

Advance Tax Under Section 147



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NORMAL DUE DATE OF PAYMENT OF TAX SECTION 137(1)

- ✓ Income tax is payable at the time of furnishing of return of income i.e. :

Companies

- Income year ending from January 1 to June 30 - December 31.
- Income year ending from July 1 to December 31 - September 30 next year.

Others

- September 30.

PERSONS LIABLE TO PAY ADVANCE TAX

SECTION 147(1) & (2)

- ✓ Advance tax is applicable on the following persons if their income has been charged to tax for the latest tax year:
 - i. Companies
 - ii. AOPs
 - iii. Individuals whose latest assessed taxable income other than specified exclusions is less than one million rupees.
- ✓ Advance tax is payable irrespective as to whether a person is resident or non-resident.

INCOMES EXCLUDED FROM ADVANCE TAX AMBIT SECTION 147(1)

- ✓ The Specified Exclusions from advance tax ambit are:
 - i. Salary income.
 - ii. Dividend income
 - iii. Income taxable under final tax regime.
 - iv. Income of non-resident persons from shipping and air transport.
 - v. Income of non-resident persons from:
 - royalty other than derived through PE in Pakistan.
 - fee for offshore digital services.
 - fee for money transfer operations.
 - card network services.
 - payment gateway services.
 - interbank financial telecommunication services.
 - fee for technical services.

ADVANCE TAX FORMULA - INDIVIDUALS

SECTION 147(4B)

- ✓ Advance tax is payable by individuals as per the following formula:

$$(A / 4) - B$$

Where

A = Tax assessed for the latest tax year.

B = Taxes paid during the quarter which are adjustable as per section 168.

ADVANCE TAX DUE DATES - INDIVIDUALS

SECTION 147(5)

- ✓ The due dates of payment of advance tax for individuals are as follows:
 - September quarter - September 15th
 - December quarter - December 15th
 - March quarter - March 15th
 - June quarter - June 15th

ADVANCE TAX FORMULA – COMPANIES / AOPS

SECTION 147(4)

- ✓ Advance tax is payable by companies and AOPs as per the following formula:

$$(A \times B/C) - D$$

Where

A = Turnover during the quarter.

B = Tax assessed for the latest tax year including super tax paid under section 4C and minimum tax paid under sections 113 and 113C.

C = Turnover for the latest tax year.

D = Taxes paid during the quarter which are adjustable as per section 168.

- ✓ Where turnover for the quarter is not known it shall be taken as 1/4th of 110% of the latest assessed turnover.

ADVANCE TAX DUE DATES – COMPANIES / AOPS

SECTION 147(5A)

- ✓ The due dates of payment of advance tax for companies and AOPs are as follows:
 - September quarter - September 25th
 - December quarter - December 25th
 - March quarter - March 15th
 - June quarter - June 15th

ADVANCE TAX OWN ESTIMATE - MANDATORY COMPANIES / AOPS SECTION 147(4A)

- ✓ Company or AOP which is required to pay advance tax under section 147(4) shall estimate its tax liability for the year at any time before the second installment is due.
- ✓ If its estimated tax liability for the year is likely to be MORE than their advance tax liability for the year under section 147(4), then it shall file estimate of its advance tax liability with the Commissioner before the due date of payment of advance tax for the second (2nd) quarter.
- ✓ It shall then pay advance tax equal to 50% of such estimated tax liability for the year after adjustment of what has already been paid in the first quarter whilst remaining 50% estimated tax liability for the year shall be paid equally in remaining two quarters.

ADVANCE TAX OWN ESTIMATE – OPTIONAL COMPANIES / AOPS / INDIVIDUALS

SECTION 147(6)



- ✓ If company, AOP or individual is of the view that its estimated tax liability for the year is likely to be LESS than the amount of advance tax required to be paid under section 147(1), then it may file an estimate of its tax liability for the year with the Commissioner before the due date of payment of advance tax for the last quarter and pay reduced advance tax accordingly.
- ✓ The aforesaid estimate shall include turnover for the completed quarters, estimated turnover for the remaining quarters along with reasons for any decline in estimated turnover, documentary evidence of estimated expenses or deductions which may result in lower payment of advance tax and estimated taxable income for the year.
- ✓ Various tax credits allowable under the law such as under section 61, section 63, section 64, section 65, etc. can be accounted for whilst computing advance tax liability under section 147(4A) and section 147(6) if benefit of tax credit has been accrued.
- ✓ Supreme Court in the case of Dawood Herclues Chemicals Ltd reported as **2006 PTD 2498** held filing of estimate under section 147(6) after due date of payment for last quarter invalid.

ADVANCE TAX IN ABSENCE OF LATEST ASSESSMENT COMPANIES / AOPS SECTION 147(6A)

- ✓ Company or AOP shall also pay advance tax on the basis of quarterly turnover in the absence of the latest assessed income or declared turnover.
- ✓ Minimum tax under section 113 and under section 113C shall also be accounted for in computing the advance tax liability.
- ✓ Advance tax liability would be adjusted for taxes already paid during the quarter.

ADVANCE TAX SUPER TAX / MINIMUM TAX SECTION 147(4AA)

- ✓ Super tax liability under section 4C and minimum tax liability under section 113 on the basis of turnover and alternative corporate tax liability under section 113C need to be considered whilst working out advance tax liability under section 147 of the Ordinance.
- ✓ Super tax needs to be estimated only on incomes liable to advance tax under section 147 of the Ordinance whilst incomes excluded from advance tax ambit under section 147(1) will be ignored.

TURNOVER – DEFINITION

SECTION 113(3)

- ✓ Turnover is defined under section 113(3) of the Ordinance as follows:

“turnover” means,-

- a) the gross sales or gross receipts, exclusive of Sales Tax and Federal Excise duty or any trade discounts shown on invoices, or bills, derived from the sale of goods, and also excluding any amount taken as deemed income and is assessed as final discharge of the tax liability for which tax is already paid or payable;*
- b) the gross fees for the rendering of services for giving benefits including commissions; except covered by final discharge of tax liability for which tax is separately paid or payable;*
- c) the gross receipts from the execution of contracts; except covered by final discharge of tax liability for which tax is separately paid or payable; and*
- d) the company's share of the amounts stated above of any association of persons of which the company is a member.*

Supreme Court in the case of CIT v Khurshid Ahmed & others reported as **2016 PTD 1393** observed that the definition of “turnover” under section 113 is restrictive / exhaustive and does not include each and every source of income but includes only what has been specified under the definition.

ADVANCE TAX - CAPITAL GAIN ON SECURITIES COMPANIES / AOPS SECTION 147(5B)



- ✓ Company / AOP is required to pay advance tax on capital gain on “securities”, as defined under section 37A(3) of the Ordinance.
- ✓ The aforesaid advance tax is payable within 21 days after the end of each quarter. It is adjustable against tax liability of the year.
- ✓ Advance tax rate is as follows:
where holding period of the security is:
 - Less than 6 months - 2% of capital gain
 - More than 6 but less than 12 months - 1.5% of capital gain
- Advance tax under section 147(5B) is collectible by NCCPL under the Eighth (8th) Schedule.

ADVANCE TAX – BUILDERS & DEVELOPERS COMPANIES / AOPS / INDIVIDUALS SECTION 147(5C)



- ✓ Advance tax is payable in four (04) equal instalments on project-by-project basis by companies, AOPs and individuals in respect of the following business income:
 - i. construction and disposal of residential, commercial and other buildings
 - ii. development and sale of residential, commercial and other plots
- ✓ The aforesaid advance tax is payable by persons who have opted to be taxed under section 100D of the Ordinance read with Eleventh (11th) Schedule.

ADVANCE TAX – BUILDERS & DEVELOPERS

TAX RATES

SECTION 147(5C)

- ✓ Advance tax rates for income of builders and developers prescribed under Part IIB of First (1st) Schedule of the Ordinance for Karachi, Lahore and Islamabad are as follows:

Sq. Ft.	Tax Rate
Tax for commercial buildings – Section 147(5C)(i)	
Any size	Rs. 250 per sq. ft
Tax for residential buildings – Section 147(5C)(i)	
upto 3000	Rs. 80 per sq. ft
3000 and above	Rs. 125 per sq. ft
Tax for development of residential area buildings – Section 147(5C)(ii)	
Any size	Rs. 20 per sq. ft
Tax for others – Section 147(5C)(ii)	
Any size	Rs. 150 per sq. ft

ADVANCE TAX MISCELLANEOUS SECTION 147(7), (8) & (9)



Advance tax is tax due as per assessment order

- ✓ Advance tax due under section 147 shall be treated as if it is tax due under an assessment order. Advance tax due means advance tax due for payment as per advance tax estimate of taxpayer.

Advance tax is adjustable

- ✓ Advance tax paid under section 147 is adjustable against the tax liability of the year.

Excess advance tax is refundable

- ✓ Excess advance tax paid is refundable as per section 170.

TAXATION OFFICER CANNOT MAKE ESTIMATE OF ADVANCE TAX SECTION 147(6) & (7)

- ✓ Advance tax under section 147 is to be estimated by taxpayer alone and taxation officer does not have any power to make any estimate.
- ✓ Sindh High Court in case of Karachi Port Trust reported as **2011 PTD 1996** observed that tax authorities do not have any power under the law to challenge the correctness of the estimate filed by taxpayer. It was further observed that section 147(7) empowers tax authorities to recover the estimated advance tax not paid by taxpayer but does not give any jurisdiction to taxation officer to determine advance tax liability through an order.
- ✓ Lahore High Court in the case of Sui Northern Gas Pipelines Limited reported as **2017 PTD 1774** overturned the estimate made by taxation officer by observing that such estimate can be made by taxpayer alone and it can only be verified after the end of tax year after tax return is filed by taxpayer.

TAXATION OFFICER CANNOT MAKE ESTIMATE OF ADVANCE TAX SECTION 147(6) & (7)

- ✓ Lahore High Court in case of Fauji Fertilizer Company Limited reported as **2018 PTD 719** held that if taxpayer filed an estimate of advance tax and paid tax as per said estimate then there is nothing under the law which can be done until return of income is filed and it is established that advance tax was under paid.
- ✓ Certain changes were made under section 147(6) through the Finance Act, 2018 whereby the Commissioner was vested with the powers to estimate advance tax liability under certain conditions, however, these changes were omitted through the Finance Act, 2021 whereafter the law has reverted to its original position.
- ✓ Islamabad High Court in the judgment in the case of First Micro Finance Bank Limited reported **126 TAX 408** affirmed that advance tax estimate could only be made by taxation officer during that limited period.
- ✓ Lahore High Court in the case of National Power Parks Management Co. (Pvt) Ltd. reported as **2020 PTD 1001** held that estimation of advance tax by taxation officer and order passed under section 147 is appealable under section 127.

ADVANCE TAX ON SALES SALES TAX REGISTERED PERSONS SECTION 147A

- ✓ Every provincial sales tax registered person whose name is not appearing in the active taxpayers' list (ATL) on 30th June of the previous tax year shall pay monthly advance tax at 3% of the turnover declared in sales tax return.
- ✓ Advance tax is payable at the time of filing of provincial sales tax return.
- ✓ Advance tax is adjustable against tax liability for the year and can also be taken into account whilst computing advance tax liability under section 147.
- ✓ If the name of the person is being included in ATL during the year, advance tax would still be required to be paid till 30th June of the current year.

DEFAULT SURCHARGE FOR NON OR UNDER PAYMENT OF ADVANCE TAX SECTION 205(1A) & (1B)

- ✓ Default surcharge is leviable under sub-section (1A) of section 205 of the Ordinance on non-payment or under payment of advance tax by taxpayer at 12% from the due date of payment of advance tax to the date of payment of advance tax or due date of filing of return of income whichever is earlier.
- ✓ Default surcharge is leviable under sub-section (1B) if advance tax on own estimate basis under section (4A) or sub-section (6) is not paid or amount so paid is less than 90% of tax chargeable for the relevant tax year. Default surcharge is leviable at 12% on the amount of non-payment or short fall from 1st day of April of the tax year to the date of assessment or 30th day of June of next following year whichever is earlier.
- ✓ In the case of special tax year default surcharge would be levied from the 1st day of the fourth quarter of the tax year to the date of assessment or last day of special tax year.

DEFAULT SURCHARGE FOR NON OR UNDER PAYMENT OF ADVANCE TAX SECTION 205(1A) & (1B)

- ✓ Default surcharge can be levied through an order under section 205. It can be levied in piecemeal even if advance tax has not yet been paid.
- ✓ Default surcharge is leviable for an under payment of advance tax as compared to actual tax liability only after assessment or deemed assessment order has been passed i.e. after the end of tax year and not before. However, where advance tax estimated by taxpayer himself is not paid or under paid, default surcharge can be levied before the passing of assessment or deemed assessment order.
- ✓ Default surcharge is leviable only if there is a willful default. Sindh High Court in the case of Tianshe International Pakistan Co. (Pvt) Limited reported as **2018 PTD 900** held levying of default surcharge without establishing mens rea as illegal.
- ✓ The issue is, however, currently debatable and some tax and appellate authorities are taking a different view due to an Indian Supreme Court's judgement wherein it was held that default surcharge is not a penal action and, therefore, mens rea is not essential for its levy.

PENALTY FOR NON OR UNDER PAYMENT OF ADVANCE TAX SECTION 182

- ✓ Penalty is not payable for any non or under or late payment of advance tax.
- ✓ Tribunal in the decision reported as **2016 SLD 1104** has affirmed the deletion of penalty by Commissioner Appeals by stating that there is no penalty provisions under section 182 of the Ordinance for non-payment of advance tax under section 147 of the Ordinance.
- ✓ Sindh High Court in the case of Paki Saudi Fertilizer Limited reported as **1999 PTD 4061** held that no penalty was leviable under the repealed Ordinance for non-payment, short payment or delayed payment of advance tax.
- ✓ Sindh High Court in case of Karachi Port Trust reported as **2011 PTD 1996** has observed that the only recourse available to the Commissioner in case of wrong estimate of advance tax is to levy default surcharge under section 205(1B) after return of income is filed.