

May 15, 2019

Memorandum on Assets Declaration Ordinance, 2019



A·F·FERGUSON&Co.
*Chartered Accountants
a member firm of the PwC network*

MEMORANDUM ON ASSETS DECLARATION ORDINANCE, 2019

Preamble

Through an ordinance, the Federal Government has promulgated the Assets Declaration Ordinance, 2019 (Annexure 'A') on May 14, 2019. This Ordinance is a step in the right direction, which was necessitated by the prevailing circumstances of the economy and tax culture of Pakistan where not only a sizeable part of assets is undeclared / under-declared, but is also being held in the form of *benami* assets.

Benami Transactions (Prohibition) Act, 2017 has become operational in 2019 owing to the issuance of relevant Rules whereby holding of *benami* assets is declared as illegal. It was, therefore, imperative to bring a transitional declaration mechanism for providing an opportunity to bring these assets into the documented economy.

Similarly, application of the automatic exchange of information under the Common Reporting Standard (CRS) of the OECD has resulted in availability of substantial information with the Federal Board of Revenue (FBR) about foreign assets of Pakistanis which information is, and has the potential of, being used for the identification of assets / expenditures currently out of the documented system.

Under these circumstances, it is a requisite gesture on part of the Federal Government to provide an opportunity for declaration of such assets / expenditure before any significant prosecution drive is undertaken.

Moreover, there are various tax disputes where the amounts are outstanding due to the pendency of cases in Courts of law. Subject to certain restrictions, the Ordinance also caters for the payment of such demands without any penal consequences.

Due to the above changes of circumstances, the Assets Declaration Ordinance, 2019 is different in certain aspects from the similar law of April 2018 (Previous Scheme).

There are certain matters for which we understand that a necessary clarification will be issued in due course. It is also expected that issuance of Ordinance by the Federal Government will be followed by announcement of Amnesties by the Provincial Governments, so as to encourage declaration of services revenue not yet declared and to allow payment of related services tax thereon.

Persons covered

Under this Ordinance, any person may make a declaration in respect of 'undisclosed assets', 'undisclosed expenditure', 'undisclosed sales' and '*benami* assets'. Whilst the Previous Scheme only allowed such individuals who were Citizens of Pakistan to file the declarations, this Ordinance does not make any such restriction.



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Assets covered

The Ordinance will apply to undisclosed assets acquired, undisclosed expenditure incurred and undisclosed sales made upto June 30, 2018 and *benami* assets acquired or held on or before the date of declaration.

In respect of *benami* assets declared under the Ordinance, it is our view that income earned from such assets during the tax year 2019 will remain chargeable to tax in the respective tax year.

Exclusions

Following persons and assets are not eligible under this Ordinance:

- holders of public office [as defined in the Voluntary Declaration of Domestic Assets Act, 2018 (Annexure B)], their *benamidars* [as defined in the Benami Transactions (Prohibition) Act, 2017 (Annexure C)], their spouses and dependents;
- a public company as defined in section 2(47) of the Income Tax Ordinance, 2001;
- Proceeds or assets that are involved in or derived from the commission of a criminal offence, gold and precious stones, bearer prize bonds and other such bearer securities, share certificates, bonds or any other bearer assets; and
- Assets for which proceedings are pending in any court of law.

Amnesty for unpaid tax demands

This Ordinance also provides that for any outstanding tax demand determined by the tax authorities, the declarant can discharge the same without any default surcharge and penalty. This concession is available even in those cases where the matter is pending before any Court of Law. Section 10 of the Ordinance provides that the amount of tax or default surcharge paid under the Ordinance is not refundable. Necessary amendment is needed in this regard to exclude the payments under the Ordinance made in respect of matters pending before any Court of law, so that the same are refunded to the declarants in case the matter is ultimately decided in their favour by the Court of law.

Valuation of assets

Valuation of assets (other than domestic immovable properties) is to be the fair value that is the price which the asset would ordinarily fetch on sale in open market on the date of declaration but in no case less than the cost of acquisition of the asset.

For foreign assets, the rate of exchange to be used shall be the one prevailing on the date of declaration.

With regard to domestic immovable properties, the value shall not be less than 150% of the FBR notified value or DC value, as may be applicable in that particular case.

Revaluation of immovable properties

The Ordinance also provides an opportunity to increase the valuation of those immovable properties, which were already declared under the Income Tax Ordinance, 2001, or voluntary declaration of domestic Assets Act, 2018. However, this shall not be construed to result in any negative repercussion for declarations already made under the above laws as long as the value has been in line with FBR notified value or DC value, as the case may be.

Conditions for declaration including repatriation

- Any cash held in Pakistan as declared under the Ordinance is required to be deposited in declarant's bank account and to be retained upto June 30, 2019.
- The Ordinance does not require mandatory repatriation of foreign assets, however, foreign liquid assets not repatriated are required to be deposited in declarant's foreign bank account on or before June 30, 2019.
- Foreign liquid assets repatriated are required to be deposited into declarant's own bank account in Pakistan or invested into Pakistan Banao Certificate or any foreign currency denominated bonds, issued by the Federal Government.

We understand that the term "Foreign Liquid Assets" has to be construed as defined in the Previous Scheme; however, no enabling provision is available in the Ordinance.

Rates of tax

Declaration under this Ordinance shall be chargeable to tax at the following rates:

S. No.	Undisclosed assets, sales or expenditure	Rate of tax
1.	All assets except domestic immovable properties	4%
2.	Domestic immovable properties	1.5%
3.	Foreign liquid assets not repatriated	6%
4.	Unexplained expenditure	4%
5.	Undisclosed Sales	2%

Date of declaration and payment of tax

Declaration under this Ordinance has to be filed by June 30, 2019.

Payment of tax can be made upto June 30, 2020 (in case the payment is not made by the said date, the declaration shall be null and void); however, any payment after June 30, 2019 shall attract default surcharge at the following rates.

S. No.	Time of payment of tax	Rate of Default Surcharge (%age of tax amount)
1.	July 1, 2019 – September 30, 2019	10%
2.	October 1, 2019 – December 31, 2019	20%
3.	January 1, 2020 – March 31, 2020	30%
4.	April 1, 2020 – June 30, 2020	40%

Payment of tax in respect of foreign assets has to be made in accordance with the Rules to be prescribed by the State Bank of Pakistan.

Overriding effect and confidentiality

The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. All confidentiality provisions of the Income Tax Ordinance, 2001 and Right of Access to Information Act, 2017 shall apply to declarations made under this Ordinance, except for disclosure of information to any authority exercising its powers under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; Federal Excise Act, 2005 and Customs Act, 1969 for the purpose of enabling such authority to exercise its powers under these laws. It is worth mentioning here that unlike the Previous Scheme, there are no provisions in the Ordinance for imposition of fine / for imprisonment of any person in breach of confidentiality provisions.

Declaration not admissible as evidence

Nothing contained in the declaration made under this Ordinance shall be admitted as evidence against the declarant for the purpose of any proceedings relating to imposition of penalty or for the purpose of prosecution under any law.

Effect of declaration and incorporation in books

Declarants shall be entitled to incorporate the undisclosed assets, undisclosed sales, undisclosed expenditure and *benami* assets in their books of account once the same are declared and tax paid thereon under the Ordinance. It is our view that in respect of *benami* assets, the requirement of transferring the same to the beneficial owner under the Benami law will not be applicable once the same is declared in accordance with the provisions of this Ordinance.

No allowance, credit or deduction

This is a very important anti-abuse provision in the Ordinance, which was not included in the Previous Scheme. Under this new concept, the declarant shall not be allowed to claim any allowance, credit or deduction in respect of assets declared and incorporated in the books in consequence of such declaration. This effectively means that whenever the declared asset will be used for the purpose of business or disposed of, the tax consequences will be dealt by excluding the impact of values declared and incorporated under this Ordinance.

An
ORDINANCE

*to provide for voluntary declaration of undisclosed assets, sales
and expenditure*

WHEREAS there is a reportedly large scale non-declaration of assets,
sales and expenditure;

ANDWHEREAS it is expedient to make provisions for declaration of such
assets, sales and expenditure for the purposes hereinafter appearing;

AND WHEREAS it is expedient to—

- (a) allow the non-documented economy's inclusion in the taxation
system; and
- (b) serve the purpose of economic revival and growth by encouraging
a tax compliant economy;

AND WHEREAS the Senate and the National Assembly are not in
session and the President of the Islamic Republic of Pakistan is satisfied that
circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in the exercise of the powers conferred by clause
(1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the
President of the Islamic Republic of Pakistan is pleased to make and promulgate
the following Ordinance:—


1. Short title, extent and commencement.— (1) This Ordinance shall
be called the Assets Declaration Ordinance, 2019.

(2) It shall extend to the whole of Pakistan.

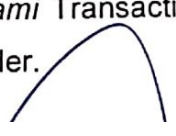
(3) It shall come into force at once.

2. Definitions.—(1) In this Ordinance, unless there is anything
repugnant in the subject or context,—

- (a) "assets" means all domestic and foreign assets of every
kind;

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- (b) "Board" shall have the same meaning as defined in clause (8) of section 2 of the Income Tax Ordinance, 2001 (XLIX of 2001);
 - (c) "court of law" means a High Court or Supreme Court of Pakistan;
 - (d) "declarant" means a person making a declaration under section 5;
 - (e) "holder of public office" means a person as defined in the Voluntary Declaration of Domestic Assets Act, 2018 or his benamidar as defined in the *Benami* Transactions (Prohibition) Act, 2017 (V of 2017) or their spouses and dependents;
 - (f) "undisclosed assets" includes benami assets as defined in the *Benami* Transactions (Prohibition) Act, 2017 (V of 2017) and any assets the value of which has been unreported, under-reported or understated;
 - (g) "undisclosed expenditure" means any unexplained or unaccounted expenditure under the provisions of the Income Tax Ordinance, 2001 (XLIX of 2001) up to the tax year 2018, which has not been declared in the return of income or for which a return of income has not been filed and such expenditure is not accounted for;
 - (h) "undisclosed sales" means sales or supplies chargeable to sales tax or federal excise duty under the Sales Tax Act, 1990 or the Federal Excise Act, 2005, respectively, which were not declared or have been under-declared up to 30th June, 2018.

(2) All other words and expressions used but not defined in this Ordinances shall have the same meaning assigned thereto under the Income Tax Ordinance, 2001 (XLIX of 2001), the Sales Tax Act, 1990, the Federal Excise Act, 2005, the *Benami* Transactions (Prohibition) Act, 2017(V of 2017) and the rules made thereunder.



3. Declaration of undisclosed assets, sales and expenditure.—

Subject to the provisions of this Ordinance, any person may make, on or before 30th June, 2019, a declaration only in respect of any—

- (a) undisclosed assets, held in Pakistan and abroad, acquired up to 30th June, 2018;
- (b) undisclosed sales made up to 30th June, 2018.
- (c) undisclosed expenditure incurred up to 30th June, 2018; or
- (d) *benami* assets acquired or held on or before the date of declaration;

Explanation.— It is clarified that the benefit under this Ordinance shall also be available where—

- (a) any proceedings have been initiated or are pending or where any income has been assessed under the Income Tax Ordinance, 2001 (XLIX of 2001), which are relatable to undisclosed assets or expenditure except where the matter has attained finality;
- (b) any proceedings have been initiated or are pending or have been adjudicated under the Sales Tax Act, 1990, or the Federal Excise Act, 2005, which are relatable to any undisclosed sales or supplies except where the matter has attained finality.

4. Charge of tax and default surcharge.— (1) The undisclosed assets shall be chargeable to tax and default surcharge at the value mentioned in section 5 and at the rates specified in the Schedule to this Ordinance.

(2) The undisclosed sales and expenditure shall be chargeable to tax and default surcharge at the rates specified in the Schedule to this Ordinance.

5. Value of Assets.—Value of assets,—

- (a) in case of domestic immovable properties shall be the price not less than—

- (i) 150% of the FBR value notified under sub-section (4) of section 68 of the Income Tax Ordinance, 2001

(XLIX of 2001); or


- (ii) 150% of the DC value, where FBR value has not been notified or the FBR value is less than the DC value; or
 - (iii) 150% of FBR value notified under sub-section (4) of section 68 of the Income Tax Ordinance, 2001 (XLIX of 2001) for land and 150% of DC value for constructed property, where FBR value has not been notified for constructed property;
- (b) in case of all other assets, shall be the price which the assets would ordinarily fetch on sale in the open market on the date of declaration but in no case shall be less than the cost of acquisition of the asset:

Provided that in case of foreign assets, the fair market value shall be determined at the exchange rate prevalent on the date of declaration.

Explanation.— It is clarified as follows—

- (a) in case any declarant has already filed a declaration in respect of any immovable property under the Income Tax Ordinance, 2001, or the Voluntary Declaration of Domestic Assets Act, 2018 and wishes to enhance the declared value of the said immovable property, he may file a declaration under this Ordinance in terms of the value mentioned in section 5 and above;
- (b) in case a person has already filed a declaration in respect of any immovable property which is in line with section 68 of the Income Tax Ordinance, 2001, or the Voluntary Declaration of Domestic Assets Act, 2018 no further proceedings or action will be initiated against him in view of the provisions of this Ordinance, in particular section 5 thereof.

6. Time for payment of tax.— (1) The due date for payment of tax chargeable under this Ordinance shall be on or before 30th June, 2019:



Provided that after the due date under this sub-section, the tax shall be paid on or before the 30th June, 2020 along with default surcharge at the rates given in clause (2) of the Schedule to this Ordinance.

(2) The tax in respect of foreign assets or foreign currency held in Pakistan shall be paid in foreign currency according to the procedure prescribed by the State Bank of Pakistan, in the mode and manner provided in section 9.

(3) If a person fails to pay tax and default surcharge according to this section, the declaration made shall be void and shall be deemed to have never been made under this Ordinance.

(4) Notwithstanding the provisions of clause (g) of section 11, in case of outstanding demand at the time of filing of declaration, the declarant may pay the amount of such tax determined by the Officer of Inland Revenue, under the provisions of the Sales Tax Act, 1990 or the Income Tax Ordinance, 2001 (XLIX of 2001), or the Federal Excise Act, 2005, without payment of default surcharge and penalty.

7. Incorporation in books of account.—(1) Where 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 irrespective of the fact that the asset, sales or expenditure were relatable to a year which is barred by time for the purpose of revision of return of income or wealth statement, as the case may be.

(2) No allowance, credit or deduction under any law for the time being in force shall be available for assets so incorporated.

8. Conditions for declaration.— The declaration made shall be valid if—

(a) cash held by the declarant is deposited into a bank account in the manner specified at the time of declaration and is retained in such bank account up to the 30th June, 2019; or

(b) the foreign currency held in Pakistan declared under section 3 is deposited into declarant's own foreign currency bank

account at the time of declaration and is retained in such account till 30th June, 2019; or

- (c) the repatriated foreign liquid asset is deposited into declarant's own Pak Rupee account or his foreign currency bank account in Pakistan or is invested into Pakistan *Banao* Certificates or any foreign currency denominated bonds issued by the Federal Government; or
- (d) foreign liquid assets not repatriated to Pakistan shall be deposited in declarant's foreign bank account on or before the 30th June, 2019.

9. Mode and manner of repatriation of assets held outside Pakistan and payment of tax thereon.—The State Bank of Pakistan shall notify the mode and manner of—

- (a) repatriation of assets to Pakistan;
- (b) deposit of tax in foreign currency through State Bank of Pakistan; and
- (c) method of conversion of value of assets held outside Pakistan in Pak rupees.

10. Tax paid not refundable.— Any amount of tax or default surcharge paid under the provisions of this Ordinance shall not be refundable.

11. Ordinance not to apply to certain persons, assets or proceedings.— The provisions of this Ordinance shall not apply to—

- (a) holders of public office;
- (b) a public company as defined under clause (47) of section 2 of the Income Tax Ordinance, 2001;
- (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;

- (f) bearer securities, shares, certificates, bonds or any other bearer assets; or
- (g) proceedings pending in any court of law.

12. Declaration not admissible in evidence.— Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under this Ordinance shall be admissible in evidence against the declarant for the purpose of any proceedings relating to imposition of penalty or adverse action or for the purposes of prosecution under any law.

13. Misrepresentation.— Notwithstanding anything contained in this Ordinance, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed to have been never made under this Ordinance.

14. Confidentiality.— (1) Notwithstanding any other law for the time being in force including the Right of Access to Information Act, 2017 (XXXIV) and sub-section (3) of section 216 of the Income Tax Ordinance, 2001 (XLIX of 2001), except the provisions of clauses (a) and (g) of sub-section (3) of section 216 of the Income Tax Ordinance, 2001 (XLIX of 2001), particulars of any person making a declaration under this Ordinance or any information received in any declaration made under this Ordinance shall be confidential.

15. Power to make rules.— The Board may by notification in the official Gazette make rules for carrying out the purposes of this Ordinance including the manner, procedure, payment of tax and conditions under which the declaration under this Ordinance shall be filed.

16. Ordinance to override other laws.— The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

17. Removal of difficulties.— (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, remove such difficulty as is inconsistent with the provisions of this Ordinance.

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THE SCHEDULE

[see section 4]

Rates of Tax

(1) The rates of tax imposed on undisclosed assets, sales and expenditures shall be as specified in the following Table, namely: —

Table

S. No.	Undisclosed assets, sales or expenditure	Rate of tax
(1)	(2)	(3)
1.	All assets except domestic immovable properties	4%
2.	Domestic immovable properties	1.5%
3.	Foreign liquid assets not repatriated	6%
4.	Unexplained expenditure	4%
5.	Undisclosed Sales	2%

Rates of Default Surcharge

(2) The amount of tax under clause (1) of the Schedule shall be increased by a default surcharge by amount percentage as specified in the following Table, namely:—

Table

S. No.	Time of payment of tax	Rate of default surcharge
1.	If the tax is paid after the 30 th June, 2019 and on or before the 30 th September, 2019	10% of the tax amount
2.	If the tax is paid after the 30 th September, 2019 and on or before the 31 st December, 2019	20% of the tax amount
3.	If the tax is paid after the 31 st December, 2019 and on or before the 31 st March, 2020	30% of the tax amount
4.	If the tax is paid after the 31 st March, 2020 and on or before the 30 th June, 2020	40% of the tax amount



Dr. Arif Alvi
President

HOLDER OF PUBLIC OFFICE

The term "holder of public office" has been defined in the 'Voluntary Declaration of Domestic Assets Act, 2018' to mean a person who is or has been, during the preceding ten 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, bank, 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;

Explanation.— For the purpose of this sub-clause the expressions "Chairman" and "Vice Chairman" shall include "Mayor" and "Deputy Mayor" as the case may be, and the respective councilors therein; and

- (vii) a District Nazim or District *Naib Nazim*, Tehsil *Nazim* or Tehsil *Naib Nazim* or Union *Nazim* or Union *Naib Nazim*.

**DEFINITIONS OF 'BENAMIDAR', 'BENAMI PROPERTY'
AND 'BENAMI TRANSACTION'**

"benamidar" means 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;

"benami property" means any property which is the subject matter of benami transaction and also includes the proceeds from such property;

"benami transaction" means,---

- (A) a transaction or arrangement,---
 - (a) where a property is transferred to, or is held by, a person and the consideration for such property has been provided, or paid by, another person; and
 - (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by:---
 - (i) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, agent or legal adviser, and any other person as may be notified by the Federal Government for this purpose; or
 - (ii) any person being an individual in the name of his spouse or in the name of any child or in the name of his brother and sister or lineal ascendant or descendant and the individual appearing as joint owner in any document of such individual and the consideration for such property has been provided or paid out of known resources of income of the individual; or
- (B) a transaction or arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or arrangement in respect of a property where the owner of the property is not aware of, or denies knowledge of, such ownership; or
- (D) a transaction or arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.