

May 15, 2019

***Memorandum on
Assets Declaration Ordinance, 2019***



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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.



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.