



COMMENTS ON **ASSET DECLARATION ORDINANCE 2019**

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A. PREAMBLE

Assets Declaration Ordinance, 2019 (“Ordinance”) has been promulgated to provide for voluntary declaration of undisclosed assets, sales and expenditure.

The Ordinance has been promulgated to allow the non-documented economy’s inclusion in the taxation system and to serve the purpose of economic revival and growth by encouraging a tax compliant economy.

B. DECLARATION ORDINANCE

Salient features of the Ordinance are briefed as under.

1. PERSONS COVERED

- “Declarant” has been defined as a ‘person’ making declaration. This means all the Persons are eligible to avail the benefit of declaration irrespective of residential and citizenship status except
 - a) a public company;
 - b) holders of public office (definition in Annexure A);
 - c) Benamidar (definition in Annexure A) of persons in (b) above; and
 - d) spouses and dependents of (b) and (c) above.

2. ASSETS COVERED

- Undisclosed, unreported and under reported assets acquired up to 30th June 2018
- Undisclosed and undeclared sales made up to 30th June 2018
- Undisclosed expenditures incurred up to 30th June 2018
- Benami Assets acquired or held on or before date of declaration.

Except

- a) those assets, sales or expenditures with respect to which proceedings are pending in any Court of law; Court of Law under the Ordinance is defined as a “High Court” or “Supreme Court of Pakistan”;
- b) those assets, sales or expenditures with respect to which the proceedings under Income Tax Ordinance, 2001 (“ITO”), Sales Tax Act, 1990 (“STA”) and Federal excise Act, 2005 (“FEA”) have attained finality. It means that those assets with respect to which proceedings are still pending or which are appealable before court of law are covered in the ordinance and those assets with respect to which proceedings have been concluded and time for filing of appeal against such proceedings has been lapsed are not covered in the ordinance.
- c) any proceeds or assets that are involved in or derived from the commission of a criminal offence;
- d) Gold and precious stones;
- e) Bearer prize bonds; and
- f) Bearer assets.

3. TIMELINE FOR DECLARATION

The deadline for filing of declaration shall be 30th June 2019

4. TIMELINE FOR PAYMENT OF TAX

The deadline for payment of tax without default surcharge shall be 30th June 2019. Timeline for payment of default surcharge and rates of default surcharge have been reproduced in point 6 below.

5. TAX RATES AND VALUES FOR ASSETS

Class of assets/income	Value	Tax Rates
Domestic Immovable Properties - Land	Not less than 150% of value prescribed by the FBR under section 68 of ITO or 150% of DC value, whichever is higher	1.5%
Domestic Immovable Properties - Constructed	Not less than 150% DC value where FBR value has not been notified for constructed property	1.5%
Foreign Liquid Assets not repatriated	Not less than Fair Market Value or cost, whichever is higher, translated at exchange rates prevalent at date of declaration.	6%
Foreign Liquid Assets Repatriated		4%
Unexplained Expenditure	Not less than Fair Market Value or cost, whichever is higher	4%
Undisclosed Sales		2%
All assets except domestic immovable properties		4%

The rates for domestic immovable properties have been prescribed at 2.25% effectively. For example, if the FBR prescribed value of a property is Rs. 10,000,000 then the same will be required to be declared at Rs. 15,000,000 minimum. The tax at 1.5% will be required to be paid on value of Rs. 15,000,000 instead of Rs. 10,000,000 which will be Rs. 225,000. Therefore, effective rate of tax will become (Rs. 225,000/Rs. 10,000,000) 2.25%.

6. DEFAULT SURCHARGE

Time of payment of Tax	Default surcharge rate in addition to tax
01 st July 2019 to 30 th September, 2019	10%
01 st October 2019 to 31 st December, 2019	20%
01 st January 2020 to 31 st March, 2020	30%
01 st April 2020 to 30 th June, 2020	40%

Example

For example, Mr. A declares a constructed property having land cost Rs. 1,000,000 and construction cost Rs. 4,000,000. FBR specified rate for the land is Rs. 2,500,000 and DC rate of land is Rs. 1,500,000. With respect to construction, there is no FBR specified rate, however, DC rate of constructed area in the locality comes to Rs. 5,000,000. Mr. A will declare value of land at Rs. 3,750,000 (i.e. 150% of Rs. 2,500,000) and value of constructed area at Rs. 7,500,000 (i.e. 150% of Rs. 5,000,000). Total immovable property will be declared at Rs. 11,250,000. Tax on such declaration of Rs. 11,250,000 at 1.5% will be Rs. 168,750. If Mr. A pays such amount of Rs. 168,750 on 15th January 2020 a default surcharge of Rs. 50,625 (i.e. 30% of Rs. 168,750) will also be required to be paid in addition to tax amount of Rs. 168,750. Therefore, a total of Rs. 219,375 will be required to be paid by Mr. A.

7. CONDITIONS FOR DECLARATION

1. Before filing of declaration any cash in hand which is declared should be deposited into a bank account at the time of declaration and should be retained in such bank account up to 30th June 2019.
2. Foreign currency declared which is held in Pakistan should be deposited into declarant's own foreign currency bank account and should be retained in such bank account up to 30th June 2019.
3. The repatriated foreign liquid assets should be deposited into:
 - a. Declarant's own Pak Rupee account;
 - b. His foreign currency bank account in Pakistan;
 - c. Invested into Pakistan Banao Certificates; or
 - d. Invested into any foreign currency denominated bonds issued by the federal government.
4. Foreign liquid assets not repatriated to Pakistan shall be deposited in declarant's foreign bank account on or before 30th June 2019.
5. The declared assets, sales and expenditure shall be allowed to be incorporated in declarant's books of accounts irrespective of the fact that the periods to which such amounts relate are time barred for the purpose of revision of return of income or wealth statement.
6. No credit of such incorporation, i.e. input tax adjustment, allowance of business expense, depreciation etc. shall be allowed.

8. CONFIDENTIALITY

Particulars of any person making a declaration, or any information received in any declaration, shall be confidential notwithstanding any law for the time being in force **except disclosure:**

- To any person acting in the execution of ITO, where it is necessary to disclose the same to him for the purposes of ITO;
- To any authority exercising powers under FEA, STA, the Wealth Tax Act, 1963 (XV of 1963), or the Customs Act, 1969 (IV of 1969), as may be necessary for the purpose of enabling its duty to exercise such powers;

9. DECLARATION NOT ADMISSIBLE AS EVIDENCE

Nothing contained in any declaration made shall be admissible in any proceedings against the declarant for imposition of penalty or for prosecution under any law.

C. POINTS TO PONDER

Specific legal and economic shortcomings in the draft are discussed below.

1. Public companies as defined in ITO, 2001 has been excluded from availing the benefit of declaration. Public company has been defined in section 2(47) of the ITO which means:
 - a. A listed company;
 - b. A company in which 50% or more shares are held by:
 - i. Federal or Provincial Government
 - ii. A foreign government
 - iii. A foreign company wholly owned by a foreign government
 - c. A unit trust including mutual fund.

This means other companies, such as private companies etc. are eligible to avail the amnesty. There will be complications for auditors of such companies who had already audited the Financial Statements of such companies and had provided an unqualified opinion. There may also be litigations against such auditors by shareholders who had relied upon such audit reports in past. Therefore, to avoid complications, all the companies as defined in section 80(2)(b) of ITO shall be barred from availing the scheme.

2. Dependents of a public office holder have been barred from availing the scheme. However, no mechanism has been provided to ascertain such dependency. This may lead to frivolous litigations as well as triggering constitutional embargo of equal rights as every citizen has equal rights and cannot be barred from his rights due to his/her blood relation with other citizen.
3. The definition of holder of public office creates ambiguity as the same has been referred from Voluntary Declaration of Domestic Assets Act, 2018 ("Act 2018") which includes holder of public office during "ten preceding years". It is unclear whether the duration of ten preceding years commences from promulgation of Act 2018 or this ordinance.
4. The ordinance has been made applicable for every person, i.e. whether or not citizen of Pakistan. The benefit of declaration should only be available to citizens of Pakistan.
5. Domestic immovable property has been offered to be declared effectively at 2.25% (i.e. 150% of FBR value x 1.5% tax rate). This is a huge concession as currently any purchaser of immovable property has to pay taxes equivalent to approximately 3% at least (advance income tax, stamp duties, etc). Meagre 2.25% penalty to declare the immovable property will be discriminatory to compliant citizens.
6. With respect to undeclared bank accounts, it has not been made clear whether the values taken should be closing balances or the credit entries. It transpires from the language of the

relevant provisions of the ordinance that closing balance is to be accounted for. However, tax rate should be applicable on credit entries instead of closing balance. Closing balances of undeclared bank accounts are mostly virtually nil as these bank accounts are used to perform transactions only as witnessed in joint Investigation Report of recent fake accounts case.

7. Cash balances are required to be deposited in bank account and are required to be maintained therein up to 30th June 2019. The time limit for maintaining such balance is too short and may lead to future whitening of black or untaxed money as cash may be borrowed from informal channels for two months and may be deposited into bank accounts.
8. Repatriation of foreign assets should be allowed a timeframe of at least six months instead of repatriation (if opted by declarant) on or before declaration as repatriation involves legal complications in maturity/redemption of long-term investments such as investments in insurance policies, securities, debentures, mutual funds, etc.
9. No mechanism has been provided in case any declarant intends to revise his declaration within time frame. We expect the same will be incorporated in the rules.
10. There may be cases where a declarant has under declared assets under Act 2018. If he opts to declare the same assets at increased values under this ordinance, a question may arise as to what would be the fate of his declaration under Act 2018 as according to Act 2018, such redeclaration tantamount to misdeclaration, which in turn nullifies his declaration under Act 2018.
11. It has been provided that any amount of tax or default surcharge paid under the ordinance shall not be refundable. However, excess tax or default surcharge erroneously paid should be made refundable.

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ANNEXURE A

"holder of public office" means a person who is or has been during the ten preceding years, --

- (i) The President of the Islamic Republic of Pakistan or the Governor of a Province;
- (ii) The Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Chairman Senate, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney-General for Pakistan and other Law Officers appointed under the Central Law Officers Ordinance, 1970(VII of 1970), Adviser or Consultant or Special Assistant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State, Federal Parliamentary Secretary, Member of Parliament, Auditor-General of Pakistan, Political Secretary;
- (iii) the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Adviser or Consultant or Special Assistant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate-General for a Province including Additional Advocate-General and Assistant Advocate-General, Political Secretary;
- (iv) the Chief Justice or, as the case may be, a Judge of the Supreme Court, Federal Shariat Court, a High Court or a Judicial Officer whether exercising judicial or other functions or Chairman or member of a Law Commission, Chairman or Member of the Council of Islamic Ideology;
- (v) holding an office or post, in the service of Pakistan or any service in connection with the affairs of the Federation or of a Province or of a local council constituted under any Federal or Provincial law relating to the constitution of local councils, co-operative societies or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government or a civilian employee of the Armed Forces of Pakistan: Provided that a member of the Board, not actively engaged in the business and day-to-day affairs of the said corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization shall not be treated as holder of public office under this sub-clause;
- (vi) the Chairman or Mayor or Vice Chairman or Deputy Mayor of a zila council, a municipal committee, a municipal corporation or a metropolitan corporation constituted under any Federal or Provincial law relating to local councils;
- (vii) **Explanation.** - For the purpose of this sub-clause the expressions "Chairman" and "Vice Chairman" shall include "Mayor" and "Deputy Mayor" as the case maybe, and the respective councillors therein; and
- (viii) a District Nazim or District Naib Nazim, Tehsil Nazim or Tehsil Naib Nazim or Union Nazim or Union Naib Nazim.

"Benamidar" under the Benami Transactions (Prohibition) Act, 2017 is defined as a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.



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