MINIMUM TAX IMPLICATIONS AFTER THE FINANCE ACT, 2019

SECTIONS 148 AND 153

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- Changes introduced by the Finance Act, 2019
- Implications on Commercial Importers / Traders
- Implications on Contractors / Service Providers
- Computational Issues
- Practical Scenarios
- Questions

Changes introduced by the Finance Act, 2019

Section 148

- Tax required to be collected on import of goods that are sold in the same condition as they were when imported was treated as final tax
- The Finance Act, 2018 brought a substantive conceptual shift whereby such tax collection was made “minimum tax”
- The Finance Supplementary (Second Amendment) Act, 2019 restored the original position whereby tax collected at import stage from commercial importers was again treated as final discharge of tax liability

Changes introduced by the Finance Act, 2019

Section 148

- The Finance Act, 2019, however, again introduced amendments through which tax collection at import stage is made "minimum tax" instead of "final tax"

- As a result of this change, Commercial Importers are now required to compute their financial results for comparison of tax on profits with minimum tax

- Pursuant to the above amendments, Commercial Importers are now required to file a return of income instead of a statement in terms of section 115 of the Ordinance

Changes introduced by the Finance Act, 2019

Section 153

- Prior to the Finance Act, 2019, tax deductible under section 153 of the Ordinance on account of the following was treated as final tax
  - Income from sale of goods except where the company is a manufacturer of such goods or is a public listed company
  - Income from execution of contracts

Changes introduced by the Finance Act, 2019

Section 153

- The Finance Act, 2019 has brought a substantial change with respect to such streams of income. Consequently, tax deductible on following receipts is to be treated as minimum tax instead of final tax:
  - Income arising from supply of goods except where the company is a manufacturer of such goods or is a public listed company
  - Income from execution of contracts
  - Income arising from rendering of services (this was made minimum tax via the Finance Act, 2015)

Changes introduced by the Finance Act, 2019

Section 153

- Clause (94), Part IV, Second Schedule to the Ordinance provided a reduced rate of tax @ 2% for specified service sectors subject to fulfilment of conditions provided therein. Withholding tax rate of 8%/10%, was however, applicable on payment to such service providers

- Further, section 153(4A) also provided for issuance of exemption certificate to the above persons engaged in providing the services specified in Clause (94) above

- The Finance Act, 2019 omitted Clause (94) and a reduced rate of withholding tax of 3% has been prescribed for persons involved in rendering of specified services. This withholding @ 3% is a minimum tax on the income arising from such services

Changes introduced by the Finance Act, 2019

Section 153

- It may be noted that section 153(3) provides that ‘tax deductible’ would be minimum tax. Therefore, receipts from sale of goods / rendering of services to persons who are not withholding agents would not fall under the minimum tax regime and would thus be taxable at applicable rate of tax under ‘Normal Tax Regime’

- Section 153(4A), dealing with issuance of exemption certificate for specified service providers, has also been omitted. Accordingly, the Commissioner is no more authorized to issue exemption certificate for withholding of tax in respect of receipts from rendering of services

Implications on Commercial Importers/ Traders

- Commercial importers / Traders are now required to prepare financial statements / accounts
- Filing of return of income instead of statement under section 115
- Maintenance of proper and complete records (earlier no expense was being claimed therefore there was no risk of disallowance of expenses)
- The tax authorities may raise questions regarding transfer pricing (earlier tax paid on assessed value of goods was final tax - largely applicable on multinationals)
- Applicability of section 147 in respect of payment of advance tax

Implications on Commercial Importers/ Traders

- Sale by Commercial Importer would still not be subject to withholding tax in terms of section 153(5) where tax at import stage has already been collected

- Two regimes of minimum tax would be applicable
  - Under section 113
  - Under section 148

- If minimum tax liability under 148 > minimum tax liability under 113 > tax liability under NTR. Carry forward of minimum tax under 113 would be available?

- Alternative Corporate Tax would also be applicable. Thereafter, carryforward under ACT will be available, if ACT under section 113C is > minimum tax under section 148?

Implications on Contractors / Service Providers

- Similar to the implications as discussed above, contractors and service providers would also be required to prepare financial statements / accounts and file return of income

- However, one major problem that is being faced is that since tax deductible under section 153(1)(b) and (c) is minimum tax, whether it would be computed on actual receipts or its accrual would also entail such income to be offered under MTR. Specially in case of companies, where accrual method of accounting is mandatorily followed

- If tax under MTR is worked out on accrual basis, actual receipts would also be subjected to withholding of tax, which would not be refundable being minimum tax. In other words, such tax may be lapsed if income in subsequent year is less than the prior year

Computational Issues!

- Tax liability under NTR would be compared with –
  - Minimum tax liability under section 148 on corresponding sales

OR

  - Minimum tax liability under section 148 on purchases made during the year

If a person earns income under MTR only which was previously taxable under FTR

Computational Issues!

- Adjustment for opening stock would be required to be made in current year since such stock has already been taxed under FTR in the year of import
- Tax depreciation would be claimed on original cost of assets or WDV would be computed
- Initial allowance would not be available to the person on opening cost / WDV of assets

If a person earns income under MTR only which was previously taxable under FTR

Computational Issues!

- Loss under MTR would be adjustable against NTR income under any other head?

- Minimum tax under section 113 would be computed on entire turnover or turnover excluding MTR

- If minimum tax under section 113 is applied on entire turnover and is > MTR under section 148 > ACT > NTR. How final liability would be computed i.e. under section 113

or

- MTR under section 148 + Minimum under section 113 (only on turnover excluding MTR)

If a person's income consists of two streams of income i.e. NTR and MTR

Practical Scenario 1

Turnover	1,200
Accounting profit	100
Taxable income	40
Tax on taxable income @ 29%	11.6
Minimum tax under section 113 @ 1.5%	18
ACT @ 17%	17
Minimum tax under section 148 (say assessed value equals to 70% of turnover i.e. 1200 X 70% = 840 X 5.5%)	46.2
Tax liability (higher of above)	46.2
Tax deducted at source under 148 (on imports made during the year i.e. 1,050 X 5.5%)	57.75
Excess deduction on closing stock of Rs.210 (1,050 – 840)	11.55

Tax is paid on closing stock as well which has not been sold. Whether it would be included in tax liability for the year **or** tax on these imports would be paid in subsequent year when they are sold.

Practical Scenario 2

Turnover under NTR	A	2,500
Turnover under MTR	B	1,200
Accounting profit	C	100
Taxable income under NTR	D	50
Taxable loss under MTR	E	(40)
Total Taxable income	F = D+E	10
Tax on taxable income @ 29%	F X 0.29	2.9
Minimum tax under section 113 @ 1.5%	(A+B) X 1.5%	55.5
ACT @ 17%	C X 17%	17
Minimum tax under section 148 (say cost equals to 70% of turnover i.e. 840 X 5.5%)	G	46.2
Tax liability would be under section 113 (being higher of all)		55.5
	OR	
Tax liability under section 113 (NTR only)	A X 1.5%	37.5
Tax liability under section 148 (MTR)	G above	46.2
Total tax liability		83.7

Practical Scenario 3

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Turnover under NTR	A	2,500
Turnover under MTR	B	1,200
Accounting profit	C	150
Taxable income under NTR	D	140
Taxable income under MTR	E	60
Total Taxable income	F = D+E	200
Tax on taxable income @ 29%	F X 0.29	58
Minimum tax under section 113 @ 1.5%	(A+B) X 1.5%	55.5
ACT @ 17%	C X 17%	25.5
Minimum tax under section 148 (say cost equals to 70% of turnover i.e. 1200 X 70% = 840 X 5.5%)	G	46.2
Tax liability would be under NTR (being higher of all)		58
OR		
Tax liability under NTR (excluding income under MTR)	D X 29%	40.6
Tax liability on MTR under section 148 (being higher than NTR liability on such turnover)	G above	46.2
Total tax liability		86.8

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Tax regime for individual traders

- “Trader” means, an individual engaged in business of buying and selling of goods in the same state, including a retailer and a wholesaler but shall not include a distributor

- For the tax year 2020 minimum tax payable under section 113 has been reduced from 1.5% to 0.5% for traders having turnover up to Rs. 100 million (on sales to persons other than companies)

- General rate of withholding tax under section 153 is 4.5% on individual traders which is also minimum tax on such sale of goods. Accordingly, only those traders whose turnover is less than Rs.100 million and are supplying goods to individual customers (where withholding provisions under section 153 are not applicable), will be able to benefit from the above scheme.

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