

## Withholding function and monitoring of withholding taxes

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### Objective

- ▶ Today's session has been planned with the objective to discuss and develop some of the principles relating to withholding / collection of taxes as prescribed under the Income Tax Laws in Pakistan and its monitoring.

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## COLLECTION / WITHHOLDING OF TAXES

Page 3



### Why withholding tax?

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- ▶ Pay as you earn
- ▶ To cater the working capital / day to day funding needs of the Government
- ▶ Easy recovery of tax

Page 4

Withholding function and monitoring of withholding taxes



## General rules

- ▶ Tax must be withheld unless the recipient produces a Nil withholding tax certificate
- ▶ Rates of withholding tax to be applied in accordance with the status of the recipient vis-à-vis –
  - ▶ Individual / AOP / Company
  - ▶ Filer / Non-filer
- ▶ Withholding tax may not apply for certain payments as are captured under Part IV of the Second Schedule to the Income Tax Ordinance, 2001 (“the Ordinance”)

## Concept of Filer and Non-filer – Section 2(23A) & (35C)

- ▶ “Filer” means a taxpayer -
  - ▶ whose name appears in the active taxpayers’ list issued by the Federal Board of Revenue (from time to time); or
  - ▶ who is a holder of a taxpayers’ card.
- ▶ “Non-Filer” means a person who is not a “filer”.
- ▶ Active Taxpayers’ List (ATL) is updated on every Sunday as per rule 81B and is available on the FBR’s web-portal (<http://www.fbr.gov.pk/ActiveTaxpayersList.aspx>)
- ▶ In case of individuals, the identification number on ATL is the Computerized National Identity Card Number
- ▶ For persons other than individuals (i.e. AOP and Companies), the identification number on ATL is the National Tax Number

## Time of deduction of tax – Section 158

- ▶ A person is required to deduct tax from an amount paid by the person at the time the amount is actually paid.

## Time and manner of deposit of tax – Rule 43

- ▶ The tax deducted / collected must be deposited within seven days from the of end of each week ending on every Sunday, in which the tax is withheld
- ▶ In case of remittance outside Pakistan to a non-resident person, tax is required to be deposited seven days prior to such remittance.
- ▶ For deposit of tax, PSID is required to be generated which requires following details –
  - ▶ National Tax Number / Free Tax Number / Computerized National Identity Card Number
  - ▶ Name of the taxpayer
  - ▶ Status of the taxpayer (Company / AOP / Individual)
  - ▶ Address of the taxpayer
  - ▶ Payment section
  - ▶ Taxable amount
  - ▶ Tax amount being deducted / collected

## Certificate of tax deduction – Section 164 and Rule 42

- ▶ Every person deducting tax from a payment is required to furnish a certificate of such deduction to the person from whom the tax has been withheld
- ▶ Such certificate shall be accompanied by copies of challan of payment (i.e. Computerized Payment Receipt)
- ▶ The certificate of deduction of tax is to be issued within –
  - ▶ 15 days after the end of the financial year
  - ▶ 7 days from the date such certificate is requested by the person from whom tax has been collected / deducted.

## Withholding tax statement – Section 165

- ▶ Every person collecting / deducting tax under the Ordinance is required to submit a monthly withholding tax statement to the FBR
- ▶ Monthly withholding tax statements are required to be e-filed within 15 days from the end of the month to which such statement relates
- ▶ Withholding tax statement is required to be filed even where no tax has been deducted in the relevant month
- ▶ Withholding tax statement shall also include payments where no tax has been deducted due to availability of exemptions, or otherwise

Reporting requirements – Section 165

- ▶ Following mandatory information is required to be reported in the monthly withholding tax statement in respect of the persons from whom tax has been collected / deducted
  - ▶ National Tax Number / Free Tax Number / Computerized National Identity Card Number
  - ▶ Name of the taxpayer
  - ▶ Date of transaction on which tax is deducted
  - ▶ Payment section code (auto-linked with rate of tax deduction)
  - ▶ Taxable amount
  - ▶ Tax deducted / collected
  - ▶ Exemption code (auto-linked with reasons for non-deduction), where tax has not been collected / deducted
  - ▶ Computerized Payment Receipt Number for taxes deposited

Imports – Section 148 (Cont'd...)

Person liable to collect tax	Collector of customs	
From whom	Importer of goods	
Value on which collection is made	Assessed value + Custom Duty + Federal Excise Duty + Sales tax	
General rate	Filer	Non-Filer
- For industrial undertakings and companies	5.5%	8%
- For other taxpayers	6%	9%
- On specified imports	1% - 4.5%	1.5% - 6.5%

### Imports – Section 148

- ▶ Collection at import stage is not applicable including imports by the following:
  - ▶ The Federal, Provincial or Local Governments
  - ▶ A foreign company owned by a foreign government
  - ▶ A person who imports plant and machinery for setting up an industrial undertaking
  - ▶ A person who imports plant and machinery for execution of a contract with the Federal, provincial or a local government.
  - ▶ Petroleum (E&P) companies
  - ▶ Industrial undertaking if the tax liability of the current year on the basis of tax of preceding two years, whichever is higher, is paid [Clause (72B), Part IV, Second Schedule]



### Salary – Section 149 (Cont'd...)

Person liable to deduct tax	Every person responsible for payment
From whom	Employees deriving taxable salary for the year
Value on which deduction is to be made	Taxable salary
Rate	At the average rate of tax computed at the rates prescribed in Part I of the First Schedule
Time of deduction	At the time of payment of salary (generally on a monthly basis)



## Salary – Section 149 (Cont'd...)

- ▶ While the employer is obliged to withhold tax [at the applicable tax rates as per the First Schedule to the Ordinance] on the salary income of the employee, the employer is only entitled to –
  - ▶ adjust taxes deducted on behalf of its employee under other sections of the Ordinance, from the tax being withheld by him, and
  - ▶ make adjustments for tax credits admissible against the employee's salary income.
  - ▶ Excess or short deduction of tax by the employer from salary within the tax year

## Salary – Section 149 (Cont'd...)

- ▶ Adjustment for taxes paid by the employee under other sections of the Ordinance is permissible in respect of the following -
  - ▶ tax withheld by pension fund manager on withdrawal of balance under Pension Fund (section 156B)
  - ▶ tax withheld from cash withdrawal from a bank account (section 231A)
  - ▶ tax withheld on transactions in bank (section 231AA)
  - ▶ tax collected at the time of purchase of a motor car (section 231B)
  - ▶ tax collected by the Motor Vehicle Registration Authority along with motor vehicle tax (section 234)
  - ▶ tax collected on electricity bill for domestic consumption (235A)
  - ▶ tax collected from a telephone/ mobile phone subscriber including prepaid cards for telephone (section 236)
  - ▶ tax collected on air ticket purchases (section 236B)



## Salary – Section 149 (Cont'd...)

- ▶ tax collected on sales or transfer of immovable property (section 236C)
- ▶ tax collected on functions and gatherings (section 236D)
- ▶ tax collected by education institutions (section 236I)
- ▶ tax collected on purchase or transfer of immovable property (section 236K)
- ▶ tax collected by education institutions (section 236I)
- ▶ tax collected on purchase or transfer of immovable property (section 236K)
- ▶ tax collected on international air ticket purchases (section 236L)
- ▶ tax collected on banking transactions (section 236P)
- ▶ tax collected on education related expenses remitted abroad (section 236R)
- ▶ tax collected on insurance premium (section 236U)
- ▶ tax collected on persons remitting amounts abroad through credit or debit or prepaid cards (section 236Y)

## Salary – Section 149

- ▶ The tax credit for which the employer is authorized to make adjustments while computing the taxable income of his employee is on account of the following -
  - ▶ a. Tax credit admissible under section 61 – Donations
  - ▶ b. Tax credit admissible under section 62 - Investment in shares and insurance
  - ▶ c. Tax credit admissible under section 63 - Contribution to an Approved Pension Fund
  - ▶ d. Tax credit admissible under section 64 - (omitted through Finance Act, 2015 and now allowable as a deductible allowance under section 60C, however, employer is also not allowed to adjust the same).

**Dividend – Section 150 (Cont’d...)**

Person liable to deduct tax	Every resident company and branches of foreign companies operating in Pakistan
From whom	Every shareholder whether resident or not
Value on which deduction is to be made	Gross amount of dividend distribution and remittance of after tax profits by a branch of a foreign company in Pakistan
Rate	- 7.5% in case of dividend distributed by power generation companies / companies providing coal for power generation projects - 15% for other cases in case of filer - 20% for other cases in case of non-filer
Time of deduction	At the time of payment of dividend and remittance of after tax profits by a branch of a foreign company in Pakistan

**Dividend – Section 150 - Exemptions**

Clause	Nature of payment / Entity
11B	Inter-corporate dividend within group companies availing group taxation under sections 59AA subject to the condition that the group return has been filed for the latest completed tax year
38A	Venture Capital Company
38AA	China Overseas Ports Holding Company Limited, China Overseas Ports Holding Company Pakistan (Private) Limited, Gwadar International Terminal Limited, Gwadar Marine Services Limited and Gwadar Free Zone Company Limited
38C	Islamic Development Bank
47B	NIT, Collective Investment Scheme, Modaraba, Approved Pension Fund, Private Equity & Venture Capital Fund Recognized PF, GF and Pension Fund
67	International Finance Corporation
69	Asian Development Bank

Profit on debt – Section 151 (Cont’d...)

Person liable to deduct tax	All payers, other than individuals and AOPs
From whom	All resident persons
Value on which deduction is to be made	Gross amount after deduction of zakat (if any)
Rate	- 10% of gross yield for filers - 10% for non-filers, if annual yield is less than Rs.500,000 - 17.5% for non-filers, if annual yield is more than Rs.500,000
Time of deduction	At the time of payment of interest/profit on deposit/ saving accounts, bond, certificate, debenture, instruments of any kind

- ▶ No withholding tax applies on payment of interest on loans borrowed from banks and financial institutions
- ▶ Non-resident persons who are covered under section 152(2) are not liable to deduction of tax under section 151



Profit on debt – Section 151 - Exemptions

Clause	Nature of payment / Entity
11C	Inter-corporate profit / interest within group companies availing group taxation under section 59AA subject to the condition that the group return has been filed for the latest completed tax year
16	Institutions of the Agha Khan Development Network (Pakistan) listed in Schedule 1 of the Accord and Protocol
36A	Investment in Behbood Saving Certificate/ Pensioner’s Benefit Account / Shuhada Family Welfare Account
38	Special Purpose Vehicle for the purpose of Securitization or issue of Sukuks
38C	Islamic Development Bank
47B	NIT, Collective Investment Scheme, Modaraba, Approved Pension Fund, Private Equity & Venture Capital Fund Recognized PF, GF and Pension Fund
67	International Finance Corporation
68	Pakistan Domestic Sukuk Company
69	Asian Development Bank
108	“The Supreme Court of Pakistan – Diamer Bhasha & Mohmand Dams – Fund”



Payment to non-residents – Section 152 (Cont’d...)

Nature of payment	Rate of withholding tax
Royalty or Fees for Technical Services (FTS) when governed under Final Tax Regime	15%
Execution of contracts under a construction, assembly or installation project including for supervisory services in relation to such project	7%
Contracts for advertisement services rendered by T.V. Satellite Channels	7%
Insurance premium or re-insurance premium	5%
Advertising services to a Media House	10%
Profit on debt -	
- Non-resident having a P.E. in Pakistan	20%
- Non-resident having no P.E. in Pakistan	10%
Fee for offshore digital services	5%



Payment to non-residents – Section 152 (Cont’d...)

Nature of payment	Rate of withholding tax	
	Filer	Non-filer
Purchase of goods from a PE being a company	4%	7%
Purchase of goods from a PE other than a company	4.5%	7.75%
Acquisition of transportation services from a PE	2%	2%
Other services rendered by PE being a company	8%	14%
Other services rendered by PE not being a company	10%	17.5%
Execution of contract by PE being a company	7%	13%
Execution of contract by PE not being a company	7.5%	10%
Any other payment to a non-resident (General rate)	20%	20%



## Payment to non-residents – Section 152 (Cont'd...)

- ▶ The general withholding rate of 20% does not apply on the following payments
  - ▶ Salary - 149
  - ▶ Dividend - 150
  - ▶ Prizes and winnings - 156
  - ▶ Brokerage and commission - 233
  - ▶ Payments that are taxable to a PE in Pakistan of the non-resident person
  - ▶ Payments by a person who is held to be a representative of a non-resident person
  - ▶ Where a person claims to be a representative of the non-resident person
  - ▶ Amounts which are not chargeable to tax in the hands of a non-resident person

## Payment to non-residents – Section 152

- ▶ If a person intends to make payment to a non-resident person without deduction of tax, he must obtain prior approval from the Commissioner Inland Revenue
- ▶ Above reporting requirement is not applicable in the following cases:
  - ▶ Import of goods where title of goods is transferred outside Pakistan and is supported by import documents except where the import is part of an overall EPCC arrangement between the associate / PE of the non-resident
  - ▶ Educational and medical expenses remitted in accordance with the regulations of the SBP

## Payment for foreign produced commercials – Section 152A

- ▶ Every person responsible for making payment directly or through an agent or intermediary to a non-resident person for foreign produced commercial for advertisement on any television channel or any other media shall deduct tax from the gross amount paid.
- ▶ The rate of deduction of tax is 20%.

## Payment for goods, services and contracts – Section 153 (Cont'd...)

- ▶ Every prescribed person is liable to deduct tax on gross amount including sales tax from all resident persons
- ▶ Prescribed person means:
  - ▶ Federal Government
  - ▶ A company
  - ▶ An association of persons constituted by or under a law
  - ▶ Non profit organization
  - ▶ A foreign contractor or consultant
  - ▶ A consortium or joint venture
  - ▶ Exporter or export house (for the purpose of sub-section 2)
  - ▶ An individual and AOP, having turnover of Rs.50 million or above
  - ▶ A sales tax registered person
  - ▶ a person deriving income from the business of construction and sale of residential, commercial or other buildings (builder)
  - ▶ a person deriving income from the business of development and sale of residential, commercial or other plots (developer)

Payment for goods, services and contracts – Section 153

Description	Section	Companies		Other than companies	
		Filer	Non-Filer	Filer	Non-Filer
Supply of Goods	153(1)(a)	4%	8%	4.5%	9%
Supply of goods (Fast moving consumer goods)	153(1)(a)	2%	2%	2.5%	2.5%
Services(Other than transport services)	153(1)(b)	8%	14.5%	10%	17.5%
Transport Services	153(1)(b)	2%	2%	2%	2%
Advertising services	153(1)(b)	1.5%	12%	1.5%	15%
Execution of Contract	153(1)(c)	7%	14%	7.5%	15%



Payment for goods, services and contracts – Section 153 (Cont'd...)

- ▶ Deduction of tax is not required in following cases –
  - ▶ Sale of goods by an importer in the same condition as they were imported and on which tax has been paid at import stage
  - ▶ Payments representing refund of security deposit
  - ▶ Payments for purchase of an asset under a lease and buyback agreement
  - ▶ Where the payment is for securitization of receivable by a special purpose vehicle



Exports – Section 154

Collecting agent	Transaction	Rate of withholding
Authorized dealer in foreign exchange	Export of goods by an exporter	1% on export proceeds realized
Every banking company	Sale of goods by an exporter under inland back to back letter of credit or other arrangements	1% on export proceeds realized
Authorized dealer in foreign exchange	Commission due to an indenting commission agent	5% on export proceeds realized
Collector of Customs	Clearing of goods exported	1% of gross value of goods
Export Processing Zone Authority	Export of goods by an industrial undertaking located in the Zone	1% on export proceeds
Direct exporter / export house	A firm contract to an indirect exporter	1% of export proceeds



Income from property – Section 155 (Cont'd...)

Person liable to deduct tax	Every prescribed person
From whom	Individual, AOP and Company
Value on which deduction is to be made	Gross amount of rent (including rent of furniture & fixture and amount of services relating to property)
Time of deduction	At the time of payment of rent including payment in advance

- ▶ Prescribed person means:
- ▶ Federal, Provincial or Local Government
  - ▶ Company
  - ▶ Non profit organization or a charitable institution
  - ▶ Diplomatic mission of a foreign state
  - ▶ Private education institution, boutique, beauty parlour, hospital, clinics, maternity home
  - ▶ Individuals and AOPs paying rent of Rs.1.5 million in a year
  - ▶ Any other person notified by the FBR





### Income from property – Section 155

► The rate of deduction of tax in case of individual and AOPs -

Gross amount of rent	Rate of withholding tax
Where the gross amount of rent does not exceed PKR 200,000	Nil
Where the gross amount of rent exceeds Rs.200,000 but does not exceed Rs.600,000.	5 per cent of the gross amount exceeding Rs.200,000
Where the gross amount of rent exceeds Rs.600,000 but does not exceed Rs.1,000,000.	Rs.20,000 plus 10 per cent of the gross amount exceeding Rs.600,000.
Where the gross amount of rent exceeds Rs.1,000,000 but does not exceed Rs.2,000,000.	Rs.60,000 plus 15 per cent of the gross amount exceeding Rs.1,000,000.
Where the gross amount of rent exceeds Rs.2,000,000.	Rs.210,000 plus 20 per cent of the gross amount exceeding Rs.2,000,000

► The rate of tax to be deducted under section 155, in the case of company shall be 15% of the gross amount of rent for filers and 17.5% of the gross amount of rent for non-filers.



### Prizes and winnings – Section 156

Person liable to deduct tax	Every person paying prize on a bond, winnings from a raffle, lottery, prize on winnings quiz, prize offered by companies for promotion of sales or cross-word puzzle
Value on which deduction is to be made	Gross amount paid
Rate	- On prize on a bond or cross word puzzle – 15% for filer and 25% for non-filers - 20% in all other cases (filer / non-filer)
Time of deduction	At the time of payment



Cash withdrawal – Section 231A

Person liable to deduct tax	Every banking company
From whom	Every person withdrawing cash in a day exceeding Rs.50,000
Rate	- 0.3% for filers - 0.6% for non-filers
Time of deduction	At the time when withdrawal exceeds Rs.50,000 in a day

- ▶ Exemption from withholding –
  - ▶ Federal or Provincial Government
  - ▶ A foreign diplomat or a diplomatic mission in Pakistan
  - ▶ Person who produces an exemption certificate
  - ▶ Withdrawal by a “Branchless Banking (BB) Agent Account” utilized to render branchless banking services to customers
  - ▶ “The Supreme Court of Pakistan – Diamer Bhasha & Mohmand Dams – Fund”



Brokerage and commission – Section 233 (Cont’d...)

Person liable to deduct tax	Federal / Provincial / Local Government, a company or an AOP, in the capacity of a principal
From whom	Every person, being an agent
Rate	Advertising agents <ul style="list-style-type: none"><li>- 10% for filers</li><li>- 15% for non-filers</li></ul> All other cases <ul style="list-style-type: none"><li>- 12% for filers</li><li>- 15% for non-filers</li></ul>
Time of deduction	At the time of making payment of brokerage or commission



## Brokerage and commission – Section 233

- ▶ Where the agent retains commission or brokerage from any amount remitted by him to the principal, he shall be deemed to have been paid the commission or brokerage by the principal and the principal shall collect advance tax from the agent.
- ▶ In case of advertising agents, the value on which deduction is to be made is worked out as under –

$$\frac{A \times 15}{85}$$

Where A is the amount paid or to be paid to electronic or print media for advertising services (excluding commission) on which tax is deductible under clause (b) of sub-section (I) of section 153.

## Non-cash banking transactions – Section 236P

- ▶ Non-filers are subject to collection of tax on all non-cash banking transactions at the rate of 0.6%
- ▶ This withholding tax is applicable where total payments for all transactions in a day exceed Rs.50,000 in all bank accounts.
- ▶ Following exceptions have been provided under the law –
  - ▶ payments made for taxes of Federal, Provincial or Local government
  - ▶ A foreign diplomat or a diplomatic mission in Pakistan
  - ▶ Transactions executed from the accounts of ‘the Supreme Court of Pakistan – Diamer Bhasha & Mohmand Dams – Fund’ – Clause (108), Part IV, Second Schedule
  - ▶ transfer of any sum to ‘the Supreme Court of Pakistan – Diamer Bhasha & Mohmand Dams – Fund’ – Clause (109), Part IV, Second Schedule to the Ordinance.

### Remittance through cards – Section 236Y

- ▶ Non-filers are subject to collection of tax on all non-cash banking transactions at the rate of 0.6%
- ▶ This withholding tax is applicable where total payments for all transactions in a day exceed Rs.50,000. However, this threshold shall be considered separately for sales of instruments and transfer of sums
- ▶ The only exception is for payments made for taxes of Federal, Provincial or Local government



### Other major advance tax collections – Various sections

Section	Nature of transaction
231AA	Advance tax on transactions in bank
231B	Advance tax on private motor vehicles
236	Telephone and internet users
236A	Advance tax at the time of sale by auction
236B & 236L	Advance tax on purchase of domestic / international air ticket
236D	Advance tax on functions and gatherings
236G	Advance tax on sales to distributors, dealers and wholesalers
236H	Advance tax on sales to retailers
236I	Collection of advance tax by educational institutions
236Q	Payment to residents for use of machinery and equipment
236R	Collection of advance tax on education related expenses remitted abroad
236S	Dividend in specie
236U	Advance tax on insurance premium



# MONITORING OF WITHHOLDING TAXES

## Reconciliation of expenses - Rule 44(4)

- ▶ A person responsible for collecting or deducting tax and required to furnish monthly statement of withholding taxes shall, wherever required by the Commissioner, furnish a reconciliation of the amounts mentioned in the aforesaid monthly statements with the amounts mentioned in the return of income, statements, related annexes and other documents submitted from time to time.
- ▶ Tax authorities are empowered to levy and collect tax under section 161 of the Ordinance from the payer, if default of non-deduction of tax is established.
- ▶ Tax authorities are also empowered to levy penalty and default surcharge on the payer for non-deduction / collection of tax.

How to prepare reconciliation

Description		Rupees	Comments
	Total expense / purchases as per accounts	4,500,000	
Add:	Opening payable / accrual	300,000	Attach relevant ledger accounts
Add:	Closing pre-payments / advances	250,000	
Less:	Closing payable / /accrual	(450,000)	
Less:	Opening prepayments / advances	(700,000)	
	Total payments during the year	3,900,000	
Less:	Exempt amounts / amounts not liable to withholding of tax	(1,900,000)	Attach exemption certificates/undertakings or quote relevant provision of law, rules, SRO, circular etc.
Less:	Below taxable limit amounts	(150,000)	Attach relevant ledgers, invoices etc.
	Taxable payments for the year	1,850,000	Should match with reported figures
	Tax deducted/collected & paid (@ 10%)	185,000	Attach CPRs



Important points to remember

- ▶ Deduction of tax on net basis is not permissible under the law.
- ▶ The taxation officer is under an obligation to establish that amount identified was liable to withholding tax.
- ▶ Individual amount(s) in default, name of party, period of transaction, factum that payment was actually made needs to be established by the taxation officer in the order under section 161.
- ▶ No recovery under section 161 is warranted if the recipient (from whom tax deduction was required) has filed its return and no further tax is payable by him. Only default surcharge is recoverable from the person who has failed to deduct or collect tax - Section 161(1B)
- ▶ You are entitled to recover the tax paid under section 161 from the recipient of payment from whom tax was required to be deducted but was not deducted - Sec 161(2)



# Case laws

Some relevant case laws relating to levy of tax under section 161 and penalty and default surcharge under sections 181 and 205 respectively are summarized below.

Citation	Summary of findings
2014 PTD 1939 (LHC) - Sui Northern Gas Pipelines	If tax has been paid by the recipient of payments, the payer shall not be held liable to the principal amount of tax
83 TAX 227 (Trib.)	The ultimate burden of tax is on the recipient who is required by law to file the return of income and to discharge its ultimate tax liability.
2012 PTD 122 (Trib.)	
1999 PTD 1302 (Trib.)	- Penalty imposing statute is quasi-criminal in nature and mens rea or willful default has to be established before taking any penal action. - Where default is made due to circumstances beyond the control of a person, such person cannot be held assessee in default.
2007 PTD 901 - Habib Bank Limited	
2005 PTD 1 - Gharibwal Cement Limited	
28 Tax 181 (LHC)	
90 Tax 1 (Supreme Court of Pakistan)	No additional tax is leviable in cases where the department fails to prove a case of willful default on the part of taxpayer



THANK YOU

