

## Budget 2014-15: Essential tax reforms

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"If we want lower taxes for growth, then spending must be curtailed so that governments won't need so much money. The next time you hear a politician promise another tax break for some special group of taxpayers, think how much that hurts the economy and you as a taxpayer. It's time to simplify the system and reduce its onerous impact that undermines economic growth" - Jack M. Mintz, the Palmer Chair of Public Policy, School of Public Policy, University of Calgary, Canada

For any meaningful change in existing ailing tax system, solutions have to be found for those issues that have been side-tracked for years. The most essential issue is revival of circle system as the existing functional one has not only failed miserably, it has rendered the Federal Board of Revenue (FBR) a non-functional organisation. The other very impressing issue is lack of effective personal taxation due to overwhelming presumptive taxes, minimum taxes, unjust tax brackets and numerous exemptions. Unfairness of the system is obvious that it is not even indexed with inflation. This article will concentrate on these two issues alone. The other important ones will be discussed in the forthcoming articles, written exclusively for the forthcoming budget 2014-15.

On the eve of each year's budget exercise, many vital issues are raised by experts, but ignored by FBR for reasons best known to it eg issue of restoration of circle system was raised way back in 2008 in these columns and then repeated many a times, but never considered by the policymakers. On income taxation, the policy of appeasement, despite vehement opposition from many quarters, is prevailing and perpetuating. Giving tax amnesties, increasing exemption limits, raising deductions, lowering tax brackets and serving the rich and mighty through statutory regulatory orders (SROs) has eroded income tax base substantially. The following, if considered, in the forthcoming budget, can bring a meaningful change in tax administration.

### **ADMINISTRATIVE REFORMS - FAILURE OF FUNCTIONAL SYSTEM**

The administration of a tax system is a complex issue. No doubt, a proper input from FBR is vital for making the system successful but it is equally necessary to take all the stakeholders on board. On the issue of revival of circle system in Inland Revenue Service (IRS), wide support is available now-many tax bars and trade bodies have supported it recently. In fact, there is hardly any difference of opinion on this issue in the wake of complete failure of functional system. Unfortunately, this issue, which deserved utmost priority, was neglected by all the tax reform or advisory committees constituted in the past by FBR. The recently-notified advisory committee must treat revival of circle system as the important issue deserving full-scale attention.

The undeniable reality is that no agenda for rationalisation or simplification of tax reforms can substantially improve tax compliance, unless there is a substantial improvement in public perception regarding the efficiency, technical competence, integrity and ability of the tax authorities to relentlessly pursue and punish tax evaders without any political and other interference. The present functional structure in IRS has failed to achieve these objectives. There is always talk of giving "market" wages, but nobody has ever thought of improving the overall working conditions of FBR and professional skills of officers and staff. If one goes to a tax office as a taxpayer only then one would feel the taste of inhuman

and insulting treatment, an ordinary citizen receives daily. Does it really need enormous money to extend respect and courtesy to taxpayers they deserve? Does this issue relate to market wages or foreign funding or advice?

The exercise relating to tax reforms cannot be a time-bound affair and does not mean merely making changes in law. Reforms can be successful only if simultaneous analysis is made of the whole system, that is, tax structure, tax administration, state of economy, taxpayers' attitude, revenue needs of the country and so many other allied aspects. Measures that are necessary to make a tax system successful relate to: -

1. devising and running an efficient and truly independent justice system;
2. provision of expert legal advice for drafting of laws;
3. designing of tax forms and procedures;
4. improvements in the management of tax department;
5. a broad-based personnel policy;
6. training of tax administrators, especially for under-cover operations;
7. educating the taxpayers and making them realise that it is their moral duty to pay tax;
8. development of work ethics;
9. provision of healthy working conditions; and
10. efficient redressal machinery for the problems of taxpayers.

### **CHANGE IN INCOME TAX REGIME**

It is an inescapable conclusion that income tax law, as it exists, is a most undesirable piece of legislation. Direct tax system intends to achieve the twin aims of maximising revenue as well as utilising revenue for achieving socio-economic objectives. In actual practice, our tax system has failed to achieve either of these objectives. In fact, the complex regime of incentives and disincentives built into the direct tax law cannot but lead, per se, to difficulties in enforcement and to the opening of opportunities for tax-dodgers/evaders. Undoubtedly, the time has come to resolve these contradictions and to completely convert direct tax regime into simple tax law.

### **BROADENING TAX NET**

FBR has been running after small fry to broaden the tax net. For example, a person with a car, telephone etc has to file a return whether he has taxable income or not. Such an exercise generates tremendous infructuous, unproductive and wasteful workload without any significant gain to the revenue. It strengthens the feeling that the government, unable to tackle the hardened tax evaders (for example sharks at stock exchanges who engulf small investors), is unduly harsh on salary and wage earners. A feeling goes around that they are made to bear the major burden of taxes. The consequence is that ordinary people who generally think of themselves as honourable and honest end up in participating or advising others to practice evasion of taxes!

In order to initiate a public debate, below is a draft of proposed 'Income Tax Act, 2014'. A meaningful public debate on this draft can pave the way for better income tax legislation in the country. However, it all depends on the attitude of the elected members, who hardly take any interest in enacting such laws that can make a difference in the lives of ordinary people. They openly defy tax laws - see Tax Directory

published by FBR recently. They are not ready to part away some part of their colossal incomes. They are keener to safeguard their vested interests and keep on accumulating more wealth as money power is what ensures them to remain in power. Therefore, personal taxation has become an important issue in Pakistan. With only 840,000 filing tax returns this year, Pakistan now represents a case of total tax revolt. Non-compliance of income tax law by the legislators, politicians, military-civil hierarchy, powerful business houses and traders is highly lamentable. In this scenario, we need to ensure strict compliance of income tax obligations, but first of all must introduce a simple and growth-oriented legislation so that there is inclination for voluntary compliance. The draft proposed below can achieve this purpose.

There are considerable chances that the government would avoid any such legislation. It would certainly harm the interests of the classes represented by the ruling party. However, one hopes that even if government ignores it, some member(s) of Opposition may get inspired and opt to present it as a private member's bill in the House before the forthcoming budget - 2014-15. It can generate meaningful debate in the Parliament and public. Progressive income taxation is at the heart of establishing a true social democracy, which we lack. Complex laws and cumbersome procedures give unbridled powers and discretion to tax authorities and these should be discarded if we want real and meaningful tax reforms. It is now the duty of elected members to take initiative and enact fiscal laws through consultative process as ordained by the Supreme Court in CIT v Eily Lilly & Others 2009 PTR 23 [Supreme Court] as under:

"Since the creation of Pakistan we have not been able to frame any Income Tax Act duly debated in the Assembly. Both the Ordinances were promulgated during the Martial Law Regime otherwise the Constitution has prescribed a four month life of an Ordinance in case the Ordinance is not be placed before the Assembly and it shall be enacted as an Act then the Ordinance will automatically cease to exist. This aspect also reveals that the Constitution has cast duty upon the legislative body to frame the laws within the parameters prescribed under the scheme of the Constitution"... The fact that the Ordinance in question was issued and various amendments were incorporated before and even after the enforcement of the Ordinance 2001 raises the controversy that the Ordinance in question was promulgated without meticulous debate on the subject due to which assesseees and concerned departments were compelled to agitate the issues in different courts."

## **SALIENT FEATURES OF THE PROPOSED INCOME TAX ACT**

### **I. INTEGRATION OF ALL COMPONENTS**

There are four authorities responsible for enactment and implementation of taxes on income, Parliament, Federal Government, Federal Board of Revenue and the Inland Revenue Authorities. The role of each one of them should be clearly defined.

### **II. NO DELEGATED POWERS**

There should be no delegation of power to any administrative authority in fiscal law, except to make rules. The notorious SRO system should be disbanded completely as it is against Article 162 of the Constitution of Pakistan.

### **III. TAX RATES SHOULD NOT BE SUBJECT TO ANNUAL FINANCE BILL**

Income tax Rates should be at least for five years so that people can make long-term planning of their affairs. The base of income and the range of tax rates should be made adequately wider so that there is no need to change it every year. The progressivity of the tax rates is essential to meet the constitutional requirement of ensuring economic justice and social disparities. Tax rates should also be rationalized in order to make them equitable for all classes of persons.

### **IV. TAX ON UNDISCLOSED INCOME**

The tax on undisclosed income must not be charged by clubbing it with the declared income. It should be taxed separately at a fixed rate. However, it is proposed to have a National Deposit Account in which any amount can be deposited without giving explanation for its source. No money can be withdrawn from it for 3 years and it would not carry any interest either. Thereafter, when money is withdrawn the same shall become taxable in that year.

### **V. INCOME FROM CAPITAL GAINS AND LONG-TERM SOURCES**

Income from capital gains and other long-term sources should be separately taxed. It should be delinked from the taxation of annual income.

### **VI. DISTRIBUTION OF INCOME WITHIN A FAMILY**

In respect of deductions, a minimum 20% of the income, if transferred to members of taxpayer's family, must be exempted. It can be made taxable in the hands of the members of the family. This will provide for faster and equitable distribution of wealth amongst the members of the family and greater family stability in the society.

### **VII. PENALTY AND PROSECUTION**

Penalty and prosecution provisions must continue and the income tax authorities should be given wider powers to enforce the provisions of law. No degree of liberalisation or reduction in the rates of tax can take away the lure of not paying taxes. Tax is like any other expenditure and every one would like to save the maximum on this.

### **VIII. PAYMENT OF TAX**

The entire amount of tax should be made payable by the assessee either by deduction at source or by advance payment of tax before the end of the year. The base for deduction of tax at source may be made very wide but option must be given to the assessee to declare that his income is below the taxable level to receive income without any deduction of tax. Penalty and prosecution provisions can be strengthened against giving a false declaration.

## **IX. NATIONAL COURT OF FEDERAL TAXES**

There may be a National Court of Federal Taxes subordinate only to the Supreme Court. It should be the final authority as regards the interpretation of all federal tax laws. It should only refer important

questions of law to the Supreme Court. This would relieve the High Courts of very heavy burden of tax cases.

## **X. RULES OF INTERPRETATION**

The Act should contain the rules for interpretation of the statutes. Much of tax litigation has arisen because of different rules of interpretation being applied by different authorities and by the same authorities at different times. The rules of interpretation of tax laws should be applied uniformly and decisively.

## **DRAFT INCOME TAX ACT, 2014**

### **CHAPTER I**

#### **PRELIMINARY**

##### Part 1 - Enactment

- (1) This Act may be called the Income Tax Act, 2014.
- (2) It extends to the whole of Pakistan.
- (3) Save as otherwise provided in this Act, it shall come into force on the 1st July 2014 or any later date notified by the Federal Government.
- (4) The Income Tax Ordinance, 2001 is hereby repealed.
- (5) If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by general or special order, do anything not inconsistent with such provisions which appear to be necessary or expedient for the purpose of removing the difficulty.
- (6) The Federal Government shall cause every Rule made and every notification or circular issued under the Act to be sent to the Parliament Secretariats within one month of its issue.
- (7) Where both Houses of Parliament agree in making any modification in the Rule, circular or notification or both the Houses agree that the Rule, circular or notification should not be made or issued, the Rule, circular or the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Rule, circular or notification.

- (8) No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceedings shall lie against the Government or any officer of the Government for anything done in good faith or intended to be done under this Act.

## **PART 2 - DEFINITIONS**

2. In this Act, unless the context otherwise requires-

(1) "agricultural income" means agricultural income as defined below:

(a) any rent or revenue derived from land which is situated in Pakistan and is used for agricultural purposes;

(b) any income derived from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

Provided that the building is on, or in the immediate vicinity of, the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

(2) "amalgamation", "company", "director", "dividend", "manager", "managing agent", "principal officer" and "public sector company" have the meanings respectively assigned to them in the Companies Ordinance, 1984;

(3) "assessee" means a person in whose name a proceeding under the Act has been initiated or is intended to be initiated;

(4) "Taxation Officer" means any authority who is vested with the relevant jurisdiction under the Act;

(5) "average income-tax rate" means the rate arrived at by dividing the amount of income-tax on Gross Annual Income as per the rates in the First Schedule by such Gross Annual Income;

(6) "Board" means the Federal Board of Revenue established under the Federal Board of Revenue Act, 2007 (Act No IV of 2007);

(7) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(8) "capital asset" means property of any kind except-

(a) stock-in-trade, consumable stores or raw materials held for the purposes of business or profession,

(b) movable property excluding jewellery held by an individual or a Hindu Undivided Family, and

(9) "charitable purpose" and "charity" shall have the meaning assigned to them in the Trust Act of 1882;

(10) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (XI of 1912), or under any other law for the time being in force in any Province for the registration of co-operative societies;

(11) "fair market value" of an asset means the price that the asset would fetch if sold in the open market on the relevant date;

(12) "firm", "partner" and "partnership" shall have the meanings respectively assigned to it in the Partnership Act, 1932 (IX of 1932);

(13) "income" includes any receipt in cash or in kind or by settlement through account, whether due or not, which is assessable under the Act and shall include

(a) gifts received,

(b) value of any assets received by way of inheritance or under will or on death of any person in any manner, which exceeds Rs one million, and

(c) goodwill;

(14) "legal representative" shall have the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure 1908 (V of 1908);

(15) "non-resident person" shall be one as defined in the Foreign Exchange Regulation Act of 1947 and as a person who is not a non-resident shall be treated as a resident person;

(16) "person" includes –

(a) an individual,

(b) a Hindu Undivided Family,

- (c) a company,
  - (d) a firm,
  - (e) an association of persons or a body of individuals, whether incorporated or not,
  - (f) a local authority,
  - (g) every artificial juridical person, not falling within any of the preceding sub-clauses, and
  - (h) federal government, provincial government or any person, body or institution, responsible for paying any sum under the Act;
- (17) "prescribed" means prescribed by the Board;
- (18) "profession" includes vocation;
- (19) "public servant" has the same meaning as given in section 21 of the Pakistan Penal Code (XLV of 1860);
- (20) "transfer" has the same meaning as given in the Transfer of Property Act, 1882 (IV of 1882) and shall include –
- (a) the transfer of a capital asset by a person to a firm or association of persons or body of individuals in which he is or becomes a partner or member, by way of capital contribution or otherwise and
  - (b) the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or association of persons or body of individuals;
- (21) "year", save as otherwise provided in any provision of this Act, means the financial year, and where a business or profession is newly set up, or a source of income newly comes into existence on a date within the said financial year, the year shall be the period beginning with that date and ending with the financial year or earlier.

### **PART 3 - ADMINISTRATION**

3. (1) The Federal Government shall constitute a Federal Board of Revenue consisting of a Chairman and Members required from time to time to implement this Act.
- (2) The Board shall exercise such powers and perform such duties as may be entrusted to the Board by or under any law subject to the control of the Federal Government.
- (3) All decisions of the Board shall have the consent of at least three Members of the Board (including the Chairman).
4. (1) The Board shall have the following classes of tax authorities under its control and management for the purposes of the Act:



- (a) Chief Commissioner Inland Revenue,
- (b) Commissioner of Inland Revenue,
- (c) Additional Commissioner Inland Revenue,
- (d) Deputy Commissioner Inland Revenue,
- (e) Assistant Commissioner Inland Revenue,
- (f) Taxation Officer,
- (g) Inspector.

(2) The Federal Government shall appoint as many of the Inland Revenue authorities mentioned in clause (1) as may be necessary for the purposes of the Act.

5. Subject to the rules and orders of the Federal Government regulating the conditions of service of persons in public services and posts, the Board itself or by authorising the Chief Commissioner in this behalf, may appoint such executive or ministerial staff as may be necessary to assist the Inland Revenue authorities in the execution of their functions.

6. The Board may issue orders, instructions and directions, without interfering with the judicial discretion of an appellate authority, to any tax authority for the following purposes and all such orders, instructions and directions shall be binding on all such authorities –

(1) Relaxation of any provision contained in Chapters 4 and 6 of the Act in respect of any class of incomes or class of cases, which, in the opinion of the Board, is necessary in the public interest;

(2) Admission of an application or claim for any exemption, deduction, refund or any other relief under the Act after expiry of the specified period to avoid genuine hardship in any case; and

(3) Proper administration of the Act including the regulation and control of the procedure for implementing the provisions of Chapters 5, 7, 8 and 9.

7. (1) The Board shall assign jurisdiction to the inland revenue authorities, and may also authorise other authorities to assign such jurisdiction to such other authorities as it may deem proper, to exercise all or any of the powers and to perform all or any of the functions under the Act, control and manage the authorities and the staff,.

(2) Any case or any proceeding under any provision of the Act in respect of a case shall be transferred from one Officer to another as prescribed by the Board provided that, where, it is sought to be transferred not at the option of the assessee, the assessee shall be given a reasonable opportunity of being heard in the matter and the reasons for doing so shall be recorded by the authority transferring the case.

8. Whenever in respect of any proceeding under the Act an authority ceases to exercise jurisdiction and is succeeded by another who has the jurisdiction, the authority so succeeding

may continue the proceeding from the stage at which the proceeding was left by the predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof is reopened or that before any order is passed against him, he is reheard.

#### **PART 4 - GENERAL**

9. Every person in respect of whom proceeding under any provision of the Act has been initiated or who is required to have a National Tax Number (NTN) under any notification issued by the Board in this behalf, and who has not been allotted such a number shall, within one month of the initiation of the proceeding or issue of the notification, as the case may be, apply in the prescribed manner to the Taxation Officer for the allotment of the number.

10. Every person, who has been allotted a National Tax Number shall –

(1) quote such number in all his returns to, or correspondence with any inland revenue authority;

(2) quote such number in all challans for the payment of any sum due under this Act; and

(3) quote such number in all documents pertaining to such transactions as may be prescribed by the Board.

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11. Every person shall intimate to the Taxation Officer any change in his address or in the name or nature of his business or any changes in the constitution, succession or dissolution of a firm or a company.

12. A notice or requisition under this Act may be served on a person as provided under the Code of Civil Procedure, 1908 (V of 1908) by an Inland Revenue authority for –

(1) enforcing attendance;

(2) examination on oath;

(3) producing books of accounts or any other document; and

(4) issuing commissions.

13. Where a notice or requisition under section 12 has been issued to a person, the powers available to a court as provided in Chapter VI of the Code of Criminal Procedure shall be available to the inland revenue authority to compel appearance.

14. Any assessee who is required to appear before any inland revenue authority under any proceeding under the Act except under section 12 may appear through an authorised representative as prescribed by the Board.

## **CHAPTER 2**

### **CHARGE OF INCOME TAX**

#### **Part 1 - General Rate of Income tax**

15. Save as otherwise provided in any other provision of the Act, income tax in respect of the Net Annual Income of every person shall be charged at the rate prescribed in the First Schedule of the Act.

16. Income tax in respect of the Net Annual Income of a firm, or an association of persons, or a body of individuals, whether incorporated or not, where the individual shares of the partners or the members, as the case may be, in the whole or any part of income, are indeterminate or unknown, shall be charged at the rate of 30 percent of the Net Annual Income.

17. Where the person is in receipt of any income on which no income tax is payable as mentioned in Part 3 or any income on which special rates of income tax as mentioned in Part 4 of this Chapter are applicable, income tax to be charged shall be computed at average income tax rate on the Net Annual Income.

18. Income tax in respect of income from long-term sources as provided in Part 6 of Chapter 3 of the Act should be charged in the following manner:

(1) Number of years for which the asset was held or the source of income was in existence, assuming part of a year as one year, shall first be determined.

(2) Income from the long-term source as assessed shall be divided by such number of years.

(3) Income tax to be charged shall be the sum of income tax calculated on the amount arrived at in clause (2) at the rates prescribed in the First Schedule multiplied by the number of years arrived at in clause (1) in respect of each of such long-term sources.

19. Where any relief of tax is granted or avoidance of double taxation is provided for under Part 5, the provisions of this Act shall apply to the extent they are beneficial to the assessee.

#### **PART 2 - PERSONS WHOSE INCOME IS EXEMPTED FROM INCOME TAX**

20. Income of a company wholly owned by the Federal Government shall be exempted from income tax.

21. Income of an authority, institution or body created under an Act of the Parliament shall be exempted from income tax if so provided under that Act.

22. Income of an institution, association or body existing solely for one or more of the following

purposes and not for purposes of profit and created or recognised as such by the Federal Government shall be exempted from income tax:

- (1) scientific research,
- (2) education,
- (3) medical service,
- (4) collection and distribution of news,
- (5) promotion of sports,
- (6) promotion and regulation of a legal business or profession,
- (7) development of village industries,
- (8) administration of any public, charitable or religious trust or institution,
- (9) national relief,
- (10) promotion of Pakistani culture and arts,
- (11) promotion of co-operative institutions, and
- (12) economic development of backward communities of Pakistan.

23. Income or voluntary contributions received or due to be received by any trust, institution or body registered under any Act of the Federal or a Province and existing solely for charitable purposes and not for purposes of any profit shall be exempted from income tax subject to the following conditions –

- (1) at least 80 percent of such receipts during the year shall be spent for the charitable purposes during that year,
- (2) money remaining in balance may be deposited in an account notified by the Federal Government,
- (3) no benefit accrues directly or indirectly to the author of the trust or to the founder of the institution or to any of the trustees or managers or to any person who has contributed ten thousand rupees or more or to any of the relatives of such persons, and
- (4) at least 20 percent of the voting power in the management or administration of the trust or body shall vest in the nominees of the Federal Government.

24. Income of a political party recognised by the Election Commission of Pakistan shall be exempted from income tax subject to the following conditions –

- (1) the party maintains proper books of accounts as prescribed;
- (2) it keeps a record of names and addresses of the persons giving contribution; and
- (3) the accounts are audited by a Chartered Accountant.

### **PART 3 - INCOME ON WHICH NO INCOME TAX IS PAYABLE**

25. Income tax shall not be payable on any income falling within any of the following clauses:

- (1) agricultural income;
- (2) dividend;
- (3) any sum received by an individual as a member of a Hindu Undivided Family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family;
- (4) share, compensation, salary, bonus, commission or remuneration by whatever name called, due to, or received by partner of a firm from such firm, or a member of an association of persons from such an association;
- (5) any income by way of salary payable by the Government of Pakistan in Pakistan or abroad; and
- (6) any income exempted by an Act of Parliament.

### **PART 4 - SPECIAL RATES OF INCOME TAX**

26. Income tax in respect of income from profits and gains of any manufacturing concern, may, at the option of the assessee, be calculated at the rate of 5 percent of total sales turnover or gross receipts as the case may be.

27. Income tax shall be charged in the case of non-residents at the rate of 10 percent of gross receipts, in respect of income from –

- (1) dividends;
- (2) compensation;
- (3) units, securities, bonds etc;
- (4) royalty or fees for any technical or professional services;

(5) long-term sources; and

(6) ship carrying passengers, livestock, mail or goods shipped at a port in Pakistan, whether the amount is paid or payable in or out of Pakistan.

28. Income tax on income from undisclosed sources shall be charged at the rate of 30% of such income.

29. Income tax in respect of any benefit, perquisite or allowance given in any manner but not in cash, in respect of employment, to the employee or to an associate of the employee or to a third party at the request of the employee or his associate shall be charged, in the case of the employer, at the rate of 20% of the value of such benefit, perquisite or allowance to be computed in the prescribed manner and no tax in this respect shall be payable by the employee.

#### **PART 5 - DOUBLE TAXATION RELIEF**

30. The Federal Government may enter into an agreement with the Government of any foreign country –

(1) for the granting of relief in respect of income on which have been paid both income tax under this Act and income tax under that country, or

(2) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, or

(3) for exchange of information for the prevention of evasion or avoidance of income tax chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or

(4) for recovery of income tax under this Act and under the corresponding law in force in that country, and, may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

### CHAPTER 3

#### ASSESSMENT OF INCOME

##### **Part 1 - Scope of Assessment of Income**

31. The income of any year shall include -

(1) in the case of a resident person, all income received or due to be received from all sources in Pakistan and outside by or on behalf of such person;

(2) in the case of a non-resident person all income received or due to be received from a source in

Pakistan; and

(3) from a source outside Pakistan to the extent it is derived from a business controlled in or a profession set up in Pakistan by or on behalf of such person.

32. The following incomes shall be deemed to be received or due to be received in Pakistan:

(1) all income received or due to be received, directly or indirectly, through or from any business connection in Pakistan, or through or from any property in Pakistan, or through or from any asset or source of income in Pakistan, or through the transfer of a capital asset situated in Pakistan; and

(2) any salary for service rendered in Pakistan.

33. All incomes for the purposes of assessment shall be classified under the following heads of income -

(1) Income from salary,

(2) Income from house property,

(3) Income from business or profession,

(4) Income from other sources, [www.imranghazi.com/mtba](http://www.imranghazi.com/mtba)

(5) Income from long-term sources,

(6) Income from undisclosed sources.

34. (1) The total annual income shall be the sum of incomes from all heads mentioned in section 33 excluding income from long-term sources under section 27(6), income from undisclosed sources under section 28, income on which no income tax is payable under Part 3 and income in respect of which special rates of income tax are applicable under Part 4 of Chapter 2 and after following set off of losses provided for under Part 8 of this Chapter.

(2) The Net Annual Income shall be the total annual income as reduced by deductions under Part 9 of this Chapter.

(3) The gross annual income shall be the net annual income as increased by the income from undisclosed sources under section 28, income on which no income tax is payable under Part 3 and income in respect of which special rates of income tax are applicable under Part 4 of Chapter 2 of the Act.

(4) The gross total income shall be the gross annual income as increased by the income from long-term

sources under section 27(5) of the Act.

## **Part 2 - Income from Salary**

35. Salary means any payment, whether due or not, in respect of an employment, given in cash to the employee or to an associate of the employee or to a third party at the request of the employee or his associate and shall include, except to the extent prescribed by the Federal Government-

(1) Any wages annuity or pension, gratuity, fees, perquisites or allowances, profit in lieu of or in addition to salary or wages, advance of salary, payment received in respect of any period of leave not availed of, or annual accretion to a fund recognised by the Commissioner of Provident Fund which is contributed by the employer;

(2) any assets, goods or services provided at less than the fair market value to the extent of the difference; and

(3) any salary or arrears of salary, paid, allowed or due from any employer in the year and from any other employer in any other year provided it has not already been assessed to tax.

36. The following deductions shall be allowed before determining the income from salary -

(1) a sum of Rs. 80,000 as reduced by any income assessable under the Act for each of the spouse and the first two children who are dependent on the employee,

(2) any leave travel concession or assistance received or due to be received as prescribed by the Federal Government,

(3) any allowance received or expenditure incurred or due to be incurred by the employee in respect of residential accommodation occupied by him as prescribed by the Federal Government; and

(4) any allowance to meet expenses wholly, necessarily and exclusively incurred in the performance of duty as prescribed by the Federal Government.

## **Part 3 - Income from House Property**

37. The annual value of any property consisting of any buildings or lands appurtenant thereto of which the assessee is owner, excluding such portions as may be being used for any business or professional purposes, shall be assessed as income from house property.

38. The annual value as referred to in section 37 shall be the sum for which the said property may reasonably be expected to be let from year to year or the rent received or receivable during the year, whichever is more.



39. The following deductions shall be allowed before arriving at the income from house property -

- (1) the taxes in respect of the property paid during the year;
- (2) a sum equal to twenty percent of the annual value;
- (3) compensation calculated at the rate of 12% of expenditure incurred for acquiring the property; and
- (4) where the property was vacant during a part of the year, that part of the annual value which is proportionate to the period of vacancy, provided that this allowance shall be given in respect of one such property only.

#### **Part 4 - Income from Business or Profession**

40. The following income shall be assessed as income from business or profession-

- (1) the profits and gains, arising directly or indirectly, received or receivable by any person, relating to any business or profession which was carried on by the assessee at any time during the year,
- (2) the value of any benefit of perquisite, whether convertible into money or not, arising directly or indirectly, from the business or profession;
- (3) any share, salary, compensation, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm or a member of an association of persons, from the partnership of such a firm or the membership of such an association, as the case may be; and
- (4) any debt, allowed as bad or doubtful under clause (3) of section 42, to the extent it is actually recovered during the year.

41. In respect of any capital expenditure including goodwill, to the extent it is wholly and exclusively necessary for carrying on the business or profession during the year, the fair market value of the asset represented by such expenditure or the actual expenditure incurred by the assessee during the year or previous to it if not claimed earlier, whichever is less, shall be debited to a Capital Reserve Account and shall be further dealt with as below:-

- (1) any sum, at the option of the assessee provided it does not exceed the debit balance at any point of time, may be credited to the Capital Reserve Account and debited to the profit and loss account;
- (2) the fair market value or the actual value received or receivable, whichever is more, on transfer of any asset represented by such expenditure including goodwill, shall be credited to the profit and loss account on the date of such transfer.

42. Revenue expenditure shall be dealt with as below:

(1) in respect of rent, rates, taxes, repairs and insurance for premises, machinery, plant, or furniture and wholly and exclusively for the purposes of business or profession during the year, the actual payment made during the year shall only be allowed;

(2) any expenditure on scientific research related to the business shall be allowed to the extent it is actually incurred during the year,

(3) any bad or doubtful debt shall be allowed to the extent it is bad or doubtful in the opinion of the Taxation Officer or as prescribed by the Board and has actually been written off in the books of accounts of the assessee;

(4) no personal expenditure in respect of any person, whether connected with the business or profession or not, shall be allowed;

(5) no expenditure to the extent, in the opinion, of the Taxation Officer or as prescribed by the Board, it is excessive or unreasonable, having regard to the fair market value of the goods, services or facilities for which the payment is made and to the legitimate needs of the business or profession of the assessee, shall be allowed.

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43. It shall be compulsory for every person having income from profits and gains of business or profession to maintain books of account, if the gross receipts or sales exceed the sum prescribed by the Board.

44. Notwithstanding any provisions of this Part, the Board may prescribe any method for computing the income from profits and gains of business or profession in any case or class of cases.

#### **Part 5 - Income from Other Sources**

45. The following incomes shall be assessed as income from other sources -

(1) income on which no income tax is payable as per clauses (1), (2), (3) and (6) of section 25;

(2) family pension;

(3) income from transfer of capital assets not assessable under section 47(1) and computed in accordance with the provisions of section 48; and

(4) any other income which is not included in any other sections of the Act.

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46. Actual expenditure incurred wholly and exclusively for earning any income from other sources shall be allowed to be deducted if it has not been claimed as deduction under any other provision of the Act.

#### **Part 6 - Income from Long-term Sources**

47. The following incomes shall be assessed as income from long-term sources -

(1) income from transfer of capital assets whether the capital asset has been held by the assessee for more than 12 months in the year in which it has been transferred; and

(2) any gratuities, payment in communication of pension, cash equivalent of the leave salary, compensations under any statute or schemes approved by federal or provincial governments or any payment at the time of voluntary retirement, received or due to be received by the employee, by virtue of his employment for more than 12 months.

48. The income from capital gains assessable under section 45(3) or 47(1) and income from long-term sources shall be computed, by deducting from the full value of the consideration received or due to be received, the following amounts, as may be applicable -

(1) indexed cost of acquisition of the asset;

(2) indexed cost of any improvement thereto;

(3) expenditure incurred wholly and exclusively in connection with the transfer;

(4) amount deposited in an annuity scheme for a minimum period of 10 years as notified by the Federal Government; and

(5) amount spent for buying a residential house provided the assessee does not own another residential house.

#### **Part 7 - Income from undisclosed sources**

49. The following receipts, credits, expenditures or investments shall be assessed as income from undisclosed sources in the year in which any such sum is received or credited or the expenditure is incurred or the investment is made and about which the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Taxation Officer, satisfactory:

(1) credits in the books of accounts;

(2) investments which are not recorded in the books of account;

(3) any stock, money, bullion, jewellery or other valuable article or thing found in the possession of the assessee;

(4) any amount by which the amount expended, or where it is less than the fair market value, the fair market value of any investment or any stock, bullion, jewellery or other valuable article or thing found in the possession of the assessee exceeds the amount recorded in this behalf in the books of account;

(5) the amount covered by any expenditure or part thereof; and

(6) any amount which is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank.

50. Where the transactions in respect of any investment, stock, money, bullion, jewellery or other valuable article or thing found in the possession or under the control of a person is not recorded in the books of accounts regularly maintained by him and,

(1) the person fails to make a statement on oath that such income has been received by him from a particular source during a year for which the due date for filing the return of income is not over, or

(2) having made such a statement withdraws it or does not disclose it in the relevant return of income or does not file such a return, the amount representing such transactions shall be assessed as income from undisclosed sources.

51. Where the assessee has concealed or furnished inaccurate particulars of any income, such income as is covered by such particulars shall be assessed as income from undisclosed sources.

52. If in respect of any fact or material related to the computation of the total income of any person -

(1) such person fails to offer an explanation or offers an explanation which is found by the Taxation Officer to be false, or

(2) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of total income have been disclosed by him, then, the amount added or disallowed in computing the income shall be assessed as income from undisclosed sources.

53. No money deposited in the National Deposit Account as notified by the Federal Government shall be assessable under this Chapter and no explanation as regards the source of such money shall be required to be given provided that -

(1) no amount shall be allowed to be withdrawn for a minimum period of 3 years from the date of

deposit; and

(2) no compensation shall be payable on such deposit.

### **Part 8 - Set-off of losses**

54. Where the net result of computation in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set-off against his income from any other source under the same head.

55. Where the net result of computation under any of the heads of income from or house property or business or profession or other sources is a loss, the assessee shall be entitled to have the amount of such loss set-off against any other of these heads of income.

56. Notwithstanding any provision of this Part, no income on which income tax is not payable under Part 3 or in respect of which special rate of tax is applicable under Part 4 of Chapter 2 of the Act, shall be allowed to be set-off against any loss.

57. No loss under any head of income, which could not be set-off under the provisions of this part of the Act, shall be allowed to be carried forward to next year.

### **Part 9 - Deductions to be made in computing net annual income**

58. Any deposit in the name of the individual under any scheme notified by Federal Government, such that no amount including the compensation could be withdrawn for a minimum period of three years, provided the deposit does not exceed 20 percent of the total annual income and is made out of it, shall be deducted from the total annual income.

59. Any investments mentioned in section 58, not exceeding 20 percent of total annual income and made out of it in the name of any member of the family in the case of an individual or any member in the case of a Hindu Undivided Family, shall be deducted from total annual income.

60. Any payments out of the total annual income not exceeding 20 percent of it, to a person whose income is exempted from income tax under Part 2 of Chapter 2 of the Act subject to any conditions, general or specific, that the Federal Government may like to impose on the control and management of that person and notify, shall be allowed to be deducted from total annual income.

61. Any sum as notified by the Federal Government in the case of a person or a class of persons affected by flood, typhoon, hurricane, cyclone, earthquake or other convulsions of nature, or riot or civil disturbance, or, accidental fire or explosion or action taken by an enemy or action taken in combating an enemy (whether with or without a declaration of war) shall be allowed to be deducted from the total annual income of the assessee before giving any deduction under sections 58, 59 and 60 and the limit of

20% shall be applicable on the total annual income as reduced by any deduction under this section.

## **CHAPTER 4**

### **PROCEDURE FOR ASSESSMENT**

#### **Part 1 - Procedure**

62. The following persons shall file a return of income for every year in the prescribed form;

(1) All persons whose net annual income exceeds Rs. 400,000;

(2) All persons whose incomes are exempted under Part 2 of Chapter 2 of the Act, unless exempted by the Board;

(3) Every person to whom a notice is issued by the Taxation officer in the prescribed form requiring him to file the Return of Income within one month of receiving the notice or, with the permission of the Additional/Deputy Commissioner, earlier.

(4) In all other cases, as the Board may prescribe.

63. Where a return is filed by a person under section 62 and he discovers an omission or a wrong statement therein, he may file a revised return before any order or any notice is issued to him under any clause of section 65.

64. The return shall be filed under section 62 before the following dates in the financial year following the year:

(1) where the net annual income is less than Rs. 500,000 or where it is filed under Section 62(2), by the end of September;

(2) where the net annual income is less than Rs. one million, by the end of October;

(3) where the net annual income is Rs. one million or more, by the end of December.

65. (1) If the Taxation Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence, that a return filed under section 62 is correct and complete, or that it requires rectification of any mistake apparent from record, he shall, within one year from the end of the financial year in which the return is filed, assess the income of the assessee on the basis of such return or such rectification, as the case may be, and determine the sum payable by the assessee or refundable to the assessee.

(2) An assessee may object to the order made under clause (1), by making an application to the Taxation Officer within one month in which the order is served on him and the Taxation Officer after considering such objections shall assess the income of the assessee and the tax payable by him or refundable to him, within one year from the end of the financial year in which such objections are received.

(3) Where in the opinion of the Taxation Officer -

(a) the return filed under section 64 is required to be examined; or

(b) particulars of any income are required to be investigated; or

(c) particulars of any income have not been furnished or have been wrongly furnished, he may serve on the assessee a notice requiring him to produce or cause to be produced such accounts, documents, statements or information as the Taxation Officer may require, after recording the reasons for issuing the notice in writing.

(4) The notice under sub-clause (a) of clause (3) shall be issued before the expiry of two years from the end of the financial year in which the due date as mentioned in section 64 falls.

(5) The notice under sub-clause (b) or (c) of the clause (3) shall be issued before the expiry of four years with the approval of the Additional/Deputy Commissioner and eight years with the approval of the Commissioner, from the end of the year to which the particulars of the said income, in the opinion of the Taxation Officer, relate.

(6) Where a notice under clause (3) has been served on the assessee, the Taxation officer shall, after hearing such evidence as the assessee may produce or the Taxation Officer may require to be produced and after taking into account all relevant materials which he has gathered, make an assessment or revise the assessment of the income of the assessee and determine the sum payable by him or refundable to him within one year from the end of the financial year in which the notice is served.

(7) Where the assessee fails to respond to the notice under clause (3) or to comply with all the terms of the notice, the Taxation Officer after taking into account all the relevant materials he has gathered, shall assess the income to the best of his judgement and determine the sum payable by the assessee.

(8) Where as a result of -

(a) any mistake apparent from record; or

(b) any order passed under any provision of the Act including Chapter 9, any order passed under the Act is required to be rectified, the Taxation Officer shall pass such an order of rectification within one year from the end of the financial year in which such mistake or order is intimated to the assessee;

Provided that where such an order affects the assessee in any adverse manner, he shall be given a reasonable opportunity of being heard.

(9) If the Commissioner, either of his own motion or on an application made by the assessee, considers that any order passed by the Taxation Officer is erroneous or prejudicial to the compensations of revenue or of the assessee, he may, after giving the opportunity of being heard to the assessee, call for and examine the record of any such proceedings and make or cause to be made such enquiry as he deems necessary, and, pass such order as is justified including an order enhancing, reducing, modifying or cancelling the assessment or directing a fresh assessment:

Provided that no such order, either by the Commissioner himself or through the Taxation Officer, shall be passed after the expiry of two years from the end of the financial year in which the order being revised by the Commissioner was passed.

## **Part 2 - Special Cases**

66. (1) Where a person dies, his legal representative or the executor shall be liable to pay any sum, which the deceased would have been liable to pay under the Act if he had not died.

(2) Any proceeding taken or which could have been taken against the deceased before his death shall be continued or initiated, as the case may be, against the legal representative or the executor, and all the provisions of the Act shall apply to him accordingly.

(3) The liability of a legal representative or the executor shall be limited to the value of the estate of the deceased:

Provided that, if he creates a charge on or disposes of or parts with any part of such estate, he shall also be personally liable to that extent.

67. (1) Every representative assessee shall be deemed to be an assessee for the purposes of the Act.

(2) Assessment shall be made in the name of the representative assessee in respect of the income for which he is the representative assessee.

(3) The representative assessee shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and any sum payable under the Act in respect of such income shall be recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(4) Every representative assessee who, as such, is liable to pay any sum under the Act as estimated by him or intimated to him by the Taxation Officer, shall be entitled to recover the sum so payable from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may



come to him in his representative capacity, an amount equal to the sum so payable.

### **Part 3 - Settlement of Cases**

68. There shall be a settlement committee consisting of one Chief Commissioner and two Commissioners of Inland Revenue as prescribed by the Board for the settlement of the cases in accordance with the provisions of this Chapter.

69. An assessee who is aggrieved against the assessment of any part of his income or any liability under any provisions of the Act, may, within one month of receiving such order, make an application in such form and in such manner as may be prescribed, to the settlement committee to have the case settled in accordance with the provisions of this Chapter.

70. After examination of the records and the report of the Taxation Officer and after giving a reasonable opportunity of being heard to both the assessee and the officer either in person or through the authorised representative, the committee shall pass such order, as it thinks fit.

71. Every order passed under section 70 shall provide for the terms of settlement including any demand for tax, compensation or penalty or whether prosecution proceedings are required to be initiated or not and any other matter to make the settlement effective.

72. The settlement shall be void if the committee subsequently finds that it has been obtained by fraud or misrepresentation of the facts and in that event all the provisions of the Act shall apply as if no such application was ever filed.

73. Any sum due under the provisions of this Chapter shall be recovered under the provisions of Part 6 of Chapter 6 likely any other dues under other provisions of the Act.

74. Where there is a mistake apparent from record, the settlement committee may rectify the order under section 70, as it thinks fit but not after one year of passing such order.

75. Every order of settlement passed under section 70 shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided under this Chapter, be reopened in any proceedings under the Act or under any other law for the time being in force.

76. Any proceedings under this Chapter before the settlement committee shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Pakistan Penal Code (XLV of 1860).

## CHAPTER 5

### ENFORCEMENT

77. Where the Commissioner, in consequence of information in his possession, has reason to believe that -

(1) any person has failed to comply with any requirements of a notice under section 12 of the Act; or

(2) any person is not likely to comply with any requirements of a notice under section 12 of the Act; or

(3) any person is in possession of money, valuables or asset which he has not disclosed or in respect of which he is not likely to have any satisfactory explanation, then, he may authorise any inland revenue authority to

(a) enter and search any building, place, vessel, vehicle or aircraft where such books of accounts or documents or such money, valuables or asset or such person whose personal attendance is required are likely to be available;

(b) break open the lock of any door, box, locker, safe, almirah, or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or documents or money, valuables or assets;

(d) seize any such books of account or documents, or money, valuables or assets;

(e) place marks of identification on any books of accounts or documents or make or cause to be made extracts or copies therefrom; and

(f) make a note or an inventory of books of account or documents, or of money, valuables or assets found therein.

78. The authorised officer may requisition the services of any police officer or of any officer of the Federal Government, or of both, to assist him for the purposes of section 77 and it shall be the duty of every such officer to comply with the requisition.

79. The authorised officer may serve an order on the owner or the person who is in immediate possession or control of such books of accounts, documents, money, valuables or assets that he shall

not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this section.

80. The authorised officer shall have all the powers provided under section 12 for making such investigation as may be required and any statement made by any person during such investigation may be used in evidence in any proceeding under the Act.

81. Where any books of accounts, documents, money, valuables or any assets are found in the possession or control of any person, it shall be deemed to be true and belonging to that person or owned by that person unless the explanations offered by him are satisfactory in the opinion of the authorised officer.

82. Where on the basis of books of accounts, documents, money, valuables, assets or any other evidence found during the search or thereafter, the authorised officer is of the opinion that any income was required to be disclosed under the provisions of the Act but was not disclosed or where it was not required to be disclosed because the due date for filing the return of income was not over, it was not entered in the books of accounts regularly being maintained by the assessee, he shall pass an order Taxation such income as income from undisclosed sources for that year in which the search action was taken and determine the liability in respect of such income payable by the assessee within one year of taking such action.

83. The authorised officer shall apply the money, valuables or assets seized under section 77 or restrained under section 79 towards liability determined under section 82 or any other liability under any other provisions of the Act in the manner prescribed by the Board and release the balance to the person from whose custody it was seized alongwith the books of accounts or documents, if in his opinion these are not required or any other proceeding under the Act.

84. The person, from whose custody any books of accounts or documents are seized under section 77 or restrained under section 82, may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

85. The Additional/Deputy Commissioner shall exercise the following powers to collect information for the determination of income or any liability under the provisions of the Act in the case of the assessee or of any other case or in general-

(1) Where any books of accounts or documents, which are in his opinion relevant for any proceeding under the Act, have been taken into custody by an officer or an authority under any law for the time being in force, he may requisition such books of accounts or documents and require such officer or authority to deliver such books of accounts or documents to an inland revenue authority as authorised by him;

(2) he may require any person to furnish information regarding names and addresses of any other person or persons available with him or details of any transactions entered into by him or details of any books of accounts, documents, valuables or assets belonging to him or belonging to others but in his custody or in his knowledge;

(3) he may authorise any authority to enter any place at which a business or profession is carried on during the hours at which such place is open for the conduct of business or profession -

(a) to inspect such books of accounts or documents as may be available;

(b) to verify or check the cash, stock or other valuable article or thing found therein; and

(c) to collect such information as may be relevant to or useful for any proceeding under the Act.

## **CHAPTER 6**

### **COLLECTION AND RECOVERY**

#### **Part 1 – General**

86. Income tax on the income of the year shall be liable to be paid by 30th September of that year either by deduction or collection at source or payment in advance by the assessee according to the provisions of the Act.

87. Where any tax remains due to be paid or is required to be paid under any provision of the Act, it shall be payable by the assessee direct.

88. Payment of income tax by any mode shall not prejudice the assessment of any income under any provisions of the Act.

89. Where any tax, compensation, penalty, fine or any other sum is payable under any provisions of the Act, the Taxation officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

90. The amount specified in the notice of demand under section 88 shall be paid within one month of the service of the notice or from the date of first appellate order, where an appeal is filed, as the case may be, at the place and to the person mentioned in the notice unless this period is reduced with the previous approval of the Additional/Deputy Commissioner of Inland revenue.

91. Where the assessee has failed to pay within the specified time any sum which is payable under any provisions of the Act, he shall be liable to pay compensation mentioned in section 88 at the rate of one percent of such sum for every month or part of a month of default to be compounded at the end of every financial year.

92. Where in consequence of any order passed under the Act, a refund becomes due to the assessee, it shall first be adjusted against any dues for any year under provisions of the Act outstanding against the assessee and the balance, if any, shall be refunded to him forthwith.

93. Where the refund due under section 92 is granted to the assessee after one month of the order referred to therein, he shall be entitled to compensation at the rate of one percent of such refund for every month or part of a month from the date of the order compounded at the end of every financial year.

94. Where the order giving rise to calculation of compensation under section 91 or 93 is revised under the Act, the compensation shall also be revised accordingly.

## **PART 2 - DEDUCTION OF TAX AT SOURCE**

95. (1) Tax shall be deducted at the average rate on the salary assessable under Part 2 of Chapter 3 at the end of every month during which it is paid.

(2) An employee may submit in duplicate a declaration of his Net Annual Income of the year and of tax payments in the prescribed form and verified in the prescribed manner to the person responsible for deducting tax at source under clause (1) before the end of the year.

(3) The person responsible for deducting tax at source under clause (1) may increase or decrease the amount of any instalment to adjust any excess or deficiency of deduction earlier or to make it in accordance with the declaration under clause (2).

(4) Where, according to the assessee, there is no need to change the income or the other details declared in clause (2), the declaration filed thereunder shall be regarded as the return of income for the purposes of Chapter 4.

(5) One copy of the declaration filed under clause (2) shall be sent to the Taxation Officer along with the annual return prescribed to be filed by the person responsible for deducting tax under clause (1)

96. Tax shall be deducted at source at the rate of 10 percent of the gross receipts from the following payments –

(1) compensation;

(2) winnings from lottery, crosswords or Enami (Prize) Schemes;

(3) any commission or brokerage;

(4) payments to non-resident sportsmen or sports association;

(5) payments out of investments made under section 58 and 59;

(6) commission, remuneration or prize (by whatever name called) on stocking, distributing, purchasing or selling of lottery tickets;

(7) rent under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(8) fees for professional or technical services;

(9) any payment assessable as income from long-term sources.

97. Tax shall be deducted at the rate of one percent on any sum paid for carrying out any work which shall include –

(1) supply of labour;

(2) advertising;

(3) broadcasting or telecasting including production of programs for such broadcasting or telecasting;

(4) carriage of goods and passengers by any mode of transport other than railways;

(5) catering.

98. Notwithstanding anything contained in any provisions of this Chapter, where any sum chargeable under the provisions of the Act is payable to a non-resident, tax shall be deducted at the rate of 20 percent of the sum payable. [www.imranghazi.com/mtba](http://www.imranghazi.com/mtba)

99. (1) No person shall make deduction of tax from any sums payable to the Government or to a person whose income is exempted from income tax under Part 2 of Chapter 2.

(2) No deduction of tax shall be made in the case of any person, who is resident in Pakistan, if such person furnishes to the person responsible for deducting tax at source, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner saying that no tax shall remain due to be payable by him by the end of the year in which tax is deductible at source.

(3) The person responsible for deducting tax at source shall send the first copy of the declaration referred to in clause (2) to the Taxation Officer within three months of its receipt.

(4) Where the person responsible for paying any such sum chargeable under this Act to a non-resident, or the non-resident himself, considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Taxation Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.

100. The person responsible for deducting tax at source shall be the payer of such sum on which tax is required to be deducted at source under the provisions of this Chapter unless specifically prescribed by the Board but shall not include an individual or a Hindu Undivided Family.

101. Tax shall be deducted at source at the time of payment of the sum in cash or by issue of a cheque or draft or by any other mode or at the time of credit of such sum to the account of the payee or to any account, whether called "suspense account" or by any other name, whichever is earlier.

### **PART 3 - COLLECTION AT SOURCE**

102. Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or any other mode, whichever is earlier, collect from the buyer of the following goods, a sum equal to ten percent of such amount as income tax:

(1) Alcoholic liquor for human consumption allowed to non-Muslims under the law of the land,

(2) Timber; and

(3) Any other forest produce.

103. All provisions of the Act relating to deduction of tax at source shall be accordingly applicable to collection of tax at source under section 102.

### **PART 4 - ADVANCE PAYMENT OF TAX**

104. Income tax under the provisions of the Act in respect of the income of the year as reduced by the tax deducted at source shall be payable by the assessee in three equal instalments by the end of September, December and March respectively.

105. If according to the estimate made by the Taxation Officer on the basis of information available with him, he is of the opinion that the assessee has not paid any instalment as prescribed in section 104 or the amount of any instalment paid by the assessee is less than the amount estimated by the Taxation Officer, he can serve a notice on the assessee to pay the requisite amount according to his estimate.

106. If the assessee does not agree with the estimate of the Taxation Officer, he shall submit in writing the reasons thereof and pay the amount of instalment according to his own estimate before the date of payment under section 105 expires.

### **PART 5 - RECOVERY**

107. Where the assessee has gone in appeal as provided under the Act, the sum payable relating to the amount in dispute shall become recoverable within one month of the disposal of the appeal and not before.

108. On an application being made by the assessee before the expiry of due date of making any payment under the Act, the Taxation Officer with the approval of the Additional/Deputy Commissioner of Inland Revenue, may extend the time for payment or allow payment by instalments or both, subject to such conditions as he may think fit to impose in the circumstances of the case or as the Board may

prescribe.

109. The Taxation Officer may serve a notice on any person, from whom any money is due or with whom any money or other asset of the assessee is available in any manner and in any capacity, to pay out of such money or other asset the sum payable under any provisions of the Act by the assessee and all provisions of the Act relating to recovery of such sum from such person shall be applicable.

110. Where the sum or other asset as referred to in section 109 is jointly held with the assessee, the shares of the joint holders shall be presumed, until the contrary is proved, to be equal.

111. Every person to whom a notice is issued under section 109 shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company, insurer or the like, it shall not be necessary for any pass book, deposit receipt, policy or any such document to be produced before the payment is made, notwithstanding any rule, practice or requirement to the contrary.

112. Any claim respecting any money or other asset in relation to which a notice under section 109 is issued arising after the date of the notice shall be void as against any demand contained in the notice.

113. The Taxation Officer may, on his own motion or on an application being made by such person on whom a notice under section 109 is served, amend or revoke the notice or extend the time for making the payment after giving reasonable opportunity of being heard to such person.

114. The Taxation Officer may apply to the Court in whose custody, there is money belonging to the assessee for payment to him of the amount due from the assessee.

115. The Taxation Officer, with the prior approval of the Commissioner of Inland Revenue, may proceed to recover any amount due from the assessee by one or more of the modes mentioned below in the manner as prescribed by the Federal Government:

- (1) attachment and sale of the assessee's movable property;
- (2) attachment and sale of the assessee's immovable property;
- (3) appointing a receiver for the management of the assessee's movable and immovable property;
- (4) arrest of the assessee and his detention in prison.

## **CHAPTER**

**7**

## **PENALTY**

116. Where the Taxation Officer is satisfied that the assessee has failed to perform any duty or comply with any requirements demanded without any reasonable cause under any provision of the Act or notice issued under the Act, he may order that such person shall pay by way of penalty a sum which shall be:



- (1) Rs Two hundred for every day of default under sections 9, 11 and 64(1);
- (2) Rs One hundred for every day of default under sections 64(2) and 65(3);
- (3) Rs One hundred for default under section 10;
- (4) Rs One thousand for every day of default under section 64(3);
- (5) Rs One thousand in the cases of defaults under sections 10, 12 and 85;
- (6) Rs Ten thousand in case of fraud or misrepresentation referred to in section 72;
- (7) Up to one hundred percent of the value of asset in respect of which an order under section 79 has been passed in case of default under that section; and
- (8) Up to Rs 10,000 in cases of defaults under clauses (2) or (3) of section 85.

117. Where any income is assessed as income from undisclosed sources under Part 7 of Chapter 3 of the Act, the Taxation Officer may levy a penalty of –

- (1) up to 10% of such income if it does not exceed Rs 100,000;
- (2) up to 100% of such income if it is equal to Rs 100,000 or more.

118. Where the Taxation Officer is satisfied that any person has defaulted under any provision of Chapter 6 of the Act, he may levy a penalty of –

- (1) up to 10% of such sum if it does not exceed Rs 100,000;
- (2) up to 100% of such sum if it is equal to Rs 100,000 or more.

119. No order imposing a penalty under this Chapter shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

120. An order of penalty under this Chapter shall be made with the previous approval of the Additional/Deputy Commissioner if the amount of penalty is equal to Rs 100,000 or more.

121. No order of penalty under this Chapter shall be passed after one year of the default or of receipt of the order or notice-giving rise to initiation of penalty proceeding.

122. The Commissioner may, on his own motion or otherwise, under the circumstances prescribed by the Federal Government, reduce or waive the penalty leviable under this Chapter at any time during the continuance of the proceeding or on its completion.

## **CHAPTER 8**

## **PROSECUTION**

123. Where a penalty under Chapter 7 is imposed and the amount of penalty levied is not less than Rs 100,000, the person on whom the penalty is levied shall be punishable with the rigorous imprisonment, which may extend to two years.

124. The following persons shall be punishable with rigorous imprisonment, which may extend to two years-

(1) any person who removes, conceals, transfers or delivers to any other person, any property or compensation therein so that the Taxation Officer may not be able to recover any sum out of it in accordance with the provisions of the Act;

(2) any person who makes a statement in any verification under the Act or delivers an account or statement which is false;

(3) any person who abets or induces in any manner another person to make and deliver an account or statement or declaration which is false.

125. Where any money or any valuable thing or any document or books of accounts or the like is found in the possession of any person under any proceeding under the Act, it shall be presumed to be belonging to him, unless proved otherwise, and it shall be admissible against that person as an evidence in any proceeding under the Act including prosecution under this Chapter.

126. In any prosecution under this Chapter, the Court shall presume the existence of a culpable mental state on the part of the accused, which may be rebutted by the accused.

127. "Culpable mental state" for the purpose of section 126 shall include intention, motive or knowledge of a fact or belief in, or reason to believe a fact.

128. For the purpose of any proceeding under the Act including the provisions under this Chapter, a fact shall be said to be proved when its existence is established by preponderance of probability.

129. The Taxation Officer shall initiate any proceeding under this Chapter only with the previous sanction of the Commissioner.

130. The Chief Commissioner may compound any offence, either before or after the institution of the proceeding under this Chapter.

## **CHAPTER 9**

### **APPEALS**

131. No appeal under this Chapter shall be admitted, and where it is filed, it shall be dismissed, if the assessee has made an application for settlement of his case under section 69 of the Act.

132. Any assessee aggrieved by an order passed under the Act may appeal against such order, to the Commissioner (Appeals) having the jurisdiction as assigned by the Board, in the prescribed form and verified in the prescribed manner within one month of receiving the order. The Commissioner (Appeals) shall be bound to pass before the expiration of three months from the end of the month in which the appeal is presented, failing to which the relief sought through the said appeal shall be deemed to have been given and all the provisions of this Act shall have effect accordingly.

133. No appeal shall be admitted under section 131 unless tax payable on the basis of admitted liability is paid and the evidence in proof of such payment is enclosed with the form of appeal.

134. The Taxation Officer with the approval of the Additional/Deputy Commissioner or the assessee, if he is aggrieved by the order of the Commissioner (Appeals), may file a second appeal to the Tax Appellate Tribunal, constituted separately for the purpose by an Act of Parliament, within one month of receiving the order.

135. The Taxation Officer with the approval of the Commissioner or the assessee, if he is aggrieved by the order of the Tax Appellate Tribunal, may appeal to the National Court of Federal Taxes constituted separately for the purpose by an Act of Parliament, within one month of receiving the order.

136. As regards questions of fact, the order of the National Court of Federal Taxes shall be final and no appeal shall be heard against its order.

137. If, on an application being made by the Taxation Officer with the approval of the Chief Commissioner or the assessee, as the case may be, the National Court of Federal Taxes is of the opinion that a question of law has arisen which is required to be referred to Supreme Court, it may draw up a statement of case and refer it to the Supreme Court within one month of the receipt of such application.

138. The Federal Board of Revenue with the approval of the Federal Government may directly apply to the National Court of Federal Taxes to refer any question of law to the Supreme Court, if it is expedient to do so in public interest.

139. For interpreting the provisions of the Act, the following shall be taken help of in the order given below-

- (1) plain and simple meaning of the language used in the Act;
- (2) meaning of the word or phrases given under any other Act;
- (3) decisions of the Courts;
- (4) speeches and discussion made in the Parliament pertaining to the Bill;

## **CHAPTER 10**

### **ADVANCE RULINGS**

140. Definitions.- In this Chapter, unless the context otherwise requires, -

(a) "advance ruling" means –

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant and such determination shall include the determination of any question of law or of fact specified in the application;

(ii) a decision by the Authority in relation to an assessment which is pending before any Authority or the Tribunal in case of an applicant who is a resident in Pakistan and such decision shall include the decision on question of law or fact arising out of the orders of assessment in respect of which an application has been made by a resident applicant;

(b) "applicant" means any person who –

(i) is a non-resident; or

(ii) is a resident falling within any such class or category of persons as the Federal Government may, by notification in the Official Gazette, specify in this behalf;

(iii) makes an application under sub-section (1) of section 143;

(c) "application" means an application made to the Authority under sub-section (1) of section 143;

(d) "Authority" means the Authority for Advance Rulings constituted under section 141;

(e) "Chairman" means the Chairman of the Authority;

(f) "Member" means a Member of the Authority and includes the Chairman.

141. Authority for advance rulings.- (1) The Federal Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) The Authority shall consist of the following Members appointed by the Federal Government, namely:-

(a) a Chairman, who is a retired Judge of the Supreme Court;

(b) an officer of the Inland Revenue who is qualified to be a member of the Federal Board of Revenue;

(c) an officer of the All Pakistan Services who is, or is qualified to be, an Additional Secretary to the Government of Pakistan;

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(4) The Federal Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Islamabad, with branch offices in various cities of the country.

142. Vacancies, etc, not to invalidate proceedings.- No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the authority.

143. Application for advance ruling. - (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of fifty thousand rupees.

(3) An applicant may withdraw an application within thirty days from the date of the application.

144. Procedure on receipt of application.- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application except in the case of a resident applicant where the question raised in the application,-

(a) is already pending in the applicant's case before any inland revenue authority, the Appellate Tribunal or any court;

(b) involves determination of fair market value of any property;

(c) relates to a transaction which is designed prima facie for the avoidance of income tax:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such

further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised legal representative.

**Explanation:** For the purposes of this sub-section, "authorised representative" shall have the meaning as prescribed by the Board.

(6) The Authority shall pronounce its advance ruling in writing within three months of the receipt of application.

(7) A copy of the advance ruling pronounced by the authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner, as soon as may be after such pronouncement.

145. Appellate authority not to proceed in certain cases.- No Tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 144.

146. Applicability of advance ruling.- (1) The advance ruling pronounced by the Authority under section 144 shall be binding only –

(a) on the applicant who had sought it;

(b) in respect of the transaction in relation to which the ruling had been sought; and

(c) on the Commissioner, and authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

147. Advance ruling to be void in certain circumstances.- (1) Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 144 has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

148. Powers of the Authority.- (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (V of 1908).

(2) The Authority shall be deemed to be a civil court within the meaning of Code of Civil Procedure, 1908 (V of 1908) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Pakistan Penal Code (VL of 1860).

149. Procedure of Authority. - The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

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ST SCHEDULERATES OF INCOME TAX

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- (A) Where the Net Annual Income Nil does not exceed Rs 400,000
  - (B) Where the Net Annual Income exceeds 5 percent of the amount by which the Rs 400,000 but does not Net Annual Income exceeds Rs 400,000exceed Rs 600,000
  - (C) Where the Net Annual Income Rs 10,000 plus 10 percent of the exceeds Rs 600,000 but does not amount by which the Net Annual exceed Rs 1,000,000 Income exceeds Rs 600,000
  - (D) Where the Net Annual Income Rs 50,000 plus 15 percent of the exceeds Rs 1,000,000 but does amount by which the Net Annual not exceed Rs 2,200,000 Income exceeds Rs 1,000,000
  - (E) Where the Net Annual Income Rs 230,000 plus 20 percent of the exceeds Rs 2,200,000 but amount by which the Net Annual does not exceed Rs 3,500,000 Income exceeds Rs 2,200,000
  - (F) Where the Net Annual Income Rs 490,000 plus 25 percent of the exceeds Rs 3,500,000 but amount by which the Net Annualdoes not exceed Rs 5,000,000 Income exceeds Rs 3,500,000
  - (G) Where the Net Annual Income Rs 865,000 plus 30% of the amount by exceeds Rs 5,000,000 which the Net Annual Income 5,000,000
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**(Concluded)**