

***CAPITAL
MARKET
RESCUE –
President
promulgates
Ordinance***



COMMENTS ON THE FINANCE (AMENDMENT) ORDINANCE, 2012

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Executive Summary

Through an Ordinance a much awaited rescue ruling exercising the executive powers has been promulgated with the hope that under the revised Capital Gain Tax (CGT) regime, stock market would attract new investment which would further increase revenue collection.

The salient features of the changes introduced through the Ordinance are being discussed here under:

- 1. Capital value tax (CVT) @ 0.01% of the purchase value on purchase of shares of a public company listed on a registered stock exchange has been imposed. The CVT on stock market transactions was abolished in the past.*
- 2. Under the Income Tax ordinance, 2001, no enquiries regarding the nature and source of investment (calculated in a prescribed manner) in the shares would be made;*
 - from the coming into force of a new Schedule i.e. Eighth Schedule (Rules for computation of capital gains on listed securities) up to June 30, 2014 where amount remains invested for a period of 120 days.*
 - for investment made prior to the introduction of a new Schedule i.e. Eighth Schedule (Rules for computation of capital gains on listed securities) and where the amount remains invested for a period of 45 days up to June 30, 2012.*

Furthermore, The tax on capital gains, if any, has to be duly discharged through National Clearing Company of Pakistan Limited (NCCPL) automated system in collaboration with The Central Depository Company of Pakistan Limited , a statement of investments is to be filed with the Commissioner along with the return of income and wealth statement for the relevant tax year within the due date as provided in section 118.

The NCCPL shall issue a certificate to the taxpayer for filing along with the return of income. The NCCPL is also required to furnish to the Board within 30 days of the end of each quarter, a statement of capital gains and tax computed thereon. The amendment also provides for the regular system and procedural audits of NCCPL on quarterly basis by Pakistan Revenue Automation Limited (Pral), or any other company or firm approved by the Board and any authority appointed under section 209, not below the level of Additional Commissioner Inland Revenue.

The ordinance seeks to amend Finance Act, 1989, Income Tax Ordinance, 2001 and shall come in force at once.

AMENDMENTS IN FINANCE ACT, 1989

Capital Value Tax

Scope of Capital Value Tax has been enhanced by levying tax at the rate of 0.01 per cent of the purchase value on purchase of shares of a public company listed on a registered stock exchange in Pakistan through amendments made in Section 7 of the Finance Act, 1989.

AMENDMENTS IN INCOME TAX ORDINANCE, 2001

Section 2 of the Income Tax Ordinance has been amended whereby following definition of NCCPL being inserted by adding a new clause 35AA.

(35AA) "NCCPL" means National clearing Company of Pakistan Limited, which is a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984) and licensed as "Clearing House" by the Securities and Exchange Commissioner of Pakistan,";

Capital Gain Tax

Special Provisions relating to Capital Gain Tax has been introduced through insertion of Section 100B and corresponding Eighth Schedule providing rules for the computation of capital gains on listed securities.

Sub-section 2 of newly inserted Section 100B excluded following persons or class of persons from the applicability of aforesaid Section:

- *a mutual fund;*
- *a banking company, a non-banking company, and an insurance company subject to tax under the Fourth Schedule;*
- *a modaraba;*
- *a 'foreign institutional investor' being a person registered with NCCPL as a foreign institutional investor; and*
- *any other person or class of persons notified by the Board.*

Section 233A

Collection of advance tax by a Stock Exchange registered in Pakistan at the rate of 0.01 percent on traded value from its members in respect of trading of shares by the members has been deleted through omitting clause (c) of Section 233A and corresponding clause (iii) in Division IIA of Part IV.

FIRST SCHEDULE

Part I

Division VII

Following changes in rates of tax to be paid under Section 37A shall be made through the Ordinance.

S. No.	Period	Tax Year	Rate of Tax (%)	
			Before Amendment	After Amendment
1.	<i>Where holding period of a security is less than six months</i>	2011	10	10
		2012	10	10
		2013	12.5	10
		2014	15	10
		2015	17.5	17.5
2.	<i>Where holding period of a security is six months or more but less than twelve months</i>	2011	7.5	7.5
		2012	8	8
		2013	8.5	8
		2014	9	8
		2015	9.5	9.5
		2016	10	10
3.	<i>Where holding period of a security is one year or more</i>		0	Omitted

EIGHTH SCHEDULE [Section 100B]

RULES FOR THE COMPUTATION OF CAPITAL GAINS ON LISTED SECURITIES

MANNER AND BASIS OF COMPUTATION OF CAPITAL GAINS AND TAX THEREON

1. *Tax on capital gains on disposal of listed securities, subject to tax under section 37A, and to which section 100B apply, shall be collected and deposited on behalf of taxpayers by NCCPL in the prescribed manner for which NCCPL shall develop an automated system.*
2. *Central Depository Company of Pakistan Limited shall furnish information as required by NCCPL for discharging obligations under this Schedule.*
3. *NCCPL shall issue an annual or a shorter period certificate to the taxpayer in respect of capital gains subject to tax under this Schedule which is required to be filed along with the return of income of the taxpayer and such certificate shall be conclusive evidence in respect of the income under this Schedule.*
4. *A statement of capital gains and tax computed thereon shall be furnished to the Board within thirty days of the end of each quarter by the NCCPL.*
5. *Capital gains computed under this Schedule shall be chargeable to tax at the rate applicable in Division VII of Part I of the First Schedule.*

SOURCES OF INVESTMENT

1. *The Ordinance seeks to enhance relaxation to investors by providing that no enquiries as to the nature and source of the amount invested shall be made for any investment made **prior to enforcement of this Schedule** in the listed securities subject to the following conditions:*
 - *a statement of investments along with the return of income and wealth statement for tax year 2012 is filed with the Commissioner; and*
 - *the amount remains invested for a period of forty five days up to 30th of June 2012, in the prescribed manner.*
2. *No enquiries as to the nature and source of the amount invested in shares of public listed company **from the date of coming into force of this Schedule till June 30, 2014**, shall be made subject to the following conditions:*
 - *the amount remains invested for a period of one hundred and twenty days in the prescribed manner;*
 - *tax on capital gains, if any, has duly been discharged in the prescribed manner; and*
 - *a statement of investments along with the return of income and wealth statement for the relevant tax year is filed with the Commissioner;*

3. *For the purpose of this rule, amount of investment shall be calculated in the prescribed manner, excluding market value of net open sale position in futures and derivatives, if such sale is in a security that constitutes the said investment.*

CERTAIN PROVISIONS OF THIS ORDINANCE NOT TO APPLY

The respective provisions for collection and recovery of tax, advance tax and deduction of tax at source laid down in the Parts IV and V of Chapter X shall not apply on the income from capital gains subject to tax under this Schedule and these provisions shall apply in the manner as laid down in the rules made under this Ordinance, except where the recovery of tax is referred by NCCPL to the Board.

PAYMENT OF TAX COLLECTED BY NCCPL TO THE BOARD

The amount collected by NCCPL on behalf of the Board shall be deposited in a separate bank account with National Bank of Pakistan and the said amount shall be paid to the Board along with interest accrued thereon on yearly basis by July 31st next following the financial year in which the amount was collected.

PERSONS TO WHOM THIS SCHEDULE SHALL NOT APPLY

If a person intends not to opt for determination any payment of tax as laid down in this Schedule, he shall file an irrevocable option to NCCPL after obtaining prior approval of the Commissioner in the manner prescribed. In such case the provisions of rule 2 shall not apply.

RESPONSIBILITY AND OBLIGATION OF NCCPL

1. *Regular system and procedural audits of NCCPL on quarterly basis shall be conducted to verify the implementation of this Schedule and rules made under this Ordinance by any of the following authorities:*
 - *Pakistan Revenue Automation Limited (PRAL), a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984); or*
 - *any other company or firm approved by the Board; or*
 - *any authority not below the level of an Additional Commissioner Inland Revenue appointed under section 209 of the Ordinance.*
2. *NCCPL shall implement the recommendations if any, of the audit report as approved by the Commissioner and make adjustments for short or excessive deductions. However, no penal action shall be taken against NCCPL on account of any error, omission or mistake that has occurred from application of the audited system.*
3. *NCCPL shall be empowered to refer a particular case for recovery of tax to the Board in case NCCPL is unable to recover the amount of tax.*

TRANSITIONAL PROVISIONS - *In respect of tax year 2012, for the period commencing from coming into force of this Schedule till June 30, 2012, the certificate issued by NCCPL under rule 1(4) shall be the basis of capital gains and tax thereon for that period.*