

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.

COLLECTION / WITHHOLDING OF TAXES

Why withholding tax?

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

General rules

- ▶ Tax must be withheld unless the recipient produces a Nil withholding tax certificate or the law specifically provides for exemption from tax withholding (For instance, in the case of banks where the Seventh Schedule categorically mentions that withholding provisions are not applicable to Banks).
- ▶ Rates of withholding tax to be applied in accordance with the status of the recipient vis-à-vis –
 - ▶ Individual / AOP / Company
 - ▶ Persons appearing on the Active Taxpayers' List or otherwise
- ▶ 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 Active Taxpayers List and Tenth Schedule

- ▶ “Active Taxpayer List” - ATL means the list instituted by the Federal Board of Revenue and includes such list issued by the Azad Jammu and Kashmir Central Board of Revenue or Gilgit-Baltistan Council Board of Revenue
- ▶ Active Taxpayers’ List (ATL) is updated on March 01 every year and is available on the FBR’s web-portal.
(<https://e.fbr.gov.pk/esbn/Service.aspx?PID=q1RI3O/iitaUIPApR6Mf0A==>)
- ▶ In case of individuals, the identification number on ATL is the Computerized National Identity Card Number / Passport Number / NICOP
- ▶ For persons other than individuals (i.e. AOP and Companies), the identification number on ATL is the National Tax Number

Concept of Active Taxpayers List and Tenth Schedule (Cont'd...)

- ▶ Through the Finance Act 2019, Tenth Schedule was introduced which generally provides that where tax is required to be deducted or collected under any provision of the Ordinance, the rate of withholding, as prescribed under the First Schedule, will be doubled in case of persons whose name does not appear on the ATL.

Concept of Active Taxpayers List and Tenth Schedule (Cont'd...)

- ▶ Certain exceptions has been provided from applicability of the provisions of the Tenth Schedule, some of which are –
 - ▶ Salary
 - ▶ Payments to non-residents other than payment to a PE of a non-resident for sale of goods, provision of services or execution of contract
 - ▶ Payment of profit on debt to non-resident not having a PE in Pakistan (Clause 5A)
 - ▶ Payment of profit on debt on debt instruments (Clause 5AA)
 - ▶ Payment of dividend to non-resident persons (Clause 111A, Part IV, 2nd Schedule)
 - ▶ Payment to non-resident individual holding Pakistan Origin Card (POC) / NICOP / CNIC maintaining a Foreign Currency Value Account (FCVA) or Non-resident Pakistani Rupee Value Account (NRVA) with authorized banks in Pakistan
 - ▶ Payment on account of exports
 - ▶ Payment on account of export of services (154A)
 - ▶ Tax collection under section 234 (from 22 August 2022 till 30 June 2023)
 - ▶ Tax collection under sections 235 and 236 (Electricity, telephone and internet bills)

Concept of Active Taxpayers List and Tenth Schedule (Cont'd...)

- ▶ Tenth Schedule also provides that where the withholding agent or the person from whom tax is required to be collected or deducted is satisfied that a person not appearing in the active taxpayers' list was not required to file a return of income / statement, he shall before collecting or deducting tax under this Ordinance, furnish to the Commissioner a notice in writing electronically and the Commissioner shall pass an order accepting or rejecting the contention of the withholding agent.
- ▶ The order by the Commissioner is required to be passed within 30 days of receipt of notice otherwise it will be deemed that the contention of the taxpayer has been duly accepted and approval has been granted.

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.
- ▶ In case of payment of profit on debt, earlier of the time it is paid or credited to the account of the recipient.

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 quarterly withholding tax statement to the FBR
- ▶ Quarterly withholding statements are to be filed within 20 days from end of each quarter.
- ▶ 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.
- ▶ Annual statement is also required to be filed for salary and other than salary payments by 31 July and within 30 days from the end of the tax year, respectively.

Reporting requirements – Section 165

- ▶ Following mandatory information is required to be reported in the quarterly 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

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	
Rate of collection	Person on ATL	Person not on ATL
Person importing goods classified in Part I of the Twelfth Schedule	1%	2%
Person importing goods classified in Part II of the Twelfth Schedule (commercial importers)	3.5%	7%
Person importing goods classified in Part II of the Twelfth Schedule (other than commercial importers)	2%	4%
Person importing goods classified in Part III of the Twelfth Schedule	5.5%	11%

Imports – Section 148 (Cont'd...)

- ▶ Collection at import stage is not applicable on 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 execution of a contract with the Federal, provincial or a local government.
 - ▶ Petroleum (E&P) companies
 - ▶ Motor vehicle upto 1000cc in CBU condition
 - ▶ Goods produced or manufactured and exported from Pakistan which are subsequently imported in Pakistan within one year of their exportation, provided conditions of section 22 of the Customs Act, 1969

Salary – Section 149

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 allowed 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 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 (235)
 - ▶ tax collected from a telephone/ mobile phone subscriber including prepaid cards for telephone (section 236)
 - ▶ tax collected on sales or transfer of immovable property (section 236C)
 - ▶ tax collected on purchase or transfer of immovable property (section 236K)

Salary – Section 149 (Cont'd...)

- ▶ 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 -
- ▶ Tax credit admissible under section 61 – Donations
- ▶ Tax credit admissible under section 63 - Contribution to an Approved Pension Fund

Dividend – Section 150

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	<ul style="list-style-type: none">- 7.5% in case of dividend distributed by power generation companies / companies providing coal for power generation projects where such tax is a pass through item- 7.5% in case of dividend declared by a company qualifying for exemption under clause (132C) of Part-I of this Schedule – Clause (18C)- 15% in Mutual Funds and for other cases- 25% in case where company has no tax payable due to any exemption of carry forward losses- For persons not on ATL, the rates would double except in case of dividend by entity covered under Clause (132) above
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 section 59AA subject to the condition that the group return has been filed for the latest completed tax year
36D	Sarmaya-e-Pakistan Limited
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, Approved Pension Fund / Income Payment Plan, RIET Scheme, Recognized PF, GF and Superannuation Fund
67	International Finance Corporation
69 and 72	Asian Development Bank. ECO Trade and Development Bank
Section 100D (Eleventh Schedule)	Dividend paid by a builder/developer (being a company) out of profits derived from a project.

Profit on debt – Section 151

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	<ul style="list-style-type: none">- 15% of gross yield- 10% of gross yield from government debt instruments purchased by resident citizen of Pakistan through a FCVA maintained with authorized banks in Pakistan, who has declared all his foreign assets to the Board- For persons not on ATL, the rate would double
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 but under section 152(2)

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
36B	Promissory notes and sales tax refund bonds issued under the provisions of the Sales Tax ,Act, 1990
36C	Profit paid on Pakistan Banao Certificates
36D	Profit paid to Sarmaya-e-Pakistan Limited
38	Special Purpose Vehicle for the purpose of Securitization or issue of Sukuks
38A and 38C	Venture Capital Company and Islamic Development Bank
38D	National Disaster Risk Management Fund
47B	NIT, Collective Investment Scheme, Modaraba, Approved Pension Fund, Private Equity & Venture Capital Fund Recognized PF, GF and Pension Fund

Profit on debt – Section 151 - Exemptions

Clause	Nature of payment / Entity
67	International Finance Corporation
68	Pakistan Domestic Sukuk Company
69	Asian Development Bank
95, 96	Third Pakistan International Sukuk Company Limited & Pakistan Global Sukuk Programme Company Limited
108	“The Supreme Court of Pakistan – Diamer Bhasha & Mohmand Dams – Fund”
116	The Prime Minister’s COVID-19 Pandemic Relief Fund-2020

Payment to non-residents – Section 152

Nature of payment	Rate of withholding tax
Royalty or Fee 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%
Advertisement services to a media person relaying from outside Pakistan	10%
Foreign produced commercial for advertisement on any television channel or any other media	20%
Fee for offshore digital services	10%
Any other payment to a non-resident (General rate)	20%

Payment to non-residents – Section 152

Nature of payment	Rate of withholding tax
Capital gain earned by a non-resident company from disposal of debt instruments and Government securities including T-Bills and PIBs invested through SCRA	10%
Capital gain earned by a non-resident individual having POC / NICOP / CNIC from disposal of debt instruments and Government securities and certificates invested through Foreign Currency Value Account (FCVA) or a non-resident Pakistani Rupee Value Account (NRVA)	10%
Return on investment in sukuks to a non-resident sukuk holder	25 % - Company 12.5% - Individual / AOP where more than 1 million 10% - Individual / AOP where less than 1 million
Service charges / commission / fee to the global money transfer operators, international money transfer operators or such other persons engaged in international money transfers or cross-border remittances for facilitating outward remittances	10%
Payment to card network company or payment gateway or any other person, of any transaction fee or licensing fee or service charges or commission or any other fee or interbank financial telecommunication services	10%

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

Nature of payment	Rate of withholding tax	
	Person on ATL	Person not on ATL
Purchase of goods from a PE being a company	4%	8%
Purchase of goods from a PE other than a company	4.5%	9%
Acquisition of specified services from a PE	3%	6%
Other services rendered by PE being a company	8%	16%
Other services rendered by PE not being a company	10%	20%
Execution of contract by PE		
- Sports person	10%	20%
- Others	7%	14%

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

- ▶ The general withholding rate of 20% does not apply on 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 (Cont'd...)

- ▶ 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
- ▶ Applicability of Section 100BA and Tenth Schedule vis-à-vis payment to a non-resident person where treaty provisions apply.

Payment for goods, services and contracts – Section 153

- ▶ 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 or a sales tax registered person, having turnover of Rs.100 million or above, in any of the preceding tax year
 - ▶ 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 (Cont'd...)

Description	Section	Companies		Other than companies	
		ATL	Other than ATL	ATL	Other than ATL
Supply of Goods including toll manufacturing	153(1)(a)	4%	8%	4.5%	9%
Supply of goods (rice, cotton, seed or edible oil)	153(1)(a)	1.5%	3%	1.5%	3%
Sale by distributors of cigarettes & pharmaceutical products and large import houses	153(1)(a)	1%	2%	1%	2%
Services (Other than specified services)	153(1)(b)	8%	16%	10%	20%
Specified services	153(1)(b)	3%	6%	3%	6%
Advertising services (Electronic and Print Media)	153(1)(b)	1.5%	3%	1.5%	3%
Execution of Contract	153(1)(c)	6.5 %	13%	7%	14%
Execution of Contract by a sports person	153(1)(c)	N/A		10%	20%

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 by Federal, Provincial or Local Government to a contractor for construction materials supplied to the contractor by the said Government
 - ▶ 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
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

Export of Services – Section 154A

Person liable to deduct tax	Every authorized dealer in foreign exchange
From whom	Recipient of the payment from outside Pakistan
Value on which deduction is to be made	Gross amount realized
Rate	0.25% of the receipts on account of Computer software or IT enable services (Registered with PSEB)
	1% of the receipts in all other cases

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) and payment on account of sublease
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 300,000	Nil
Where the gross amount of rent exceeds Rs.300,000 but does not exceed Rs.600,000.	5 per cent of the gross amount exceeding Rs.300,000
Where the gross amount of rent exceeds Rs.600,000 but does not exceed Rs.2,000,000.	Rs.15,000 plus 10 per cent of the gross amount exceeding Rs.600,000.
Where the gross amount of rent exceeds Rs.2,000,000.	Rs.155,000 plus 25 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 is 15% of the gross amount of rent. In case of person not appearing on ATL, the rate is 30%.

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	<ul style="list-style-type: none">- On prize on a bond or cross word puzzle – 15%- 20% in all other cases- For persons not on ATL, the rate would double
Time of deduction	At the time of payment

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	<p>Advertising agents</p> <ul style="list-style-type: none">- 10% for persons on ATL- 20% for persons not on ATL <p>Life insurance agents where commission received is less than PKR 500,000 per annum</p> <ul style="list-style-type: none">- 8% for persons on ATL- 16% for persons not on ATL <p>All other cases</p> <ul style="list-style-type: none">- 12% for persons on ATL- 24% for persons not on ATL
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.

Other major advance tax collections – Various sections

Section	Nature of transaction
231B	Advance tax on private motor vehicles
235	Advance tax on electricity bills
236	Telephone and internet users
236A	Advance tax at the time of sale by auction
236C and 236K	Advance tax on sale / transfer of immovable property from seller and purchaser
236G	Advance tax on sales to distributors, dealers and wholesalers
236H	Advance tax on sales to retailers
236Y	Advance tax on remitted amounts abroad through credit/debit/prepaid cards

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 recover 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.
- ▶ The above reconciliation is also to be filed along with the return of income applicable from the tax year 2022.

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 before initiating recovery proceedings.
- ▶ 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)

Time limit for monitoring proceedings

- ▶ Under the Ordinance, no specific time limit has been prescribed for conducting monitoring proceedings.
- ▶ In the case of Habib Bank Limited reported as 2013 PTD 1659, the Sindh High Court has, however, held that proceedings in respect of monitoring of withholding taxes under Section 161 cannot be initiated after the period of limitation prescribed for maintenance of records by the taxpayer.
- ▶ Similarly, in the case of Panther Sports & Rubber Industries (Pvt.) Ltd, The Supreme Court of Pakistan has held that since a taxpayer is obliged to maintain the record under section 174(3) of the Ordinance for a period of six years, he cannot be compelled to produce the record for such tax year which is beyond the period of six years as stipulated in section 174(3) of the Ordinance. Therefore, notices issued under section 165(2B) or 161(1A) of the Ordinance being ineffective and unenforceable were set aside.
- ▶ It was clarified that the department is only restricted where it seeks record beyond the statutory period under Section 174(3) from the taxpayer but is otherwise free to proceed if the action or proceedings under the Ordinance are based on the record already in possession of the department.

Time limit for monitoring proceedings

- ▶ In the case of Asia Poultry Feeds (Pvt.) Limited vs. the Federal Board of Revenue (W.P. 8466 of 2015) dated 23 June 2015, the Hon'ble Lahore High Court held that if the proceedings for monitoring of withholding taxes have been conducted for a particular tax year, the same cannot be reinitiated.
- ▶ In order to undo the aforesaid judgement, the Finance Act, 2019 has amended section 161 whereby the Commissioner has been empowered to amend or further amend an order of recovery already passed under Section 161, and recover the tax that escaped at the time of passing of the said earlier order, if he considers that the order passed earlier is erroneous in so far it is prejudicial to the interest of revenue.

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.)	<ul style="list-style-type: none"> - 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 assesees in default.
2007 PTD 901 - Habib Bank Limited	
2005 PTD 1 - Gharibwal Cement Limited	
28 Tax 181 (LHC)	

THANK YOU