
SPECIAL TAX REGIME FOR TRADERS

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INTRODUCTION

A special tax regime has been proposed for 'traders' through introduction of certain amendments, provisions and 'Schedule Nine' to the Income Tax Ordinance, 2001 ('Ordinance'), hereinafter referred collectively as 'Scheme'.

The proposed scheme is applicable for 'traders' engaged in trading activity only, as defined in the Scheme to mean an individual or an association of persons, not being a company, buying goods or merchandise and selling the same without further processing. Business related after-sale services (repairs only) are also to be treated as part of trading activity.

For the purposes of this scheme, 'traders' are categorised into following two segments:

1. 'Non-Filers':

Traders who have not filed income tax returns up to December 31, 2015, during the ten preceding years.;

2. 'Filers':

Traders who are holders of NTN and has filed income tax return or returns in any of the preceding ten years.;

It appears that the scheme is applicable for traders whose working capital (current assets less current liabilities) does not exceed Rs. 50 million as at June 30, 2015, however provisions in relation to filers (Part II of the Ninth Schedule) need to be suitably amended to specifically exclude persons having working capital of more than Rs. 50 million.

There appears to be no concession from Federal and Provincial sales tax laws. In case, if this concession is to be given then there will have to be amendments introduced in relevant laws.

The traders covered under the scheme shall have the option to file income tax return and pay taxes as per the normal law or the under the scheme. If there is an option under the scheme then such traders will fall outside the scope of normal income based taxation as laid down in the law.

The scheme, as per apparent intention, is an amnesty for undeclared working capital up to Rs. 50 million and a turnover based income tax regime, providing exemption from tax audit for all the tax years up to 2018. Suitable amendments are, however, required for providing an exemption from tax audit / filing of return for tax years prior to tax year 2015.

This scheme is applicable for tax years 2015 to 2018.

The 'Scheme' shall not be available for:

- a) Persons providing services; and
- b) Retailers:
 - i) Operating as unit of a 'national or international chain of store';
 - ii) Operating in an air-conditioned shopping mall, plaza or center, excluding kiosks;
 - iii) Whose cumulative electricity bill during the immediate preceding twelve consecutive months exceeds Rupees 600,000; and
 - iv) Wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers.
- c) Members of Senate of Pakistan, National Assembly of Pakistan, Provincial Assemblies; and
- d) Persons convicted under control of Narcotics Substances Act, 1997, Anti-Terrorism Act, 1997 and Anti Money Laundering Act, 2010.

There appears to be an intention that persons as referred in (b) above, if not registered, will also qualify for the scheme. Nevertheless there is a need for a clarification on the matter.

The Scheme for 'Non-filers'

In case of a 'non-filer', the proposed regime is as under:

1. Tax year 2015

Tax at the rate of 1 percent will be paid on the opening working capital being the full and final tax liability for the tax year 2015;

2. Tax years 2016, 2017 and 2018

Tax shall be paid at the rates prescribed as follows:

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| a. | For turnover up to 50 million | 0.2 % of turnover |
| b. | For turnover between 50 to 250 million | Rs. 100,000 and 1.5% |
| c. | For turnover exceeding 250 million | Rs. 400,000 and 0.1 % |

3. Income tax liability, as above, will not include income tax related to any activity other than trading as referred above, including those determined under any other Final Tax Regime (FTR). This means that if for example, that trader is subject to FTR on imports or on sales to withholding agents then said liability will continue to exist;
4. The trader falling under the scheme will not be considered as a 'prescribed person' under section 153 of the Ordinance and consequently are not required to withhold income tax on purchases, services and contracts falling under Section 153 of the Ordinance;
5. A trader shall qualify for the scheme for the tax year 2016 if the declared turnover is at least three times of the working capital declared in 2015 referred to in 1 above;
6. Qualification under the scheme for the year 2017 and 2018 shall be available if tax paid on the basis of turnover is 25 percent more than the tax paid for 2016;
7. The trader falling under the Scheme shall be exempt from tax audit provisions as laid down in the Ordinance.
8. The amendment proceeding based on the availability of 'definite information' as defined under the Ordinance will however be applicable on such persons;
9. It appears that as per the intention of the scheme, 'working capital' as declared under the scheme shall be immune from actions for undeclared sources under Section 111 of the Ordinance, however the relevant clauses would need a revision to achieve this intention if it is so envisaged.

The Scheme for 'Filers'

The salient features for the scheme for 'filers' are:

1. Tax year 2015

The income tax liability for traders falling under the scheme for tax year 2015 shall be higher of:

- a. 25% higher than tax paid for the year 2014 or any earlier year for which a return has been filed; or
- b. Tax on the basis of turnover as specified for the cases of non-filer; or
- c. Rs. 30,000.

2. Tax year 2016 to 2018

Tax liability for the year 2016 to 2018 shall be higher of:

- a. 25% of tax paid for 2015; or
- b. Tax on turnover as referred above.

3. Any trader who has already filed a return of income for 2015 before the applicability of this scheme can revise the return applying the basis adopted in the scheme. However, such an option will only be available if tax paid is higher by 10 percent of already declared tax liability.
4. The filers opting for the scheme shall be immune from actions for undeclared sources under Section 111 of the Ordinance with regard to the imputable income worked out on the basis of tax paid under the Scheme. In case of actual taxable income less than imputable income, immunity is available on payment of 1% tax on such differential.

General conditions

1. The liability under the Scheme will not include income tax related to any activity other than trading as referred above, including those determined under any other Final Tax Regime.
2. Traders qualifying for the Scheme shall not be subject to audit provisions for tax years 2015 to 2018, however, amendment proceedings under section 122 on the basis of definite information are applicable.
3. Traders opting for the Scheme will not be considered as withholding agent for the purposes of section 153 viz. payments for purchase of goods, services and contracts.
4. No adjustment for refunds or adjustable withholding taxes will be allowed to traders for offsetting their liability under the Scheme.