, Future Contracts, Forward Contracts, Options, Swaps and Contract of Right, etc.

13E. Miscellaneous.- (1) The method to determine date of acquisition of various securities disposed of, for the purpose of determination of holding period to be employed consistently shall be “First In First Out” (FIFO).

(2) To determine the cost of acquisition of securities the method to be employed consistently, at the option of the person holding such securities, shall be either “Moving Weighted Average Cost method” or “Specific Identification Cost method on FIFO basis”.

(3) Profit made on sale of borrowed shares shall be treated as capital gain when such shares are acquired for their return to Authorized Intermediary. Period intervening between acquisition and disposal of such borrowed shares shall determine the “holding period” in which the capital gain or loss falls. “Specific Identification Method” shall be used to determine the acquisition cost and consideration for disposal of such securities. The difference between cost of acquisition and consideration received against disposal (net off all borrowing costs) of such shares shall be treated as capital gain or loss. This rule shall be applicable to the securities borrowed in accordance with the “Securities Lending and Borrowing Scheme” approved by Securities and Exchange Commission of Pakistan.

(4) Profit made on disposal of shares acquired under Margin Finance Scheme, Margin Trading Scheme or other Financing or Leverage schemes approved by Securities and Exchange Commission of Pakistan shall be treated as ‘capital gain’. The difference between cost of acquisition (inclusive of borrowing cost) and consideration received against disposal of such shares shall determine the quantum of capital gain or loss.

(5) Adjustable advance tax payable under section 147(5B) shall be payable within a period of twenty-one days after the each quarter where the same cannot be paid within seven days after close of each quarter, due to practical difficulties.

13F. Exemptions.- Only express and specific exemptions in respect of income from ‘capital gains’ as provided under the second schedule to the Ordinance, shall apply for the purposes of taxation of income from ‘capital gains’ arising from disposal of securities.

13G. Adjustment of loss.- Loss suffered on disposal of securities during the period of a tax year shall be set off against capital gains from disposal of securities during such period irrespective of the period of holding of such securities in such tax year. However, no such adjustment of loss arising in the following cases shall be admissible:-

- (i) “**Wash sales**” Where capital loss realized on sale of specific share by an investor is preceded or followed in one month’s period by purchase of the same share by the same investor, thus maintaining the portfolio);

- (ii) **“Cross trade”** Where coordinated reshuffle of shares between two related accounts of the same investor, between two related account of the related investor or between two membership cards of the same broker is undertaken and share accumulating unrealized losses are sold to related accounts to realize artificial losses in one account without actually selling the shareholdings to an outsider and artificial losses so realized in an account are then used to minimize capital gain tax liability on the capital gains realized in the same account; and
- (iii) **“Tax Swap Sales”** Where the investor having realized loss (as in the case of wash sale) on a particular share does not repurchase the same share but chooses another similar share in the same sector thus not only minimizing or eliminating altogether CGT liability but also maintaining the portfolio broadly at the same risk return profile.

13H. Representative.- In case of defaulting individual investors in securities, the relevant broker(s) through which such persons have been conducting dealings in a stock exchange shall be treated as representative of such defaulting individual”.

[C.No.3 (9)/ITR/08-Part-1]

(Asrar Raouf)
Member Policy (Direct Taxes)