

**ISLAMABAD:** The Income Tax (Amendment) Ordinance, 2016 has said that where the fair market value of any immovable property of an area has not been determined by the Federal Board of Revenue (FBR) in the notification, the fair market value of such immovable property shall be deemed to be the value fixed by the District Officer (Revenue) or provincial or any other authority authorized in this behalf for the purposes of stamp duty.

Presidential Ordinance i.e. Income Tax (Amendment) Ordinance, 2016 promulgated on immovable property transactions yesterday further says that the rate of tax to be paid under Sub-Section (1A) of Section 37 shall be reduced by a fifty percent on the first sale of immovable property acquired or allotted to ex-servicemen and serving personnel of Armed Forces or ex-employees or serving personnel of federal and provincial governments, being original allottees of the immovable property, duly certified by the allotment authority.

According to the explanation of the Ordinance issued by noted tax expert Ashfaq Tola, earlier, vide a circular letter no. 7(13), dated June 29, 1993, the Board issued instructions regarding valuation of immovable property by the commissioners. The Board instructed that the values fixed by the provincial authorities should be made the basis of valuation. It was proposed vide Finance Bill 2016 that fair market value of any property shall be determined without taking into consideration the value fixed or notified by any provincial authority. However, the Finance Act 2016 altogether barred Commissioners from determining fair market Value of immovable property. The same was made to be determined on the basis of valuation made by a panel of approved valuers of the State Bank of Pakistan (SBP).

The Finance Act 2012, (FA 2012) for the first time brought capital gains arising out of disposal of immovable properties to tax subsequent to 18th Constitutional Amendment, wherein, entry number 50 in Federal Legislative List empowers the Federal Government to levy this tax. Prior to the FA 2016 and after the FA 2012, capital gains on immovable properties sold after holding up to one year and up to two years were charged to tax at the rates of 10 percent and 5 percent respectively whereas capital gains on property sold after holding for a period of more than two years were exempted from tax.

The Finance Act 2016 levied capital gain tax at the rate of 10 percent on the sale of a property held for a period up to five years whereas capital gains on property sold after holding for a period of more than five years were exempted from tax, he added.

He said the real estate sector strongly opposed the amendments introduced vide the FA 2016, especially in Section 68 of Income Tax Ordinance, 2001 (ITO), which resulted in further amendment in the ITO after prolonged deliberations among Ministry of Finance, FBR, tax policy experts, representatives from real estate sector and other stake holders. Amendment in Section 68 of the ITO is made and FBR is empowered to determine and notify the fair market values of

the immovable property. The rates to be notified have been agreed for the major cities and the same will be notified by the FBR soon, however, until the determination of such values by FBR, values already determined for the purpose of stamp duty shall be deemed to be fair market values.

Furthermore, it has also been made clear that following values shall not be less than the values determined for the purpose of stamp duty or by the FBR, as the case may be: Consideration received on disposal of property; value of property at the time of purchase; and valuation of property under Section 111. This means that the powers of District Officer under Rule 228 of Income Tax Rule, 2002 to fix a higher value of constructed property, than value under Section 68 of the ITO, for the purpose of Section 111 of the ITO, has been curbed.

In light of a decision by the Supreme Court (2009 PTD1279), proceedings cannot be initiated under provisions of Section 122 and likes, for the periods prior to this amendment on the basis of fair market values determined under Section 68 of the ITO.

However, legality of proceedings on the basis of other information (undisclosed asset, bank account) will remain untouched. It has further been explained that if the determined fair market value is different from the auction price, the higher of the two values shall be applicable.

Tola further explained that the holding period for exemption from adjustable advance tax on sale or transfer of immovable property has been reduced to 3 years from 5 years. Also, such advance tax has been exempted if the seller is dependent of a Shaheed of Pakistan Armed Forces (PAF) or of a person who dies while in the service of PAF or federal and provincial governments. The advance tax has also been exempted on first sale of property acquired or allotted as an original allottee.

The limit for exemption of advance tax on purchase of immovable property has also been enhanced from Rs 3 million to Rs 4 million.

Capital Gains Tax has been exempted on sale of property if the seller is dependent of a Shaheed of the PAF or of a person who dies while in the service of the PAF or federal and provincial governments. Capital Gain Tax has also been exempted on first sale of property acquired or allotted as an original allottee, he added.

Capital Gains Tax rates have been reduced by 50 percent in case of first sale of property acquired or allotted to ex-servicemen and serving personnel of federal and provincial governments, being original allottee of the property, Tola added.

The following is the text of the Income Tax (Amendment) Ordinance, 2016: The following Ordinance promulgated by the President is hereby published for general information:—

ORDINANCE No. IV OF 2016

AN

Ordinance

further to amend the Income Tax Ordinance, 2001

WHEREAS it is expedient further to amend the Income Tax Ordinance, 2001 (XLIX, of 2001), for the purposes hereinafter appearing;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

(693)

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Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement.—(1) This Ordinance may be called the Income Tax (Amendment) Ordinance, 2016.

(2) It shall come into force at once.

2. Amendment of Ordinance XLIX of 2001.— In the income Tax Ordinance, 2001 (XLIX of 2001),—

(1) in section 68,

(a) in sub-section (4), for the expression “the fair market value of immovable property shall; be determined on the basis of valuation made by a panel of approved valuers of the State Bank of Pakistan” the expression “the Board may, from time to time, by notification in the official Gazette, determine the fair market value of immovable property of the area or areas as may be specified in the notification” shall be substituted;

(b) after sub-section (4), amended as aforesaid, the following new sub-sections shall be added, namely:-’

“(5) Where the fair market value of any immovable property of an area or areas has not been determined by the Board in the notification referred to in sub-section (4), the fair market value of such immovable property shall be deemed to be the value fixed by the District Officer (Revenue) or provincial or any other authority authorized in this behalf for the purposes of stamp duty.

(6) In respect of immovable property—

(i) component A of the formula in sub-section (2) of section 37;

(ii) “consideration received” as mentioned in Division X of Part IV of First Schedule;

(iii) “value of Immovable property” as mentioned in Division XVIII of Part IV of the First Schedule; and

(iv) valuation for the purposes of section 111, shall not be less than the fair market value as determined under sub-section (4)

Explanation.—( 1) For the removal of doubt, it is clarified that the fair market value as determined under sub-section (4) or (5) shall be for carrying out the purposes of this Ordinance only.

(2) It is further clarified that for the purposes of clauses (i) to (iv) of this sub-section if the fair market value determined under sub-section (4) or (5) is different than the auction price the applicable price shall be the higher of the two.”;

(2) in section 236C,—

(a) in sub-section (3), for the words “five years” the words “three years” shall be substituted;

(b) after sub-section (3), amended as aforesaid, the following new sub-section shall be added, namely:—

“(4) Sub-section (1) shall not apply to:—

(a) a seller, if the seller is dependent of:

(i) a Shaheed belonging to Pakistan Armed Forces; or

(ii) a person who dies while in the service of the Pakistan Armed Forces or the Federal and Provincial Governments; and

(b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority.”;

(3) in the First Schedule,—

(a) in Part I, in Division VIII, for the Table the following shall be substituted, namely:—

Provided that rate of tax to be paid under sub-section (1A) of section 37 shall be reduced by fifty percent on the first sale of immovable property acquired or allotted to ex-servicemen and serving personnel of Armed forces or ex-employees or serving personnel of Federal and Provincial Governments, being original allottees of the immovable property, duly certified by the allotment authority.”;

(b) in Part IV, in Division XVIII, in the table, in column (1), against both S.N.1 and 2., in column.1(2) for the figure and word “3 million” the figure and word “4 million” shall be substituted.