



TOLA ASSOCIATES
TAX & CORPORATE ADVISORS



ASSETS DECLARATION ORDINANCE, 2019

FREQUENTLY ASKED
QUESTIONS

DATED: SATURDAY MAY 18, 2019


<https://goo.gl/LFiWyx>



<https://goo.gl/QDM4ZM>



ADDRESS

 408, 4th Floor, Continental Trade Centre,
Clifton Block-8, Karachi

 Email: connect@tolaassociates.com  Ph# 35303294-6

 Website: www.tolaassociates.com

A. General:

1. Who can avail the amnesty scheme?

With subject to the provisions to the Assets Declaration Ordinance, 2019, any person may avail the scheme and make declaration, except the following below:

- a) Holders of public office;
- b) A public company as provided in Income Tax Ordinance, 2001;
- c) Benamidar as defined under the Benami Transactions (Prohibition) Act, 2017.

2. Who is holder of a public office?

A holder of a public office is the person as defined in the Voluntary Declaration of Domestic Assets Act, 2018 Please see **(Annexure A)**

3. The definition of holder of public office refers to person holding certain positions during preceding ten years. Since when the period will be commenced?

The Ordinance does not provide any clarification in this regard. Therefore, in our opinion, the period shall commence from 14 May 2009 i.e. 10 years preceding to the date of commencement of the Ordinance, 2019. In other words, a person who has ceased to hold public office as on 14 May 2009, will be eligible for the scheme.

4. If holder of public office is officially permitted to work privately. Will he be eligible for Amnesty?

The Ordinance are silent with respect to eligibility of such persons to avail the scheme. Therefore, in the absence of any embargo, in our opinion, the public office holders permitted to work privately may avail the scheme to declare assets generated out of their private practice. However, FBR has an opposite viewpoint.

5. What is the cutoff date for eligible assets etc.?

The cutoff dates are as under:

Description	Incurred, Acquired or held up to
Undeclared assets	30 th June, 2018
Undeclared Sales	30 th June, 2018
Undeclared Expenditure	30 th June, 2018
Benami Assets	Date of declaration

6. When was the Ordinance promulgated?

The Ordinance was announced on 14 May 2019.

7. What is meant by the court of law?

As per section 2 (c) of the Ordinance, court of law means a High Court or Supreme Court of Pakistan.

8. When the scheme will expire?

The scheme will expire on 30 June 2019.

9. Can declaration be made without payment of tax?

Declaration can be made without payment of tax; however, default surcharge will be required to be paid in case of payments after 30 June 2019.

10. Can tax be paid in instalments?

Tax can only be paid one time and not in instalments.

11. A person has shares of a non-resident company having assets in Pakistan. Will he declare shares?

No, as per section 11 of the Ordinance, the provisions of this Ordinance do not apply to shares or any bearer assets.

12. A person has shares of a non-resident company having assets in Pakistan. Will the shares be treated as local asset or foreign asset?

If a person only holds the shares of the company and not the assets, therefore he can only declare shares, although according to section 11(f) of the

Ordinance the provisions of the Ordinance will not apply to shares or any bearer assets.

13. Can the foreign assets already declared be re declared and or repatriated with their revised values?

Yes! However, the tax shall be paid on the revised value instead of differential amount of previous and current declared values.

Moreover, wealth statement will also be required to be revised due to change in values.

14. Can a person during audit proceedings under ITO, avail this facility of amnesty scheme?

Yes, a person may opt for the scheme during audit proceedings as the Ordinance only prohibits declaration of such assets with respect to whom proceedings are pending in any court of law (i.e. High Court or Supreme Court).

15. Can a person avail amnesty scheme who is already assessed under section 122(5A) where department raised tax demand however the person has not approached appellate tribunal yet?

Yes, a person may opt for the scheme even after the passing of order by the department as the Ordinance only prohibits declaration of such assets with respect to whom proceedings are pending in any court of law (i.e. High Court or Supreme Court). However, if the period for filing the appeal has been lapsed and the condonation if the same is not available, then the Ordinance will not apply as the matter has attained finality.

16. What will be the consequences if we do not avail amnesty scheme?

Pakistan is a signatory to Organization for Economic Cooperation and Development's ("OECD") Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The convention provides that member countries ("parties") shall provide administrative assistance to each other in tax matters. Such

assistance may involve, where appropriate, measures taken by judicial bodies.

The above assistance may be in form of:

- Exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
- Assistance in recovery, including measures of conservancy; and service of document;
- Moreover, Unite Arab Emirates, which has a lion's share of Pakistani offshore investments, has also signed the convention on April 21, 2017;
- OECD has obligated its member countries to implement regulations for extensive documentation. These documentation requirements and reporting obligations of member OECD countries will result in discovery of hidden foreign assets of Pakistani citizens. Therefore, in the event of non-declaration and subsequent discovery of assets, FBR shall have powers to add the values of undeclared assets in the income of the tax year to which such assets pertain under section 111 of Income Tax Ordinance 2001 ("ITO") and consequently shall charge both taxes and penalties.

17. Can a person file declaration more than one time for example first declaration made on 31st May and thereafter 20th June 2019?

The Ordinance are silent on the issue as nothing has been provided in the Ordinance with respect to filing of multiple / revised declarations. This will be further elaborated in the rules to be announced soon by the FBR.

18. If someone misses anything to declare or has filed once but wishes to file before 30th June 2018? In that case will he file revised return, or second return as stand alone?

The Ordinance are silent and has not provided for the revision of already filed declarations, therefore, this will be clarified after the announcement of rules by the FBR.

19. What is the taxability of Immovable property as per Income Tax Ordinance, 2001?

Gain on sale of immovable properties is taxed under section 37 of ITO as under:

- For immovable properties acquired before 01-07-2016
- 5% where the holding period is up to 3 years; and
- 0% where the holding period is more than 3 years.
- For immovable properties acquired on or after 01-07-2016
- 10% where the holding period is up to 1 years;
- 7.5% where the holding period is more than 1 Year and up to 2 years;
- 5% where the holding period is more than 2 Years and up to 3 years; and
- 0% where holding period is more than 3 years.

20. At what value the foreign assets will be declared?

As per section 5 of the Ordinance, the value of foreign asset declared will be the price which the assets would ordinarily fetch on sale in the open market.

21. What is meant by Fair Market Value with respect to foreign assets?

With respect to Ordinance, fair market value has been defined in section 5 of the Ordinance as the price which the assets would ordinarily fetch on sale in the open market.

22. I have an undeclared open plot, cost of acquisition of which is Rs. 10 million, however, as per FBR notified rates, the value is Rs. 7.5 million. At what value the plot will be declared as per the Ordinance?

As per the Ordinance, the plot shall be declared at Rs. 11.25 million i.e. 150 % of the FBR notified value.

23. I want to declare my foreign assets in the amnesty and pay declaration fee/tax. Will my future earnings from these assets be exempted too?

No, future income will have to be accounted for in the return of income and wealth statement of tax year 2019 and onwards.

24. Will the application of section 230F (Directorate General of Immovable Property) be retrospective? i.e. will it apply on properties declared in amnesty too?

No, section 230F will not apply on assets declared under the amnesty as the Acts have an overriding effect on provisions of Income Tax Ordinance, 2001.

25. Can the non-disclosure of foreign income attract provisions of section 111?

Yes, the non-disclosure of foreign income may attract provision of section 111, however, the fate of proceedings is dependent upon other factors such as residential status, source of income, declaration in other jurisdictions, etc.

26. What is the meaning of dependent?

The term has neither been defined under the Ordinance nor under the ITO. However, Black's Law Dictionary defines the same as 'someone who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else'.

27. No cut-off date for acting on account of "misrepresentation" has been provided. This means action by invoking "misrepresentation" can be initiated without any time limitation. Is this correct?

In the absence of any sunset clause, action may be triggered any time without limitations, however, there has to be a reasonable time limit which, in our opinion, is the same as provided under

section 122 of ITO i.e. five years from end of financial year in which declaration has been filed.

28. Will section 230F (Directorate General of Immovable Property) be applicable on foreign properties too?

The provisions of section 230F are applicable on local properties only.

29. What will be the value of immovable properties in case FBR rates are not available?

As per Section 5 of the Ordinance, in case of non-availability of FBR notified rates 150 % of the value provided by the District Commissioner will be taken.

30. Only incorporation in the books of account is permissible but incorporation in the Wealth Statement is missing.

Under section 7 of the Ordinance it is clearly stated that if a declarant has paid tax under section 6 in respect of undisclosed assets, sales and expenditure the declarant shall be entitled to incorporate such assets, sales or expenditure in his return, wealth statement or financial statement.

31. In case of a Benami account, what will be the amount which will be declared?

As per subclause (b) of section 5 of the Ordinance, the balance present in the account on the date of declaration will be declared.

32. In case of undeclared account, what will be the treatment in following cases:

- a) **There is a balance of Rs. 1,000,000 on 30th June 2018 and there is no transaction in the bank thereafter**
- b) **There is a balance of Rs. 1,000,000 on 30th June 2018 and thereafter, there are credits of Rs. 300,000 and debits of Rs. 500,000.**
- c) **There is a balance of Rs. 1,000,000 on 30th June 2018 and thereafter, the account was closed on 31st January 2019**

The balances held on the account on 30 June 2018 will be considered for declaration under the Ordinance. Fluctuation in the account afterwards will be incorporated in the return of income and wealth statement of tax year 2019.

B. Non-Residents:

33. Who is a non-resident individual?

As per section 82 of the ITO, an individual shall be a resident for a tax year if he is present in Pakistan for a period in aggregate amounting to 183 days or more in that tax year.

For example, a person presents in Pakistan for 16 days each month shall be treated as resident individual as he has spent (16x12) 192 days in aggregate in Pakistan.

34. When a non-resident individual is required to file return of income?

As per section 114 read with section 11(6) of ITO, following non-resident individuals are required to file return of income:

- a) If his Pakistan source income exceeds Rs. 400,000
- b) If his Pakistan source business income exceeds Rs. 300,000
- c) If he has been charged to tax in any two of preceding tax years
- d) owns immovable property with a land area of two hundred and fifty square yards or more or owns any flat located in areas falling within the municipal limits existing immediately before the commencement of Local Government laws in the provinces; or areas in a Cantonment; or the Islamabad Capital Territory
- e) if he owns immovable property with a land area of five hundred square yards or more located in a rating area
- f) if he owns a flat having covered area of two thousand square feet or more located in a rating area
- g) if he owns a motor vehicle having engine capacity above 1000 CC
- h) if he has obtained National Tax Number
- i) if he is holder of commercial or industrial connection of electricity where the amount of annual bill exceeds Rs. 500,000

j) If he is issued a notice to file return of income by the Commissioner.

35. A non-resident person owns immovable property only. Is he required to file return?

As per section 115(3)(d) of ITO, a non-resident person is not required to file return of income solely due to the reason that he owns immovable property.

36. Whether a non-resident person is required to file wealth statement? In what circumstances?

As per section 116 of ITO, a non-resident individual is not required to file wealth statement. However, the commissioner may issue notice to a non-resident person to file wealth statement. In such a case, the non-resident individual will be required to file wealth statement.

37. Are non-resident persons covered under the scheme?

Yes, as per section 3 of the Ordinance, every person is eligible to opt for the scheme any person may avail the scheme and make declaration, except the following below:

- a) Holders of public office;
- b) A public company as provided in Income Tax Ordinance, 2001;
- c) Benamidar as defined under the Benami Transactions (Prohibition) Act, 2017.

38. Which assets of non-resident persons are covered?

Following assets of non-resident persons are covered:

- Benami assets acquired or held up to declaration
- All the foreign assets;
- Undisclosed sales;
- Undisclosed local assets; and/or
- Undisclosed Expenditure

acquired or held up-to 30 June 2018 by persons covered under the Ordinance, are eligible to be

benefitted under the Ordinance except certain assets.

39. Can a non-resident person declare his foreign assets?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his foreign assets.

40. Can a non-resident person declare his local assets?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his local assets.

41. A non-resident person acquired foreign assets through legally earned and tax paid money, but the same was not declared. Can he declare the same?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his foreign assets.

42. Can a non-resident person revise his wealth statement?

Yes, a non-resident person may revise his wealth statement if he has filed the same earlier. However, revision may attract audits and inquiries from the department.

43. A non-resident person acquired undeclared local assets through legally earned and tax paid foreign income, legally remitted to Pakistan. Will he be required to pay tax again upon declaration of the assets?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his foreign assets.

However, if he has filed the wealth statement for the year to which such asset pertains without

declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

44. A non-resident person acquired undeclared local assets through legally earned and tax paid foreign income, informally remitted to Pakistan. Will he be required to pay tax again upon declaration of the assets?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his foreign assets.

However, if he has filed the wealth statement for the year to which such asset pertains without declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

45. In what currency the tax is required to be paid by non-resident person on declaration of local assets?

Tax is required to be paid in Pak Rupees.

46. Whether an individual non-resident can declare his/her domestic assets under the scheme?

A non-resident person is not required to file his wealth statement under section 116 of ITO, therefore, he is also not required to declare his foreign assets.

47. At what value the local assets will be declared by non-resident person?

The local assets shall be declared at the values provided in section 5 of the Ordinance.

48. At what value the foreign assets will be declared by resident person?

As per section 5 of the Ordinance, the value of foreign asset shall be the fair market value, but it should not be less than the cost of acquisition.

C. Residents:

49. A resident person acquired undeclared local assets through legally earned and tax paid income. Will he be required to pay tax again upon declaration of the assets?

Yes, he will be required to pay tax again at the time of declaration and no adjustment/credit of the taxes previously paid shall be available.

However, if he has filed the wealth statement for the year to which such asset pertains without declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

50. A resident person acquired undeclared foreign assets through legally earned and tax paid income, legally remitted outside Pakistan. Will he be required to pay tax again upon declaration of the assets?

Yes, he will be required to pay tax again at the time of declaration and no adjustment/credit of the taxes previously paid shall be available.

However, if he has filed the wealth statement for the year to which such asset pertains without declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

51. A resident person acquired undeclared foreign assets through legally earned and tax paid foreign income. Will he be required to pay tax again upon declaration of the assets?

Yes, he will be required to pay tax again at the time of declaration and no adjustment/credit of the taxes previously paid shall be available.

However, if he has filed the wealth statement for the year to which such asset pertains without

declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

52. A resident person acquired undeclared local assets through legally earned and tax paid foreign income, legally remitted to Pakistan. Will he be required to pay tax again upon declaration of the assets?

Yes, he will be required to pay tax again at the time of declaration and no adjustment/credit of the taxes previously paid shall be available.

However, if he has filed the wealth statement for the year to which such asset pertains without declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

53. A resident person acquired undeclared local assets through legally earned and tax paid foreign income, informally remitted to Pakistan. Will he be required to pay tax again upon declaration of the assets?

Yes, he will be required to pay tax again at the time of declaration and no adjustment/credit of the taxes previously paid shall be available.

However, if he has filed the wealth statement for the year to which such asset pertains without declaring the asset, he may opt to revise his wealth statement and declare his assets therein avoiding the option under the scheme. However, the revision may attract audits and inquiries from the department.

54. In what currency the tax is required to be paid by resident person on declaration of local assets?

Tax is required to be paid in Pak Rupees.

55. Whether an individual resident in Pakistan can declare his/her domestic assets under the scheme?

Yes, every person, wherever they may be, may declare their assets, except holder of public office & certain specified persons.

56. Whether an AOP/company can declare their domestic assets under the scheme?

Yes, every company, AOP and every person, wherever they may be, may declare their assets, except a public company.

57. Whether an individual resident in Pakistan can declare his/her foreign assets under the scheme?

Yes, every person, wherever they may be, may declare their assets, except holder of public office & certain specified persons.

58. Whether an AOP/company can declare their foreign assets under the scheme?

Yes, every person, wherever they may be, may declare their assets, except a public company.

59. At what value the local assets will be declared by resident person?

The local assets shall be declared at the values provided in section 5 of the Ordinance.

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OFFICES IN PAKISTAN

Karachi Address:

**Office no. 408, 4th Floor, CTC
Building, Clifton Block-8,
Karachi**

Tel #: +92 21 3530 3293-6

Islambad Address:

**144, 1st Floor, Street No.82
Sector E-11 / 2 FECHS
Islamabad 44000,**

Tel #: +92 51-835 1551

Lahore Address:

**202-E, 2nd Floor, Sadiq Plaza
69-The Mall Road, Lahore**

Tel #: +92 42 3628 0403