Taxation of Non residents in Pakistan(expatriates and others individuals)

By

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Principle of Taxation

- Law recognizes taxation on residence status
  - accepted internationally
- Resident’s income-
  - Pakistan source and foreign source
  - Based on Principle of WORLD INCOME
- Non resident’s income-
  - Pakistan source income only

Who is non- resident?

- An Individual is resident
  - if he remains in Pakistan for more than 183 Days in a tax year
- If he lives less than 183 days in Pakistan
  - He is non-resident for that tax year
- Present in tax year for 120 days and 365 days in four preceding years
- Every tax year is a separate, distinct and self contained unit
- Individual may be resident in one tax year and he may be non-resident in next year and may be resident in third year
  - This all depends upon his stay in Pakistan in a tax year

illustration

Particulars	A	B	C	D	
Stay in Pakistan	110 days	186 days	115 days and 540 days in preceding 4years	120 days and 370 days in preceding 4years	120 days and 328 days in preceding 4years
Property income from UAE	One Million	One Million	One Million	One Million	One Million
Commission income from PSO	2 million	2 million	2 million	2 million	2 million
Business income from UK	3 million	3 million	3 million	3 million	3 million
Whether resident in Pakistan	?	?	?	?	?
Property income from UAE taxable in Pakistan	?	?	?	?	?
Whether commission income is taxable in Pakistan	?	?	?	?	?
Whether business income is taxable in Pakistan	?	?	?	?	?

Foreign Income of returning expatriates- Section 51

- Individual citizen of Pakistan who remained for FOUR YEARS non-resident in Pakistan and intends to come back to Pakistan
- Then his income from foreign source of income for that year shall be exempt from tax
- His foreign source income for next year shall also be exempt from tax
- Example
  - Non resident in Pakistan in tax year 2013,2014, 2015,2016
  - His foreign source income for tax year 2017 and 2018 shall be exempt

Benefits

- He was otherwise chargeable to tax in Pakistan for tax 2017 and 2018 for foreign source of income being resident in Pakistan u/s 10(5) of ITO,2001

Foreign Salary Income of returning expatriates- Section 51(2)

- Foreign salary income of an individual citizen of Pakistan who has left Pakistan during the tax year shall be exempt for that tax year
- Example
  - Mr. ‘A’ who remained in Pakistan from July 2017 to January 2018
  - He left Pakistan in February 2018 for employment in Canada
  - His salary income for the months Feb 2018 to June 2018 in Canada is exempt
- Benefits
  - He was otherwise chargeable to tax in Pakistan being resident in Pakistan for above foreign source of income u/s 10(5) of ITO,2001

Special status in Pakistan

- 25th amendment abolishes special status for FATA and PATA
- Business income is previous area of FATA and PATA are exempt up to 2023 under clause 146 of Part 1 of second schedule
- AJK and Gilgit Baltistan are not Pakistan for tax purposes
- Income Tax Ordinance, 2001 doesn't apply at AJK and GB
- AJK and GB have separate legislation on taxes.
- They have adopted Income Tax Ordinance,2001 to be applied in their jurisdiction by their tax administration

Differential tax rate?

- Tax rates for non –resident individual are same as are applicable for resident individuals
- Non discrimination of tax rate
- If treaty provides for higher tax rates then resident of Treaty country may invoke Non Discrimination provision of the Treaty and may pay tax equal to tax rates paid by the Pakistan resident individual
- If Treaty rates are lower than the rates applicable to resident individual in Pakistan, then resident of the Treaty country may get benefit of Treaty rates notwithstanding higher tax rate to resident individuals

Wealth statement u/s 116

- Non resident person shall not oblige to file wealth statement along with return of income under sub section (2)

- Non resident individual shall furnish wealth statement if he earns income from Final Tax Regime under sub rule(4)

- Commissioner shall issue notice to non resident individual to furnish wealth statement under sub section (1)

Foreign income and assets statement u/s 116A

- Resident individual having :
  - Foreign Income more than $ 10,000., or
  - Foreign assets more than $ 100,000
- Shall file statement u/s 116A declaring
  - Foreign assets and liabilities
  - Foreign assets transferred and consideration received
  - Complete particular of foreign income and expenditure
- He shall file return u/s 114 (2) (f)
- Commissioner may call for statement
- Non filing may attract penalty proceedings

Non recognition of rules- Section 79

- Gain or loss shall be recognized on disposal of following assets in the hands of NON RESIDENT
  - By transmission of asset to an executor or beneficiary on the death of a person
  - By reason of gift
  - Between spouse living a part on agreement
  - By reason of compulsory acquisition of asset under any law
  - By company to its shareholders on liquidation of company
  - By an AOP to its members

Royalty, FTS , offshore digital services

- Section 6 provides for special taxation on following payments to NR
  - Royalty
  - Fee for technical services
  - Fee for offshore digital services (F.A. 2018)
- Taxation on the basis of gross receipts
  - Final taxation
  - No deduction of expenditure is admissible
  - No set of any loss
  - To tax credit is permissible
- Tax withholding : 15% on royalty or FTS , 5% on offshore digital service

Withholding U/S 152 on payments to non- resident

Sub-section	Nature of payment	Final/ minimum tax or adjustable	Rate
(1)	Royalty and Fee for Technical services	Final	15%
(1A)	A contract or sub contract under a construction, assembly or Installation project	Minimum tax	7%
	A contract for supply of supervisory activities to above project	Minimum tax	7%
	Any other contract for construction or services rendering	Minimum tax	7%
	A contract for advertisement services rendered by T.V Satellite Channel	Final	7%
4A	Commissioner may issue exemption certificate having P.E		
(1AA)	Insurance premium or re-insurance premium	Minimum tax	5%
(1AAA)	Advertisement services to NR media person relaying outside Pakistan	Adjustable	10%
1C	Offshore digital services	Final	5%

Withholding U/S 152 on payments to non-resident

Sub-section	Nature of payment	Final or adjustable	Rate	
2A	For sales of goods by a company to PE of NR	As Resident	4%	
	For sales of goods by non company to PE of NR	As Resident	4.5%	
	For rendering or providing by a company services to PE of NR	minimum	8%	
	For rendering or providing by non company services to PE of NR	minimum	10%	
	On the execution of contract to PE of NR	As Resident	7%	
	Sport persons		10%	
4A	Commissioner may issue exemption certificate			

Withholding U/S 152 on payments to non-

Sub- section	Nature of payment
3	Same WHT on salary 149, dividend 150, prize bond 156, commission of Resident
	NO WHT IF TAX PAID BY AN AGENT OF NR U/S 172
	NO WHT IF NR IS NOT CHARGEABLE TO TAX
4B	**30% of tax if cohesive business of tax u/s sub section (1A)**
5	**NR may seek exemption certificate from Commissioner**
5A	**Commissioner may decide within 30 days NR request**
6	**If decided against NR, withholding shall apply**
122B	**NR may seek revision from Chief Commissioner against refusal**
Article 199	**NR may file writ before High Court against refusal**

Withholding U/S 152 on payments to non-resident

- NR shall not apply to CIR for exemption if title passed outside Pakistan
  - EXCEPT: Overall arrangement for supply of goods, installation, construction, assembly, commission, guarantees, supervisory and all or
  - principal activities performed by associate or its PE
  - Supply of goods is made by Resident or PE in Pakistan
- Educational or medical expenses as per SBP regulation
- Case law: 2010 PTD 1159 (Karachi H.C) EFU Insurance v/s Federation

Exemption from WHT

- Section 152 imposes responsibility upon PAYER to deduct WHT or seek exemption from Commissioner
- In case Commissioner declined exemption request to payer
- And Chief Commissioner also decline interference u/s 122B
- Can NR itself seeks direct exemption from his Commissioner ?

Exemption under Treaty

Income	Exempt	Taxable	Depend upon EACH TREATY PROVISION
Salary from Pakistan Source		Yes	
Income immovable property in Pakistan		Yes	
FTS from Pakistan		Yes	
Royalty from Pakistan	USA Treaty	Yes	
Dividend income from Pakistan		Yes	
Income from profit on debt from Pakistan		Yes	
Business income			Yes
Income from movable property			Yes
Capital gain (immovable property or movable property)			Yes
Shipping and airline business			Yes

Case study 2

- Mr. A is non resident in Pakistan and earns five months salary income from Turkey entity for transmitting of research data from Pakistan. Turkey entity remitted salary after deducting tax under Turkish Tax law.
- Whether Turkish Tax law applies?
- Whether such net salary is exempt from Pakistan tax?
- Whether salary is Pakistan source income?

Case study 3

- Mr. A is non resident in Pakistan and earns five months salary income from Turkey entity for transmitting of research data from Pakistan.
- He has made request to his foreign employer to pay his salary to his three kids who are getting education in Turkish University. Turkey entity made payments to his kids after deducting tax under Turkish Tax law.
- Whether Turkish Tax law applies?
- Whether such net salary is exempt from Pakistan tax?
- Whether salary is Pakistan source income?

Case study 4

- Mr. A is a Chinese non resident individual entered into an agreement with Chinese firm and earns consultancy income of US$ 25,000 from Chinese firm on KDA project. He completed this task within 35 days and left Pakistan
- He has subsequently entered into another agreement with another Chinese entity in China on Gawadar Project which was carried out for 125 days in China and 130 days in Pakistan. He earned consultancy income US$ 120,000 and payments were remitted from Pakistan office of Chinese entity
- Tax Officer Quetta issued notice for taxing his Gawadar Income and Taxman at Karachi issued notice for Karachi income only
- How you will defend your client?

Case study 5

- Mr. A is a Chinese non resident individual entered into an agreement with Chinese firm and earns consultancy income of US$ 225,000 from Chinese firm on KDA project. He has sent his employee in Pakistan for 130 days in aggregate. After getting consolidated data from his employee, he has completed this task within 35 days
- Tax Officer in Pakistan issued notice for taxing income employee and employer.
- How you will defend your client?

Case study 6

- Mr. A is a Chinese non resident individual entered into an agreement with Chinese firm and earns consultancy income of US$ 25,000 from Chinese firm located at Karachi on KDA project. After getting consolidated data from consultancy firm in Pakistan on making payment of US$ 7,000, he has completed this task within 35 days
- Tax Officer in Pakistan issued notice for taxing income.
- How you will defend your client?

Case study 7

- Mr. A is an AJK non resident individual in Pakistan entered into an agreement with Chinese firm and earns consultancy income of US$ 25,000 from Chinese firm located at Karachi on KDA project.
- After getting consolidated data through internet from consultancy firm in Karachi on making payment of US$ 7,000, he has completed this task within 35 days. Payments were paid in China
- He has however didn’t deduct tax while making payment of US$ 7000 to Pakistan firm
- Tax Officer in Pakistan issued notice for taxing income.

Case study 8

- Mr A is dealing in stock exchange at Singapore. He has clients world over. His few clients were interested in Pakistan stock market. Mr. A on behalf of his clients entered into a business contract with Mr. B in Pakistan
- Mr. B on the instructions of Mr. A made number of dealings in Pakistan stocks and in this arrangement portfolio bank accounts were opened.
- Mr. B remitted commission income to Mr. A after deduction of tax u/s 233.
- Mr. A filed return in Pakistan and asked for refund of tax deduction
- Taxman intended to reject refund claim. How you will defend Mr. A?

Case study 9

- Mr. A has three sons XYZ. Mr. X lives in USA and Mr. Y and Mr. Z are living in Pakistan. Mr. A has flat in USA and gifted the same to MR.Y
- Mr. A has a house at DHA Karachi and gifted to Mr. X and shop at Lahore to Mr. Z
- All events took place on 20-12-2016 in tax year 2017
- Mr. X came to Pakistan for registration for property only
- Meanwhile Mr. Z left Pakistan on 26Dec 2016 for business trip and export deals to UAE and Europe and came back after June 2017
- How you will file their return on the transaction of gift

Case study 10

- Mr. A has two sons and both are living in USA. Son Mr. B came to Pakistan to look after his ailing father while Mr. C continued to live in USA. Mr. B stayed here from July 2016 to January 2017 and left Pakistan when his father expired on 25th Jan 2017
- Mr. A was owner of two plots at DHA Karachi
- Both plots were subsequently transferred in the name of both brothers
- Taxman issued notice to both heir for levy of tax on inheritance of assets
- How you will defend them?

Case study 11

- Two brothers have domicile of Zob Baluchistan. But their CINC carried two residential addresses, one at Nazimabad Karachi and other at Zob. They bought house in Karachi for education purposes of their children
- Both have formed an AOP and got registered at Queeta showing place of business at Zob
- AOP won contract for road construction in the area of Zob from NHA through documents carrying postal address of Karachi
- AOP applied for exemption certificate which was refused by CIR Queeta
- Meanwhile they got correction and now CNIC shows Zob address only
- Whether CIR Queeta justified? How you will defend before CCIR?

Case study 12

- Mr A lives in UAE and made supply of plant and machinery to M/s XYZ and title of goods was passed on in UAE. M/s XYZ incurred freight and insurance expenses and cleared port documents in its name as an importer
- M/S XYZ entered into another agreement with Mr.B, the brother of A who is resident in Pakistan for installation and commissioning of plant and machinery
- Whether M/S XYZ incurred any liability on import of plant and machinery ?
- Whether remittances of price of plant is chargeable to tax
- Whether Mr A and Mr. B are chargeable to tax as an AOP when both are not interface with each other. M/s XYZ has two separate agreements with them

Case study 13

Mr . A did not disclose	Foreign Assets in UK	Moved to Burma	On advice of Mr. B
He is Offshore evader	Off shore assets	Un- specified jurisdiction	Off shore enabler
Section 2(38AB)	2(38AA)	2(60A)	2(38AC)
PENALTY Rs One lac or 200% tax whichever higher		PENALTY Rs One lac or 00% tax whichever higher	PENALTY Rs Three lac or 200% tax whichever higher
Prosecution section 192B 3 years of Fine 0.5M			Prosecution section 192B 7 years of Fine 0.5M
Commissioner may freeze his domestic assets u/s 145(5) for recovery of evaded tax if offshore moved during proceedings before him			

Case law-14

Mr. A resident in Pakistan had availed Amnesty on foreign assets in 2019 and paid tax on the undisclosed foreign assets. He however operated bank account in Singapore in 2011-13 with peak balance of US$ 1M which he lost in business transactions and thus closed the foreign account. How you can defend him

1. Whether limitation applies for five years?
2. Whether amount would be taxed in tax year 2019?
3. Whether his domestic assets could be attached for recovery of tax?

Case study 15

- Mr. A operated bank account in Dubai with heavy transactions which he didn’t disclose. On the basis of information Officer issued SCN. He however remitted entire foreign funds and asked SBP to impose 5% tax being tax on INDENTING Commission.
- Whether 5% tax is full and final tax?
- Detail show he had made transactions outside Pakistan and has no nexus with his clients in Pakistan

Q/A