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TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES





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EDITORIAL NOTE

I would like to present you the Newsletter for the month of July 2019. The Twenty first edition of our Newsletter was endeavored and accomplished by our team of ever dynamic and committed Individuals and by the blessing of the Almighty Allah. The changes brought forward by the recently promulgated Finance Act, 2019 and its implications on the economy have been highlighted in our latest publications namely



“Budget 2019-20 Significant Proposed Amendments” and “Comparison Between Finance Bill 2019 and Finance Act 2019”. Our topic of the month i.e. “Tax Residential Status” covers the definition for the Resident status in the selected countries as a crucial part in determining the taxability of an individual.

As a trend and part of our newsletter, in order to apprehend the plethora of litigations pertaining to the tax world, we also include a current Case law which may serve the purpose of understanding the laws while also helping to act as “ratio decidendi” in many appeals and cases filed by petitioners as well as respondents.

Readers are requested to visit our website www.tolaassociates.com or download our mobile apps from below links to access previous issues and other publications and to stay updated of future notifications.

1. <https://goo.gl/QDM4ZM> (iOS)
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Readers are also requested to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Ashfaq Tola - FCA
Editor in Chief

1. NOTIFICATIONS/ CIRCULARS

1. EXTENSION IN DATE OF FILING OF BI-ANNUAL WHT

The FBR vide its Circular No.10 of 2019 extended the last date to file the bi-annual withholding tax statement under Section 165 of the Income Tax Ordinance, 2001 till 20 August 2019. Notably the requirement of filing monthly withholding statement u/s 165 was replaced by the bi-annual statement as a change brought forward by the Finance Supplementary (Second Amendment) Act, 2018[FSA] in February 2019. However, it was made effective vide amendment in rule 44 of the Income Tax Rules, 2002 through SRO 849(I)/2019 dated 23 July 2019. The extension is thought to be granted due to the belated appearance of the IRIS new format as well as some glitches associated with said portal.

2. VALUATION OF PROPERTY REVISED vide SROs 829-848

The FBR vide SROs ranging from 829 to 848 prescribe the values of immovable property with respect to 19 metropolises including Islamabad, Karachi and Lahore w.e.f. 24th July 2019. The values has been revised to make them in accordance with transaction value and to discourage parking avenue of black money.

3. DIRECTOR GENERAL INTERNATIONAL TAXES - SRO 744

The FBR vide notification SRO 744(I)/2019 dated 9 July 2019 has enhanced the powers of the Directorate General of International Taxes Operation to impose or reimburse taxes on or from the unrevealed offshore goods and assets owned by overseas Pakistanis, to communicate with overseas tax authorities for the transfer of information as well as to enforce return filing and making assessment. These powers have been given to operationalize section 230E of the Income Tax

Ordinance inserted vide FSA. Accordingly, 43 Officers comprising of Director, Additional Director and Deputy/ Assistant are authorized to exercise certain powers as specified under the aforementioned SRO.

4. PRINTING OF RETAIL PRICE ON IMPORTED THIRD SCHEDULE ITEMS.

The FBR vide its STGO No. 102 dated 15 July 2019 has granted relaxation to the importers with respect to printing of retail price on the imported third schedule items by allowing affixing of stickers printed with retail price till July 31, 2019. Printing of retail price on imported items was enforced through Finance Act, 2019 but due to several representations such as blockage of imports and congestion at the ports due to unloading of containers to affix retail price stickers in the aforesaid manner, led the FBR think tank to reconsider its decision over printing of retail price on imported third schedule items.

5. CNIC CONDITION FOR WOMEN PURCHASING GOODS WORTH OVER RS. 50,000

The FBR vide its Sales tax Circular C.No. 1/2 – STB/2019 dated 22 July 2019 clarifies provision relating to CNIC promulgated by the Finance Act 2019 which required the consumer purchasing goods worth more Rs. 50,000/ to show their NIC. FBR has relaxes the conditions in case of buyer if women they may present CNIC of their father/husband instead of showing their own CNIC.

6. ESTABLISHMENT OF FATF CELL & DIRECTORATE

The FBR vide its Notification dated 25 July 2019 constituted the Financial Action Task Force (FATF) cell to effectively counter the terror financing carried through currency smuggling. The cell is placed under the responsibility of Director General, Directorate General of Intelligence & Investigation and several transfer and posting took place in order to constitute the cell as also

provided in the aforementioned notification. The constituted cell will assist as a focal point for all activities pertaining to customs compliance for the FATF issues.

2. LOCAL PUBLISHER OF FOREIGN EDUCATIONAL INSTITUTIONS IS ENTITLED TO EXEMPTION - SCP

In Case of Oxford University Press vs. The Commissioner Inland Revenue, Zone II, Large Tax Payers Unit, Karachi [C.P. No. 4927 of 2017] the taxpayer, a leading publishers of high quality books and is a branch/office of Oxford University, had claimed exemption from tax under clause (86) of Part I of the Second Schedule [Clause 86] of Income Tax Ordinance, 1979[ITO] "Any income of any university or other educational institution established solely for educational purposes and not for purposes of profit"[Para matria to Clause 92 part I of Second Schedule of Income Tax Ordinance, 2001]. The High Court held that there was no entitlement on basis interpreting the word "established" means established "in Pakistan". It was only on such basis that it had been held that since the University itself did not carry on any educational activities in Pakistan, the income earned by its publishing department could not enjoy the benefit of Clause 86. In other words, a University or Educational Institution, established abroad, will not be acceptable as university or educational institution under the Pakistani tax law if the nature of its business /working in Pakistan is not solely for educational purposes. Thus, to bring the case of the assessee within the purview of a branch of Oxford University or other educational institution entitled to exemption under clause (86) would depend upon its nature of working in Pakistan, i.e. whether in any manner it is imparting education in Pakistan. Further the taxpayer has failed to prove that the income earned by it through its business of printing, publication and sale of books or otherwise, is solely used for educational purposes in Pakistan. Against the

decision of High Court, the Taxpayer preferred an appeal in Supreme Court of Pakistan [SCP].

The SCP held that for application of exemption:

- i. The onus lies on the taxpayer to show that his case comes within the exemption,
- ii. If two reasonable interpretations are possible the one against the taxpayer will be adopted, and
- iii. If the taxpayer's case comes fairly within the scope of the exemption, then he cannot be denied the benefit of the same on the basis of any supposed intention to the contrary of the legislature or authority granting it.

The SCP rejected the HC decision on basis of (iii) of interpreting exemption rule mention supra. The Appellant was denied the benefit of the exemption on the basis of a supposed intention as regards the operation or effect of Clause 86, that the University must be carrying on educational activities in Pakistan. There was no reason for finding such intention in the exemption, no addition of words or deletion allowed. Further any income of University or education institution in form of for e.g. Rent income or endowment fund will be exempt. Further the term "not for profit" does not mean the taxpayer cannot earn profit, it means it does not distribute profit to shareholders. Since the taxpayer remitted profits to Oxford University but the same were retained and not disbursed by Oxford University of UK, hence the exemption is available. It may be noted that the view of SCP is contrary to majority decision by India Supreme Court in Oxford University Press v. Commissioner of Income Tax (2001) 247 ITR 658.

3. ECONOMIC INDICATORS

- The 3-month, 6-month and 1-year KIBOR rate for the month of June 2019 was 12.92%, 13.06 % and 13.55%, respectively, which hiked in July 2019 to 13.41%,

13.54% and 13.96%, respectively.

- The 3-month T-Bills rate for the month of June 2019 was 12.87% which hiked to 13.40% in July 2019; The 6-month T-Bills rate for the month of June 2019 was 12.92% which rose to 13.54% in July 2019. The rate for 1 year for the month of June 2019 was 13.33% which rose to 13.76% in July 2019.

- The PSX 100 index at the end of June 2019 was 34,886 points and at the end of July 2019 was 33,139 points indicating a decrease of 5%.

- The rate for Crude Oil in the OPEC basket at the end of June 2019 was \$ 62.84, whereas, at the end of July 2019 was \$ 64.71. The increase in price was 2.89%

- The rate of Gold per troy ounce in the month of June 2019 was \$1,364.07 whereas in the month of July 2019 it increased to \$1,418.19 per troy ounce by 3.81%.

- The rate of Sugar at end of June 2019 was 0.33 US\$/KG which slightly decreased to 0.32 US\$/KG in the month of July 2019.

- The rate of Palm Oil in the month of June 2019 was 472.74 US\$/MT which declined in the month of July 2019 to 467.03 US\$/MT by 1.20%.

- The US\$ parity to Chinese Yuan at the end of June 2019 was 6.90 whereas in the month of July 2019 it was 6.88 showing a decrease of 0.28%.

- The US\$ parity to Indian rupee at the end of June 2019 was 69.43 whereas in the month of July 2019 it was 68.77.

- The US\$ parity to Bangladesh Taka at the end of June 2019 was 84.50 whereas at the end of July 2019 it was 84.52 showing an increase of 0.02%.

- The US\$ parity to Pakistan Rupee at the end of June 2019 was 154.69 which increased to 159.26 at end of July 2019 by 2.86%.

- The stock of currency in circulation was Rs. 4,908.58 billion as on 29th June 2019 which increased by Rs. 67.22 billion up to 4,975.80 billion till July 27, 2019.

- The Net Government Sector borrowings at end of June 29th, 2018 were Rs. 11,620.19 billion which increased by Rs. 399.96 billion up to July 27th, 2019 to Rs. 12,020.15 billion. The net government sector borrowings were used for the purpose of budgetary support (Rs. 11,597 billion) and commodity operations (Rs. 756.14 billion); and supported by others (Rs. -16.22 billion).

- The credit to private sector at the end of June 30th, 2018 was Rs. 5,973 billion which rose by Rs. 644 billion up to July 27th, 2019 to Rs. 6,617 billion.

- Workers' remittances for the month of June and July 2019 were USD 1,645.7 million and USD 2,039.3 million respectively, an increase of 19.3%.

- The volume of imports in June 2019 was approx. 677,510 Million rupees (4,364 million \$) while the exports were approx. 266,540 Million rupees (1,717 million \$). Exports in July 2018 to June 2019 decrease by 1.00% to \$ 22,979 million over the same period last year, while Imports in July 2018 to June 2019 decrease by 9.86% to \$54,799 million over same period last year.

(July 2019 figures is not yet available officially)

4. TOPIC OF THE MONTH

- TAX RESIDENTIAL STATUS

The taxability in a country depends on many conditions with Residence being one of the main, as the Resident status of a person or individual decides whether or not that individual's/person's income is taxable, partially taxable or non-taxable in that country. In this article, we will address what makes a person a resident in Pakistan and other countries.

1. PAKISTAN:

1.1 Individual.

An individual shall be a resident individual for a tax year if the individual –

(a) is present in Pakistan for a period of, or periods amounting in aggregate to, one hundred and eighty-three days or more in the tax year;

(b) is present in Pakistan for a period of, or periods amounting in aggregate to, one hundred and twenty days or more in the tax year and, in the four years preceding the tax year, has been in Pakistan for a period of, or periods amounting in aggregate to, three hundred and sixty-five days or more; or

(c) is an employee or official of the Federal Government or a Provincial Government posted abroad in the tax year.

1.2 Company.

A company shall be a resident company for a tax year if:

(i) it is incorporated or formed by or under any law in force in Pakistan;

(ii) the control and management of the affairs of the company is situated wholly in Pakistan at any time in the year; or

(iii) it is a Provincial Government or Local Government in Pakistan.

1.3 Association of persons.

An association of persons shall be a resident association of persons for a tax year if the control and management of the affairs of the association is situated wholly or partly in Pakistan at any time in the year.

2. RESIDENT AS PER MODEL DOUBLE TAXATION AVOIDANCE TREATIES

2.1 UN Model

(i) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(ii) Whereby an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) He shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (Centre of vital interests);

(b) If the State in which he has his Centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has a habitual abode;

(c) If he has a habitual abode in both States and in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) If he is a national of both States and of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(iii) Whereby a person other than an individual is a

resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

2.2 OECD Model

(i) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(ii) A person is not to be considered a "resident of a Contracting State" in the sense of the Convention if, although not domiciled in that State, he is considered to be a resident according to the domestic laws but is subject only to a taxation limited to the income from sources in that State or to capital situated in that State. That situation exists in some States in relation to individuals, e.g. in the case of foreign diplomatic and consular staff serving in their territory. According to its wording and spirit the provision would also exclude from the definition of a resident of a Contracting State foreign-held companies exempted from tax on their foreign income by privileges tailored to attract conduit companies.

This, however, has inherent difficulties and limitations. Thus, it has to be interpreted restrictively because it might otherwise exclude from the scope of the Convention all residents of countries adopting a territorial principle in their taxation, a result which is clearly not intended. The exclusion of certain companies from the definition would not of course prevent Contracting States from exchanging information about their activities. Indeed, OECD members may feel it appropriate to develop spontaneous exchanges of information about companies which seek to obtain treaty benefits unintended by the Model Convention.

(iii) It has been the general understanding of most Member countries that the government of each State, as well as any political subdivision or local authority thereof, is a resident of that State for purposes of the Convention. Before 1995, the Model did not explicitly state this; in 1995, Article 4 was amended to conform the text of the Model to this understanding.

3. INDIA

3.1 Resident

A taxpayer would qualify as a resident of India if he satisfies one of the following 2 conditions:

- (i) Stay in India for a year is 182 days or more or
- (ii) Stay in India for the immediately 4 preceding years is 365 days or more and 60 days or more in the relevant financial year.

In the event an individual leaves India for employment during a Fiscal Year, he will qualify as a resident of India only if he stays in India for 182 days or more. This otherwise means, condition b above of 60 days would not apply to him.

3.2 Resident Not Ordinarily Resident

If an individual qualifies as a resident, the next step is to determine if he/she is a Resident ordinarily resident

(ROR) or a Resident Not Ordinarily Resident (RNOR). He will be a ROR if he meets both of the following conditions:

- (i) Has been a resident of India in at least 2 out of 10 years immediately previous years and
- (ii) Has stayed in India for at least 730 days in 7 immediately preceding years.

Therefore, if any individual fails to satisfy even one of the above conditions, he would be a RNOR.

4. USA

4.1 Resident Alien

A resident alien is a foreign person who is a permanent resident of the country in which he or she resides but does not have citizenship. To fall under this classification in the United States, a person needs to either have a current green card or have had one in the previous calendar year.

People can also fall under the U.S. classification of resident alien if they pass the substantial presence test. In order to do so, they must have been in the United States for more than 31 days during the current year, along with having been in the United States for at least 183 days over a three-year period, including the current year.

According to the United States Citizenship and Immigration Services (USCIS), there are three types of resident alien:

- (i) **Permanent resident** This is someone who has been given the lawful and legal right by the government to live in the United States.
- (ii) **Conditional resident:** This person receives a two-year Green Card, which is usually given to people who have applied for residency based on marriage or because they are entrepreneurs. A person must apply to have the conditions removed 90 days before the

Green Card expires, or else the permanent resident status will be removed.

- (iii) **Returning resident:** This is someone who has been outside the U.S. and is returning to the country. This person, also known as a "special immigrant," and must apply for readmission if he is outside the U.S. for more than 180 days.

The main issue with resident aliens is that of tax law. For example, a resident alien can use foreign tax credits, whereas a non-resident cannot. However, in general, a resident alien is subject to the same taxes as a U.S. citizen, while a non-resident alien only pays tax on domestic income that is generated within the United States, not including capital gains.

4.2 Non-Resident Alien

A nonresident alien is a noncitizen who has not passed or is exempt from the Green Card or substantial presence tests. Typical examples of nonresident aliens are teachers, people seeking medical treatment, and students.

Once a person has been inside the United States for a specific period they may qualify as a resident alien under the substantial presence test. To pass, the individual must stay in the United States for more than 31 days in any given current year. They may also be classified as a resident alien if they resided in the U.S. for more than 183 days over a three-year period, which includes the current year.

5. BANGLADESH

Resident Individual

Under section 2(55) of Bangladesh income tax ordinance 1984, 'resident' in respect of any income year means, an individual who has been in Bangladesh:

- (i) For a period of, or for periods amounting in all to, 182

days or more in that year; or

(ii) For a period of, or period amounting in all to, 90 days or more in that year having previously been in Bangladesh for a period of, or periods amounting in all to 365 days or more for 4 years preceding that year.

Residential law in Bangladesh does not depend on particular assignment. It rather depends on how many days the assignee stays in Bangladesh. It might be with assignment or without any assignment.

6. UK

6.1 Resident Individual

Whether a person is a UK resident usually depends on how many days he spends in the UK in the tax year.

A person will be considered a Resident if either:

- (i) He spends 183 or more days in the UK in the tax year or;
- (ii) Your only home was in the UK - you must have owned, rented or lived in it for at least 91 days in total - and you spent at least 30 days there in the tax year.

6.2 Non-Resident

A person will be considered a non-resident as per UK laws if:

- (i) That person spends fewer than 16 days in the UK (or 46 days if he has not been classed as UK resident for the 3 previous tax years)
- (ii) The person works abroad full-time (averaging at least 35 hours a week) and spent fewer than 91 days in the UK, of which no more than 30 were spent working

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