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**Comments on Economic and Tax Reforms
Package**

Tax ●

The President of Pakistan has made and put into effect four Ordinances as per powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan to provide legal enforceability to economic reforms package announced by the Prime Minister on April 5, 2018. These Ordinances are listed below:

- A.** The Foreign Assets (Declaration and Repatriation) Ordinance, 2018;
- B.** The Voluntary Declaration of Domestic Ordinance, 2018;
- C.** The Income Tax (Amendment) Ordinance, 2018;
- D.** Protection of Economic Reforms (Amendment) Ordinance, 2018.

Important amendments brought by these Ordinances, which are interlinked, are discussed in relevant sections of this publication.

A. THE FOREIGN ASSETS (DECLARATION AND REPATRIATION) ORDINANCE, 2018

The objective for promulgation of the Ordinance is to give effect to the tax amnesty scheme for the whitening of non-reported and under-reported assets held outside Pakistan. Such amnesty schemes have also been announced in other countries including Indonesia, which announced an amnesty scheme for declaration of foreign assets in June 2016 with objective to increase tax base.

The Indonesian Government was able to collect approximately USD 9 billion in terms of taxes and penalties, within nine months of amnesty period. The total assets declared under amnesty were approximately USD 365 billion out of which USD 91 billion were foreign assets.

Further, considering the recent steps taken by the Organization for Economic Co-operation and Development (OECD) for Automatic Exchange of Financial Account between signatory countries, it would be in the interest of taxpayers to avail such amnesties and avoid

any repercussions, which include confiscation of assets for not making proper disclosure.

Tax amnesty scheme is well timed. By end of 2018, Pakistan will start exchanging tax information with others that are part of the OECD's Automatic Exchange of Information initiative. This means Pakistan will start receiving information about offshore assets owned by its residents from tax jurisdictions that are part of the initiative. As of July 2016, 101 tax jurisdictions had signed up to the programme.

In 2014, the OECD established the Common Reporting Standard (CRS), laying the groundwork for a new global network of tax reporting. The CRS calls on the tax authorities of participating countries to obtain information from their financial institutions and automatically exchange that information with other countries on an annual basis. The purpose of the CRS is to combat international tax evasion.

Under CRS, financial institutions (FIs) in participating jurisdictions must collect certain information regarding client's status and country (or countries) of tax residence, and for certain types of entity clients, the country (or countries) of tax residence of the individual(s) who control them. FIs will report information on financial accounts held by clients who are tax residents in other reportable jurisdictions to the designated local authorities. The information then will be exchanged annually by the local authorities with the designated authorities in each reportable jurisdiction with which a relevant information sharing agreement has been entered. In participating jurisdictions, compliance is mandatory under local laws.

CRS and Foreign Account Tax Compliance Act (FATCA) both target offshore tax evasion and require financial institutions to identify clients' tax statuses, monitor clients for change in circumstances and report clients' account details, as applicable. However, FATCA focuses only on tax evasion by US Persons, whilst CRS targets offshore tax evasion based on an account holder's country (or countries) of tax residence.

The potential ramifications of CRS and the fact that Pakistan has become signatory to OECD convention in September 2016 could have a

significant bearing on the success of Amnesty Scheme(s) announced by the Government.

The initiative will mean that tax avoiders will find it hard to hide their financial information from authorities because banks would not be allowed to hide information about their non-resident customers.

1. Important definitions

- (a) "fair market value" means price of foreign asset determined and declared by a declarant himself, but in no case is less than the cost of acquisition of the foreign assets.
- (b) "foreign assets" means any movable or immovable assets held outside Pakistan and includes real estate, mortgaged assets, stock and shares, bank accounts, bullion, cash, jewels, paintings, accounts and loan receivables, beneficial ownership or beneficial interests or contribution in offshore entities and trusts.
- (c) "government security" means a bond, note or other debt instrument issued by the Federal Government with a promise of repayment upon maturity.
- (d) "liquid assets" means cash or an asset that can be readily converted into cash with a minimal impact on the assets' value and includes bank notes, marketable securities, stocks, promissory notes, government bonds, deposit certificates and other similar instruments.

2. Persons and assets covered

This Ordinance applies on all citizens of Pakistan except holders of public office, their spouses and dependent children. 'Holder of public office' has been defined under section 2(g) of the Ordinance and inter alia includes any person who is or has been at any time since January 1, 2010:

- (i) President of Pakistan or Governor of any province;
- (ii) Prime Minister, Chairman and Deputy Chairman Senate of National Assembly, Federal Ministers and their advisors or Consultants;

- (iii) Chief Minister, Speaker and Deputy Speaker of Provincial Assembly, Provincial Ministers and their advisors or Consultants;
- (iv) Chief Justice, Judges of Supreme Court and High Courts;
- (v) Persons holding an office or post in service of Pakistan or service connected with affairs of Federation, Province or local council, etc.
- (vi) Chairman, Vice Chairman or Mayor or Deputy Mayor of a Zila Council, a Municipal Committee, etc.

The foreign assets declared by the person shall not include any foreign assets, where proceedings are pending in any court of law in respect of such assets.

The provision of this Ordinance shall not apply to any proceeds or assets that are involved or derived from the commission of a criminal offence. As such, any person having such proceeds and assets will not be covered under the amnesty and such assets and proceeds will be subject to scrutiny by relevant authorities, prosecution and penalties as prescribed under the relevant laws.

3. Declaration value

The declaration and repatriation under the aforesaid Ordinance is to be made between April 10, 2018 and June 30, 2018.

The declaration is to be made at the 'Fair Market Value', which shall be the price of foreign asset determined and declared by the declarant himself but in no case to be less than the cost of acquisition of such assets.

The declarant will not be liable to pay any tax under any law enforced for the time being (including Income Tax Ordinance, 2001) for assets declared as prescribed under this Ordinance. Once declared, these assets can be incorporated in the books of accounts of the person.

4. Tax rates

The table below shows that the Government makes it more attractive in case the taxpayer repatriates his / her funds into Pakistan. For example, if the taxpayer declares his / her

previously undeclared assets before June 30 2018, then a tax rate of 5 % is applied. However, in case the taxpayer not only declares the wealth but also repatriates this wealth to Pakistan (before June 30, 2018) then a 2 percent tax rate is applied.

S.No.	Foreign assets	Rate (as a percentage of the value of foreign assets)
1.	Liquid assets not repatriated	5%
2.	Immovable assets outside Pakistan	3%
3.	Liquid assets repatriated and invested in Government securities upto 5 years in US dollars denominated bonds with six-monthly profit payment in equivalent Rupees (rate of return 3%) and payable on maturity in equivalent Rupees	2%
4.	Liquid assets repatriated	2%

5. Payment mechanism

The person would be required to declare value of foreign assets and to pay tax on such assets in the manner set out in Form A of the Schedule to this Ordinance. The description of these assets shall be in the manner as set out in Form B of the Schedule to this Ordinance.

The person shall also be required to repatriate the foreign assets in Pakistan and due date for the payment of tax shall be the date on which the person made the declaration.

6. Overriding impact 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.

The information acquired with respect to declaration under the Ordinance shall be kept confidential irrespective of whatsoever contained in any law for the time being in force. In case of any disclosure in contravention of this Ordinance, the guilty shall be punishable on conviction with a fine or imprisonment or both.

It has also been clarified that nothing contained in declaration made under this Ordinance shall be admissible in evidence against the declarant for any proceedings related to levy of penalty or prosecution under the provisions of the Income Tax Ordinance, 2001. As such, declaration of assets and payment of tax as per this Ordinance will absolve the declarant from penalties and persecution prescribed under the Income Tax Ordinance, 2001.

B. VOLUNTARY DECLARATION OF DOMESTIC ASSETS ORDINANCE, 2018

The purpose of Voluntary Declaration of Domestic Assets Ordinance, 2018 (the Ordinance) is to provide a facilitation mechanism for declaration and payment of tax in respect of previously undeclared or under declared income and assets held in Pakistan.

It is, however, pertinent to mention that time limitations of 5 tax years, as applicable, has not been changed under section 111(2) of the Income Tax Ordinance, 2001 with respect to domestic undisclosed / concealed assets, as is the case with foreign undeclared assets, which can now be taxed in the tax year prior to the tax year in which such assets are discovered by the Commissioner. It is, therefore, to be seen whether the tax payers would disclose the undeclared assets acquired in the tax years which have already become time barred.

1. The Ordinance overrides other laws

The provisions of the Ordinance shall prevail over anything contrary contained in other laws in force in Pakistan.

2. Persons covered

The Ordinance is applicable to companies, association of persons and all citizens of Pakistan wherever residing except "holder of public office", as defined under the Ordinance, their spouses and dependent children.

3. Assets covered

The Ordinance is applicable in respect of undisclosed income and "domestic assets" held in Pakistan, except where any proceeding is pending in any court of law in respect of such assets.

The term "domestic assets" as defined under the Ordinance to mean assets of every kind other than "foreign assets", as defined in the Foreign Assets (Declaration and Repatriation) Ordinance, 2018.

The provisions of this Ordinance, however, would not be applicable to any proceeds or assets that are involved in or derived from the commission of a criminal offence. As such, any person having such proceeds and assets will not be covered under the amnesty and such assets and proceeds will be subject to scrutiny by relevant authorities, prosecution and penalties as prescribed under the relevant laws.

4. Mode of declaration

The declaration under the Ordinance shall be made in the following manner:

- Form "A"
- Electronically on FBR's web portal

The declaration shall be accompanied by the evidence of payment of tax.

5. Time of declaration

The declaration under the Ordinance shall be made from April 11, 2018 to June 30, 2018.

6. Tax rate

Domestic assets declared under the Ordinance shall be chargeable to tax at the following rates:

S. No.	Assets	Rate (%)
1	Foreign currency held in a foreign currency account in Pakistan as on the 31st March, 2018 and encashed in equivalent Rupees.	2%
2	Foreign currency held in a foreign currency account in Pakistan as on the 31st March, 2018 which is invested in Government securities up to 5 years in US dollars denominated bonds with six-monthly profit payment in equivalent Rupees (rate of return being 3% per annum) and payable on maturity in equivalent Rupees.	2%
3	Other assets	5%

7. Due date of payment of tax

The due date for payment of tax under the Ordinance shall be the date on which declaration is made.

8. Recording in books of accounts

After the payment of tax in respect of domestic assets declared under the Ordinance, the declarant shall be entitled to record such assets in his books of accounts. For the purpose of the Income Tax Ordinance, 2001, the cost of acquisition of domestic assets declared under the Ordinance shall be deemed to be declared value and date of acquisition shall be deemed to be the date on which declaration has been made.

9. Valuation of assets

Domestic assets declared under the Ordinance shall be valued as per following table:

S.No.	Undisclosed Income / Assets	Value
1	Undisclosed income	As declared
2	Open plots and land	Cost of acquisition or FBR rates, whichever is higher
3	Super structure	Rs. 400 per square feet
4	Apartments and flats	Cost of acquisition or Provincial stamp duty rates, whichever is higher.
5	Imported motor vehicles	A-B Where: A= CIF value plus the amount of all charges, customs-duty, sales tax, levies, octroi, fees and other duties and taxes leviable thereon and the costs incurred till their registration. B= a sum equal to 10% of the said value for each successive year up to a maximum of five years.
6	Motor vehicles purchased from a manufacturer or assembler or dealer in Pakistan	A-B A= The price paid by the purchaser, including the amount of all charges, customs duty, sales tax and other taxes, levies, octroi, fees and all other duties and taxes leviable thereon and the costs incurred till their registration. B= a sum equal to 10% of the said value for each

S.No.	Undisclosed Income / Assets	Value
		successive year up to a maximum of five years.
7	Used motor vehicles purchased locally	Value determined in the manner specified in Serial No. 5 or 6, as the case may be, as reduced by an amount equal to 10% for every year following the year in which it was imported or purchased from a manufacturer.
8	Securities and shares traded on stock exchange	Day-end price of the share or security quoted on registered stock exchange as on the 9th April, 2018 and where no day-end price of such share or security is quoted on stock exchange on the 9th April, 2018 day-end price of the share or security quoted on a date nearest to the 9th April, 2018.
9	Securities and shares not traded on stock exchange	Break-up value or face value, whichever is higher. Breakup value shall be the sum of paid-up capital, reserves and balance as per profit and loss account as reduced by the value of preference shares and divided by the amount of the paid up ordinary share capital.
10	National saving schemes, postal	Face value.

S.No.	Undisclosed Income / Assets	Value
	certificates, bonds, securities and other similar investments in capital instruments not traded or quoted on stock exchange.	
11	Gold	Rs. 4000 per gram
12	Other precious stones and metals.	Market rate as on the 9th April, 2018 or cost of acquisition, whichever is higher.
13	Stock-in-trade.	Market rate as on the 9th April, 2018.
14	Plant and machinery	Actual cost of acquisition with no depreciation
15	Accounts receivable	Actual cost of acquisition
16	Other Assets	Actual cost of acquisition
17	Prize bonds, cash and bank accounts including foreign currency accounts.	Face value

It is pertinent to mention that tax reforms package announced by the Prime Minister included the proposal for giving right to the Government to buy local immovable property registered in 2018-19 and onwards within six months of registration at prescribed rates, however, such proposal has not been incorporated in the Ordinance. It seems that such proposal may be introduced later through the Finance Act, 2018.

10. Confidentiality

The information acquired with respect to declaration under the Ordinance shall be kept confidential irrespective of whatsoever contained in any law for the time being in force. In case of any disclosure in contravention of this Ordinance, the guilty shall be punishable on conviction with a fine or imprisonment or both.

11. Immunity

The declarant shall have complete immunity; the declaration under the Ordinance shall not be taken as evidence against the declarant for the purpose of imposition of penalty or prosecution under any law including Income Tax Ordinance, 2001.

12. Misrepresentation or suppression in declaration

However, any misrepresentation or suppression of facts in declaration shall render the declaration void and shall be deemed to have never been made.

C. THE INCOME TAX (AMENDMENT) ORDINANCE, 2018

1. Unexplained income or assets

a. Taxability of foreign undisclosed assets / incomes in the year of their discovery

Previously, both foreign and domestic undisclosed / concealed incomes, assets etc. of a person for which no explanation with regard to the source and nature was provided to the satisfaction of the Commissioner, were subject to addition to taxable income of such tax year to which it relates i.e. the year in which such income was earned, asset was acquired and / or unexplained expenditure was incurred.

However, through amendment, this clause has been changed for concealed foreign assets / incomes, only.

Presently, after expiry of time limitation of 5 years as provided in section 122 of the Ordinance, no action can be taken with regard to undisclosed assets / incomes whether local or foreign.

Now, consequent to the aforesaid amendment, any amount representing investment, money, valuable article or expenditure situated or incurred outside Pakistan and foreign source undisclosed income is required to be added to the income of immediately preceding tax year of discovery.

Resultantly, it appears that undeclared foreign assets and concealed incomes shall be open for inclusion in the taxable income of the taxpayer upon their subsequent discovery at any time without any time limitation.

Hence, persons not availing benefit of the amnesty under the 'Foreign Assets Declaration and Repatriation Ordinance, 2018' by June 30, 2018 shall not be allowed to seek refuge in respect of such foreign undisclosed assets / incomes.

Local undisclosed assets / incomes / expenses shall continue to remain in the same scheme of inclusion in tax year to which they relate.

b. Exemption of foreign exchange realized through normal banking channel capped to Rs. 10 million per tax year

Earlier, undisclosed foreign exchange remittances brought into Pakistan through banking channel were out of the scope of inclusion by tax authorities into taxable income under section 111(4) of the Income Tax Ordinance, 2001.

Through amendment in subsection (4) of section 111, such exclusion has been curtailed to the extent of foreign exchange remittances not exceeding Rs.10 million per person per tax year. Now, the tax authorities can probe the source and nature of the foreign remittances in excess of Rs. 10 million in a tax year.

2. Return of income and foreign wealth statement

a. A new provision in section 114 of the Income Tax Ordinance, 2001 has been added requiring every resident individual person to file statement of foreign income and assets in terms of newly enacted section 116A. This disclosure requirement is applicable where foreign income during a tax year is equal to, or in excess of USD 10,000 or foreign

assets with a value of USD 100,000 or more.

Such statement shall be required to be submitted along with return of income of the taxpayer in the prescribed form with disclosure of the following particulars:

- Total foreign assets and liabilities as on the last day of the tax year.
- Transfer of foreign assets by the person to any other person during the tax year with details of its consideration.
- Complete particulars of foreign incomes, the expenditure derived during the tax year and expenditure wholly and necessarily for the purposes of deriving the said income.

A penalty equal to 2% of the amount of foreign income / value of the assets, has been provided for each year of default in filing of such statement. Interestingly, the requirement is for the declaration of total foreign assets and liabilities without requiring the breakup and details of each and every asset and liabilities. Necessary amendment may be made later to correct this anomaly.

b. Under the existing law, time-limitation is given enabling Commissioner to issue notice for one or more of last five completed tax years or assessment years in case he / she is of the opinion that the person is required to file return of income, but has failed to do so.

A second proviso to section 114(5) has been added, which stipulates that above time limitation will not apply if the Commissioner is satisfied on the basis of reasons to be recorded in writing that the person, who failed to furnish his / her return, has foreign income or owns foreign assets.

3. Relief in income tax rates for individuals

A revised tax rate schedule with significantly reduced rates has been provided understandably both for salaried and non-salaried individuals with effect from July 1, 2018:

S. No.	Taxable income	Rate of tax
1.	Up to Rs.1,200,000	0%
2.	Exceeding Rs.1,200,000 but not exceeding Rs.2,400,000	5% of the amount exceeding Rs.1,200,000
3.	Exceeding Rs.2,400,000 but not exceeding Rs.4,800,000	Rs. 60,000 + 10% of the amount exceeding Rs.2,400,000
4.	Exceeding Rs.4,800,000	Rs. 180,000 + 15% of the amount exceeding Rs.4,800,000

Illustration

Tax implications before and after the revised rates for salaried individual(s) earning different monthly incomes are explained as under:

 Rupees		
Monthly income	150,000	300,000	500,000
Annual income	1,800,000	3,600,000	6,000,000
Tax as per currently applicable tax rates	137,000	497,000	1,147,000
Tax as per revised rates	30,000	180,000	360,000
Savings	107,000	317,000	787,000
Savings percentage	78%	64%	69%

D. AMENDMENT IN THE PROTECTION OF ECONOMIC REFORMS ACT, 1992 (PERA), VIDE THE PROTECTION OF ECONOMIC REFORMS (AMENDMENT) ORDINANCE, 2018

Through amendment in Section 5 of the PERA, deposit of cash in foreign currency (FC) accounts maintained in Pakistan shall now only be available in case of those FC accounts which are maintained by income tax return filer citizens of Pakistan. Resultantly, any non-filer citizen having FC account in Pakistan will not be able make any credits into such account.

This Amendment Ordinance is applicable from the date of its promulgation and has been provided overriding effect over Foreign Currency Accounts (Protection) Ordinance, 2001 or any other law for the time being in force. Thus the existing FC accounts holders must endeavor to become filers as soon as possible.

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