

PRESENTATION ON ASSETS DECLARATION ORDINANCE, 2019

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May 29, 2019

WHY ANOTHER SCHEME WAS NECESSITATED WITHIN A YEAR

- Last scheme was brought in April 2018, giving an opportunity to document assets which were undeclared as at April 9, 2018;
- Within a year from last scheme, PTI Government in its first year felt a need to give another opportunity to declare assets June 2018;
- Government claims that 2019 scheme was necessary due to following:
 - (i) Benami law has become operationally effective in March 2019 to confiscate Benami properties;
 - (ii) Receipt of financial information from 28 countries (under exchange of information) which last year was actually a probability but not a reality; and
 - (iii) Substantial under-declaration in real estate despite of upward revision in FBR values.

WHY ANOTHER SCHEME WAS NECESSITATED WITHIN A YEAR

- The above reasons indicate that FBR was unable to demonstrate stick in its carrot and stick policy announced in 2018;
- It now appears that the recent events relating to investigation of fake and Benami accounts has evolved an environment and necessity for enforcement of Benami law and as a result giving an opportunity for those who have still not declared their asset in their declarations;
- Though there are views that approximately 30% to 40% of bank accounts are Benami, the success of scheme depends upon quantum of accounts held by those persons, who are not allowed to avail the scheme.

SCOPE OF 2019 SCHEME

- Any person, including a person who is not a citizen of Pakistan can avail the scheme;
- All types of assets whether located in or outside Pakistan can be declared;
- Assets under-reported or understated can also be declared;
- Benami assets can also be declared by beneficial owner after providing details of legal owner;
- The scheme also provides that outstanding tax demands can be paid (without default surcharge / penalty) in cases which have not attained finality, and which are even pending in High Court or Supreme Court.

BRIEF ABOUT BENAMI LAW AND ASSETS

- In simple terms if legal and beneficial owner of a property are different persons, then such property is a Benami property;
- It was not illegal to acquire and held Benami property till Benami Law enacted in February 2017. Taxation law required beneficial owner to declare Benami property and offer for tax income from such asset;
- Between February 2017 and March 2019, Benami law was operationally in-effective;
- Hence there was a need to provide a transition for Benami assets acquired:
 - (i) Prior to February 2017; and
 - (ii) Those acquired after the enactment of Act and before it become operationally effective.
- Properties held under Benami can be confiscated under the Act.
- However, properties held under fiduciary capacity e.g. Trustee or in the name of spouse, children, brother, sister etc are allowed, and not subject to Benami Act.

NEGATIVE LIST OF SCHEME (I.E. INELIGIBILITY TO AVAIL SCHEME)

persons	Type of assets
<ul style="list-style-type: none">• Holder of public office including their Benamidar and their spouses or dependents period <i>When a person was dependent and assets created before or after the period of public office needs clarification.</i>• Public company as defined in Income Tax Ordinance, 2001	<ul style="list-style-type: none">• Proceeds of crime• Gold and precious stones• Bearer prize bonds• Other bearer securities• Cases pending in High Court and Supreme Court or which has attained finality

CASES ATTAINED FINALITY

Examples

- (1) Mr. A has been assessed for undeclared assets. His case is pending before Appellate Tribunal. Mr. A can avail the scheme.

- (2) Mr. B has outstanding tax demand for an assessment, which does not relate to undeclared asset or expenditure or sales. His appeal is pending in High Court. Mr. B can avail the scheme by paying outstanding demand (without default surcharge and penalty), as the case does not pertain to undeclared assets, expenditure or sales. The payment of demand would not be refundable under section 10 even if appeal is decided in his favour. *This matter requires clarification from FBR.*

RATES

Type	Rate	Condition
Cash (local / FCY)	4%	Deposit in bank account and retained till June 30, 2019
Foreign liquid assets:		
(a) Not repatriated	6%	Cash or bearer assets / proceeds deposited in bank account and retained till June 30, 2019
(a) repatriated	4%	Deposited in bank account or invested in PBC or Government Bond. Share of Pakistani companies held through foreign company or trust shall be repatriated into Pakistan, and registered with SBP as non-repatriable.
Receivable	4%	Complete particulars of persons is required to be declared
<u>Immoveable property</u>		
(a) Domestic	1.5%	Value declared shall not be less than 150% of FBR/DC value
(a) Foreign	4%	Not less than FMV
Undisclosed expenditure	4%	-
Undisclosed sales (July 2014 to July 2018)	2%	In lieu of liability of sales tax / FED applicable, provided that the sales is declared in first return to be filed after declaration

DUE DATES

- (i) Declaration is required to be filed on or before 30-06-2019. Revised declaration can be filed to rectify any error or omission, provided the value / tax originally declared is not decreased.

- (ii) Payment of tax, as per above rates, is to be made on or before 30-06-2019. Payment of tax after 30-06-2019 is allowed, subject to cascading rates of default surcharge.

FOREIGN CURRENCY / ASSETS

- (i) Tax in respect of foreign assets is to be paid in FCY (USD / AED), remitted from abroad. Tax in respect of FCY held in Pakistan is to be paid in USD through local FCY Account.

- (ii) Value of foreign assets is to be determined as per exchange rate prevalent on the date of declaration, as notified by SBP.

- (iii) Repatriation of foreign assets is required through banking channel in declarant's own account (either local currency or FCY). Declarants may also repatriate their liquid assets by subscribing Pakistan Banao Certificates (PBCs) digitally through the web portal.

VALUATION

- (i) Other than domestic real estate, valuation of asset to be made at FMV, on the date of declaration, but in no case value shall be less than cost.

- (ii) In case of foreign asset, both FMV and cost is to converted at exchange rate of declaration date.

EXAMPLE # 1

- (i) A person has earned gross revenue of PKR 100 M over last few years till 30-06-2018. Receipts were credited in Benami Account. From that account, he has made following payments:

• Business expense		40 M
• Personal expense		20 M
• For acquiring personal assets		15 M
		75 M

- (i) As a result, closing balance of bank account reflects 25 million. Out of 100 million revenue, Rs. 70 million was subject to sales tax also.

- (iii) **Tax payable under 2019 Amnesty**

• <u>Un-disclosed assets</u>			
○ Bank Account	25 M x4%	=	1
○ Personal Asset	15 M x4%	=	0.6
• <u>Un-disclosed expenditure</u>			
○ Business expense	40 M x4%	=	1.6
○ Personal expenses	20 M x4%	=	0.8
• <u>Un-disclosed sales</u>	70 M x 2%	=	1.4
			5.4

EXAMPLE # 2

Mr. A purchased immovable property in tax year 2017 and declared the same at FBR value of that time of Rs. 10 M. Actual purchase value was Rs. 50 M.

FBR value as per February 2019 valuation table is Rs. 15 M, 150% of which comes to Rs. 22.5 M. Current market value of property is 60 million.

Q. Whether Mr. A is required to file declaration?

Ans No, unless Mr. A voluntary wants to upgrade its value in wealth statement to latest FBR value or even closer to current market value. This he may consider if his wealth statement doesnot have capacity to defend the acquisition of property at actual transaction value of 50 M. However, it may be noted that incremental value of 12.5 M (22.5 M – 10 M) will not be deductible as cost in future.

Suppose Mr. A intends to sell the property in tax year 2020, expected sale proceeds are Rs. 70 million (FBR value Rs. 30 million) and tax rate on capital gains is 10%.

EXAMPLE # 2

Actual capital gains Rs. 70 M – Rs. 50 M = Rs. 20 M

Capital gains as per FBR values (suppose amnesty is not filed) (Rs. 30 M – Rs. 10 M) = Rs. 20 M x 10% = Rs. 2 M (tax payable)

Note: *Sale proceeds of (70 M – 30 M) will be kept outside wealth statement.*

Suppose declaration is filed at market value

Capital gains Rs. 70 M – Rs. 10 M = Rs. 60 M x 10% = Rs. 6 M (tax payable)

Note: *Amnesty filed for Rs. 12.5 M or even higher amount will not be eligible for deduction in the computation of capital gains.*

The benefit of filing amnesty in this case is that till the time property is sold, there is a risk of department questioning the actual purchase value of Rs. 50 M, if it is not defensible from the declared wealth statement of Mr. A.

EXAMPLE # 3

Mr. A is living in UAE for last many years. He purchased a real estate in Pakistan in tax year 2017 for Rs. 50 M. He made payment thereof from his bank account in Pakistan. Bank account in Pakistan was fed from remittances abroad.

He obtained NTN and filing Nil Return (as a non-resident person without wealth statement) to avoid tax withholding under section 236P.

He made payment through cross cheque to the extent of FBR value (10 M) and made remaining payment through cash cheques (40 M).

Q. Whether Mr. A is required to filed declaration under the scheme.

Ans No, as his primary source of income was non-taxable. He can justify the non-taxability of payment of 40 m through cash cheque.

EXAMPLE # 4

Mr. A and family had following assets:

- Cash	100 M
- Bank account (Benami)	50 M
- Property (Benami) – FMV	200 M (FBR value 50 M)
- Deposits in bank account after July 1, 2018:	
- From cash in hand	20 M
- Business sales	30 M
- He opened another Benami account after July 1, 2018 and deposited cash (in hand)	10 M

EXAMPLE # 4

Declaration

The scheme requires declaration of Benami asset acquired till the date of declaration.

At the date of declaration, following is the position of liquid assets:

- Cash (100 M – 20M – 10 M)	=	70
- Benami account# 1 (50 M + 20 M + 30 M)	=	100
- Benami account #2	=	10
		180

He should file amnesty of 180 M @ 4% after depositing cash of 70 M in bank account and keep it there till 30-06-2019. Please note that 30 M of sales / income earned after July 1, 2018 deposited in Benami account would remain taxable at normal rate in tax year 2019 although the same is part of declared value of 180 M. Such income would therefore be not declared in wealth statement to be filed for tax year 2018 *(FBR to clarify this matter)*.

For property, he should also file declaration at a value not less than 75 m (50 M x 150%), which will be subject to tax @ 1.5%.

OTHER IMPORTANT MATTERS

(i) No deduction / refund

- No deduction, allowance or credit is allowable for value / assets declared under the scheme.
- Tax paid under the scheme is not refundable on any account.

(ii) Revision of last amnesty

- For domestic real estate declared in last amnesty or wealth statement, the values can be revised upward under 2019 scheme.

(iii) Filing of return

- The Rules web portal, not the Ordinance, require filing of tax return / wealth statement for tax year 2018 alongwith the declaration, as a necessary condition for incorporation of asset declared (under the scheme) in its book of accounts / financial statements.

SOURCES WHICH GENERATE UNDECLARED FOREIGN ASSET/INCOME

- (i) Non-genuine Export and Import Commission to related parties.
- (ii) Under invoiced exports.
- (iii) Over invoiced imports.
- (iv) Kickbacks / commissions outside Pakistan.
- (v) Services income retained abroad:
 - required to be brought to Pakistan.
 - not required to be brought to Pakistan.
- (vi) Funds sent abroad from Pakistan:
 - Crime money.
 - Non-crime money out of untaxed income (Presumptive Tax Regime is a biggest source).

HOW THE UNDECLARED ASSETS (BOTH FOREIGN AND LOCAL) ARE HIDDEN

- (i) Real estates;
- (ii) Shares and securities in foreign companies;
- (iii) Shares in Pakistani Companies held directly or indirectly through foreign companies / trusts;
- (iv) Beneficial interests / contributions in offshore trusts [underlying property of such trusts being Pakistan or foreign assets];
- (v) Un-declared bank accounts;
- (vi) Bullion, cash, jewels, paintings, personal effects etc;
- (vii) Accounts and loan receivables (*katchi parchi*); and
- (viii) Benami Assets and Properties.

MEASURES TO BE TAKEN FOR DOCUMENTATION OF ECONOMY

In order to end the practice of bringing more such amnesty schemes in future, the Government needs to first plug the loopholes to curb the black economy.

- (i) To help document the economy in real estate industry, government should do away with the DC rates of purchasing and selling the plots or houses and shops in real estate industry and instead allow the transactions on real value by reducing tax rates. Registration fee which currently stands at 12% to 13% and CVT which currently stands at 1% to 2% should be reduced.
- (ii) Government to start collecting tax on agriculture sector of which contribution to GDP is Rs. 7 trillion, but it contributes the tax of just Rs. 2-2.5 billion per annum. Provincial governments should allow FBR to collect tax on Agriculture.
- (iii) Practically implementable simplified taxation regime for wholesaler and retailer.
- (iv) Effective and transparent use of information available under exchange of information and from other local sources.
- (v) Enforcement of Benami and Anti Money Laundering Laws.

CONCLUSION

We hope that the Amnesty Scheme 2019 is a “**calm before the storm**”, providing the tax defaulters a safe haven and a “**last chance**” to enter the tax net.

“Amnesty is as good for those who give it as for those who receive it. It has the admirable quality of bestowing mercy on both sides”

(Victor Hugo)

THANK YOU