SALES /PURCHASE OF IMMOVABLE PROPERTY IN PAKISTAN

Income Tax Provisions regarding Valuation, Capital Gain Tax & Advance Taxes

The following sections/provisions of the income tax Ordinance, 2001 are relevant to understand the taxes on sales and purchase of property;

- ✓ **SECTION 68 - Fair Market Value**
- ✓ **SECTION 37 & DIVISION VIII, PART I OF 1ST SCHEDULE - Capital Gain Tax Rate**
- ✓ **SECTION 236C AND DIVISION X OF PART-IV OF 1ST SCHEDULE -Advance Tax On Sale/ Disposal Or Transfer Of Immovable Property**
- ✓ **SECTION 236K & DIVISION XVIII OF PART IV OF 1ST SCHEDULE -Advance Tax On Purchase Or Transfer Of Immovable Property**
- ✓ **SECTION 236W & CLAUSE C, SUB-SECTION 4 OF SECTION 111 -Tax On Purchase Or Transfer Of Immovable Property**
- ✓ **SECTION 230F – New Tax Regime Vide Finance Act, 2018**

For each heading/section, I tried to cover the history, changes made from time to time till date. In the end I covered the new tax regime introduced vide Finance Act 2018 and the current status of the same.

FAIR MARKET VALUE- Section 68

This section is very important as the value determined under this section is used for probing the source of investment, applying the withholding /advance tax rates as well as to determine the capital gain in certain cases.

Prior to Finance Act, 2016, the Fair Market Value for probing the source of investment in acquisition of Property was to be determined by the Commissioner and as per Board's circular letter no. 7(13), dated: June 29, 1993, the Fair Market Value was the value fixed by the provincial authorities to collect the stamp duty. Accordingly the capital gain under section 37 and collection of advance tax under section 236C and 236K were also used to be computed on the basis of value fixed by the provincial authorities to collect the stamp duty.

Vide Finance Act 2016, new sub-section 4 inserted under section 68 of the Ordinance, through which the powers of the Commissioner to determine the value were withdrawn and it was specified that Fair Market Value of Immoveable Property will be determined on the basis of valuation made by a panel of approved valuers of the State Bank of Pakistan ("SBP").

These amendments were agitated at large from all stakeholders and later vide Income Tax Amendment Ordinance, 2016 dated July 31st, 2016 sub-section 4 was amended and FBR was empowered to determine and notify the fair market values of the immovable property, which will be used for the purpose of section 37, 236C and 236K.

Furthermore new sub-section 5, 6 and an explanation was inserted that following values shall not be less than the values determined for the purpose of stamp duty or by FBR, as the case may be:

- Consideration received on disposal of property;
- Value of property at the time of purchase for advance tax; and
- Valuation of property under section 111

Effectively 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 ITO, for the purpose of section 111 of ITO, was curbed.

The writer is a Chartered Accountant and is currently leading tax Practice of Rafqat Hussain & Co. He can be reached via rafqat@rafqat.com

It was further explained that if the determined fair market value was different from auction price, the higher of the two values shall be applicable.

Accordingly FBR vide different notifications notified the fair market value (generally called in the market as "FBR values") of property for different cities, the notifications can be accessed from the FBR website.

CAPITAL GAIN TAX RATE-Section 37 & Division VIII, Part I of 1st Schedule

Finance Act 2012 ("FA 2012") for the first time has brought capital gain arising out of disposal of immovable property to tax. This, according to FBR, was subsequent to 18th constitutional amendment, wherein, entry number 50 in Federal Legislative List empowers the Federal Government to levy this tax.

Accordingly capital gains tax was levied on gain arising on disposal of immovable property at the rate of 10% and 5% if the holding period was upto one year and upto two years respectively, whereas, capital gains on property sold after holding for a period of more than two years were exempt from tax.

Vide Finance Act 2016 gain on disposal of immovable property acquired within last five years made taxable at the rate of 10%, whereas, capital gains on property sold after holding for a period of more than five years were exempt from tax. However reduced rate of capital gain tax for Rental REIT Scheme was also introduced irrespective of holding period.

Later vide Income Tax Amendment Ordinance, 2016 (July 31st, 2016), Capital Gain Tax was exempted on sale of property 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. Capital Gain Tax has also been exempted on first sale of property acquired or allotted as an original allottee.

Further following tax rates and holding period were introduced;

- **For property acquired on or after July 01, 2016**

  Where holding Period is;
  - ✓ Less than one year 10%
  - ✓ Equal to or more than one year but less than two years 7.5%
  - ✓ Equal to or more than two year but less than three years 5%
  - ✓ Equal to or more than three years 0%

- **For property acquired before July 01, 2016**

  Where holding period is Up to three years 5% More than three years 0%

ADVANCE TAX ON SALE/ DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY

Section 236C and Division X of part-IV of 1st Schedule

Through Finance Act, 2012 0.5% advance tax on sale or transfer of immovable property was introduced, later vide Finance Act, 2014 the kept same i.e 0.5% for filer and 1% advance tax for non-filer also introduced.

Vide Finance Act 2016, rate of tax was increased for filer from 0.5% to 1% and non-filer from 1% to 2%. Further a sub-section 3 was inserted in section 236C that the advance tax shall not be collected if immovable property if held for period exceeding 5 years.

The writer is a Chartered Accountant and is currently leading tax Practice of Rafqat Hussain & Co. He can be reached via rafqat@rafqat.com

Through Income Tax Amendment Ordinance, 2016 (July 31st, 2016), the holding period for exemption from advance tax was reduced to 3 years from 5 years and new sub-section 4 was inserted in section 236C that advance tax was 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 was also exempted on first sale of property acquired or allotted as an original allottee.

ADVANCE TAX ON PURCHASE OR TRANSFER OF IMMOVABLE PROPERTY -Section 236K & Division XVIII of Part IV of 1st Schedule

First time through Finance Act, 2014 advance tax at the rate of 1% for filer and 2% for non-filer was introduced on purchase of immovable property exceeding Rs. 3 million,

Through Finance Act 2016, rate of advance tax increased for filer from 1% to 2% and for non-filer from 2% to 4%.

Later on vide Income Tax Amendment Ordinance, 2016 (July 31st, 2016), limit for exemption of advance tax on purchase of immovable property was enhanced from 3 million to 4 million.

TAX ON PURCHASE OR TRANSFER OF IMMOVABLE PROPERTY -Section 236W & Clause C, Sub-Section 4 of Section 111

Vide Income Tax (Amendment) Act, 2016, tax at the rate of 3% levied on purchaser or transferee on amount calculated as the difference of amount determined under section 68; and B is the amount recorded by the registering authority. The tax collected shall not be adjustable.

Amendment in section 111 introduced that difference between registered value and value determined under section 68 shall not be considered for the purposes of section 111 i.e. the differential amount will not be charged as unexplained income on which advance tax under section 236W has been paid.

Furthermore the payee allowed to incorporate the differential amount in books of accounts in tangible form.

FINANCE ACT, 2018-Section 230F

In line with the announcement of Economic Reforms Package by the Prime Minister, vide Finance Act, 2018, new tax regime for immovable properties introduced with respect to transactions relating to purchase/sales of immovable properties and their valuation and the pre-emptive right of the Government to acquire under-declared properties.

Two new authorities introduced i.e

- Directorate General of Immovable Property (DG)
- Appellate Tribunal of Immovable Property

The writer is a Chartered Accountant and is currently leading tax Practice of Rafqat Hussain & Co. He can be reached via rafqat@rafqat.com

The GD is authorized to initiate proceedings for the acquisition of property for specified reasons. The Directorate shall consists of Director General and as many Directors, Additional Directors, Deputy Directors, and Assistant Directors and such other officers as the Board may, by notification in the official Gazette appoint.

The Directorate General may initiate proceedings for acquisition of property when on the basis of valuation made, it has reason to believe that a transferor has transferred immoveable property at a value below fair market value and the consideration for such transfer has been understated for purpose of:

- Avoidance or reduction of withholding tax obligations are made;
- Concealment of unexplained amount referred to in sub-section (1) of section 111 representing investment in immovable property is made; or
- Avoidance or reduction of capital gains tax under section 37 is made.

However, the proceedings referred above shall not be initiated in respect of any immovable property after expiration of a period of 6 months from the end of the month in which the instrument of transfer is registered, recorded or attested.

The transferee may prefer express appeal to the Appellate Tribunal of Immovable Property against the order of acquisition of any immovable property within sixty days of service of a copy of such order.

The provisions of this section shall come into force on such date as the Federal Government may, by notification in official Gazette, appoint.

From the date of notification for appointment supra two authorities, WHICH IS NOT YET ISSUED, the advance tax on purchaser under section 236k will be 1% and advance tax on seller under section 236c and tax on differential value of FBR value and DC rate /provisions of clause (c) of sub-section (4) of section 111 shall not apply.

Important note:

As the proposed changes/amendments introduced vide Finance Act 2018 have not yet been notified as required under section 230F of the Ordinance, so till the issuance of notification(s), all existing provisions will be in field.

-The END-

The writer is a Chartered Accountant and is currently leading tax Practice of Rafqat Hussain & Co. He can be reached via rafqat@rafqat.com