

BRIEF NOTE ON SECTION 7E- INSTRUCTIONS ISSUED BY THE FBR

INTRODUCTION

Section 7E of the Income Tax Ordinance, 2001 (“ITO”) was introduced through the Finance Act 2022, whereby, Immovable properties having fair market value more than PKR 25 million held by resident persons, is subject to 20% tax on the amount equal to 5% of their fair market value, subject to certain exclusions. This imposition was made applicable both retrospectively and prospectively i.e. applicable for tax year 2022 and onwards.

However, this section had been challenged by majority of the taxpayers and multiple cases had been filed all over the country in the concerned provincial High Courts. The Supreme Court of Pakistan has granted a leave to appeal to the appellant taxpayers against the Order passed by the Sindh High Court (“SHC”) and issued a stay order in favor of the appellants, subject to deposit of 50% of the tax demand.

Now, the Finance Act 2023 (“Act 23”) has introduced an amendment, sub-section (2A) in Section 236C, whereby no immovable property can be sold or transferred without providing evidence to the transferring authority that the seller / transferor had duly paid the deemed income tax liability on the said property. However, rules and modes for payment for the purposes of Section 236C(2A) were not prescribed in the Act 23. On 21st July 2023, the FBR, vide Circular No. 01 of 2023-24 has issued instructions regarding the mode and manner of payment which are as under:

INSTRUCTIONS WHERE SELLER/ TRANSFEROR’S NAME APPEARS IN THE ATL:

- A.** Where the seller/ transferor has not discharged his/her deemed income tax liability along with the TY 2022 income tax return, then such person shall pay the amount separately through FBR’s online payment facility and shall produce the Computerized Payment Receipt (“CPR”) before the transferring authority which shall be sufficient compliance of the said Amendment.

INSTRUCTIONS WHERE SELLER/ TRANSFEROR’S NAME APPEARS IN THE ATL AND HAS DECLARED THE SAID PROPERTY IN HIS SECTION 7E DECLARATION FILED ALONGWITH HIS TY 2022 INCOME TAX RETURN OR IS NOT REQUIRED TO PAY DUE TO STAY FROM ANY COURT OF LAW/AUTHORITY:

- B.** Where the seller / transferor has obtained a Stay from any court or has declared the immovable property in his Section 7E declaration, then such person shall be obliged to fill in Form A annexed to the issued Circular and submit the same to the concerned Commissioner, Inland Revenue. Once the said Form A has been received by the Commissioner, the Commissioner shall examine the particulars of Form A filled by the taxpayer, and there after shall issue a certificate within 7 days of receipt of the filled Form A. This certificate shall be sufficient evidence for the purposes of Section 236C(2A).

However, the Form A does not contain any information or declaration that is required to be filled by the seller regarding any court proceedings pending in relation to Section 7E for the taxpayer. Moreover, it is unclear as to what the modus operandi regarding immovable properties acquired during Tax Year 2023, as the instructions only mention declaration of property in Section 7E for Tax Year 2022.

Furthermore, if the purpose of this Form A is to bring the particulars of immovable property and reason for exclusion from Section 7E on record, then it seems to be a repetitive exercise, as the declaration for Section 7E under IRIS already contains such information.

INSTRUCTIONS WHERE SELLER/ TRANSFEROR’S NAME APPEARS IN THE ATL BUT ARE JOINT OWNERS:

- C.** Where the property is held by more than one person, then each person shall discharge their respective deemed income tax liability through which ever modes applicable in points A and B.

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INSTRUCTIONS WHERE SELLER/ TRANSFEROR'S NAME DOES NOT APPEAR IN THE ATL:

- D. Where the person's name does not appear in the ATL, then (s)he shall pay the due amount through a separate payment challan from the FBR's online payment system and this shall be a sufficient evidence for the satisfaction of the amendment section.

WAY FORWARD

Since the apex court has granted a stay order subject to deposit of 50% tax demand under Section 7E, for those who have declared property under Section 7E on IRIS, an option in the online declaration under IRIS should be added to upload a certified copy of the Stay Order for the applicable tax year. This will create a digital data base with the FBR of those taxpayers that have a Stay order operating in favor of them. Further, the process of obtaining the certificate should be switched to online vide IRIS. This again will create a digital trail of the documents. Moreover, this can also potentially ensure that the properties subject to exemption under Section 7E and the effect of the stay order are integrated in the tax particulars online, which can then be shared with the person responsible to register the immoveable property by the FBR, to assist him in ensuring compliance of Section 236C(2A) in a more efficient manner.

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