

Training Material
HRM Wing (FBR) - GIZ

National Law Provisions Concerning International Taxation

Tax Reform Component
Governance Programme

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



National Law Provisions

- Section 107 empowers FBR to Conclude Tax Treaties
- Section 44 and 53 provides tax exemption
- Rule 15 of IT Rules explains Relief from Foreign Income Tax
- Section 101 (3) defines as to what is Pakistan Source Business Income
- Section 2 (41) defines PE
- Rule 18 of IT Rules defines ‘Royalties’, Fees for Technical Services
- Section 101(4) explains taxation of Income from Independent Services
- Section 101 (5) explains the taxation of Capital Gains
- Section 101 (6) explains taxation of Dividends
- Section 101 (7) explains taxation of Interest
- Rule 19 of Income Tax Rules explains Mutual Agreement Procedure

Section 107

- Section 107 deals with Agreements for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income imposed by this Ordinance and under the corresponding laws in force in a foreign country.
- The Federal Government is competent to make provisions by Gazette notification to implement such agreements,
- These agreements have overriding effect and no provision of the Ordinance will have effect in so far as these agreements and notified provisions for implementation provide for—
 - (a) Relief from the payable tax.
 - (b) Determination of Pakistan-source income.
 - (c) Determination of income in the hands of non-residents, including permanent establishments in Pakistan.
 - (d) Determination of income of resident persons having special relationship with non-residents.
 - (e) Exchange of information for the prevention of fiscal evasion or avoidance of taxes on income between treaty partners.

INCOME TAX RULES, 2002

Rule 19 - Mutual Agreement Procedure

- Rule 19D.- An aggrieved Pakistani national residing abroad or a resident taxpayer may make an application to the Competent Authority (FBR) in the prescribed form for taking up his matter with the Competent Authority of the relevant tax treaty partner who would endeavor to resolve it through consultative measures.
- However, the taxpayer can withdraw from the mutual agreement procedure and pursue his right of appeal under the normal course, if the terms and conditions of the impending resolution are not satisfactory to him.
- Note: The same procedure would apply for an application received in Pakistan through the Competent Authority of the other treaty partner.

Section 44 and 53

Exemptions from tax

- Section 44 provides for exemptions under international agreements. Its sub-section (1) states—(1) Any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.
- Sub-section (3) states that any income received by a person (not being a citizen of Pakistan) engaged as a contractor, consultant or expert on a project in Pakistan shall be exempt from tax under this Ordinance to the extent provided for in a bilateral or multilateral technical assistance agreement between the Federal Government and a foreign government or public international organization.
- Section 53 provides for exemptions and tax concessions in the Second Schedule to the Ordinance. The income or classes of income, or persons or classes of persons specified in the Second Schedule may be exempted from tax, taxed at lower rates, allowed reduction in tax liability or exempted from the operation of any provision of this Ordinance.

Section 101 (3)

PAKISTAN-SOURCE BUSINESS INCOME

- Section 101(3) states that Business Income of a non-resident person is to be treated as Pakistan-source income to the extent it is directly or indirectly attributable to-
 - (a) Permanent establishment in Pakistan of the non-resident.
 - (b) Sales of goods merchandise of the kind sold by the person through a permanent establishment in Pakistan.
 - © Other business activities of the kind as those effected by a non-resident through a permanent establishment in Pakistan.
 - (d) Any business connection in Pakistan.
- WHERE business of a non-resident comprises rendering of independent services (including professional and services of entertainers and sports persons) any remuneration paid by a resident person or borne by permanent establishment is also treated as business income in Pakistan.

Section 11 of the Ordinance

Computation of Income

- Section 11 (8) provides that the income of a non-resident person under any classified head i.e. salary, property income, business income, capital gains and income from Other Sources, shall be computed by taking into account only amounts that are Pakistan-source income.
- Section 11 (5) provides that the income of a resident person under any classified head shall be computed by taking into account amounts that are Pakistan-source income and amounts that are foreign-source income.
- The term “income” includes any amount chargeable to tax under the Income Tax Ordinance, any amount subject to collection or deduction of tax under various provisions of the Ordinance, any amount treated as income under any provision of this Ordinance and any loss of income.

Section 2 (41)

Permanent Establishment

- Section 2 (41) defines “permanent establishment” to mean a fixed place of business through which the business is wholly or partly carried on-including:
 - (a) a place of management, branch, office, factory, workshop, premises, warehouse, permanent sales exhibition or outlet and a liaison office where contracts (not being purchase-contracts) are negotiated;
 - (b) a mine, oil or gas well, quarry or any other place of extracting natural resources;
 - c) an agricultural, pastoral or forestry property;
 - (d) a building site, a construction, assembly or installation project together with supervisory activities continuing for more than 90 days in a 12-month period;
 - (e) the furnishing of consultancy or other services through employees/personnel;
 - (f) an agent (not being of independent status) habitually exercising an authority to conclude contracts or habitually maintaining stock-in-trade or other merchandise for delivery on behalf of the other person; and
 - (g) any substantial equipment, other asset or property capable of giving rise to income.

INCOME TAX RULES, 2002

FOREIGN INCOME TAX

- **FOREIGN INCOME TAX Rule 15** made u/s 102 and 103 of the Ordinance provides relief to the resident person from international double taxation but any penalty, fine, interest, etc. is not treated as a foreign tax. However, withholding taxes imposed on dividends, salary and gross receipts of non-resident persons as final tax are treated as substantially equivalent to the income tax imposed under the Income Tax Ordinance, 2001.
- **Section 102** of the Ordinance provides exemption to the foreign source salary of resident individuals if they have paid foreign income tax or tax was withheld at source and paid to the revenue authority of the foreign country.
- **Section 103** of the Ordinance states that where a taxpayer resident in Pakistan has paid foreign income tax, he shall be allowed a tax credit equal to or lesser of—
 - (a) foreign tax paid, or
 - (b) Pakistan tax payable in respect of that income.

This will be done by applying average rate of Pakistan income tax applicable to the taxpayer against his net foreign source income. Foreign tax credit u/s 103 is allowed first before any other tax credit admissible u/s 147 (advance tax paid) or section 168 (credit for tax collected or deducted in Pakistan) is applied.

- **Rule 16** requires the resident person to submit an application with return of income, accompanied by supporting documents, to claim credit for foreign tax. However, Commissioner is authorized to accept secondary evidence of tax deductions abroad.

Rule 18 of Income Tax Rules

Royalties

- Rule 18 of the Income Tax Rules, 2002, deals with income from royalties and states that the income of a non-resident person by way or royalty received from a resident person or a permanent establishment in Pakistan of a non-resident person shall be determined in the light of agreements made before or after 08 March, 1980, by allowing certain expenditures incurred in Pakistan or outside Pakistan in earning royalty which would not exceed 10 per cent of the gross amount of royalty.
- However, this provision does not apply where royalty is covered u/s 169 of the Income Tax Ordinance and the tax thereon (presently 15% unless fixed at a lower rate under a tax treaty) is treated as a final tax. Besides, any royalty relating to a permanent establishment is treated as income from Business u/s 6(4) of the Ordinance.
- The term “royalty” has been defined in section 2(54) of the Ordinance which, in short, may be taken to mean any amount paid or payable, as consideration for the use of or right to use any patent, invention, design, model, secret formula or process, trade mark, copyright (including films or video tapes) and receipt or right to receive any visual images or sounds in connection with television, radio or internet broadcasting or for the supply of any technical, industrial, commercial or scientific knowledge, experience or skill; or for the use of any industrial, commercial or scientific equipment; for the supply of any assistance for these properties or rights and the disposal of any property or right so mentioned.

Rule 19 of Income Tax Rules 2002

Fees for Technical Services

Rule 19 of the Income Tax Rules, 2002, states that, except where fee for technical services is treated as a final tax u/s 169 of the Ordinance, deductions will be allowed, according to the agreements, for the expenditure admissible u/s 40 being “Income from other sources” generally applying maximum total deduction @ 20% of the gross amount of such fees.

- If the tax rate is not settled in the relevant tax treaty, normal tax @ 15% will be levied on gross amount of the fee for technical services u/s 6 of the Ordinance, which is the final tax.
- The term “fee for technical services” has been defined in section 2 (23) of the Ordinance to mean any consideration, whether periodical or lump sum, for the rendering of any managerial, technical or consultancy services, including the services of technical or other personnel (not being salary income) but excluding consideration for services rendered in relation to a construction, assembly or like project undertaken by the recipient.
- Under section 101(12) of the Ordinance, income from technical fee is treated as Pakistan-source income, if it is borne by a permanent establishment of a non-resident or paid by a resident for services utilized in Pakistan.

Section 101(1)

Dependent Services

- Section 101(1) provides that Salary shall be Pakistan–source income to the extent to which it is received from any employment exercised in Pakistan (wherever paid) or is paid by our Governments in Pakistan, wherever the employment is exercised.

For this purpose, an individual who is not present in Pakistan for 183 days, in the aggregate, in a tax year, is treated as a non-resident person u/s 81(2) of the Ordinance.

- Dependant personal services need to be distinguished from Independent Services which are not treated as “Salary” but are taken as Business Income of a non-resident rendering independent services (including professional and services of entertainers and sports persons) for which remunerations are paid by a resident person or borne by a permanent establishment of the non-resident in Pakistan.

Independent Personal Services

- **Section 101 (4)** provides that where the business of a non-resident person comprises the rendering of independent services (including professional services and the services of entertainers and sports persons) any remuneration derived by that person which is paid by a resident person or borne by a permanent establishment of that non-resident person will be taxed in Pakistan.

Shipping and Air Transport Income of non-residents.

Section 7 of the Income Tax Ordinance, 2001, provides for taxation on the business of operating ships or aircrafts by the owner or charterer in respect of-

- (a) gross amount (whether in or out of Pakistan) for the carriage of passengers, livestock, mail or goods embarked in Pakistan; and
- (b) gross amount received/receivable in Pakistan for carriage of passengers, livestock, mail or goods embarked outside Pakistan.

- The following rates of tax have been prescribed:-
 - (i) 8% in case of shipping income (gross amount)
 - (ii) 3% in case of air transport income (gross amount)
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Section 101 (5)

Capital Gains

- **Section 101(5)** of the Income Tax Ordinance treats gains on disposal of assets or properties used in deriving business income by a non-resident person or his permanent establishment in Pakistan and from rendering independent services as Pakistan-source income.
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Section 101 (6)

Dividends

- **Section 101 (6)** provides that a dividend paid by a resident company shall be treated as Pakistan-source income. Resident company is one which is incorporated or formed by or under any law in force in Pakistan and the control and management of its affairs is situated wholly in Pakistan at any time in the year.
- As regards tax on dividends, section 5 of the Ordinance imposes tax at the prescribed rate (presently 10%) on the gross amount of dividend received by shareholder of a any person from any company. Similarly, advance or loan given to a private company is also treated as dividend by virtue of its broad definition given in section 2 (19) of the Ordinance.

Section 101 (7)

PROFIT ON DEBT (Interest)

- **Section 101 (7)** states that profit on debt shall be Pakistan-source income if it is borne by a permanent establishment of a non-resident person or paid by a resident person.
- “Profit on debt” whether payable or receivable, is defined in section 2(46) to mean—
- (a) any profit, yield, interest, discount, premium or other amount owing under a debt, other than a return on capital, or
- (b) any service fee or other charge in respect of a debt, including any fee or charge incurred in respect of a credit facility which has not been utilized.
- **Section 152(2)** requires every person paying an amount (profit on debt) to a non-resident to deduct tax @ 30% of the gross amount of such payment. However, this provision will not apply if the Commissioner accords approval that it is taxable to a permanent establishment in Pakistan of a non-resident person. It will also not apply where the amount is payable by a person who is liable to pay tax on that amount s representative of the non-resident person.

Rule 15 of Income Tax Rules 2001

Foreign Income Tax

- **Rule 15** made u/s 102 and 103 of the Ordinance provides relief to the resident person from international double taxation but any penalty, fine, interest, etc. is not treated as a foreign tax.
- However, withholding taxes imposed on dividends, salary and gross receipts of non-resident persons as final tax are treated as substantially equivalent to the income tax imposed under the Income Tax Ordinance, 2001.
- **Section 102** of the Ordinance provides exemption to the foreign source salary of resident individuals if they have paid foreign income tax or tax was withheld at source and paid to the revenue authority of the foreign country.
- **Section 103** of the Ordinance states that where a taxpayer resident in Pakistan has paid foreign income tax, he shall be allowed a tax credit equal to or lesser of—
 - (a) foreign tax paid, or
 - (b) Pakistan tax payable in respect of that income.
- This will be done by applying average rate of Pakistan income tax applicable to the taxpayer against his net foreign source income.
- Foreign tax credit u/s 103 is allowed first before any other tax credit admissible u/s 147 (advance tax paid) or section 168 (credit for tax collected or deducted in Pakistan) is applied.
- **Rule 16** requires the resident person to submit an application with return of income, accompanied by supporting documents, to claim credit for foreign tax. However, Commissioner is authorized to accept secondary evidence of tax deductions abroad.

Transfer Pricing

- **Chapter VI** of the Income Tax Rules applies for the purposes of section 108 (Transactions between associates).
- It mainly provides for the exercise of the Commissioner's power to distribute, apportion or allocate income, expenditure or tax credit, between associates in respect of transactions not made according to the arm's length principle.
- Such transactions cover sales, assignments, leases, licenses, loans, contributions and rights to use property or performance of services.
- Among other provisions, the Commissioner is to be guided by international standards, case law and guidelines issued by various tax-related internationally recognized organizations.
- He may also use any method consistent with the comparable uncontrolled transactions, if other methods viz (a) comparable uncontrolled price method (b) re-sale price method (c) cost plus method or (d) profit-split method would not readily determine the arm's length result.

CONCEPT OF RESIDENCE

- Section 82 provides that a resident individual is one who is present in Pakistan for 183 days, or more, in the aggregate, in a tax year or is a government official of Pakistan posted abroad in the tax year.
- Section 83 provides that a resident company is one which is incorporated or formed by or under any law in force in Pakistan and the control and management of its affairs is situated wholly in Pakistan at any time in the tax year.
- Section 84 provides that a resident association of persons is the one for a tax year if the control and management of its affairs is situated wholly or partly in Pakistan at any time in the year.
- The term “association of persons” includes a firm, a Hindu undivided family, any artificial juridical person and any body of persons formed under a foreign law, but does not include a company.
- NOTE: If a person is not resident for a tax year, such person would be treated as a non-resident.

TAX RATES FOR NON-RESIDENTS

- **Section 152.-Payments to non-residents:** Unless a tax treaty otherwise provides, the following payments to non-residents attract tax rates, as follows:
- **(1) Royalties and fees for technical services:** Every person paying an amount of royalty or fees for technical services to a non-resident is required to deduct final tax @ 15% from the gross amount paid to the non-resident
- **(1A) Contracts for construction and services:** Every person making a payment in full or part to a non-resident person on the execution of any specified contract for construction or services is required to deduct final tax @ 6% from the gross amount payable under the contract.
- **(1AA) Insurance premium, etc:** Every person making a payment of insurance or re-insurance premium to a non-resident person is required to deduct final tax @ 5% from the gross amount paid to the non-resident.
- **Sub-section(2) General rate @ 30%:** Except for the amounts subjected to deduction of tax under sections 149 (salary) 150 (Dividends) 153 (supply of goods and services) 155 (property income) 156 (Prizes and winnings) 233 (Brokerage and Commission) and the amounts of royalty or fees for technical services and contracts for construction and services, every person paying any other amount to a non-resident person (other than permanent establishment) is required to deduct tax @ 30% from the gross amount paid to the non-resident.

TAX RATES FOR NON-RESIDENTS

- **Section 152(5)** provides that where a person intends to make a normal payment to a non-resident person (other than permanent establishment) without deduction of tax, a notice will be furnished to the Commissioner who is empowered to accept the person's contention or order deduction of tax @ 30%. This provision, however, does not apply where any payment is liable to reduced rate of tax under the relevant agreement for avoidance of double taxation).
- **Section 153A.-Payments to non-resident media persons:** Every person making a payment for advertisement services to a non-resident media person relaying from outside Pakistan is required to deduct final tax @ 10% from the gross amount paid to the non-resident