Tax Residency

BY SYED ANWAR KASHIF MUMTAZ

Who is a Person? (1/2)

- A person has been defined in Section 80(1) of the Income Tax Ordinance, 2001.
- The word Person has been defined to include the following:
  - An individual
  - A company or association of persons incorporated, formed, organized or established in Pakistan or elsewhere.
  - The Federal Government, a foreign government, a political sub-Division of foreign government, or public international organization.
- The word "association of persons" has been defined in Section 80(2)(a) as including a firm, a Hindu undivided family, any artificial juridical person and anybody of persons formed under a foreign law, but does not include a company.

Who is a Person? (2/2)

- The word “company” has been defined in Section 80(2)(b) as meaning:
  - a company as defined in the Companies Act, 2017 (XIX of 2017)];
  - a body corporate formed by or under any law in force in Pakistan;
  - a modaraba;
  - a body incorporated by or under the law of a country outside Pakistan relating to incorporation of companies;
  - a co-operative society, a finance society or any other society;
  - a non-profit organization;
  - a trust, an entity or a body of persons established or constituted by or under any law for the time being in force;
  - a foreign association, whether incorporated or not, which the [Board] has, by general or special order, declared to be a company for the purposes of this Ordinance;
  - a Provincial Government;
  - a [Local Government] in Pakistan;
  - a Small Company as defined in section 2;

What is the difference between a resident and non resident?

- The Income Tax Ordinance, 2001 divides a person into 2 board categories i.e.:
  - A resident person
  - A non resident person
- The words “resident person” and “non resident person” have been defined in Section 81 of the Income Tax Ordinance, 2001.
- A resident person has been defined as a:
  - Resident individual
  - Resident company
  - Resident association
  - Federal Government
- A person who does not fall within the definition of a resident person shall be a non resident person.

Who can be categorized as a Resident Individual?

- A resident individual has been defined in Section 82 of the Income Tax Ordinance, 2001
- An individual shall be categorized as a resident individual for a tax year if he:
  - Is present in Pakistan for a period of, or periods amounting in aggregate to, one hundred and eighty three days or more in the tax year.
  - Is an employee or official of the Federal Government or a Provincial Government posted abroad in the tax year.

What can be categorized as a Resident Company

- A resident company has been defined in Section 83 of the Income Tax Ordinance, 2001
- An company shall be categorized as a resident company for a tax year if it:
  - It is incorporated or formed by or under any law in force in Pakistan
  - The control and management of the affairs of the company is situated wholly in Pakistan at any time in the year; or
  - It is a Provincial Government or Local Government in Pakistan.

What can be categorized as a Resident Association of Persons

- A resident company has been defined in Section 84 of the Income Tax Ordinance, 2001
- An association of person shall be categorized as a resident association of person for a tax year if the control and management of affairs of the association is situated wholly or partly in Pakistan at any time in the year.

Any Questions?

Foreign Income/Asset and their taxability

BY SYED ANWAR KASHIF MUMTAZ

What is Foreign Source Income?

- Section 101 and 101A identify geographical source of income vis Pakistan Source and Foreign Source.
- Broadly speaking, income pursuing to the two sections is classified as Pakistan Source either as:
  - Absolute – having actual source in Pakistan; or
  - Fictional - based on the status of the payer in Pakistan.
- Any income that is not classified as Pakistan source would be treated as foreign source income for the purposes of taxation.

Heads of Foreign Income (Fictional Income)

Section	Character	Comment
101(1)	Salary	From employment exercised in Pakistan, or paid by or on behalf of the Government(Federal or Provincial) employee wherever such employment is exercised
101(2)	Business income of a Resident Person	When income is derived from business carried on in Pakistan
101(3)	Business income of a non resident person	When income is directly or directly attributable to: • Permanent establishment of non resident person in Pakistan • Sales of goods merchandise sold are same or similar to those sold by the person through permanent establishment • Other business activities carried on in Pakistan of the same or similar kind as those effected by non resident through his permanent establishment • Import goods, whether or not title of goods passes outside Pakistan in a cohesive business operation
101(5)	Gain on Disposal – asset or property	Disposal of business or property in Pakistan

Heads of Foreign Income (Fictional Income)

Section	Character	Comment
101(6)	Dividend Income	When paid by a resident company; or remittance of after tax profit of a branch of a foreign company operating in Pakistan,
101(9)	Rental Income	When it is derived from the lease of immoveable property in Pakistan or from any other interest in or over immoveable property, including a right to explore for, or exploit natural resources in Pakistan.
101(10)	Alienation or Disposal of Immoveable Property	Referred to in 101(9) or alienation of any share in company the assets of which consists of "wholly" or "principality"; "directly" or "indirectly" of property or rights referred to in 101(9).
101(13)	Disposal of Shares	Gain on disposal of shares of a resident company

Heads of Foreign Income (Fictional Income)

Section	Character	Comment
101(4)	Independent Services rendered by a non resident person	Independent services also include(professional services and the services of entertainers and sports persons) If paid by a resident person or borne by the permanent establishment of a non resident person.
101(7)	Profit of debt	If paid by a resident person or borne by the permanent establishment of a non resident person.
101(8)	Royalty	If paid by a resident person or borne by the permanent establishment of a non resident person.
101(11)	Pension or Annuity	If paid by a resident or borne by the permanent establishment of a non resident person.

Heads of Foreign Income (Fictional Income)

Section	Character	Comment
101(12)	Technical Fee	If a paid by a resident person or borne by the permanent establishment of a non resident person.
101(12A)	Fee for Offshore Digital Services	If paid by a resident person or borne by the permanent establishment of a non resident person.
101(13A)	Insurance/ Reinsurrance Premium	If paid by a resident person or borne by the permanent establishment of a non resident person.
101(14)	Any other amount	If paid by a resident person or borne by the permanent establishment of a non resident person.

What happens to gain on disposal of assets outside Pakistan? (1/3)

- Section 101A deems gain from the disposal or alienation outside Pakistan of an asset located in Pakistan of a non-resident company as Pakistan- source.
- Where the asset is any share or interest in a non-resident company, the asset shall be treated to be located in Pakistan, if –
- The share or interest derives, directly or indirectly, its value wholly or principally from the assets located in Pakistan; and
- Shares or interest representing 10% or more of the share capital of the non-resident company are disposed or alienated.
- The share or interest shall be treated to derive its value principally from the assets located in Pakistan, if the value of such assets exceeds one hundred million rupees and represents at least 50% of the value of all the assets owned by the non-resident company.

What happens to gain on disposal of assets outside Pakistan? (2/3)

- Where the assets of the non-resident company are not wholly located in Pakistan, only income to the extent that is reasonably attributable to such assets as are located in Pakistan, and is determined as may be prescribed, would be taxable;
- 10% or more of the share capital of non-resident company are disposed or alienated;
- Where the assets in Pakistan are held through a resident company, such company shall be required to provide the prescribed information to the Commissioner within 60 days of the transaction;
- The buyer would be required to withhold tax at the rate of 10% of the fair market value of the asset.

What happens to gain on disposal of assets outside Pakistan? (3/3)

- Where the buyer has not withheld tax, the resident company is required to collect the requisite tax from the non-resident seller at an amount being the higher of:
  - 20% of the gain (that is, FMV – Cost of Acquisition of Asset); or
  - 10% of the FMV of the asset; and
- Where the tax has been withheld by the buyer or collected by the resident company, no tax shall be payable by the non-resident company in respect of the gain under the head “Income from Business” or “Capital Gains”.

What foreign source income are exempt?

- Section 102 of the Ordinance provides what sources of foreign income are exempt.
- If the individual has paid foreign income tax in respect of the salary.
- Foreign income tax is considered paid if tax has been withheld from salary by the employer and paid to the revenue authority of the foreign country in which the employment is exercised.

What are foreign losses?

- Deductible expenditures incurred by a person in deriving foreign-source income chargeable to tax under a head of income shall be deductible only against that income.
- The foreign loss shall be carried forward to the following tax year and set off against the foreign source income chargeable to tax under that head in that year, and so on, but no foreign loss shall be carried forward to more than 6 tax years immediately succeeding the tax year for which the loss was computed.
- Where a taxpayer has a foreign loss carried forward for more than 1 tax year, the loss for the earliest year shall be set off first.

What is Foreign Income Tax? (1/2)

- A foreign levy is regarded as foreign income tax if:
  - levy is a tax;
  - the tax is substantially equivalent to the income tax imposed under the Ordinance; and
  - it requires compulsory payment pursuant to the authority of the foreign country to levy tax.
- Foreign levy is not a tax if:
  - it is a penalty, fine, interest or similar obligation; or
  - person subject to levy receives or is entitled to receive, directly or indirectly, a specific economic benefit from the foreign country in exchange of payment pursuant to the levy.

What is Foreign Income Tax? (2/2)

- A foreign income tax is substantially equivalent to the income tax imposed under the Ordinance if the following conditions are satisfied:
  - the tax imposed in respect of the events that would result in derivation of income, gains or profits under the Ordinance;
  - taxable income is computed under the foreign tax by subtracting from the gross receipts any significant expenses and depreciation or amortization of capital cost attributable to such receipts or where tax is imposed under the foreign law or any other basis;
  - Dividend or interest income earned from the foreign source may be treated to have same character for the resident person, as it has under the Ordinance;
  - A withholding tax imposed on dividend, gross receipt payable to non resident persons as final tax;
  - Tax on wages by withholding imposed as a final tax on salary.

What are foreign tax credits? (1/2)

- Foreign tax credit is available only against the foreign source income chargeable to tax.
- Foreign tax credit is allowed to the extent of lesser of :
  - The foreign income tax paid; or
  - The Pakistan tax payable in respect of the income.
- Pakistan tax payable in respect of foreign source income derived by a taxpayer in a tax year shall be computed by applying the average rate of Pakistan income tax applicable to the taxpayer for the year against the taxpayer's net foreign-source income for the year.

What are foreign tax credits? (2/2)

- Foreign tax credit shall be calculated separately for each head of income.
- Any unutilized foreign tax credit or part of a tax credit shall not be refunded, carried back to the preceding tax year, or carried forward to the following tax year.
- A foreign tax credit only available if the foreign income tax is paid within two years after the end of the tax year in which the foreign income to which the tax relates was derived by the resident taxpayer.

What is a Controlled Foreign Company?

- A foreign company is a CFC if either of the two conditions is satisfied:
  - More than 50% of the capital or voting rights of a non-resident foreign company are held, directly or indirectly, by one or more persons resident in Pakistan; or
  - More than 40% of the capital or voting rights of a non-resident foreign company are held directly or indirectly by a single resident person in Pakistan.
- The taxable income of a resident person shall include income attributable to a “Controlled Foreign Company”.
- Income of a foreign company owned by a Pakistani resident is taxable in Pakistan only when such income is “received” from the non-resident entity. 109A is a deeming provision which essentially creates a legal fiction resulting into following:
  - Corporate veil is pierced and income of a non-resident company is deemed to be the income of the controlling entity in Pakistan.
  - Income is taxed when it is ‘earned’ and not when it is ‘received’.

What is the concept of an Active Business Income?

- Requires fulfillment of two conditions simultaneously:
- Cumulative income from following sources is less than 20% of total income of the foreign entity:
  - dividend
  - interest
  - property
  - capital gains
  - royalty
  - annuity payments
  - supply of goods to an associate
  - sale or licensing of intangibles and management
  - holding or investment in securities and financial assets
- Principle source of the company is under the head “income from business” in the country or jurisdiction of which it is a resident.

Controlled Foreign Company and Attributable Income?

- The attributable income is determined by comparing the percentage of control (whether directly or indirectly) held by the said person over the CFC.
- Other Exclusions:
  - Income of a controlled foreign company shall be treated as zero, if less than ten million rupees.
  - The attributable income shall be treated as zero if direct / indirect capital or voting right held by a resident person is less than 10% in the foreign company.
- Income of CFC to be determined in the currency of its tax jurisdiction and shall be included in the taxable income of the controlling resident during the tax year by converting into rupees at the SBP rate applying between that foreign currency and the rupees on the last day of the tax year.
- Foreign Tax Year: means any year or period of reporting for income tax purposes by that non-resident company in the country of residence or, if that company is not subject to income tax, any annual period of financial reporting by that company.

Controlled Foreign Company and Attributable Income?

- Income attributable to CFC shall not be taxed again when the same is received in Pakistan by the resident person.
- If tax has been paid on the CFC income by the resident person and in the subsequent year the resident person receives dividend distributed by the CFC, after deduction of tax on dividend, the resident person shall be allowed tax credit equal to the lesser of:
  - foreign tax paid;
  - Pakistan tax payable for the tax year in which the dividend is received by the resident person.

Any Questions?

Roshan Digital Account

BY SYED ANWAR KASHIF MUMTAZ

What is the purpose of roshan digital bank account?

- Roshan Digital Account is the latest digital initiative for Overseas Pakistanis by the State Bank of Pakistan.
- It aims to enable and facilitate overseas Pakistani to invest, pay, and bank in the country. With millions of Pakistanis living abroad, it is a dynamic and essential push towards a prosperous and developed Pakistan.
- A total of eight commercial banks have become part of this large-scale initiative. Let's talk about the Roshan Digital Account initiative and why Pakistanis are so excited about it!

Basic overview of the roshan digital account

- As stated previously, the Roshan Digital Account initiative is a drive to boost Pakistan's economy by bringing in foreign investment through Overseas Pakistanis.
- The account will help Overseas Pakistanis actively invest, bank, and send money to Pakistan without being physically present.
- The initiative is jointly executed by eight commercial banks, under the umbrella of the State Bank of Pakistan, presently offering the Roshan Digital Account service. However, each bank’s procedure may vary according to its policies.
- The process is simple, transparent, and swift. Overseas Pakistanis can acquire a Roshan Digital Account without formally presenting themselves in Pakistan by following these easy steps.
  - Select a Bank.
  - Provide Account Opening Information
  - Select Account Type
  - Upload Mandatory Documents for Verification
  - Add Picture
  - Receive Confirmation

What are the documents needed for the account?

- Overseas Pakistanis are required to submit the following documents along with the account creation form:
  - National Identity Card for Overseas Pakistanis (NICOP), Pakistan Origin Card (POC) or Computerized National Identity Card (CNIC)
  - Scanned copies of the first two pages of the original passport
  - A proof of the declared source of income (Payslips, Job details, etc.)
  - A current photograph
  - Signature on white paper
- The required documents may vary from bank to bank as some may require additional documents based on the bank's standard operating procedures.

Where can investment be made through this account?

- A broad spectrum of investment opportunities is created as part of the Roshan Digital Account initiative. Overseas Pakistanis with an account can invest in:
  - Government-supported saving means
  - Fixed-deposit schemes administered by banks
  - Shares in the Pakistani stock market
  - Residential and commercial real estate investments
- Please note that the first three investment categories have started in the initial stages of the initiative, while real estate and mutual fund investments are reserved for the second phase.

Why should a non resident Pakistani own the Roshan digital account?

- The Roshan Digital Account Initiative offers numerous services to account owners with the help of the latest technology, such as:
  - Digital access to all conventionalized account services, including transfer of funds, fee, and bill payments with access to e-commerce services
  - Roshan Digital Account holders can invest in Naya Pakistan Certificates (NPCs), which the Government of Pakistan highly promotes
  - Enabled investment in the stock market of Pakistan
  - Access to investment opportunities in Pakistan’s commercial and residential real estate sector

What are the benefits of having a roshan digital account?

- In Pakistan, the digital era has opened up significant opportunities by extending innovative banking solutions for Overseas Pakistanis living abroad. Technological innovations have revolutionized the banking industry covering a broad range of services.
- Roshan Digital Accounts is a complete digital solution. From the account's creation to managing its offered-services, the initiative is supported by major FinTech players in the industry to accommodate overseas Pakistanis. The Roshan Digital Account enables expatriates to make payments to any individual and funds withdrawal in Pakistani currency.
- Overseas Pakistanis can create a Roshan Digital Account without being physically present at the selected bank. Individuals can obtain a verified account in a mere span of 48 hours after successfully submitting the required documents.
- Roshan Digital Account holders can withdraw funds without worrying about retaining the lowest minimum balance. For instance, if an account holder wishes to draw all the funds from the digital account, they can do so without the restriction of retaining a specific amount to keep the account active.
- In association with the State Bank of Pakistan, the Government of Pakistan has inaugurated a service that contributes to rapid and effortless real estate investments. The minimum period required to invest in real estate, aligned by the SBP, is three years. After completing the stipulated time, the investor will be able to make investments in the real estate market.
- Although if an investor wishes to withdraw their funds during the stipulated period, they have the option to repatriate funds to the lowest possible amount or a specified amount equivalent to the principal investment amount in the Pakistani rupee.

How are investments made from Roshan Digital Account taxed?

- Profit earned on RDA deposits is tax exempt.
- No withholding tax will be deducted against profit on RDA deposits.
- No need to obtain an exemption certificate from the Federal Board of Revenue (FBR)
- Full and final tax @ 10 percent on profit on Naya Pakistan Certificates bought through Roshan Digital Account for Non Resident Pakistanis and such resident Pakistanis having declared assets abroad.
- Full and final tax of 15 percent on capital gains
- Full and final tax of 15 percent on dividends received from mutual funds and companies other than IPPs and the companies which are tax exempt. The tax rate on dividends from IPPs is 7.5 percent and from tax exempt companies is 25 percent.
- No penalty or doubling of the tax rate due to absence from Active Taxpayer's List (ATPL)
- No need to file tax returns on dividends and capital gains
- Full and final capital gains tax of 1 percent on value at the time of sale of properties
- Full and final payment of 1 percent tax on value at the time of purchase of properties

Any Questions?

THANK YOU!