A Brief on the Assets Declaration Ordinance, 2019

Tax Commentary
The President of Pakistan has promulgated Asset Declaration Ordinance, 2019 on 14 May 2019 for declaration of undisclosed assets, sales, expenditure and Benami assets.

This brief contains our comments on the provisions of the aforesaid Ordinance. We recommend that while considering their application to any particular case, reference be made to the relevant provision of the Ordinance.

16 May 2019
The Federal Government has promulgated “the Asset Declaration Ordinance, 2019” [the Ordinance] one of the initiations towards documentation of economy for the purpose of economic revival and growth by encouraging tax compliance.

Scope and Applicability

The Ordinance shall extend to the whole of Pakistan.

This provisions of the Ordinance shall apply to undisclosed assets acquired, undisclosed expenditure incurred and undisclosed sales made up to June 30 2018 and benami assets acquired or held on before the date of declaration.

Any person may make declaration on or before 30 June 2019 in respect of any:

(a) Undisclosed assets, held in Pakistan and abroad, acquired up to 30 June 2018;

(b) Undisclosed sales made up to 30 June 2018.

(c) Undisclosed expenditure incurred up to 30 June 2018; or

(d) Benami assets acquired or held on or before the date of declaration

The Ordinance provides that assets, sales and expenditure incurred up to 30 June 2018 can be declared.

The benefit of this Ordinance shall also be available to the undisclosed assets, expenditures and sales in respect of which any proceedings have been initiated or are pending and have not attained finality under the Income Tax Ordinance, 2001, the Sales Tax Act, 1990 or the Federal Excise Act, 2005 respectively.

Exclusions

The benefit of this Ordinance shall not apply to:

- holders of public office as defined in the Voluntary Declaration of Domestic Assets Act, 2018 or his benamidar as defined in the Benami Transactions (Prohibition) Act, 2017 or their spouses and dependents.

The definition of dependents has not been provided under this Ordinance, henceforth resort to dictionary meaning may create disputes.


- any proceeds or assets that are involved in or derived from the commission of a criminal offence;

- gold and precious stones;

- bearer prize bonds;

- bearer securities;

- shares, certificates, bonds or any other bearer assets.

- Proceedings pending in any court of law.

Key Definitions

Assets

Assets means all domestic and foreign assets of every kind;

Declarant

Declarant means a person making a declaration under section 5;
Undisclosed assets

Undisclosed assets includes benami assets as defined in the Benami Transactions (Prohibition) Act, 2017 and any assets the value of which has been unreported, under-reported or understated;

Undisclosed expenditure

Undisclosed expenditure means any unexplained or unaccounted expenditure under the provisions of the Income Tax Ordinance, 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;

Undisclosed sales

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.

Holder of public office

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 or their spouses and dependents.

Valuation for declaration

The valuation of assets declared shall be computed in the following manner:

<table>
<thead>
<tr>
<th>S.No</th>
<th>Asset</th>
<th>Type</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Domestic immovable property</td>
<td>Land / Constructed Property</td>
<td>If value notified by FBR under sub section 4 of section 68 of the Income Tax Ordinance, 2001 150% of the FBR value</td>
</tr>
<tr>
<td>b</td>
<td>Other assets.</td>
<td>All other assets</td>
<td>Fair market value on the date of declaration but should not be less than the cost of acquisition. In the case of foreign assets, the fair market value shall be determined at the exchange rate prevalent on the date of declaration.</td>
</tr>
</tbody>
</table>

It has been clarified that:

- The value of immovable property declared under the Income Tax Ordinance, 2001 or Voluntary Declaration of Domestic Assets Act, 2018 could be enhanced by filing a declaration under this Ordinance.
- No further action or proceedings will be taken if the earlier declaration filed in respect of an immovable property is in line with the provisions of section 68 of the Income Tax Ordinance, 2001.
Conditions for declaration

The Ordinance has placed following conditions for declaration relating to liquid assets:

<table>
<thead>
<tr>
<th>S. No</th>
<th>Asset</th>
<th>Deposit/ Invest</th>
<th>Retention required up to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cash held by the person</td>
<td>Bank account in the manner specified at the time of declaration</td>
<td>30 June 2019</td>
</tr>
<tr>
<td>2</td>
<td>Foreign currency held by the person</td>
<td>Foreign Currency Bank Account maintained in Pakistan at the time of declaration</td>
<td>30 June 2019</td>
</tr>
<tr>
<td>3</td>
<td>Foreign Liquid Assets – Repatriated to Pakistan</td>
<td>Rupee Bank Account</td>
<td>Not required</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Foreign Currency Bank Account maintained in Pakistan</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Investment in Pakistan Banoa Certificates</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Any foreign currency dominated bonds issued by Federal Government</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Foreign Liquid Assets – Not repatriated to Pakistan</td>
<td>Declarant’s Foreign Bank Account and shall be deposited on or before 30 June 2019</td>
<td>Not required</td>
</tr>
</tbody>
</table>

Due Date of Payment & Default Surcharge

The due date of payment of tax under this Ordinance shall be on or before 30 June 2019. However, tax could be paid up to 30 June 2020 along with the payment of default surcharge as follows:

<table>
<thead>
<tr>
<th>S.No</th>
<th>Description</th>
<th>Rate (% of Amount of Tax)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tax is paid after 30 June 2019 but before 30 September 2019</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>Tax is paid after 30 September 2019 but before 31 December 2019</td>
<td>20</td>
</tr>
<tr>
<td>3</td>
<td>Tax is paid after 31 December 2019 but before 31 March 2020</td>
<td>30</td>
</tr>
<tr>
<td>4</td>
<td>Tax is paid after 31 March 2020 but before 30 June 2020</td>
<td>40</td>
</tr>
</tbody>
</table>

Non-payment of tax and default surcharge within the due date will make the declaration void.

Payment of outstanding demand

The declarant may pay the outstanding demand as determined by the officer of Inland Revenue under the Sales Tax Act, 1990 or the Income Tax Ordinance, 2001 or the Federal Excise Act, 2005 without payment of default surcharge and penalty.
This option shall be available even in the cases where the proceedings are pending in any court of law i.e. High Court or Supreme Court of Pakistan.

**Mode & manner of repatriation of assets & payment of tax**

The State Bank of Pakistan shall notify the mode and manner of repatriation of assets to Pakistan, deposit of tax and method of conversion of value of asset held outside Pakistan in Pak rupee.

**Incorporation in books of account**

Consequent to payment of tax on undisclosed assets, sales and expenditures as the case may be, the declarant shall be entitled to record such assets, sales or expenditures in his return, wealth statement or financial statement irrespective of the fact that the assets, sales or expenditures related to a year which is barred by time for revision of return or wealth statement.

Further, no allowance, credit or deduction shall be available on assets under any law so incorporated. It seems depreciation expense would also not be admissible on depreciable assets.

**Non refundability**

The amount of tax or default surcharge paid under the Ordinance shall not be refundable.

The Ordinance primarily relates to tax paid on undeclared assets, sales, expenditures or benami assets, it however also contain provision for payment of outstanding tax demand relating to pending litigation.

While this clause relates to tax paid on undeclared assets, sales, expenditures and benami assets, however the Ordinance has not provided any exclusion from this restriction for payment of outstanding tax demand relating to pending litigation if later settled in favour of the declarant.

**Misrepresentation**

Declaration made through misrepresentation or suppression of facts would be considered as void irrespective of the provisions of the Ordinance.

**Other matters**

- The information of person making a declaration shall be kept confidential irrespective of the provisions of section 216(3) of the Income Tax Ordinance, 2001 except clauses ‘a’ & ‘g’ of said sub section, including the Right of Access to Information Act, 2017 and any other law for the time being in force.

- The provisions of the Ordinance shall prevail notwithstanding to the contrary contained in any other law for the time being in force.

- Declaration would not be considered as admissible evidence against the declarant for the purpose of any proceedings relating to imposition of penalty or prosecution under any law.

- FBR may make rules including manner, procedure and payment of tax and conditions under which the declaration shall be filed.

- If any difficulty arises in giving effect to the provisions of the Ordinance the Federal Government may by notification in official gazette remove such difficulty as in inconsistent with the provision of this Ordinance.

**Issues for consideration / clarification**

There are certain matters that would require consideration / clarifications.

- The definition of undisclosed sales doesn’t cater for the services receipts earned by service sector tax payers. Though the intent behind this promulgation would not be so still this may be treated as a discriminatory exclusion.

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Assets Declaration Ordinance, 2019

- The definition of undisclosed sales doesn’t include exempt sales made by the tax payers under Sales tax Act.
- The matter of disclosing corresponding undisclosed liability needs to be considered in case of disclosure of undisclosed asset (receivable) by the tax payer.
- In respect of benami assets declared under this Ordinance, it is our view that income earned from such assets during the year 2019 will be chargeable to tax in respective tax year.

Under this Ordinance undisclosed expenditures include both un-explained and unaccounted expenditure, however the rate of tax has been specified only for unexplained expenditures. This may lead to dispute with respect to rate of tax for unaccounted expenditures.
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