

**The Income Tax Ordinance, 2001**  
**[XLIX of 2001]**

**AN**

**ORDINANCE**

***to consolidate and amend the law relating to Income tax***

WHEREAS it is expedient to consolidate and amend the law relating to income tax and to provide for matters ancillary thereto or connected therewith;

WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with Provisional Constitutional Amendment Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

**CHAPTER I**

**PRELIMINARY**

**1. Short title, extent and commencement.-** (1) This Ordinance may be called the Income Tax Ordinance, 2001.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

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**Explanation:**

**1. Date of enforcement of the Ordinance**

This Ordinance was published vide No. F.No.2 (1)/2001-Pub. on 13-09-2001. The Government appointed the first day of July 2002 as the date from which this Ordinance came into force vide SRO 381(I)/2002 dated 15<sup>th</sup> June, 2002.

The Income Tax Ordinance, 1979, stood repealed with effect from 30.06.2002 and was replaced by the Income Tax Ordinance, 2001, which came into operation immediately thereafter i.e. with effect from 01.07.2002. CIT, Peshawar vs. Islamic Investment Bank Ltd. 2016 PTD 1339 [SCP]

Note: See section 239 for matters relating to the repealed Income Tax Ordinance, 1979 (the 'repealed Ordinance')

**Explanation (contd.)****2. Territories of Pakistan vs. whole of Pakistan under the Ordinance**

As per Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the territories of Pakistan are: -

- i. the provinces of Balochistan, the Khyber Pakhtunkhwa, the Punjab and Sindh;
- ii. the Islamabad Capital Territory;
- iii. the Federally Administered Tribal Areas (FATA); and
- iv. such states and territories as are or may be included in Pakistan whether by accession or otherwise.

**FATA** includes:

- i. Tribal Areas adjoining districts of: Peshawar, Kohat, Bannu, and Dera Ismail Khan, and
- ii. Agencies of: Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan, and South Waziristan [Article 246 of the Constitution]

**Provincially Administered Tribal Areas (PATA)** means the districts of Chitral, Dir and Swat (including Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district. [Article 246 of the Constitution]

**3. Essential requirement for application of taxation laws to FATA and PATA**

No Act of the Parliament applies to FATA unless the President so directs. Moreover, no Act of the Parliament or a Provincial Assembly applies to PATA unless the Governor of that province, with the approval of the President, so directs. Article 247(3) of the Constitution.

**4. Different notifications relating to the tribal areas****i. Salaries paid in tribal areas**

The Central Board of Revenue vide its letter C.No. 1(8)WHT/94 dated February 27, 1995, explained the withholding tax provision regarding salary in the following words:

*"It is clarified that provisions of section 50 of the Income Tax Ordinance, 1979 are not applicable to the branches of Pakistani banks located in the Tribal Areas as defined in Article 246 of the Constitution of Pakistan or any part thereof because no Act of Parliament applies to the said areas except when the President or the Governor of the province, as the case may be, so directs with the approval of the President.*

*This may please be brought to the notice of all concerned for compliance."*

**ii. Salaries paid to government employees in tribal areas**

The Central Board of Revenue vide its letter C. No. 1(41) IT-J/94 dated November 28, 1994 explained the issue in the following manner:

*"The undersigned is directed to state that the Hon'ble High Court has held that under section 12(1) of the Income Tax Ordinance the salaries received by government employees who are working/posted in tribal areas are liable to tax irrespective of the fact whether the Income Tax Ordinance is applicable in that area or not. It has been held that "once government employee is receiving his salary from state exchequer, he automatically becomes liable to pay tax on his income, without any barrier of locality, place of service or nature of duties unless specifically exempted.*

**Explanation (contd.)**

2. I am further directed to enclose a copy of the above mentioned judgment for circulation amongst the officers of your Region."
- iii. **Circular No.1(13)WHT/IT/2007 dated November 23, 2010:**  
 " To remove any confusion, it is clarified that subject to provisions of clause (126I) of Part-I and clause (10A) of Part-IV of second schedule to the Income Tax Ordinance, 2001, withholding taxes is deductible in the following circumstance;
- (i) Contractors who are resident in PATA/FATA, and are executing contracts in tribal areas, but are receiving payments from Federal or Provinces Governments in settled territories, are not exempt from withholding tax deductible under section 153 of the Income Tax Ordinance, 2001. This being a final tax liability of such a contractor is not adjustable against his normal tax liability.
  - (ii) Owners/operators of petrol pumps who are resident in PATA/ FATA and making payments to petroleum companies (mostly situated in Karachi) are not exempt from withholding tax deductible under section 156A of the Ordinance.
  - (iii) Employers of Federal or Provincial Governments, who are posted in PATA/FATA, are not exempt from deduction of withholding tax under section 149 of the Ordinance.
  - (iv) Persons, who are resident of PATA/FATA and are making payments on account of imports in settled territories are not exempt from advance tax deductible under section 148 of the Ordinance.
  - (v) PATA/FATA residents receiving payments from settled areas are not exempt and
  - (vi) The earlier conflicting clarifications, if any, on these issue may be treated as suppressed."
- Note: The decisions of the appellate authorities regarding taxability on the basis of receipt in settled areas are different from this notification and discussed in these notes.
5. The complainant was engaged in the manufacture of ghee and cooking oil in Malakand (PATA). No sales were found to have been made in taxable areas. The department assessed 20% income as taxable on flimsy ground without evidence. The income of the complainant company was held to be exempt by the Tribunal. The FTO ordered to implement the order of the Tribunal in letter and spirit declaring total income as exempt. 2012 PTD 449 [FTO]
6. **Taxation in FATA /PATA where payments are made by Federal or provincial government**  
 With reference to clarification/order dated 30-4-2011 issued by the Secretary (Withholding taxes), the Lahore High Court relied upon the Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd. through the Chief Executive and 6 others 2003 PTD 1913 [SCP] and decided the case accordingly. Meaning thereby that no such withholding was required even if they were receiving payments from Federal or Provincial Governments in settled areas. Muhammad Akbar Leghari and 2 others vs. FOP 2016 PTD 2371 [Lah.HC]
7. **Status of Gilgit-Baltistan [previously known as Northern Areas]**  
 Legal Framework Order, 1994 issued on June 12, 1994 was replaced with the Gilgit-Baltistan Empowerment and Self-Governance Order, 2009 passed by the Federal Cabinet of Pakistan on 29<sup>th</sup> August, 2009. Now Gilgit-Baltistan is administratively divided into two Divisions. Baltistan Division consists of two districts: Ghanche and

**Explanation (contd.)**

Skardu. The other is Gilgit Division which comprises of five districts of Ghizer, Gilgit, Diamir, Astore and Hunza-Nagar. It has total area of around 72,971 km<sup>2</sup> and a population of about one million people [2009]. It has now its own elected legislative assembly, elected chief minister and federally appointed Governor. Therefore, Gilgit-Baltistan is a province, de facto though not mentioned as such in the Constitution.

**8. Taxation in Gilgit-Baltistan [formerly Northern Areas]**

“Since most of the Pakistan Statutes have been made applicable to Northern Areas including Citizenship Act as stated above, we are of the view that the people of Northern Areas are citizens of Pakistan, for all intents and purposes. The above distinction between the two categories of the above fundamental rights of the Constitution is not material. They are the citizens of Pakistan, like any other citizen have the right to invoke any of the above fundamental rights, but they are also liable to **pay taxes and other levies competently imposed**”. (Emphasis provided) Al-Jehad Trust and Others vs. Federation of Pakistan and others 1999 SCMR 1379 Referring to “competently imposed” in the above mentioned judgment, the ITAT explained that these words connote that only those taxes or levies would be payable by the people of Northern Areas which are imposed by express notification and legislative measures. Income Tax Ordinance, 1979 was extended to Northern areas vide letter No. NA-9(7)/80 dated 3-3-1981 and was withdrawn vide Order No. NA 9(7)/80 dated 3-4-1999. Regional Commissioner, Islamabad allowed refund of tax deducted [erroneously] in Northern areas vide his letter No. SO-1-18(41)/02-03/8261 dated 28-1-2003. The ITAT keeping in view these notifications held that income tax Ordinance was not applicable to Northern areas of Pakistan. 2010 PTD (Trib.) 1099

**9. Non-exempt status of Gilgit agency**

The ITAT in (2006) Tax 130 (Trib.) held that there was no evidence that Gilgit agency was exempt from Income Tax. [Note: See other case law which is more speaking].

**10. Notifications, orders etc. relating to Northern Areas [now Gilgit-Baltistan]****i. Tax deduction from bills by DCMA**

Following is the text of CBR's Letter C. No. 4(8) WM/92 dated October, 1993:-

“I am directed to say that in the above referred case the representation made by the Income Tax Department to the President of Pakistan has been accepted.

The brief facts of the case are that certain contractors of Northern Areas filed a complaint before Wafaqi Mohtasib challenging the deduction of tax at the rate of 3% from their bills by the DCMA w.e.f the year 1980 on the ground that the provisions of Income Tax Ordinance, 1979 are not applicable to Northern Area. The Hon'ble Wafaqi Mohtasib, by his order dated 16.6.1992, held that the extension of the provisions of Income Tax Ordinance, 1979 to the Northern Areas was unconstitutional. It was also recommended by him that the tax deduction u/s 50(4) of the Income Tax Ordinance 1979 not being legal, the amount deducted from the Contractors of Northern Areas may be refunded to them. The Income Tax Department filed a review petition before the President of Pakistan against the order of Honourable Wafaqi Mohtasib.

The President has been pleased to accept Department's review petition against the aforementioned findings of the Honourable Wafaqi Mohtasib. A copy of the Law Division letter No. 1411/92-Law dated 19-9-1993 is enclosed for information.”

**Explanation (contd.)**

Letter No. 1411/92 dated September 19, 1993 referred to above reads as follows:-

“The representation of the CBR dated 14-7-1992, on the above subject addressed to the President of Pakistan has been decided. The Acting President has been pleased to order as under:-

“The representation by Central Board of Revenue, Islamabad against the recommendations of Wafaqi Mohtasib in the case REG-II/23/92 (Rev) in REG-II/3145/91 is hereby accepted.”

ii. **Income Tax Ordinance (adaptation) Order 1981**

Vide No. NA -9(7)/80 dated 3-4- 1999 of Kashmir Affairs & Northern Areas and SAFRON Division, the Federal Government withdrew Income Tax Ordinance (adaptation) order 1981 , in the following words:

“ In view of the pendency of an appeal of the peoples of Northern Areas and Al-Jehad Trust regarding determination of constitutional status of Northern Areas and extension of taxation laws before the Supreme Court of Pakistan, the Competent Authority has been pleased to withdraw Income Tax (Adaptation) Order 1981, issued vide this Ministry No. NA-9(7)/80 dated 3<sup>rd</sup> February, 1981 and the Central Excise Act (Adaptation) Order 1996 issued vide this Ministry No.9/7/80-NA.I, dated 23<sup>rd</sup> July, 1996.”

iii. **Non-taxation in Skardu**

“It is certified that the Ministry of Kashmir Affairs & Gilgit Baltistan and SAFRON Division Islamabad has withdrawn the Income Tax Ordinance (Adaptation) Order 1981 and Central Excise Act (Adaptation) Order 1996 vide Kashmir Affairs & Gilgit Baltistan and SAFRON Division Islamabad Order No. No. NA 9(7)/80 dated 3-4-1999 all kinds of taxes including Sales Tax are exempt in Skardu.” Deputy Commissioner Skardu No. Court-298/2010 dated 24-11-2010.

iv. **Gilgit Baltistan – Different aspects of taxation**

**Deduction of advance income tax under section 148 of the Income Tax Ordinance, 2001 at the import stage from the taxpayers of Gilgit Baltistan**

“Gilgit Baltistan Council Secretariat has conveyed that the taxpayers of Gilgit Baltistan who import goods are obliged to pay withholding tax under section 148 of the Income Tax Ordinance, 2001, however, they are not allowed credit in respect of this withholding tax at the time of assessment by Gilgit Baltistan Income Tax Authorities owing to the reason that the tax collected u/s 148 is not transferred to the Gilgit Baltistan by the Pakistan Income Tax Authorities.

2. In pursuance of the decision(s) taken in the meeting of the committee constituted for the resolution of tax issues in Gilgit-Baltistan and for resolution of the issue at hand an amount equivalent to tax collected u/s 148 of the Income Tax Ordinance, 2001 should be deposited by importers of Gilgit Baltistan in designated branch of the National Bank of Pakistan in Gilgit Baltistan which may be treated as proper and valid for the purposes of section 148 of the Income Tax Ordinance, 2001. On the strength of these challans/CPR's of tax payment, the CIR Gilgit Baltistan should be empowered to issue a certificate to the effect that the amount due under section 148 of the Income Tax Ordinance, 2001 has been paid by the importer of Gilgit Baltistan into a National Bank Branch in Gilgit Baltistan.

**Explanation (contd.)**

3. It has, therefore, been decided that Custom Authorities will honour the certificate issued by the Commissioner of Inland Revenue Gilgit Baltistan to the effect that the amount equivalent to tax under section 148 of the income Tax Ordinance, 2001 has been paid by the importer. Such certificate is to be accompanied by a copy of the challan/computerized payment receipt of the said tax.” Circular No. 12 of 2016 dated 03-10-2016

v. **Allowance of credit for deduction/collection of tax at source in Gilgit –Baltistan/Pakistan**

“Gilgit-Baltistan Council Secretariat and various tax payers of Pakistan and Gilgit –Baltistan have pointed out that the taxpayers of Gilgit-Baltistan are not being allowed credit for taxes collected /paid/deducted at source in Pakistan or Gilgit Baltistan under various provisions of the Income Tax Ordinance, 2001. Moreover, the issue of exemption certificates by the tax authorities of Pakistan and Gilgit-Baltistan and acceptance thereof by both has been agitated.

2. The matters have been examined in the Board in consultation with the authorities of Gilgit-Baltistan Council for formulating a mechanism aimed towards the resolution of the issue of exemption certificates and allowing credit to taxpayer for ultimate adjustment of the tax paid by them.

3. After considering the suggestions made for the purpose of resolving these problems and to implement the decision(s) taken in the inter-Ministerial meeting it has been decided that henceforth:-

- i) The competent tax authorities of Pakistan and Gilgit Baltistan will issue the relevant exemption certificate(s) to their taxpayers in suitable cases as per the relevant provisions of the Income Ordinance, 2001/Gilgit Baltistan Income Tax Adaptation Act, 2012 and both authorities would accept these certificates as such.
- ii) Credit of taxes paid in Pakistan and Gilgit Baltistan will be allowed by the respective tax authorities pursuant to carrying out necessary verification on the basis of original tax payment challans/computerized payments receipts.

The above instructions are circulated to the concerned tax authorities of Pakistan and Gilgit Baltistan and the Gilgit Baltistan Council for information and necessary action.” Circular No. 13 of 2016 dated 3-10-2016.

vi. **Exemption of income from contract made in Pakistan but executed in Gilgit Baltistan**

“Various representations have been received in the Board for grant of relief from double taxation to contractors who execute contracts in Gilgit Baltistan but to whom payments are made in Pakistan. In partial modification of Circular No. 16 of 1954, the following instructions are being issues:

“2. In such case, income shall be taxable with reference to the place where the contract is actually executed, irrespective of the place where the contract is made or payment is received. If a contract is executed exclusively within Gilgit Baltistan, income shall not be taxed in Pakistan even if contract was made in Pakistan and payment was received in Pakistan and vice versa.” - Circular No. 14 of 2016 dated 3-10-2016

**11. Northern areas [Gilgit Baltistan]**

- i. Income accrued from the Northern Areas is not taxable. (2009) 100 Tax 378 (Trib.)
- ii. In another case of a taxpayer who executed contracts within the limits of Northern Areas decided in I.T.A. No. 185/PB/2010 dated 5-4-2011 it was held that learned CIR(A) has rightly held that even if the AOP was a resident AOP, the portion of its business which is situated in tribal area would not come

**Explanation (contd.)**

- under the Income Tax Ordinance, 2001, and if the income generating activity commences and ends in the tribal area (non taxable territory) then that activity is not liable to taxation. 2013 PTD (Trib.) 2204
- iii. It is clearly decided by the Honorable Supreme Court of Pakistan in Messrs Gul Cooking Oil and Ghee Mills (Pvt.) Ltd., Ref: 2008 PTD 169 (SC) that Income derived by a person or Company in non-taxable area would be exempt from Income Tax while business activities in taxable area are liable to tax. No distinction of residential status or place of payment was made in this judgment of the Supreme Court. 2013 PTD (Trib.) 2204
- iv. Portion of contract work done in the Northern Areas would not come under the provision of Income Tax Ordinance, 2001 irrespective of place of residence or place of payment. Any person whether belonging to taxable or non-taxable territory if derives income from non-taxable territory would be exempt from the application of Income Tax Ordinance, 2001 and liable to tax for income derived from taxable territory. 2013 PTD (Trib.) 2204

**12. Adaptation of Pakistan Income Tax Ordinance, 2001 by the Gilgit Baltistan Council**

The Gilgit-Baltistan Council on 21st March, 2012 passed the Gilgit-Baltistan Council Income Tax (Adaptation) Act, 2012. The relevant section 2 of the said Act read as under:

**“2. Adaptation of Income Tax Ordinance, 2001 of Pakistan.**—The Income Tax Ordinance, 2001 (XLIX of 2001), hereinafter referred to as the said Ordinance, as in force in Pakistan immediately before the commencement of this Act and all rules made and notifications issued thereunder are adapted and shall, as far as practicable, be in force in Gilgit-Baltistan subject to the following modifications, namely:—

- (a) the expressions "Pakistan", "Federal Government", and "Federal Board of Revenue" shall respectively be construed to be references to "Gilgit-Baltistan", the "Gilgit-Baltistan Council" and the "Board of Revenue";
- (b) the expression "Provincial Government" shall be construed to refer to the Gilgit-Baltistan Government: and
- (c) in the Second Schedule, in Part III, after clause (14), the following new clause shall be added, namely:—

"(15) The tax payable under Part-I of the First Schedule by an individual domiciled in Gilgit-Baltistan and deriving income from sources within Gilgit-Baltistan shall be reduced by **50 percent**".

**13. Jurisdiction of the courts in Tribal areas-when exercisable**

"The settled principle of law is that the jurisdiction of superior Courts cannot be excluded in matters in which any part of cause of action accrues at a place outside tribal area and inside the settled area. In the instant case a citizen of Pakistan stands arrested within the limits of Abbottabad District and is removed there from to the tribal area. The major infringement of right has admittedly taken place within the settled area and thus this Court has got the jurisdiction to hear the matter and adjudicate upon under Article 199 of the Constitution." Muhammad Sharif Khan v. S.D.M., 1997 MLD 152 [Pesh. HC]

**14. Legislature does not intend unjust**

"The Courts must lean against giving a statute retrospective operation on the presumption that the legislature does not intend what is unjust. It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions,

**Explanation (contd.)**

or impairs existing contracts, that the rule in question prevails. Reference may be made in this connection to page 206 of Maxwell on the Interpretation of Statutes, Eleventh Edition. Even if two interpretations are equally possible, the one that saves vested rights would be adopted in the interest of justice, specially, where we are dealing with a taxing statute." *Nagina Silk Mills, Lyallpur v. Income Tax Officer, Lyallpur* PLD 1963 SC 322

**15. Combined business**

In the assessment years 1998-99 to 2002-03, an assessee earned income from transport of passengers from Pakistan to the Northern areas and from Northern Areas to Pakistan. ITAT in 2010 PTD (Trib.) 734 held that only income from receipts on account of distance covered in Pakistan are taxable in Pakistan and expenses are also to be allowed in the same proportion.

**16. Tax deducted of commercial importers**

The Supreme Court, *AJK* in PLD 2005 SC (AJ&K) 373 held that the tax at import stage is taxable irrespective of destination of raw material.

Note: There are conflicting judgment of other courts discussed in these notes.

**Also See notes under s. 148**

**17. Taxability where income is earned both from taxable and non-taxable territories**

There is no cavil to the legal position that exemption under the law from payment of income tax is available to a person or company carrying its business in tribal areas and income tax cannot be collected from such person or company by the tax collecting authorities of the Government unless the law relating to the collection of income tax is extended to the tribal areas by virtue of Article 247 of the Constitution. However the question whether a company or a person derives income from business being carried out in taxable or non-taxable area is a pure question of fact which cannot be decided without holding proper inquiry for determination of controversial facts regarding the tax liability. The business of a person or company may or may not be confined to a particular place or area, rather, it may be expanded beyond the local limits of the area in which Income Tax Ordinance is not applicable and thus if the income is derived from the sale of products which are manufactured in the factory situated in non-taxable area both from taxable and non-taxable area, the question relating to the tax liability of such a business concern cannot be determined only on the basis of location of factory or its registered office rather the requirement of law in such case is to hold a proper inquiry and ascertain the correct factual position for determination of tax liability. The exemption from payment of tax is certainly available on the business being carried in tribal area in which income tax law is not applicable but the real question for determination in the present case would be that a company with its manufacturing unit in taxable area is exempted from payment of income tax on its income as a whole or only on the income being derived from non-taxable area. Notices issued to the assessee under section 56 and 61 were held to be valid for the purpose. *CIT v. Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd.* 2008 PTD 169 [SC. Pak] Note: **Also see notes under section 148**

**18. Business connection with taxation areas**

A taxpayer who lived in Seo, a village in Kohistan (under PATA) executed some contracts with Frontier Works Organization for road works in the Kohistan Pattan area. His tax was deducted u/s 50(4) of the repealed Ordinance. The taxpayer filed statement under section 143 of the repealed Ordinance. The applicant applied for refund which was rejected. A complaint was filed before FTO who vide his orders



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**Explanation** (contd.)

reported as 2008 PTD 848 directed the commissioner to rectify the order u/s 221 of the Income Tax Ordinance, 2001. In reaching this decision, the FTO discussed 'business connection' and observed that the business connection itself is to be within Pakistan viz., that the person concerned should have such activity in Pakistan. This does not mean that any dealings with a resident of Pakistan would constitute such a connection. It was held that since the complainant has also not carried out any activity directly or indirectly in the taxable territories, he cannot, therefore, be considered to have a business connection in Pakistan.

- 19.** In case 1973 SCMR 282, it was held that the Income Tax Act is a complete Code by itself and any grievance in regard to the assessment can be remedied within the four corners of that Act.

**2. Definitions.-** In this Ordinance, unless there is anything repugnant in the subject or context –

- (1) "accumulated profits" in relation to <sup>1</sup>[distribution or payment of] a dividend, <sup>2</sup>[include] –
- (a) any reserve made up wholly or partly of any allowance, deduction, or exemption admissible under this Ordinance;
  - (b) for the purposes of <sup>3</sup>[sub-clauses (a), (b) and (e) of clause (19)] all profits of the company including income and gains of a trust up to the date of such distribution or such payment, as the case may be; and
  - (c) for the purposes of <sup>4</sup>[sub-clause (c) of clause (19)], includes all profits of the company including income and gains of a trust up to the date of its liquidation;
- <sup>5</sup>[(1A) "amalgamation" means the merger of one or more banking companies or non-banking financial institutions, <sup>6</sup>[or insurance companies,] <sup>7</sup>[or companies owning and managing industrial undertakings] <sup>8</sup>[or companies engaged in providing services and not being a trading company or companies] in either case <sup>9</sup>[at least one of them] being a public company, or a company incorporated under any law, other than Companies Ordinance, 1984 (XLVII of 1984), for the time being in force, (the company or companies which so merge being referred to as the "amalgamating company" or companies and the company with which they merge or which is formed as a result of merger, as the "amalgamated company" ) in such manner that –

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<sup>1</sup> Inserted by the Finance Act, 2003.

<sup>2</sup> Substituted for the word "includes" by the Finance Act, 2005.

<sup>3</sup> Substituted for "clauses (a), (d) and (e) of sub-section (20)", by the Finance Ordinance, 2002.

<sup>4</sup> Substituted for "clause (c) of sub-section (20)", by the Finance Ordinance, 2002.

<sup>6</sup> Inserted by the Finance Act, 2004.

<sup>7</sup> Inserted by the Finance Act, 2005.

<sup>8</sup> Inserted by the Finance Act, 2007

<sup>9</sup> Inserted by the Finance Act, 2005.

- (a) the assets of the amalgamating company or companies immediately before the amalgamation become the assets of the amalgamated company by virtue of the amalgamation, otherwise than by purchase of such assets by the amalgamated company or as a result of distribution of such assets to the amalgamated company after the winding up of the amalgamating company or companies; <sup>10</sup>[and]
- (b) the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation <sup>11</sup>[.]
- <sup>12</sup>[ ]
- <sup>13</sup>[(2) “Appellate Tribunal” means the Appellate Tribunal Inland Revenue established under section 130;]
- (3) “approved gratuity fund” means a gratuity fund approved by the Commissioner in accordance with Part III of the Sixth Schedule;
- <sup>14</sup>[(3A) “Approved Annuity Plan” means an Annuity Plan approved by Securities and Exchange Commission of Pakistan (SECP) under Voluntary Pension System Rules, 2005 and offered by a Life Insurance Company registered with the SECP under Insurance Ordinance, 2000 (XXXIX of 2000);]
- <sup>15</sup>[(3B) “Approved Income Payment Plan” means an Income Payment Plan approved by Securities and Exchange Commission of Pakistan (SECP) under Voluntary Pension System Rules, 2005 and offered by a Pension Fund Manager registered with the SECP under Voluntary Pension System Rules, 2005;]
- <sup>16</sup>[(3C) “Approved Pension Fund” means Pension Fund approved by Securities and Exchange Commission of Pakistan (SECP) under Voluntary Pension System Rules, 2005, and managed by a Pension

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<sup>10</sup> Added by the Finance Act, 2005.

<sup>11</sup> Substituted for “; and” by the Finance Act, 2005.

<sup>12</sup> \*Sub-clause (c) omitted by the Finance Act, 2005. Its legislative life is as under:

Fund Manager registered with the SECP under Voluntary Pension System Rules, 2005;]

<sup>17</sup>[(3D) “Approved Employment Pension or Annuity Scheme” means any employment related retirement scheme approved under this Ordinance, which makes periodical payment to a beneficiary *i.e.* pension or annuity such as approved superannuation fund, public sector pension scheme and Employees Old-Age Benefit Scheme;]

<sup>18</sup>[(3E) “Approved Occupational Savings Scheme” means any approved gratuity fund or recognized provident fund;]

(4) “approved superannuation fund” means a superannuation fund, or any part of a superannuation fund, approved by the Commissioner in accordance with Part II of the Sixth Schedule;

<sup>19</sup>[(5) “assessment” includes <sup>20</sup>{provisional assessment,} re-assessment and amended assessment and the cognate expressions shall be construed accordingly;]

<sup>21</sup>[(5A) “assessment year” means assessment year as defined in the repealed Ordinance;]

<sup>22</sup>[(5B) “asset management company” means an asset management company as defined under the Non-Banking Finance Companies and Notified Entities Regulations, 2007;]

(6) “association of persons” means an association of persons as defined in section 80;

(7) “banking company” means a banking company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962) and includes any body corporate which transacts the business of banking in Pakistan;

<sup>23</sup>[(8) “Board” means the Central Board of Revenue established under the Central Board of Revenue Act, 1924 (IV of 1924), and on the commencement of Federal Board of Revenue Act, 2007, the Federal Board of Revenue established under section 3 thereof];

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\* Mentioned as clause in the official Gazette.

<sup>24</sup>[(9)] “bonus shares” includes bonus units in a unit trust;

<sup>25</sup>[(10)] “business” includes any trade, commerce, manufacture, profession, vocation or adventure or concern in the nature of trade, commerce, manufacture, profession or vocation, but does not include employment;

<sup>26</sup>[(11)] “capital asset” means a capital asset as defined in section 37;

<sup>27</sup>[(11A)] “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;]

<sup>28</sup>[(11B)] “Chief Commissioner” means a person appointed as Chief Commissioner Inland Revenue under section 208 and includes a Regional Commissioner of Income Tax and a Director General of Income Tax and Sales Tax;]

<sup>29</sup>[(11C)] “Collective Investment Scheme” shall have the same meaning as are assigned under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;]

(12) “company” means a company as defined in section 80;

<sup>30</sup>[(13)] “Commissioner” means a person appointed as Commissioner Inland Revenue under section 208 and includes any other authority vested with all or any of the powers and functions of the Commissioner;]

<sup>31</sup>[(13A)] “Commissioner (Appeals)” means a person appointed as Commissioner Inland Revenue (Appeals) under section 208;]

<sup>32</sup>[(13AA)] “consumer goods” means goods that are consumed by the end consumer rather than used in the production of another good;]

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<sup>25</sup> Inserted by the Finance Act, 2005.

<sup>26</sup> Inserted by the Finance Act, 2005.

<sup>33</sup>[(13B) “Contribution to an Approved Pension Fund” means contribution as defined in rule 2(j) of the Voluntary Pension System Rules, 2005  
<sup>34</sup>[ ];]

- (14) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1925 (VII of 1925) or under any other law for the time being in force in Pakistan for the registration of co-operative societies;
- (15) “debt” means any amount owing, including accounts payable and the amounts owing under promissory notes, bills of exchange, debentures, securities, bonds or other financial instruments;
- (16) “deductible allowance” means an allowance that is deductible from total income under Part IX of Chapter III;
- (17) “depreciable asset” means a depreciable asset as defined in section 22;
- <sup>35</sup>[(17A) “Developmental REIT Scheme” means Developmental REIT Scheme as defined under the Real Estate Investment Trust Regulations, 2015;]
- (18) “disposal” in relation to an asset, means a disposal as defined in section 75;
- (19) “dividend” includes -
  - (a) any distribution by a company of accumulated profits to its shareholders, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets including money of the company;
  - (b) any distribution by a company, to its shareholders of debentures, debenture-stock or deposit certificate in any form, whether with or without profit, <sup>36</sup>[ ] to the extent to which the company possesses accumulated profits whether capitalised or

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(c) an amended assessment under section 122;

(d) a demand for an amount due under sections 141, 142, 143 and 144; or

<sup>36</sup> Inserted by the Finance Act, 2011.

not;

- (c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;
- (d) any distribution by a company to its shareholders on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated profits have been capitalised or not; <sup>[37]</sup>
- (e) any payment by a private company <sup>38</sup>[as defined in the Companies Ordinance, 1984 (XLVII of 1984)] or trust of any sum (whether as representing a part of the assets of the company or trust, or otherwise) by way of advance or loan to a shareholder or any payment by any such company or trust on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company or trust, in either case, possesses accumulated profits; <sup>39</sup>[or]
- <sup>40</sup>[(f) <sup>41</sup>[remittance of] after tax profit of a branch of a foreign company operating in Pakistan;]

but does not include –

- (c) (i) a distribution made in accordance with <sup>42</sup>[sub-clause] or (d) in respect of any share for full cash consideration,

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<sup>37</sup> Inserted by the Finance Ordinance, 2002

<sup>38</sup> Substituted by the Finance Act, 2008. The original clause inserted by the Finance Ordinance, 2002 read as under:

“(5B) “assets management company” means a company registered under the Assets Management companies Rules, 1995;”

<sup>40</sup> Previously number of this clause was (11) which was changed to (8) by the Finance Act, 2014.

Before substitution by the Finance Act, 2007, the then clause (11) read as under:

“Central Board of Revenue” means the Central Board of Revenue established under the Central Board of Revenue Act, 1924 (IV of 1924);”

or redemption of debentures or debenture stock, where the holder of the share or debenture is not entitled in the event of liquidation to participate in the surplus assets;

- (ii) any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company; <sup>43</sup>[ ]
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of <sup>44</sup>[sub-clause] (e) to the extent to which it is so set off; <sup>45</sup>[and
- (iv) remittance of after tax profit by a branch of Petroleum Exploration and Production (E&P) foreign company, operating in Pakistan.]

<sup>46</sup>[(19A) “Eligible Person”, for the purpose of Voluntary Pension System Rules, 2005, means an individual Pakistani who <sup>47</sup>[holds] a valid National Tax Number <sup>48</sup>[or Computerized National Identity Card <sup>49</sup>[or National Identity Card for Overseas Pakistanis] issued by the National Database and Registration Authority] <sup>50</sup>[ ] <sup>51</sup>[:]]

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<sup>43</sup> Renumbered as "(9)" for "(8)" by the Finance Act, 2014.

<sup>44</sup> Renumbered as "(10)" for "(9)" by the Finance Act, 2014.

<sup>45</sup> Renumbered as "(11)" for "(10)" by the Finance Act, 2014.

<sup>47</sup> Inserted by the Finance (Amendment) Ordinance, 2009 on 28-10-2009 and re-inserted as such by the Finance (Amendment) Ordinance, 2010 dated 06-02-2010 and the Finance Act, 2010. Insertion by the Finance Act, 2010 was intended to take effect and was to be deemed to have taken effect from the 5th June, 2010 [However, reference in the Act was incorrect which makes it contentious].

<sup>48</sup> Added by the Finance Act, 2011.

<sup>49</sup> Original clause (13) read as under:

“(13) “Commissioner” means a person appointed as a Commissioner of Income Tax under section 209”.

The above clause was substituted with the following clause in the Finance Ordinance, 2002:



<sup>52</sup>[Provided that the total tax credit available for the contribution made to approved employment pension or annuity scheme and approved pension fund under Voluntary Pension System Rules, 2005, should not exceed the limit prescribed or specified in section 63.]

<sup>53</sup>[(19B) The expressions “addressee”, “automated”, “electronic”, “electronic signature”, “information”, “information system”, “originator” and “transaction”, shall have the same meanings as are assigned to them in the Electronic Transactions Ordinance, 2002 (LI of 2002);]

<sup>54</sup>[(19C) “electronic record” includes the contents of communications, transactions and procedures under this Ordinance, including attachments, annexes, enclosures, accounts, returns, statements, certificates, applications, forms, receipts, acknowledgements, notices, orders, judgments, approvals, notifications, circulars, rulings, documents and any other information associated with such communications, transactions and procedures, created, sent, forwarded, replied to, transmitted, distributed, broadcast, stored, held, copied, downloaded, displayed, viewed, read, or printed, by one or several electronic resources and any other information in electronic form;]

<sup>55</sup>[(19D) “electronic resource” includes telecommunication systems, transmission devices, electronic video or audio equipment, encoding or decoding equipment, input, output or connecting devices, data processing or storage systems, computer systems, servers, networks and related computer programs, applications and software including databases, data warehouses and web portals as may be prescribed by the Board from time to time, for the purpose of creating electronic record;]

<sup>56</sup>[(19E) “telecommunication system” includes a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of speech, music and other

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“(13) “Commissioner” means a person appointed as a Commissioner of Income Tax under section 208, and includes a taxation officer vested with all or any of the powers and functions of the Commissioner;”

sounds, visual images and signals serving for the impartation of any matter otherwise than in the form of sounds or visual images and also includes real time online sharing of any matter in manner and mode as may be prescribed by the Board from time to time.;

- (20) “employee” means any individual engaged in employment;
- (21) “employer” means any person who engages and remunerates an employee;
- (22) “employment” includes –
- (a) a directorship or any other office involved in the management of a company;
  - (b) a position entitling the holder to a fixed or ascertainable remuneration; or
  - (c) the holding or acting in any public office;
- <sup>57</sup>[(22A) “fast moving consumer goods” means consumer goods which are supplied in retail marketing as per daily demand of a consumer <sup>58</sup>{excluding durable goods }];]
- (23) “fee for technical services” means 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, but does not include –
- (a) consideration for services rendered in relation to a construction, assembly or like project undertaken by the recipient; or
  - (b) consideration which would be income of the recipient chargeable under the head “Salary”;
- <sup>59</sup>[(23A) “filer” means a taxpayer whose name appears in the active taxpayers’ list issued by the Board from time to time or is holder of a taxpayer’s card;]

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<sup>58</sup> Inserted by the Finance Act, 2005.

- (24) “financial institution” means an institution <sup>60</sup>[as defined] under the Companies Ordinance, <sup>61</sup>[1984 (XLVII of 1984)] <sup>62</sup>[ ];
- (25) “finance society” includes a co-operative society which accepts money on deposit or otherwise for the purposes of advancing loans or making investments in the ordinary course of business;
- (26) “firm” means a firm as defined in section 80;
- (27) “foreign-source income” means foreign-source income as defined in sub-section (16) of section 101.
- (28) “House Building Finance Corporation” means the Corporation constituted under the House Building Finance Corporation Act, 1952 (XVIII of 1952);
- <sup>63</sup>[(28A) “imputable income” in relation to an amount subject to final tax means the income which would have resulted in the same tax, had this amount not been subject to final tax;]
- <sup>64</sup>[(29) “income” includes any amount chargeable to tax under this Ordinance, any amount subject to collection <sup>65</sup>[or deduction] of tax under section 148, <sup>66</sup>[150, 152(1), 153, 154, 156, 156A, 233, 233 A,] <sup>67</sup>{,} sub-section (5) of section 234 <sup>68</sup>{,236M and 236N}, <sup>69</sup>[any amount treated as income under any provision of this Ordinance] and any loss of income <sup>70</sup>{,};]

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60 Clause 17A inserted by the Finance Act, 2015.

61 The words “and any distribution to its shareholders of shares by way of bonus or bonus shares”, omitted by the Finance Ordinance, 2002

62 The word “or” omitted by the Finance Act, 2008.

64 The word “or” inserted by the Finance Act, 2008.

65 Sub-clause (f) inserted by the Finance Act, 2008.

66 Substituted for “any” by the Finance Act, 2009.

67 Substituted for “clause” by the Finance Ordinance, 2002

68 The word “and” omitted by the Finance Act, 2009.

69 Substituted for “clause” by the Finance Ordinance, 2002.

70 The word “and” and paragraph (iv) inserted by the Finance Act, 2009.

<sup>71</sup>[(29A) “income year” means income year as defined in the repealed Ordinance;]

<sup>72</sup>[(29B) “Individual Pension Account” means an account maintained by an eligible person with a Pension Fund Manager approved under the Voluntary Pension System Rules, 2005;]

<sup>73</sup>[(29C) “Industrial undertaking” means –

(a) an undertaking which is set up in Pakistan and which employs,-

- (i) ten or more persons in Pakistan and involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy; or
- (ii) twenty or more persons in Pakistan and does not involve the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy;

and which is engaged in,-

- (i) the manufacture of goods or materials or the subjection of goods or materials to any process which substantially changes their original condition; or
  - (ii) ship-building; or
  - (iii) generation, conversion, transmission or distribution of electrical energy, or the supply of hydraulic power; or
  - (iv) the working of any mine, oil-well or any other source of mineral deposits; and
- (b) any other industrial undertaking which the Board may by notification in the official gazette, specify.]

(30) “intangible” means an intangible as defined in section 24;

<sup>74</sup>[(30A) “investment company” means an investment company as defined in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;]

<sup>75</sup>[(30AA) “KIBOR” means Karachi Inter Bank Offered Rate prevalent on the first day of each quarter of the financial year;]

<sup>76</sup>[(30B) “leasing company” means a leasing company as defined in the Non-Banking Finance Companies and Notified Entities Regulation, 2007;]

<sup>77</sup>[(30C) “liaison office” means a place of business acting for the principal, head office or any entity of which it is a part, and

- (a) its activities do not result in deriving income in Pakistan; and
- (b) maintains itself out of any amount remitted from outside Pakistan received through normal banking channels.

*Explanation,—* It is clarified that—

- (i) a place of business shall not be treated as liaison office if it engages in—
  - (a) commercial activities;
  - (b) trading or industrial activities; or
  - (c) the negotiation and conclusion of contracts;
- (ii) the activities shall be treated to be commercial activities, if these include—
  - (a) providing after sales services for goods or services; or
  - (b) marketing or promoting pharmaceutical and medical products or services;
- (iii) subject to clause (i), a place of business shall be treated as a liaison office, if it undertakes activities of—
  - (a) an exploratory or preparatory nature, to investigate the possibilities of trading with, or in, Pakistan;

- (b) exploring the possibility of joint collaboration and export promotion;
  - (c) promoting products where such products are yet to be supplied to, or sold in, Pakistan;
  - (d) promoting technical and financial collaborations between its principal and taxpayers in Pakistan; or
  - (e) provision of technical advice and assistance.]]
- (31) “liquidation” in relation to a company, includes the termination of a trust;
- <sup>78</sup>[(31A) “Local Government” shall have the same meaning as in the Punjab Local Government Ordinance, 2001 (XIII of 2001), the Sindh Local Government Ordinance, 2001 (XXVII of 2001), the NWFP Local Government Ordinance, 2001 (XIV of 2001) and the Balochistan Local Government Ordinance, 2001 (XVIII of 2001);]
- (32) “member” in relation to an association of persons, includes a partner in a firm;
- (33) “minor child” means an individual who is under the age of eighteen years at the end of a tax year;
- (34) “modaraba” means a modaraba as defined in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- (35) “modaraba certificate” means a modaraba certificate as defined in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- <sup>79</sup>[(35A) “Mutual Fund” means a mutual fund <sup>80</sup>[registered or approved by the Securities and Exchange Commission of Pakistan];]

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<sup>79</sup> Inserted by the Finance Act, 2008.

<sup>80</sup> Inserted by the Finance Act, 2008.

<sup>81</sup>[(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 Commission of Pakistan <sup>82</sup>{or any subsidiary of NCCPL notified by the Board for the purpose of this clause};]

<sup>83</sup>[(35B) “non-banking finance company” means an NBFC as defined in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;]

<sup>84</sup>[(35C) “non-filer” means a person who is not a filer;]

<sup>85</sup>[(36) “non-profit organization” means any person other than an individual, which is –

- (a) established for religious, educational, charitable, welfare or development purposes, or for the promotion of an amateur sport;
- (b) formed and registered under any law as a non-profit organization;
- (c) approved by the Commissioner for specified period, on an application made by such person in the prescribed form and manner, accompanied by the prescribed documents and, on requisition, such other documents as may be required by the Commissioner;

and none of the assets of such person confers, or may confer private benefit to any other person;]

(37) “non-resident person” means a non-resident person as defined in Section 81;

(38) “non-resident taxpayer” means a taxpayer who is a non-resident person;

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82 Clause (22A) inserted by the Finance Act, 2015.

83 Inserted by the Finance Act, 2017.

- <sup>86</sup>[(38A) “Officer of Inland Revenue” means any Additional Commissioner Inland Revenue, Deputy Commissioner Inland Revenue, Assistant Commissioner Inland Revenue, Inland Revenue Officer, Inland Revenue Audit Officer <sup>87</sup>{, District Taxation Officer Inland Revenue, Assistant Director Audit, } or any other officer however designated or appointed by the Board for the purposes of this Ordinance;]
- <sup>88</sup>[(38B) “online marketplace” means an information technology platform run by e-commerce entity over an electronic network that acts as a facilitator in transactions that occur between a buyer and a seller.]
- (39) “Originator” means Originator as defined in the Asset Backed Securitization Rules, 1999;
- (40) “Pakistan-source income” means Pakistan-source income as defined in section 101;
- <sup>89</sup>[(40A) “Pension Fund Manager” means an asset management company registered under the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003, or a life insurance company registered under Insurance Ordinance, 2000 (XXXIX of 2000), duly authorized by the Securities and Exchange Commission of Pakistan and approved under the Voluntary Pension System Rules, 2005, to manage the Approved Pension Fund;]
- (41) “permanent establishment” in relation to a person, means a <sup>90</sup>[fixed] place of business through which the business of the person is wholly or partly carried on, and includes –
- (a) a place of management, branch, office, factory or workshop, <sup>91</sup>[premises for soliciting orders, warehouse, permanent sales exhibition or sales outlet,] other than a liaison office

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<sup>87</sup> The words “by the Federal Government in the official Gazette as a financial institution” omitted by the Finance Act, 2003.

“(29) “income” includes any amount chargeable to tax under this Ordinance, any amount subject to collection of tax under Division II of Part V of Chapter X, sub-section (5) of 234 Division III of Chapter XII, and any loss of income;”

<sup>91</sup> Inserted by the Finance Act, 2003.



except where the office engages in the negotiation of contracts (other than contracts of purchase);

- (b) a mine, oil or gas well, quarry or any other place of extraction of natural resources;

<sup>92</sup>[(ba) an agricultural, pastoral or forestry property;]

- (c) a building site, a construction, assembly or installation project or supervisory activities connected with such site or project <sup>93</sup>[but only where such site, project and its <sup>94</sup>[connected] supervisory activities continue for a period or periods aggregating more than ninety days within any twelve-months period] ;

- (d) the furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for such purpose <sup>95</sup>[ ];

- (e) a person acting in Pakistan on behalf of the person (hereinafter referred to as the “agent <sup>96</sup>[” ],) other than an agent of independent status acting in the ordinary course of business as such, if the agent –

- (i) has and habitually exercises an authority to conclude contracts on behalf of the other person;

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<sup>93</sup> Substituted for "and" by the Finance Act, 2014.

<sup>94</sup> The words and figure “and 236M “ were inserted by the Finance Act, 2014 and were substituted by “,236M and 236N” by the Finance Act, 2015.

<sup>95</sup> Inserted by the Finance Act, 2003.

<sup>96</sup> The words, comma, etc. "but does not include, in case of a shareholder of a [ \* ]company, the amount representing the face value of any bonus share or the amount of any bonus declared, issued or paid by the company to the shareholders with a view to increasing its paid up share capital" omitted by the Finance Act, 2014.

- (ii) has no such authority, but habitually maintains a stock-in-trade or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person; or
- (f) any substantial equipment installed, or other asset or property capable of activity giving rise to income;
- (42) “person” means a person as defined in section 80;
- <sup>97</sup>[(42A) “PMEX” means Pakistan Mercantile Exchange Limited a futures commodity exchange company incorporated under the Companies Ordinance, 1984 (XLVII of 1984) and is licensed and regulated by the Securities and Exchange Commission of Pakistan;]
- (43) “pre-commencement expenditure” means a pre-commencement expenditure as defined in section 25;
- (44) “prescribed” means prescribed by rules made under this Ordinance;
- <sup>98</sup>[(44A) “principal officer” used with reference to a company or association of persons includes –
  - (a) a director, a manager, secretary, agent, accountant or any similar officer; and
  - (b) any person connected with the management or administration of the company or association of persons upon whom the Commissioner has served a notice of treating him as the principal officer thereof;]
- (45) “private company” means a company that is not a public company;
- <sup>99</sup>[ ]
- (46) “profit on a debt” <sup>100</sup>[whether payable or receivable, means] –

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<sup>100</sup> Inserted by the Finance Act, 2005.

- (a) any profit, yield, interest, discount, premium or other amount<sup>101</sup>[,] owing under a debt, other than a return of 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;
- (47) “public company” means –
- (a) a company in which not less than fifty per cent of the shares are held by the Federal Government<sup>102</sup>[or Provincial Government];
  - <sup>103</sup>[(ab) a company in which<sup>104</sup>[not less than fifty per cent of the] shares are held by a foreign Government, or a foreign company owned by a foreign Government<sup>105</sup>[;]]
  - (b) a company whose shares were traded on a registered stock exchange in Pakistan at any time in the tax year and which remained listed on that exchange<sup>106</sup>[ ] at the end of that year; or
  - <sup>107</sup>[(c) a unit trust whose units are widely available to the public and any other trust as defined in the Trusts Act, 1882 (II of 1882);]
- <sup>108</sup>(47A) “REIT Scheme” means a REIT Scheme as defined in the Real Estate Investment Trust Regulations, 2015;]

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<sup>101</sup> Original clause (29C) inserted by the Finance Act, 2005, before its substitution by the Finance Act, 2010 read as under:

“(29C) “Industrial undertaking” means –

- (i) the manufacture of goods or materials or the subjection of goods or materials to any process which substantially changes their original condition;
- (ii) ship-building;

- <sup>109</sup>[(47B) “Real Estate Investment Trust Management Company ( <sup>110</sup>[RMC])” means <sup>111</sup>[RMC] as defined under the Real Estate Investment Trust Regulations, <sup>112</sup>[2015] ;]
- <sup>113</sup>[(47C) “Rental REIT Scheme” means a Rental REIT Scheme as defined under the Real Estate Investment Trust Regulations, 2015;]
- (48) “recognised provident fund” means a provident fund recognised by the Commissioner in accordance with Part I of the Sixth Schedule;
- <sup>114</sup>[ ]
- (49) “rent” means rent as defined in sub-section (2) of section 15 and includes an amount treated as rent under section 16;
- <sup>115</sup>[(49A) “repealed Ordinance” means Income Tax Ordinance, 1979 (XXXI of 1979);]
- (50) “resident company” means a resident company as defined in section 83;
- (51) “resident individual” means a resident individual as defined in section 82;
- (52) “resident person” means a resident person as defined in section 81;
- (53) “resident taxpayer” means a taxpayer who is a resident person;
- (54) <sup>116</sup>["royalty"] means any amount paid or payable, however described or computed, whether periodical or a lump sum, as consideration

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\* The word “Board” replaced the words “Central Board of Revenue” in the Finance Act, 2007. Substituted by the Finance Act, 2008. Before substitution clause (30A), originally inserted by the Finance Ordinance, 2002, read as under:

“(30B) “leasing company” means a company licensed under the Leasing Companies (Establishment and Regulation) Rules, 2000;”

for -

- (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark or other like property or right;
  - (b) the use of, or right to use any copyright of a literary, artistic or scientific work, including films or video tapes for use in connection with television or tapes in connection with radio broadcasting, but shall not include consideration for the sale, distribution or exhibition of cinematograph films;
  - (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre or similar technology in connection with television, radio or internet broadcasting;
  - (d) the supply of any technical, industrial, commercial or scientific knowledge, experience or skill;
  - (e) the use of or right to use any industrial, commercial or scientific equipment;
  - (f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as mentioned in <sup>117</sup>[sub-clauses] (a) through (e); <sup>118</sup>[and]
  - (g) the disposal of any property or right referred to in <sup>119</sup>[sub-clauses] (a) through (e);
- (55) “salary” means salary as defined in section 12;
- (56) “Schedule” means a Schedule to this Ordinance;
- (57) “securitization” means securitization as defined in the Asset Backed Securitization Rules, 1999;

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<sup>117</sup> Inserted by the Finance Act, 2017.

<sup>118</sup> Inserted by the Finance Act, 2008.

<sup>119</sup> Inserted by the Finance Ordinance 2002.

- (58) “share” in relation to a company, includes a modaraba certificate and the interest of a beneficiary in a trust (including units in a trust);
- (59) “shareholder” in relation to a company, includes a modaraba certificate holder, <sup>120</sup>[a unit holder of a unit trust] and a beneficiary of a trust;
- <sup>121</sup>[(59A) “Small Company” means a company registered on or after the first day of July, 2005, under the Companies Ordinance, 1984 (XLVII) of 1984, which,-
- (i) has paid up capital plus undistributed reserves not exceeding <sup>122</sup>{fifty} million rupees;
  - <sup>123</sup>[(ia) has employees not exceeding two hundred and fifty any time during the year;]
  - (ii) has annual turnover not exceeding two hundred <sup>124</sup>[and fifty] million rupees; and
  - (iii) is not formed by the splitting up or the reconstitution of company already in existence;]
- <sup>125</sup>[(59B) “Special Judge” means the Special Judge appointed under section 203;
- (60) “Special Purpose Vehicle” means a Special Purpose Vehicle as defined in the Asset Backed Securitization Rules, 1999;
- (61) “speculation business” means a speculation business as defined in section 19;

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120 Substituted for the words “set up by the Investment Corporation of Pakistan or by an investment company” by the Finance Act, 2003.

122 Inserted by the Finance Act, 2017.

“(35B) “non-banking finance company” means an institution notified under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

<sup>126</sup>[(61A) "stock fund" means a collective investment scheme or a mutual fund where the investible funds are invested by way of equity shares in companies, to the extent of more than seventy per cent of the investment;]

(62) "stock-in-trade" means stock-in-trade as defined in section 35;

<sup>127</sup>[(62A) "startup" means,—

- (i) a business of a resident individual, AOP or a company that commenced on or after first day of July, 2012 and the person is engaged in or intends to offer technology driven products or services to any sector of the economy provided that the person is registered with and duly certified by the Pakistan Software Export Board (PSEB) and has turnover of less than one hundred million in each of the last five tax years; or
- (ii) any business of a person or class of persons, subject to the conditions as the Federal Government may, by notification in the official Gazette, specify.;

(63) "tax" means any tax imposed under Chapter II, and includes any penalty, fee or other charge or any sum or amount leviable or payable under this Ordinance;

(64) "taxable income" means taxable income as defined in section 9;

<sup>128</sup>[ ]

(66) "taxpayer" means any person who derives an amount chargeable to tax under this Ordinance, and includes —

- (a) any representative of a person who derives an amount chargeable to tax under this Ordinance;
- (b) any person who is required to deduct or collect tax under Part V of Chapter X <sup>129</sup>[and Chapter XII;] or

- (c) any person required to furnish a return of income or pay tax under this Ordinance;
- (67) “tax treaty” means an agreement referred to in section 107;
- (68) “tax year” means the tax year as defined in sub-section (1) of section 74 and, in relation to a person, includes a special year or a transitional year that the person is permitted to use under section 74;
- (69) “total income” means total income as defined in section 10;
- (70) “trust” means a “trust” as defined in section 80;
- <sup>130</sup>[(70A) “turnover” means turnover as defined in sub-section (3) of section 113;]
- (71) “underlying ownership” means an underlying ownership as defined in section 98;
- (72) “units” means units in a unit trust;
- (73) “unit trust” means a unit trust as defined in section 80; and
- <sup>131</sup>[(74) “Venture Capital Company” and “Venture Capital Fund” shall have the same meanings as are assigned to them under the <sup>132</sup>[Non-Banking Finance <sup>133</sup>[Companies] (Establishment and Regulation) Rules, 2003];
- <sup>134</sup>[(75) “whistleblower” means whistleblower as defined in section 227B;]

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### Explanation

#### 1. Purpose of definitions

It is for the obvious reason that in a particular legislation the definitions are provided keeping in view the peculiar requirements of the said legislation. It is now a settled

- 
- (c) none of the income or assets of the person confers, or may confer a private respect of which the Commissioner has issued a ruling certifying that the person is a non-profit organization for the purposes of this Ordinance; and



principle of interpretation that where the original law does not define a particular connotation, adopting the ordinary dictionary meanings is always safe. CIT v. Messrs. Ellcot Spinning Mills Ltd. 2008 PTD 1401(H.C. Lah.)

It is accepted principle of interpretation that it is the author who knows in what context and for what object a word is used in a document. It is with this object that the legislature defines various words in order to indicate its intention and for that object

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### **Explanation (contd.)**

the words are defined in a particular law to make it clear as to in what sense various words have been used. (1985) 51 Tax 79 (Trib.)

When a word is not defined in a statute, Court is to follow its general/ordinary meaning given in the dictionary. 1999 PTD 4147; PLD 1996 Quetta 21.

#### **2. Definition clause is declaratory**

We may observe that a definition clause in a statute is of a declaratory nature though normally the definitions provided for in the definition clauses are to be read into the provisions of the Act while interpreting the defined terms/ words, but if the contents of the provisions of the Act indicate otherwise, the definition clause cannot override a main provision of the statute. In the present case, section 2 makes it explicit by providing that “unless there is anything repugnant in the subject or context.” 1991 SCMR 1699.

In Bank of Bahawalpur v. Chief Settlement and Rehabilitation Commissioner (PLD 1977 SC 164) it has been held that although normally an expression if defined in a Statute has to be given the same meaning wherever it occurs therein, yet there is ample authority for the principle of interpretation that a definition of a term in a Statute is merely declaratory in nature and should not be unnecessarily inflicted where it does not fit in with the subject or context.

#### **3. How to apply definitions?**

Grammatically, words may cover a case but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in English language as so applied. Loin Mutual Marine Insurance Association v. Tucker (1883) 12 Q.B.D.176 per Brett M.R.

The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment. Freed v. DPP (1969) 2 WLR 390.

#### **4. Principle of *Ejusdem generis* and its application**

When the general words follow the enumeration of particular classes of persons or things, the general words, under the rule of construction or maxim of construction known as ‘*ejusdem generis*’, will be construed as applicable only to persons or things of the same general nature or class as those enumerated unless an intention to the contrary is clearly shown.

The doctrine applies when the following five conditions exist:

- (1) The statute contains an enumeration by specific words;
- (2) the members of the enumeration constitute a class;
- (3) the class is not exhausted by the enumeration;
- (4) a general term follows the enumeration; and

- (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.  
PLD 2000 SC 111

**5. Has a definition same meaning throughout the statute?**

Sometime a definition is provided for a particular provision or a set of provisions like a Division or a Chapter. However, usually the definition clause contains definitions

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**Explanation (contd.)**

which apply to the whole Act, subject to context. In *Iftikhar Ahmed and others v. President National Bank of Pakistan and others* (PLD 1988 SC 53) the Supreme Court observed that normally a word/expression if defined in a statute is to be given the same meaning wherever it occurs therein yet a definition of a term in a statute is merely declaratory in nature and should not be unnecessarily inflicted where it does not fit in with the object of the context. [PTCL 2001 CL.410 (Kar.)]

The definitions given here are valid for the whole Ordinance unless subject or context requires otherwise. It means one has not only to look at the words but also at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of words under the circumstances. However, it is incumbent on those who contend that the definition given in the interpretation clause does not apply to a particular section to show that the context in fact so requires. (AIR 1986 SC 1176)

**6. Deeming provisions-scope**

- a. In PLD 1970 SC 29, their Lordships observed that while interpreting a deeming clause in a statute the Courts are bound to ascertain for what purpose and object that provision has been enacted.
- b. In 2002 PTD 2112, Lahore High Court has observed that it is a settled law that deeming provisions in a statute cannot spill over to other provisions in a statute are to be construed strictly within the four corners of their objects.
- c. Deeming provisions in the Income Tax Ordinance, 2001 are for specific purposes and they are specifically mentioned in various provisions of the Ordinance. Where there is no deeming provision anything cannot be construed as deemed to be done, as by doing so, one will go beyond the scope of the provisions of law. 2010 PTD (Trib.) 1127
- d. Generally the effect of a deeming provision in a taxing statute is that it brings within the tax net a gain or benefit which ordinarily would not have been treated as cash income. In other words, it brings within the chargeability income not actually accrued but which supposedly to have accrued notionally. *Kantilal Manilal v. The Commissioner of Income Tax* (AIR 1961 Supreme Court 1038)

**7. Types of definition**

Definitions of different words and expressions given in this section begin with such words as “means” or “includes” or “means ... but does not include”, and “means and includes”, etc. These words express scope of a definition as under:

- i. **“Includes”** denotes that the word in respect of which “includes” is used bears both its extended statutory meaning and its ordinary, popular and natural sense, whenever that would be properly applicable. This type of definition is called inclusive definition. A word defined in the form ‘is deemed to include’ is also a type of inclusive or extensive definition. It brings by

legal fiction something within the meaning of the word defined which in common parlance is outside of its meanings.

Where in defining anything, the Legislature uses the word “included” or “includes”, the rule of interpretation is that it used a word of enlargement and it ordinarily implies that something else has been included, which falls outside the general meaning of the word. It may also be used to give a comprehensive description that includes what is not obvious, what is uncertain and what is in the ordinary sense, not impossible. Malik

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#### Explanation (contd.)

- Muhammad Inam and others vs. Federation of Pakistan and others (2007) 95 Tax 3 (S.C. Pak.)
- ii. Where the word is declared to ‘**mean**’ such and such, the definition is prima facie restrictive and exhaustive.
  - iii. A definition may be in the form of ‘means and includes’ and it would be exhaustive (Dilworth v. Commissioner of Stamps 1899 AC 99(PC))
  - iv. It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition, to borrow the words of Lord Esher, M.R. in Gough v. Gough it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasilingam v. P.S.G. College of Technology: (1981) ILLJ 358 SC Page 2301 On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other. Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union: (2007) IILLJ 825SC
  - v. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or “comprises” or “consists of”. N.D.P. Namboodripad (Dead) by LRs. v. Union of India and Ors. AIR2007 SC1782

#### 8. Sec. 2(1) Accumulated profits

The expression “accumulated profits” signifies, firstly, that there must have been profits in previous years and, secondly, that amounts out of such profits have been accumulated from time to time, with the result that there is some amount of accumulated profits in the possession of the company just before the commencement of the accounting year in this reference. [Navnitlal C. Jhaveri v. CIT (1971) 80 ITR 582 (Bom.)]. The effect of inclusive definition of “accumulated profits” is that apart from its general accounting definition, the amounts mentioned in the definition will also be treated as accumulated profit. Modaraba, Trusts and other corporate bodies have also been defined as company under section 80 (1) (b) of the Income Tax Ordinance, 2001 so distribution of their accumulated profits to their certificate holders, etc as per this

definition shall also be treated as dividend.

Related issues are discussed below:

- i. **Does it mean that accumulation should be over the years?**  
The word 'accumulated' means the profit earned bit by bit and accumulated. It does not mean that it should be carried forward from year to year. Profits can accumulate even within a single year. [CIT v. Roshan Lal [1975] 98 ITR 349 (All.)]
- ii. **Accumulated profit does not mean taxable profit**

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**Explanation (contd.)**

- iii. **What is a reserve?**  
Profits must be understood in commercial sense. While interpreting corresponding provision in the Indian Income Tax Act, the Supreme Court of India held that the expression 'accumulated profits' occurring in sub-clause (e) of section 2(6A) of the 1922 Act [corresponding to section 2(22) (e) of the 1961 Act] or for that matter in any other clause means profits in the commercial sense and not assessable or taxable profits liable to tax as income under the 1922 Act [P.K. Badiani v. CIT [1976] 105 ITR 642 (SC).]
- iv. **Accumulated profits include reserves**  
In CIT (Central) Karachi v. Pakistan Security Printing Corporation Ltd., Karachi (1985) 51 Tax 137 (H.C. Kar.), it has been observed that the ordinary meaning of the word, 'reserve' seems to be setting apart or retaining or preserving or keeping in store or keeping back for special or general use.
- v. **Statutory reserves form part of accumulated profits**  
Accumulated profits include general reserves unless profits so transferred to reserves are capitalized in one form or the other. CIT v. K. Srinivasan (1963) 50 ITR 788 (Mad.)
- vi. **Depreciation and accumulated profits**  
Merely because a statute directs creation of reserves and that amount ultimately be handed over to purchaser, it cannot be said that they ceased to be accumulated profits. T.M. Rangachari v. CIT (1976) 102 ITR 50 (Mad.)
- vii. **Return of capital cannot form part of accumulated profits**  
For determination of 'accumulated profits' allowance for depreciation should be calculated under the provisions of the Income Tax Act, and deducted. Navnitlal v. CIT (1971) 80 ITR 582 (Bom.)
- viii. **Capitalization of profits**  
The use of the expression 'accumulated profits, whether capitalised or not' in section 2(22) tends to show that under that provision it is only the distribution of the accumulated profits which are deemed to be dividends in the hands of the shareholders. By using the expression 'whether capitalised or not', the legislative intent clearly is that the profits which are deemed to be dividend would be those which were capable of being accumulated and which would also be capable of being capitalised. The amounts should, in other words, be in the nature of profits which the company could have distributed to its shareholders. This would clearly exclude return of part of a capital to the company, as the same cannot be regarded as profit capable of being capitalised, the return being of capital itself [CIT v. Urmila Ramesh [1998] 96 Taxman 533 (SC).]

- ix. **Distinction between distribution and payment**  
 The distinction between 'distribution' and 'payment' is that, while distribution connotes two acts, (i) a division, and (ii) a delivery; 'payment' connotes something that is given, and it need not have been first apportioned and then disbursed. The two expressions are not synonymous. 'Distribution is a division amongst several persons; in case of 'payment', such recipient may be a single person. [CIT v. Jamnadas Srinivas (P) Ltd. (1970) 76 ITR 656]

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**Explanation (contd.)**

**9. Section 2 (1A). Amalgamation**

- i. In general terms amalgamation is a procedure by which two or more companies amalgamate and continue as one company. In relation to amalgamation, an amalgamating company is a company which amalgamates with one or more other companies. The amalgamated company means the single company that is, or will be, the result of the amalgamation and that continues, or will continue, after the amalgamation. It may be one of the amalgamating companies or a new company. As a result of amalgamation, assets and liabilities of the amalgamating companies become assets and liabilities of the amalgamated company without their purchase or winding up of the amalgamating companies. However, the definition given in the ordinance is restrictive and considers amalgamation in respect of a few companies only. The scope has been enhanced progressively since the tax year 2003 as explained under:

<b>Tax year</b>	<b>Companies added for eligibility of amalgamation</b>
2003	Banking companies and Non-banking financial institutions
2004	Insurance companies
2005	Companies owning and managing industrial undertakings
2007	Service sector companies other than trading companies

One of the companies should be a public limited company, or a company formed under a law other than Companies Ordinance, 1984.

- ii. **Time limit for amalgamation**  
 Originally amalgamation was treated as amalgamation if it was approved by the regulatory authority upto June 30, 2004. In the Finance Act, 2004, date was extended to June 30, 2006. Then in the Finance Act, 2005, there is no sunset limitation.
- iii. **Tax facilitation**
- a. Legal and advisory service charges and administrative cost in relation to planning and implementation of amalgamation by amalgamated company is an allowable expenditure. Sec. 20 (3).
- b. In case amalgamation took place upto June 30, 2007, accumulated loss under the head "Income from business" other than speculation business, of amalgamating companies and amalgamated companies was eligible for set off against income of each other. However, with effect from July 01, 2007 assessed tax loss of the tax year (other than capital loss and brought forward loss) shall be eligible for set off. If remained unadjusted, it shall be carried forward for adjustment in the next six tax years as per Sec. 57A. However, through the FA, 2008, set off of accumulated losses under the head "income from business" in case of banking companies, NBFC,

- Insurance and Modarabas have again been allowed on amalgamation. In case of Banking Companies the amendment is retrospective with 1<sup>st</sup> July, 2007.
- c. Unabsorbed depreciation of the amalgamating companies shall be available for adjustment as per section 57.
  - d. Rate of income tax applicable to income of amalgamated company for its different businesses shall be the same as applicable to such businesses in the relevant tax year for the tax year in which

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**Explanation (contd.)**

- amalgamation takes place and two tax years next following. Cl. (19) of Part II of the Second Sch.
    - e. Even under the Income Tax Ordinance, 1979 in the case reported as (2006) 94 Tax 383 (Trib.) it was held that amalgamation expenses were not in the nature of capital expenditure and allowable as revenue expense under section 23(1)(xviii) of the repealed Ordinance.
  - iv. **Other laws relating to amalgamation**
    - a. For banking companies or a merger involving a banking company – Sec. 48 of the Banking Companies Ordinance, 1962. [www.sbp.org.pk](http://www.sbp.org.pk)
    - b. For Non-banking Financial Companies –section 282L of the Companies Ordinance, 1984. [www.secp.gov.pk/corporatelaws](http://www.secp.gov.pk/corporatelaws)
    - c. For other companies- Section 287 to 289 of the Companies Ordinance, 1984. [www.secp.gov.pk](http://www.secp.gov.pk)
  - v. **Foreign Banks eligible for amalgamation**

Section 48 “Procedure for amalgamation of banking companies” has been amended through the Finance Act, 2007 to bring “foreign banking companies” within the preview of this section and for the purpose a proviso to sub-section (4) has been added to provide that the State Bank of Pakistan may sanction a scheme of amalgamation involving foreign banking companies on the approval of scheme by the Head Offices of concerned foreign banking companies. Further, sub-section (7) has also been amended to include “foreign banking companies” within the meaning of “banking company” for the purpose of this section.
  - vi. As held by the Delhi High Court in CIT (Delhi) v. Bhahrat Development (Pvt.) Limited 135 ITR 456 which was subsequently upheld by the Supreme Court of India in a number of decisions, a merger does not give rise to any financial transaction which becomes a taxable event and there is no cash payment involved in any manner. It was then held that "amalgamation does not involve any sale or purchase and any surplus of value of shares issued by the amalgamated company over the value of one asset transferred does not result in any taxable gain". Moreover, the contention of the learned A.R. that mere revaluation of assets for any reason does not give rise to income that could be taxed, is also supported by a number of case-law discussed above. Under the Income tax law, only real income accrued or received by a taxpayer can be brought into the ambit of taxation. Hypothetical entries resulting in accretion to notional income or in the value of assets do not, in any manner, give rise to a taxable event.
  - vii. Tribunal in its decision reported as 2007 PTD (Trib.) 1885 while dealing with an appeal covered by the provisions of the Income Tax Ordinance, 1979

(since repealed) discussed the concept of merger of two companies. In this case, the Tribunal has held that in the repealed Ordinance there was no provision regarding merger or the amalgamation of the companies which is made through the winding up proceedings by the Courts under section 297 of the Companies Ordinance, 1984. It was held that since the merger was approved by the Hon'ble Lahore High Court in terms of the provisions of the Companies Ordinance, 1984, the same is binding on the Departmental Officers. The relevant findings in this respect are reproduced here under:--

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**Explanation (contd.)**

- "We have no doubts in our mind that the merger approved by the Hon'ble High Court had the legal effect of giving a continuity to the operations of the merged company, which in the instant case is Messer Elahi Spinning and Weaving Mills as a part of the assessee company i.e. Messer Taj Textile Mills consequent and vesting the assessee company with all assets and liabilities of Messrs Elahi Spinning and Weaving Mills (merged company). It is evident that if there was any un-discharged tax liability of the aforesaid non-surviving company, the same would have been recoverable from the assessee company and that the assessee company would have been bound to duly discharge the same. Similarly, the assessee company is clearly entitled to have adjustment of the unabsorbed losses that have been brought forward."
- viii. The Superior Courts of Pakistan have repeatedly held that a merger approved by the Hon'ble High Court is binding on all concerned including tax authorities. In this regard, case titled *Ujala Cotton Mills v. ITO etc.* reported as 1985 PTD 510 is referred wherein it has been held that -
- "The contention that the Income Tax Department was not party to those proceedings cannot be heard. There is no such provision to implead them as a party and hence for all the purposes any order in this behalf made by the High Court shall be binding on them, otherwise no sanctity could be attached to it and for that purpose the whole exercise in obtaining it will be quite an otiose act. The order by its very nature determines the vesting of assets and incurring of liabilities."
- ix. MA (Cond.) No.81/LB/2010 and ITA No.880/LB/2010, dated 11-2-2011, in case of *Messrs Ghani Float Glass Ltd. v. CIR (Appeals-I), RTO, Lahore* "From the above quoted case-law of the Indian Jurisdiction it is evident that merger does not involve any of the situation covered in section 75 relied and applied by the Taxation Officer for disallowing depreciation."
- "The concept of amalgamation falls out of the scope of provisions of section 75 of the Income Tax Ordinance, 2001. The provisions of section 2(1A)(b) of the Income Tax Ordinance, 2001 clearly lay down that in amalgamation of assets of the amalgamated company are amalgamated otherwise than by purchase."
- x. As held by the Delhi High Court in *CIT (Delhi) v. Bharat Development (Pvt.) Limited* 135 ITR 456 which was subsequently upheld by the Supreme Court of India in a number of decisions, a merger does not give rise to any financial transaction which becomes a taxable event and there is no cash payment involved in any manner. It was then held that "amalgamation does not involve any sale or purchase and any surplus of value of shares issued by the amalgamated company over the value of one asset transferred does not result in any taxable gain."

- xi. "In case of amalgamation of 100% subsidiary with its parent company the entire capital and assets of the subsidiary company vest in the parent company and as a result of the amalgamation the parent company becomes the sole owner of the capital of the subsidiary company. There is, therefore, no extinguishment of the right of the parent company in the capital on the liquidation of the subsidiary company and there is thus no question of accrual of capital gain or sustaining of capital loss. Hence, amalgamation over the cost of the parent company's shareholding in the subsidiary is not

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**Explanation (contd.)**

- chargeable to tax as capital gain under section 45 of the Income Tax Act, 1961." 150-ITR-529 The Bombay High Court in case of Forbes Forbes Cambell and Company Ltd. v. Commissioner of Income-Tax, Bombay City-III, Bombay dated 09 September 1983.
- xii. **Merger/amalgamation is not a taxable event**  
It is a settled proposition that a merger of two or more companies is essentially a process of corporate reconstruction whereby assets of the merging companies are either clubbed or brought together in the surviving or the new company. However, proprietary rights of assets remain intact. No financial transaction could be said to have taken place between the merging companies. As such in the scheme of merger arrangement there does not take place any sale, disposition, exchange or relinquishment or extinguishment of any right on the part of the amalgamating companies that gives rise to any income or gain resulting in a taxable event. The repositioning of the amalgamating companies through a due process of law resulting in the emergence of an amalgamated company only gives rise to one thing i.e. the shareholders of the merging companies eventually become the shareholders of the amalgamated company. Accordingly, the ultimate interest and ownership of shareholders of a merging company remains unchanged based on appropriate share swap ratio forming part of the scheme of arrangement under which the merger is ultimately sanctioned by the State Bank of Pakistan or the Court of law as the case may be. It would be, therefore clear that a shareholder's intrinsic right/interest remains the same as was prior to the merger. In view of this situation, whereupon merger the net assets of the merging companies remain unaltered as also the proprietary interest of the shareholders in the amalgamated company remains the same, a corporate merger does not give rise to any taxable event. Mashreq Bank, PSC, Karachi vs Commissioner Of Inland Revenue, (Legal Division), RTO, Karachi 2012 PTD (Trib.) 1544
- xiii. The Superior Courts of Pakistan have repeatedly held that a merger approved by the Hon'ble High Court is binding on all concerned including tax authorities. Mashreq Bank, PSC, Karachi vs Commissioner Of Inland Revenue, (Legal Division), RTO, Karachi 2012 PTD (Trib.) 1544
- xiv. The contention that the Income Tax Department was not party to those proceedings cannot be heard. There is no such provision to implead them as a party and hence for all the purposes any order in this behalf made by the High Court shall be binding on them, otherwise no sanctity could be attached to it and for that purpose the wholes exercise in obtaining it will be quite an otiose act. The order by its very nature determines the vesting of assets and



incurring of liabilities. *Ujala Cotton Mills v. ITO etc.* reported as 1985 PTD 510

- xv. **Circular No. 1 of 2005** dated July 05, 2005 deals with amalgamation.
10. **Sec. 2(3) 'Approved Gratuity Fund', Sec. 2(48) 'Recognized Provident Fund', and Sec. 2(3E) 'Approved Occupational Savings Scheme'**  
An 'approved gratuity fund' and 'recognized provident fund' which are approved and recognized by the Commissioner of Income Tax under Part III and I of the Sixth Schedule, respectively are also collectively or severally called 'approved occupational savings scheme (s)'.

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**Explanation (contd.)**

11. **Sec. 2 (3A) 'approved annuity plan', sec. 2(3B) approved income plan, sec.2 (3C) 'approved pension fund', sec. 2(19A) 'Eligible person', sec. 2(29B) 'individual pension account', sec. 2(40A) 'pension fund manager'**  
All these expressions are related to Voluntary Pension System Rules, 2005 (VPS Rules) notified by the Securities and Exchange Commission of Pakistan (SECP) and effective from January 27, 2005. Under these rules asset management companies and life insurance companies can get licence to act as pension fund managers. Life insurance companies are further authorized to offer annuity plans to the participants at their retirement age.  
All Pakistani nationals over 18 years of age and having a valid National Tax Number (NTN) or with effect from July 01, 2007 having Computerized National Identity Card Numbers are eligible to contribute to the pension fund authorized under VPS rules. With effect from July 01, 2008, Pakistani Nationals holding National Identity Cards for Overseas Pakistanis can also benefit from the scheme, if otherwise eligible. An eligible person can contribute to more than one pension fund and are also allowed to transfer balances in their accounts from one pension fund manager to another fund manager. The contribution can be made in instalments or in lump sum. The funds shall be managed by the fund managers who will keep separate accounts of each eligible person and the funds shall be invested as per criteria fixed by the SECP from time to time.  
Under the rules the normal retirement age can be chosen by the individual as any year between 60 and 70. The individual is only required to give a 30 days notice prior to the attainment of the selected age. In case of permanent disability rendering the participant unable to work, he can also elect to receive the normal retirement benefits at an earlier age. The normal retirement and permanent disability benefits consist of an option to withdraw up to 25% of the fund as a lump-sum. The rest of the fund must be used either to buy an annuity from a Life Insurance company of his choice or to withdraw periodic amounts under an approved payment plan. Any other 'voluntary or early retirement' withdrawal before 60 years of age would attract withholding tax and be subject to other conditions laid down in the Income Tax Ordinance. Any amount received by a person from an approved income plan or approved annuity plan under the said rules shall be treated as 'Income from Other Sources'.
12. **Approved Pension Fund**  
Pension Fund has been defined in Rule 2(1)(p) of the Voluntarily Pension System Rules, 2005 as under:  
(p) "pension fund" means a fund made up of sub-funds created from the contributions paid by the participants and would consist of all the assets for the time being held or deemed to be held by sub-funds and includes all income or investment returns thereon

but excludes fees, charges and expenses related to the management of the investments of sub-funds;"

**13. Tax advantages**

- i. Contributions and premium paid by persons who derive their income from 'business' or 'salary' towards an approved pension fund are eligible for tax credit as per section 63 of this Ordinance. However, transfer of funds from approved employment pension or annuity scheme or recognised provident fund or approved gratuity fund to approved pension fund shall not be eligible for tax credit.

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**Explanation (contd.)**

- ii. No tax shall be deducted on payments made by the fund manager at the time of retirement or in case of permanent disability or death before the retirement (limit of withdrawal is 25% of the balance). The amount shall be exempt from tax also.
- iii. Tax shall not be deducted in case the balance in the person's individual pension account is invested in an approved income payment plan of a pension fund manager or paid to a life insurance company for the purchase of an approved annuity plan or is transferred to another individual pension account of the taxpayer maintained with any other Pension Fund Manager. (Section 156B).
- iv. The provisions of sections 150, 151 and 233 shall not apply to any person making payment to an approved pension fund or an approved income payment plan constituted by a Pension Fund Manager under these rules.
- v. Contribution made to an approved pension fund by a person deriving income from business or profession is deductible expense as per Sections 20 & 21.

**14. Sec. 2(5) Assessment**

- i. Assessment is the process of computation of the taxable income of the taxpayer and the computation of tax payable by him. The ordinance has also used other expressions denoting assessment with qualifying adjectives: best judgment assessment, provisional assessment, amended assessment, original assessment, and provisional amended assessment, etc.
- ii. The Privy Council in the case of CIT V. Khemchand (1938) 6 ITR 414 (PC) observed that the word "**assessment**" is used sometimes meaning the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the tax statute for imposing liability on the taxpayer. The word is used in wide as well as restricted sense depending upon the context or subject with regard to which it is being used. The expression 'proceedings for assessment' has been held by the Supreme Court of India to include also proceedings for the rectification of an assessment already made, and the revision thereof by the Commissioner. [Sankappa v. ITO (1968) 68 ITR 760 (SC) ; Kalawati Devi Harlalka v. CIT (1967) 66 ITR 680 (SC)]
- iii. The existence of an **assessee was essential for an assessment**; there could not be an assessment of a non-existent person. The assessment made on the Free Press Co. long after it was struck off the register of company was not valid. A fresh assessment was not possible on the original return, as it has ceased to exist. 1960 ITR 40-38 (Madras H.C)

- iv. In the Finance Act, 2011 “provisional assessment” has been included in the definition of assessment for abundant clarification of the legal coverage available to a provisional assessment. Circular No. 7 of 2011 dated 01-07-2011
- 15. Assessment year**  
Under this ordinance, assessment is made on tax year basis. However, in respect of periods upto 30<sup>th</sup> June, 2002 assessment is made on the basis of assessment years. The definition given in Section 2(8) of the repealed Income Tax Ordinance, 1979 has been adopted for the purpose according to which “assessment year” means the period of twelve months beginning on the first day of July next following the income year and includes any such period which is deemed, under any provision of that Ordinance, to be the assessment year in respect of any income or any income year.

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**Explanation (contd.)**

- For the purpose of computing yearly profits and gains, each year is a separate self-contained period of time, in regard to which profits were earned or loss was sustained.
- 16. Asset Management Company**  
An 'Asset Management Company' is a company that invests the pooled funds of retail investors in securities in line with the stated investment objectives. For a fee, the investment company provides more diversification, liquidity, and professional management service than is normally available to individual investors. The diversification of portfolio is done by investing in such securities which are inversely correlated to each other. They collect money from investors by way of floating various mutual fund schemes.<sup>135</sup> However, the pool might also take the form of a hedge fund, retirement or pension fund, or other institutional fund and, depending on how the fund is organized, could invest in any range of investment vehicles including equities, fixed income securities, and derivative products. According to Rule 2(ii) of NBFC and Notified Entities Regulations, 2007 “asset management company” means a company which has been issued license by the SECP to offer asset management services.
- 17. Sec. 2(6) Association of Persons (AOP)**  
Definition of ‘Association of Persons’ given in Section 80 is applicable to the whole Ordinance. According to this definition Association of persons includes a firm, a Hindu Undivided Family (HUF), any artificial juridical person and any body of persons formed under a foreign law, but does not include a company. In the repealed Ordinance, firm, Hindu undivided family and artificial juridical persons were not included in the definition of AOP.  
**The partnership** is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.  
**HUF** is a joint family and consists of all persons lineally descended from a common ancestor. Hence, HUF is a group of members of the same family. The “father”, or the “senior member” of the family called “Karta”, ordinarily manages the property belonging to the joint family.

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<sup>135</sup> Clause (38A) was originally inserted by the Finance (Amendment) Ordinance, 2009 dated 28-10-2009 and re-inserted by the Finance (Amendment) Ordinance, 2010 dated 06-02-2010 with the same wording as under:

**18. Artificial juridical person**

A juridical person is an artificial creation, organized directly or indirectly by physical persons for fulfilling certain social functions and satisfying certain needs. Having no psyche and being not an alive creature, it cannot have such moral features natural for humans as honor and dignity. However, such features may be associated with them and respected by natural persons. A Hindu deity and a 'dargah' are examples of artificial juridical persons.

**19. Whether AOP or not – Deciding factors discussed in various decisions <sup>136</sup>**

- i. The essential criterion that attracts the label of AOP in the hierarchy of income tax and wealth tax is the unity of income making purpose rather than the unity of title in the income yielding asset. Hence, volition on the part of the members of association is an essential ingredient. 2003 PTD (Trib.) 2734.
- ii. An association of persons (AOP) is a creature of contract explicit or implicit [1978 PTD (Trib.) 54].

**Explanation (contd.)**

- iii. The word 'associate' means, according to the Oxford Dictionary, 'to join in common purpose or to join in an action'. Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the word occurs in section 3 of the 1922 Act, which imposes a tax on income, profits or gains, the association must be one the object of which is to produce income, profits or gains - CIT v. Indira Balkrishna [1960] 39 ITR 546 (SC).
- iv. 'Association of persons' as used in section 2(31) means an association in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one, the object of which is to produce income, profits or gains - N.V. Shanmugham & Co. v. CIT [1971] 81 ITR 310 (SC).
- v. For forming an 'association of persons' the members of the association must join together for the purpose of producing an income. An 'association of persons' can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence, volition on the part of the members of the association is an essential ingredient. Even a minor can join an 'association of persons' if his lawful guardian gives his consent. In the case of receiving dividends from shares, where there is no question of any management, it is difficult to draw an inference that two or more shareholders function as an 'association of persons' from the mere fact that they jointly own one or more shares, and jointly receive the dividends declared. Those circumstances do not by themselves go to show that they acted as an 'association of persons' - G. Murugesan & Bros. v. CIT [1973] 88

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"Officer of Inland Revenue" means any Additional Commissioner Inland Revenue, Deputy Commissioner Inland Revenue, Assistant Commissioner Inland Revenue, Inland Revenue Officer, Special Officer Inland Revenue or any other officer however designated or appointed by the Board for the purposes of this Ordinance;

- ITR 432 (SC).
- vi. To 'Associate' is to join in a common purpose or action. 'Association' does necessitate the exercise of volition of those who form the association. The exercise of that volition can be by or on behalf of those who form the association - Estate of Khan Sahib Mohd. Oomer Sahib v. CIT [1958] 33 ITR 767 (Mad.).
  - vii. An association of persons does not mean any and every combination of persons. It is only when they associate themselves in an income-producing activity that they become an association of persons. They must combine to engage in such an activity; the engagement must be pursuant to the combined will of the persons constituting the association; there must be a meeting of the minds, so to speak. In a nutshell, there must be a common design to produce income. If there is no common design, there is no association. Common interest is not enough. Production of income is not enough. This interpretation of the expression 'association of persons' flows from the meaning of the word 'association' - Deccan Wine & General Stores v. CIT [1977] 106 ITR 111 (AP).
  - viii. Joining together by the members of the association for the purpose of producing income is requisite for formation of an association of persons. Such coming together or combining is a consensual act and depends upon the volition of the parties. Merely because certain persons are constituted joint owners, such as by inheriting the property of a person on his death, they do not become an association of persons, for, in that event, the jointness is the

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**Explanation (contd.)**

result of operation of law and not of volition of parties - CIT v. T.V. Suresh Chandran [1980] 121 ITR 985 (Ker.).

**20. Difference between Artificial juridical person [AJP] and Association of Persons [AOP]**

A basic difference between an artificial juridical person and association of persons is volition. Artificial person is the one who has been artificially designated the status of a person as opposed to a natural person. The formation and status of this person [AJP] in some cases may be volition while it can also be without volition. However, an AOP cannot be without volition. It is a combination of individuals having common interest in business with the object of earning income carried on by one or more than one of them for the benefit of all of them. This situation does not apply in the case of artificial juridical person except for the formation of a limited company in which the purpose of doing business together and getting benefit out of it can be similar, however, other juridical person may not have the same object. Their object can be any kind of social welfare or it can be cooperation formed by or under any law by Government for a particular purpose in which the individuals may be associated under legal obligations. Moreover, an association of persons may not always be a registered organization formed through some instrument but on the other hand an artificial juridical person has to be legally constituted body formed by or under some law of the land. 2006 PTD (Trib.) 471

**21. Sec. 2(7) Banking Company and business of banking**

**i. Banking Company**

Section 5 (c) of the Banking Companies Ordinance, 1962 defines banking company as under:

“banking company” means any company which transacts the business of banking in Pakistan <sup>137</sup>[and includes their branches and subsidiaries functioning outside Pakistan of banking companies incorporated in Pakistan].

*Explanation.* — Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;”

- ii. **Business of Banking** as defined in section 5(b) of the said Ordinance, means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.
- iii. Investment banks are not banking companies. 1999 PTD (Trib) 2949.
- iv. An activity which is aimed at advancement of general public falls in the definition of “public welfare”. However, it has to be seen as to whether a business being done with poor people, actually means that it is for their welfare. .... Money lending business at small scale is essentially a banking business which cannot be termed as “welfare activity” simply for the reason that loans are given to people who are termed as “poor” for the purpose of advancement of such loans. 2007 PTD (Trib.) 1869
- v. The common characteristics of banking have been established in the (non-

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**Explanation (contd.)**

tax) case of United Dominions Trust Ltd v Kirkwood 1966 2 QB 431 and endorsed in Hafton Properties Ltd v McHugh 59TC420.

**22. Bonus Shares**

- i. Shares issued free of cost to the shareholders of a company, by capitalizing a part of the company’s reserves. Following a bonus issue, though the number of total shares increases, the proportional ownership of shareholders does not change.
- ii. When bonus shares are issued, though there is distribution of capitalized accumulated profits but such distribution does not entail release of assets of the company. Shashibala Navnitlal v. CIT (1964) 54 ITR 478 (Guj.)

**23. Business**

Different expressions used in connection with business are discussed as under:

- i. **Trade and Commerce**

If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume of business which would convert a trade into commerce. But everybody understands the distinction between the two with

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The existing clause was re-inserted by the Finance Act, 2010. Insertion by the Finance Act, 2010 was intended to and deemed to have taken effect from the 5th June, 2010[However, reference in the Act was incorrect which makes it contentious].

sufficient vagueness. *Sri Gajalakshmi Ginning Factory Ltd. v. CIT* (1952) 22 ITR 502 (Mad.)

- ii. A '**vocation**', as normally understood, is a calling in which a person passes his life. It may even be stated to be a way of living or a sphere of activity for which one has a special fitness, though it is not necessary that the activity should be indulged in for purpose of livelihood. *Ka Ram Swami Gouder v. CIT* (1987) 163 ITR 94 (Mad.)
- iii. **Profession** involves occupation requiring purely intellectual or manual skill. *CIT v. Manmohan Das* (1966) 59 ITR 699 (SC)
- iv. **Difference among a vocation, a job, an occupation, or profession**  
Black's Law Dictionary defines the term "profession" as a vocation requiring special, usually advanced education, knowledge and skill. The labour and skill involved is predominantly mental or intellectual, rather than physical or manual, it implies professed attainments in special knowledge as distinguished from mere skill. Originally there were only three professions: ministry, medicine and law. Others were vocations. However, with the passage of time, the term profession expanded in its meaning. Now-a-days, in common parlance, vocational careers are generally "Blue Collar" careers. Common examples can be of plumber, electrician, carpenter, roofer, printing pressmen, etc. Professional designations include doctor, accountant, lawyer, chemist and pharmacist.  
The Merriam-Webster online dictionary defines career as "a field for or pursuit of consecutive progressive achievement especially in public, professional, or business life" and "a profession for which one trains and which is undertaken as a permanent calling." (Reference, Merriam-Webster online: <http://www.merriam-webster.com/dictionary/career>)  
Any specific job is only one piece of the lifelong learning and career puzzle. Any job is only a part of a larger, life-long career.  
Occupation is a regular job like working in a factory.

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#### Explanation (contd.)

- v. The words 'business' and 'vocation' are not synonymous. The word 'vocation' is a word of wider import than the word 'profession'. *Upper India Chamber of Commerce v. CIT* (1947) 15 ITR 263 (All.)
- vi. Reference to **an adventure in the nature of trade**, suggests that the transaction in question cannot properly be regarded as trade or business. It is allied to a transaction that constitutes trade or business but may not be trade or business itself. It is characterized by some of the essential features that make up a trade or business but not all of them. *Bhagirath Prasad Bilgaiya v. CIT* [1983] 139 ITR 916 (MP).
- vii. **Manufacturing** has often been understood as transformation of one article into a commercially different commodity. (1981) 43 Tax 1 (HC. Lah.)  
The expressions "manufacture" and "produce" have not been defined in the Income-tax Act. The dictionary meaning of "manufacture" is "to transform or fashion new materials into a changed form for use". In common parlance, manufacture means production of articles from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labour or by machinery. In other words, it

means making of articles or materials commercially different from the basic components by physical labour or mechanical process. In its ordinary connotation, manufacture signifies emergence of new and different goods as understood in relevant commercial circles. So far as the meaning of the word "produce" is concerned, though the word "produce" has a wider connotation than the word manufacture, when used in juxtaposition with the word "manufacture", it takes in bringing into existence new goods by a process which may not amount to manufacture. The activity of extraction of wood by the assessee from the forest by felling the trees and converting the same into logs, planks, sleepers and other articles, undoubtedly, falls within the definition of "manufacture". (2001) 1 J & K Law Reporter 123 (H.C. J&K) Note: For the purposes of Section 153, definition of manufacturer has been provided in the Finance Act, 2008.

viii. **Is tailoring and stitching a manufacturing activity?**

An assessee was receiving charges for tailoring and stitching for other parties. It was held by the High Court that the assessee was a manufacturer. 2003 PTD 2073 [Karachi High Court] and relied upon in 2009 PTD (Trib.) 2154

ix. **Providers of food- are they manufacturers?**

As per contract, the taxpayer was obliged to provide breakfast, lunch, dinner to the employees of the contractee company. Obviously, the breakfast, lunch, dinner and even preparation of tea involves different articles and when they are put together, they are converted into another distinct article or produce which are completely changed or reshaped and are put to different use as compared to their original condition. The taxpayer was held to be a manufacturer and his income was to be assessed under normal law being a manufacturer in the tax years 2004 to 2007. 2009 PTD (Trib.) 2154

x. **Adventure in the nature of trade**

Dealing with the effect of inclusion of "an adventure in the nature of trade" in the definition of "business", the Supreme Court, in *G. Venkataswami Naidu and Co. v. CIT* [1959] 35 ITR 594 (at pages 607-608) observed:

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**Explanation (contd.)**

"When section 2 (4), refers to an adventure in the nature of trade it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterized by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. Sometimes it is said that a single plunge in the waters of trade may partake of the character of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction. On the other hand, it is sometimes said that the appearance of one swallow does not make a summer. This may be true if, in the metaphor, summer represents trade; but it may not be true if summer represents an adventure in the nature of trade because, when the section refers to an adventure in the nature of trade it is obviously referring to transactions which individually cannot themselves be



described as trade or business but are essentially of such a similar character that they are treated as in the nature of trade."

xi. **Business is a word of indefinite import**

The essential features of "business" are no more res integra. It was held by the Supreme Court in *State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* [1964] 15 STC 644 that the expression "business", though extensively used, is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with a profit-motive.

xii. **Deciding factors about business**

In *CIT v. Principal Officer, Laxmi Surgical P. Ltd.* [1993] 202 ITR 601, it was held that it is not possible to evolve any legal test or formula which can be applied in determining whether a transaction is an adventure in the nature of trade or not. The answer to the question must necessarily depend in each case on the total impression and effect of all the relevant factors and circumstances proved therein which determine the character of the transaction.

In *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1, the Supreme Court held that whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive. By the use of the expression "profit-motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. Moreover, the burden of proving that the transactions carried on by an assessee were of such a nature as to constitute "speculation business" is on the taxing authorities. If the authorities come to

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**Explanation (contd.)**

a conclusion without making necessary investigation in that regard, such an inference cannot be sustained.

**24. Sec.2 (10) Capital asset**

Definition of capital asset as per section 37 is as under:

"Capital asset" means property of any kind held by a person, whether or not connected with a business, but does not include-

- a) any stock-in-trade <sup>138</sup>[ ] consumable stores or raw materials held for the purpose of business;
- b) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortization deduction under section 24;
- c) any immovable property; or
- d) any movable property (excluding capital assets specified in sub-section (5) of Section 38) held for personal use by the person or any member of the

person's family dependent on the person.

N.B. According to this definition stocks and shares are always capital asset irrespective of the purpose for which they are held. Thus stock and shares in the hands of a dealer of shares and stocks shall be treated as capital assets. The situation remains the same even after amended definition of "capital asset" in section 37(5), because stock-in-trade defined in section 35 does not include stocks and shares. Since position in the Indian law is different, therefore special care must be exercised before drawing any parallel between capital gains arising from stocks and shares in the two jurisdictions. ITAT fell into such error in 2007 PTD (Trib.) 1055.

**25. Sec. 2(11) Board**

Prior to the Finance Act, 2007, Central Board of Revenue Act, 1924, was applicable but it was substituted by the Federal Board of Revenue Act, 2007, under section 3 of which its name has been changed from "Central Board of Revenue" to "Federal Board of Revenue" with more financial and administrative autonomy.

**Statutory role of FBR in redressal of taxpayers' grievances**

Section 7 of the FBR Act, 2007 provides administrative remedy to such grievances that cannot be redressed through any appellate forum and that are caused by factors like the following:

- (a) any action done or taken for the enforcement of the fiscal laws, or
  - (b) any notification issued by the Federal Government, or
  - (c) any act of maladministration, corruption and misbehavior by any employee or officer of the Board,
  - (d) any unnecessary delay or hardship caused due to any administrative process.
- Such person can make representation online too at [grievancecell@fbr.gov.pk](mailto:grievancecell@fbr.gov.pk)

**26. Sec. 2(11A) Charitable purpose**

Case law relating to charitable purpose is as under:

i. **Inclusive definition**

The statutory definition is not exhaustive or exclusive. Even if the object or purpose may not be regarded as charitable in its popular signification as not tending to give relief to the poor or for advancement of education or medical relief, it would still be included in the expression 'charitable purpose' if it advances an object of general public utility – *CIT v. Andhra Chamber of Commerce* [1965] 55 ITR 722 (SC).

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**Explanation (contd.)**

ii. **Charity for others only**

The very concept of 'charity' denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. The action which flows from charitable thinking is always directed at benefiting others. It is this direction of thought and effort and not the result of what is done in terms of financially measurable gain which determines that it is charitable – *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC).  
A trust, the object and scope of which is limited to the education of the members of a family would not come within the definition of a charitable purpose contained in the Income-tax Act – *D.V. Arur v. CIT* [1945] 13 ITR 465 Bom.).

iii. **Can religious activity be a charitable purpose?**

In some cases, even a religious activity by a particular sect would be a charitable activity; for some, supply of fodder to animals and cattle is a

religious object, while to others it may be a charitable purpose. According to the Hindu religious system, donations on some occasions would be considered to be a religious activity. Similarly, Khairat under the Mohammedan law would be considered to be a religious activity. The said activities may be for a charitable purpose to some. Hence, in many cases, both the purposes may be overlapping. The purposes may have both the elements, charity and religious. A trust can be either for religious purposes or for charitable purposes or it can be for both charitable and religious purposes. Hence, the words 'trust for charitable purpose' would include even a trust for advancement of religion - *CIT v. Barkate Saifiyah Society* [1995] 213 ITR 492 (Guj.).

iv. **Charity should be main objective**

Where primary or dominant purpose of 'institution' is charitable and other objects which, by themselves, may not be charitable, but are merely ancillary or incidental to primary or dominant object, same would not prevent 'institution' from validly being recognized as a charity - *Director of Income-tax v. Bharat Diamond Bourse* [2003] 126 Taxman 365 (SC).

v. **What does education include?**

The word 'education' has been used in section 2(15) in the sense of systematic instruction, schooling or training, and not in the wide and extended sense according to which every acquisition of further knowledge constitutes education. Thus, publishing newspapers and magazines is not 'education' - *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC).

Where the main objects of the assessee-company, which had obtained a licence, under section 25 of the Companies Act, were the promotion of search for truth, diffusion of useful knowledge and publication of books and journals, the objects were to be treated as directly related to education. Expressions of a wide and general character had been used apparently with a view not to restrict its scope, such as merely to start an educational school or college. Merely because an expression such as 'search for truth' was used, such use being of a hyperbolic nature, its meaning need not be restricted so as to exclude the notion of education - *Ecumenical Christian Centre v. CIT* [1983] 139 ITR 226 (Kar.).

vi. **Promotion of artistic taste**

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**Explanation (contd.)**

Education, in the context of the law of charity, is not limited to teaching in the narrow sense. Raising the artistic taste of the country by public performance, of dramas, musical shows, etc., would be an educational purpose - *CIT v. Sri Thyaga Brahma Gana Sabha (Regd.)* [1990] 52 Taxman 396/[1991] 188 ITR 160 (Mad.).

vii. **Private Academies not charitable purpose**

The running of a private coaching institute for the purpose of training the students to appear at some specified examinations upon taking specified sum from the trainees would not bring the petitioner running such institute within the provisions of section 2(15) - *Bihar Institute of Mining and Mine Surveying v. CIT* [1994] 208 ITR 608/76 Taxman 455 (Pat.).

viii. **Relief for the poor not affected by.-**

a. **political connection**

If an association is set on foot by a political organization and is connected with it but still has for its real object the relief of poverty, its connection with the political organization will not make its real object any less charitable - *All India Spinners' Association v. CIT* [1944] 12 ITR 482 (PC).

b. **incidental entry into political life**

If the primary purpose is advancement of objects of general public utility, it would remain charitable even if there is an incidental entry into the political domain for achieving any purpose, namely, promotion of or opposition to legislation concerning that purpose was contemplated - *CIT v. Andhra Chamber of Commerce* [1965] 55 ITR 722 (SC).

c. **preference to relatives**

Where the primary object was relief and benefit of the poor and indigent members of a particular community all over the world, a mere direction to give preference to the relations of the settlor will not affect the charitable nature of the trust- *Trustees of the Charity Fund v. CIT* [1959] 36 ITR 513 (SC).

ix. **Object of general public utility**

General public does not mean entire mankind. An object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. However, the section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature - *Ahmedabad Rana Caste Association v. CIT* [1971] 82 ITR 704 (SC).

The word 'general public utility', though very wide, would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would serve general public utility - *All India Spinners Association v. CIT* [1944] 12 ITR 482 (PC).

The element of providing something for nothing or for less than it does or for less than the ordinary price need not necessarily be present in any purpose of

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**Explanation (contd.)**

general public utility. An eleemosynary element is not essential - *Trustees of the 'Tribune', In re* [1939] 7 ITR 415 (PC).

x. **Examples of institutions held charitable**

- a. Bar Councils - *CIT v. Bar Council of Maharashtra* [1981] 130 ITR 28 (SC).
- b. Chambers of Commerce - *CIT v. Federation of Indian Chambers of Commerce & Industry* [1981] 130 ITR 186 (SC).
- c. Promotion of trade & Commerce – by bourse of diamond exporter - *Director of Income-tax (Exemptions) v. Bharat Diamond Bourse* [2003] 126 Taxman 365 (SC).
- d. Stock Exchanges - *Hyderabad Stock Exchange Ltd. v. CIT* [1967] 66 ITR 195 (AP).

- e. State Road Transport Corporations - *CIT v. Andhra Pradesh State Road Transport Corporation* [1986] 159 ITR 1 (SC).
- f. Association formed to promote, encourage and protect the interests of the banking and pawn broking trade - *CIT v. A. P. Bankers & Pawnbrokers Association* [1988] 170 ITR 476 (AP).
- g. An association whose objects were to encourage and develop automobile movement in Southern India and to protect and extend privileges to its members - *Addl. CIT v. Automobile Association of Southern India* [1981] 127 ITR 730 (Mad.).
- h. An association whose activities were mainly to promote commerce, art, science or any other useful object connected with photographic and allied trade and to promote and protect interest of traders in that field - *CIT v. South Indian Photographic & Allied Trades' Association* [1987] 166 ITR 166 (Mad.).
- i. An association formed to promote brick kiln trade - *Addl. CIT v. Delhi Brick Kiln Owners' Association* [1981] 130 ITR 55 (Delhi).
- j. An association formed mainly to encourage and develop the film industry - *CIT v. South Indian Film Chamber of Commerce* [1981] 129 ITR 22 (Mad.).
- k. An association whose object was to promote and protect textile industry - *Southern India Millowner's Association v. CIT* [1977] 110 ITR 871 (Mad.); *CIT v. Textile Mfrs. Association* [1972] 83 ITR 247 (Punj. & Har.); *CIT v. Cotton Textiles Export Promotion Council* [1968] 67 ITR 539 (Bom.).
- l. A company whose objects were to promote commerce and trade in silk yarn/cloth and to carry on business on behalf of its members - *Addl. CIT v. Surat Art Silk Cloth Mfrs. Association* [1980] 121 ITR 1 (SC).
- m. An association whose main object is promotion, protection, etc., of persons and bodies engaged in the business of hire-purchase - *Addl. CIT v. South India Hire Purchase Association* [1979] 116 ITR 793 (Mad.).
- n. An organization or club intended to promote the social and physical well-being of persons to enable them to participate in games - *CIT v. Ootacamund Gymkhana Club* [1977] 110 ITR 392 (Mad.).

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**Explanation (contd.)**

- o. A society whose dominant object was to safeguard and further the interests of the press in general - *CIT v. Indian & Eastern Newspaper Society* [1982] 136 ITR 81 (Delhi) (Appendix).
- p. A trust for the benefit of the satsangis who are followers of the Radhaswami faith - *CIT v. Radhaswami Satsangh Sabha* [1954] 25 ITR 472 (All.).
- q. A society set up for the propagation of artistic principles which underlie industrial and commercial occupations - *Addl. CIT v. Victoria Technical Institute* [1979] 120 ITR 358 (Mad.).
- r. A corporation engaged in advancement of Scheduled Tribes - *Girijan Co-operative Corporation Ltd. v. CIT* [1989] 76 CTR (AP) 44.

- s. A trust engaged in and assisting/promoting rural reconstruction work, cottage industry and all other incidental matters - *Thiagarajar Charities v. Addl. CIT* [1978] 114 ITR 699 (Mad.).
- t. Society of Chartered Accountants being engaged in activities of general public utility, is a charitable society - *CIT vs. Jodhpur Chartered Accountants Society* [2002] 258 ITR 548 (Raj.).
- xi. **Examples of institutions held to be not charitable**
  - a. A trade union - *CIT v. Indian Sugar Mills Association* [1974] 97 ITR 486 (SC). The income of a trade union is, however, exempt under section 10(24) of the Indian Act.
  - b. An association of hotel proprietors formed for procuring articles on permit and supplying them to the members, and for protecting the business interests of the members - *Madras Hotels Association v. CIT* [1978] 111 ITR 241 (Mad.).
  - c. A race club - *Bangalore Race Club v. CIT* [1970] 77 ITR 435 (Mys.).
  - d. An institution or trust whose dominant object is political in character. *Lokamanya Tilak Jubilee National Trust Fund, In re* [1942] 10 ITR 26 (Bom.); *CIT v. All India Hindu Mahasabha* [1983] 140 ITR 748 (Delhi).
  - e. An association/club formed for the development or promotion of sports or games, or entertainments - *Cricket Association of Bengal v. CIT* [1959] 37 ITR 277 (Cal.); *South Indian Athletic Association Ltd. v. CIT* [1977] 107 ITR 108 (Mad.); *CIT v. Andhra Pradesh Riding Club* [1987] 168 ITR 393 (AP).
  - f. Delhi stock exchange - *Delhi Stock Exchange Association Ltd. v. CIT* [1997] 91 Taxman 273 (SC).
  - g. An association formed for the benefit of cement traders, though its object was not to make any profit, when there is no provision for any relief of the poor or for education or for medical relief or the advancement of any other object of general public utility, and there is no intention to benefit the general public or any section of the general public - *CIT v. Ernakulam District Cement Dealers Association* [2002] 253 ITR 198 (Ker.).
- xii. **Examples of objects held to be charitable**
  - a. Benefit and welfare of police personnel and their families - *CIT v. Andhra Pradesh Police Welfare Society* [1984] 148 ITR 287 (AP).

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**Explanation (contd.)**

- b. Raising of moral, intellectual, economic, social and political conditions of people - *Ganga Prasad Varma Memorial Society v. CIT* [1982] 134 ITR 421 (All.).
- c. Running a newspaper which is not a mere vehicle of political propaganda, but is aimed at dissemination of news and ventilation of opinion upon all matters of public interest, so as to serve as an organ of educated public opinion - *Trustees of the Tribune, in re* [1939] 7 ITR 415 (PC); *Pratap Press v. CIT* [1961] 41 ITR 577 (All.).
- d. Development of village industry of hand-spinning and hand-weaving - *All India Spinners' Association v. CIT* [1944] 12 ITR 482 (PC).

- e. Protecting, safeguarding, guiding and furthering the interest of bullion merchants, as well as promoting the standards of their behaviour towards the general public - *Addl. CIT v. Madras Jewellers & Diamond Merchants Association* [1981] 129 ITR 214 (Mad.).
- f. Providing refuge for domesticated animals and birds - *CIT v. Shri Shaila Industrial & Spiritual Colony Charities* [1973] 87 ITR 175 (Ker.).
- g. Providing for constructing colonies for poor workmen - *CIT v. Kamla Town Trust* [1996] 84 Taxman 248 (SC).
- h. Supply of fodder to cattle and animals - *Vallabhdas Karsondas Natha v. CIT* [1947] 15 ITR 32 (Bom.).
- i. Installation of a *Pathshala* to which admission is open to the public, even if only Brahmin boys were factually the students - *Smt. Ganeshi Devi Rami Devi Charity Trust v. CIT* [1969] 71 ITR 696 (Cal.).
- j. Repairing and maintaining the samadhies of the ancestors of the family *guru* and holding annual *melas* in commemoration of the *guru* - *CIT v. Guryani Brij Balabh Kaur Trust* [1980] 125 ITR 381 (Punj. & Har.).
- k. Erection of a memorial hall (Shaheed Samarak Bhavan) - *Mahakoshal Shaheed Samark Trust v. CIT* [1983] 140 ITR 795 (MP).
- l. Giving medical aid, social welfare and uplift of poor members of a particular community, and giving financial and other help on the occasion of marriage of the members of that community - *CIT v. Surji Devi Kunji Lal Jaipuria* [1990] 53 Taxman 112 (All.).
- m. Providing monetary help for marriages or sacred thread ceremonies - *CIT v. Anand Swarup Brijendra Swarup Charitable Trust* [1991] 187 ITR 656 (All.).
- n. Imparting training (teaching) in arts and handicrafts to unemployed men and women, even if it involved payment to them for work done - *CIT v. J.K. Charitable Trust* [1991] 59 Taxman 602 (All.).
- o. Spending money on the marriages of girls belonging to a particular community - *CIT v. Bhartiya Khatri Sewa Trust* [1992] 65 Taxman 531 (All.).

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**Explanation (contd.)**

- p. Assessee-bourse whose principal object was to facilitate diamond trade so that maximum revenue could be earned by way of foreign exchange and also to make diamond trade more competitive at international level, is an institute established for charitable purpose - *Director of Income-tax v. Bharat Diamond Bourse* [2003] 126 Taxman 365/259 ITR 280 (SC).
- xiii. **Examples of objects held to be non-charitable**
- a. Regulating terms and conditions of employment in the mills and factories, to promote good relations between the employers and employees, to adjudicate internal controversies, and to establish just and equitable principles in trade and impose restrictive

conditions on the conduct of trade and business - *CIT v. Indian Sugar Mills Association* [1974] 97 ITR 486 (SC).

- b. Encouraging and promoting the scientific breeding and training of race horses - *Hyderabad Race Club v. CIT* [1985] 153 ITR 521 (AP)(FB).
- c. Providing for the welfare of the employees of a trust - *Zenith Tin Works Charitable Trust v. CIT* [1976] 102 ITR 119 (Bom.).
- d. Providing for constructing colonies for workmen in general and in particular settlor company's workmen - *CIT v. Kamla Town Trust* [1996] 84 Taxman 248 (SC).

**27. Section 2(11C) Collective investment scheme**

Since the term "Collective investment Scheme" has been used in the Ordinance, there was a need to define this term. It therefore has been defined to mean a closed-end fund and an open-end scheme as defined under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003. [Finance Act, 2011]

**28. Sec. 2(12) Company**

Definition of 'company' given in Section 80 is as under:

"company" means –

- (i) a company as defined in the Companies Ordinance, 1984 (XLVII of 1984);
  - (ii) a body corporate formed by or under any law in force in Pakistan;
  - (iii) a modaraba;
  - (iv) a body incorporated by or under the law of a country outside Pakistan relating to incorporation of companies;
  - (v) a trust, a co-operative society or a finance society <sup>139</sup>[or any other society established or constituted by or under any law for the time being in force;]
  - (vi) a foreign association, whether incorporated or not, which the Central Board of Revenue has, by general or special order, declared to be a company for the purposes of this Ordinance;
  - (vii) a Provincial Government; <sup>140</sup>[ ]
  - (viii) a local authority in Pakistan; <sup>141</sup>[or]
  - <sup>142</sup>[(ix) a Small Company as defined in section 2;]
- For detail see notes under section 80.

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**Explanation (contd.)**

**29. Sec. 2(13B) Contribution to an approved pension fund**

The definition "Contribution" contained in rule 2(j) of the VPS Rules, 2005 and adopted in the Income Tax Ordinance, 2001 is as under:

"contribution" means an amount as may be voluntarily determined by an individual payable annually, semiannually, quarterly, or monthly to one or more

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139 Inserted by the Finance Act, 2017.

140 Inserted by the Finance Act, 2005.

141 Inserted by the Finance Act, 2006.

142 Inserted by the Finance Act, 2003.



Pension Fund Managers and held in one or more individual pension accounts of a participant, subject to any specified minimum limit.”

**30. Sec.2(15) Debt**

**Nature of definition of debt**

Although definition of debt given in the ordinance is exclusive, however, by virtue of insertion of words “other financial instruments”, the effect is that it has virtually become an inclusive definition. Thus, any financial instrument which a taxpayer enters into shall be treated as a debt. In common parlance an instrument having monetary value or recording a monetary transaction is treated as a financial instrument. In financial circles, a financial instrument is a term used to denote any form of funding medium—mostly those used for borrowing in money markets, e.g. bill of exchange, bonds, derivatives etc.

i. **Difference between a debt and loan**

The substance of a loan is a right in the creditor to demand repayment and the substance of a debt is a liability upon the debtor to repay the money.

Chakravarti Justice in Ram Ratan Karmarker v. Amulya Charan Karmarker 56 CWN 728 1 P. 729

ii. **Promissory note**

A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. (Negotiable Instruments Act, 1881)

iii. **Bill of exchange**

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. (Negotiable Instruments Act, 1881)

iv. **Debenture**

According to Wikipedia, a debenture is long term debt instrument used by governments and large companies to obtain funds. It is similar to bond except from securitization. A debenture is usually unsecured in the sense that there are no liens or pledges on specific assets. It is however, secured by all properties not otherwise pledged. In the case of bankruptcy debenture holders are considered general creditors. The advantage of debentures to the issuer is they leave specific assets unencumbered, and thereby leave them open for subsequent financing. Debentures are generally freely transferable by the debenture holder.

v. **Financial instruments**

Examples of other financial instruments include Treasury Bills, Certificates of Deposit, Commercial Papers, Repurchase Agreements, Banker’s Acceptance, Eurodollars, Saving Certificates, etc.

vi. **Bond**

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**Explanation (contd.)**

According to Black’s Law Dictionary, a bond is a “written instrument with sureties, guaranteeing faithful performance of acts or duties contemplated.”

In finance, bond is a debt security, in which the authorized issuer owes the holders of bond a debt and is obliged to repay the principal and interest (the coupon) at a later date, called maturity. Bonds are generally issued for a

fixed term and it is usually 10 years.

‘Prize bonds’ is a different category of bearer bonds in which no interest/profit is paid but, like in lottery, some persons get prizes by draw. So they are like lottery tickets except from the fact in such prize bonds the principal amount remains intact and can be encashed at any time. They are in perpetuity in terms of duration like consol bonds.

- vii. **Security:** (As defined in the Companies Ordinance, 1984)

Security means any share, scrip, debenture, participation term certificate, modaraba certificate, musharika certificate, term finance certificate bond, pre-organization certificate or such other instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose.

A pre-organization certificate is a sort of acknowledgment of money contributed by promoters before incorporation of the company.

**WAPDA Bonds are government securities**

WAPDA bonds (second issue) was held to be a government security in terms of Public Debt Act 1944. Habib Bank Ltd. Karachi v. CIT, Karachi 2009 PTD 443 [Kar. HC]

- viii. **Accounts payable**

Money which a company owes to vendors for products and services purchased on credit. This item appears on the company’s balance sheet as a current liability, since the expectation is that the liability will be fulfilled in less than a year. When accounts payable are paid off, it represents a negative cash flow for the company.

- ix. **Difference among a bond, a note and a bill**

In American finance terminology, a bond is a debt with maturity period exceeding 10 years. New debt between one year and ten years is a note and new debt less than one year is a bill. In some countries terms ‘bond’ and ‘note’ are used interchangeably. Market participants normally use bonds for large issues offered to a wide public, and notes for smaller issues originally sold to a limited number of investors. There are no clear demarcations.

- x. **Difference between stock and bond**

Stocks and bonds are both securities, the difference is that the stock holders own a part of the issuing company and bond holders are in essence lenders to the company. Bonds (except from consol bonds) have fixed term of maturity while stocks may outstand indefinitely.

- xi. **Types of financial instruments**

Financial instrument is any form of funding medium. They can be categorized into two types as under:

- a. **Cash instruments/primary instruments**

These are financial instruments whose value is determined directly by markets. Examples: stocks, commodities, currencies and bonds.

- b. **Derivative Instruments**

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**Explanation (contd.)**

These are financial instruments which derive their value from some other financial instrument or variable.

Examples: 1. Stock option derives value from the value of a stock.

2. Interest rate swap derives its value from one or more interest indices.

**31. Sec. 2(16) Deductible allowance**

The deductible allowances under Part IX of Chapter III are: Zakat paid under the Zakat and Ushr Ordinance, 1980; Workers' Welfare Fund under the Workers' Welfare Fund Ordinance, 1971; and Workers' Participation Fund under Companies Profit (Workers' Participation) Act, 1968. When deductible allowances are deducted from 'total income', the balance income is called 'taxable income'.

**32. Sec. 2(17) Depreciable asset**

Definition given in Section 22 has been adopted for the whole Ordinance. According to that definition, a **depreciable asset** means any tangible movable property, immovable property (other than unimproved land), or structural improvement to immovable property, owned by a person that –

- (a) has a normal useful life exceeding one year;
- (b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
- (c) is used wholly or partly by the person in deriving income from business chargeable to tax, but shall not include any tangible movable property, immovable property, or structural improvement to immovable property in relation to which a deduction has been allowed under another section of this Ordinance for the entire cost of the property or improvement in the tax year in which the property is acquired or improvement made by the person.

**33. Sec. 2(18) Disposal**

Definition of the term 'disposal' in section 75 has been adopted for the whole Ordinance. It reads as under:

- “(1) A person who holds an asset shall be treated as having made a disposal of the asset at the time the person parts with the ownership of the asset, including when the asset is –
  - (a) sold, exchanged, transferred or distributed; or
  - (b) cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.
- (2) The transmission of an asset by succession or under a will shall be treated as a disposal of the asset by the deceased at the time asset is transmitted.
- (3) The application of a business asset to personal use shall be treated as a disposal of the asset by the owner of the asset at the time the asset is so applied.
- (3A) Where a business asset is discarded or ceases to be used in business, it shall be treated to have been disposed of.
- (4) A disposal shall include the disposal of a part of an asset.”

**34. Sec. 2(19) Dividend**

- i. **Common meaning:**  
Dividend means a sum paid to or received by a shareholder proportionate to his shareholding in a company out of total sum distributed. CIT V. Nalin Behari Lal Singha (1969) 74 ITR 849 (SC)
- ii. **Effect of inclusive definition**

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**Explanation (contd.)**

Being an inclusive definition, the expression 'dividend' means dividend as ordinarily understood under the Companies Act, and also the heads of payment or distribution specified in the Income Tax Act - Hari Prasad Jayantilal & Co. v. V.S. Gupta, ITO [1966] 59 ITR 794 (SC).

- iii. **Deemed and then actual dividend – to be taxed only once**

If an amount is assessed in the hands of shareholder as deemed dividend, and subsequently dividend is actually distributed, a set off is to be made by the company against actual distribution. *LP Badiani v CIT* (1985) ITR 204 (Bom.)

- iv. **Advance or loan deemed as dividend**  
Deeming provision is attracted at the time of payment of advance or loan and it is immaterial that advance or loan was repaid during previous year [ in the same meaning as is income year] and was not outstanding at the end of year. *Smt. Tar. Shyam v. CIT*(1977) 108 ITR 345 (SC)
- v. **Treatment of purchase of undistributed dividend**  
Undistributed dividend. Assessee newly purchased shares of a limited company and received undistributed dividend on his shares relating to the period when he was not a member of the company. Original shareholders already taxed on these very dividends – amount received by the assessee whether liable to tax-held no. 1980 41 Tax 179
- vi. **Deemed dividend on account of loans/ advances**  
In respect of a *pari materia* provision in the Indian Tax Law, the Supreme Court of India held that Section 2(6A)(e) of 1922 Act [Section 2(22)(e) of 1961 Act] is not beyond the legislative competence of the Legislature. It also does not contravene the rights conferred under articles 19(1)(f) and 19(1)(g) of the Constitution - *Navnit Lal C. Javeri v. K.K. Sen, AAC* [1965] 56 ITR 198 (SC).
- vii. **Differentiate debt from a loan**  
The term 'loan or repayment of a loan' does not, however, necessarily include a debt that constitutes unpaid purchase money. For example, if a settlor sells an asset to his or her trustees or a connected company but leaves the purchase price uncollected until a later date, the settlor has not necessarily loaned the amount of that purchase price to the trustees (see *Ramsden v CIR*, 37TC619).
- viii. **When dividend is deemed to have been paid or distributed?**  
Dividend must be deemed to have been paid or distributed in the year when it was actually, whether physically or constructively, paid to the different shareholders, that is to say, when the amount was credited to separate accounts of shareholders or paid to them. *Punjab Distilling Industries Ltd. vs. CIT* (1965) 57 ITR 1 (SC).
- ix. **Indirect loans can also be treated as deemed dividend**  
Where assessee shareholder of company received loan from a proprietary concern and proprietary concern had received loan from the company, which was meant for benefit of the assessee, loan so received was assessable as deemed dividend. *Nadlal Kanoria v. CIT* (1980) 122 ITR 405 (Cal.)
- x. **Effect of amendment in the Finance Act, 2008**  
By virtue of addition of sub-clause (e) in the definition of dividend, any after-tax profit of a branch of a foreign company operating in Pakistan shall

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#### Explanation (contd.)

- xi. **Which debt has been repaid?**  
If there have been a number of advances on a current account and a repayment is made, any parties involved can make a specific appropriation

against a particular debt. Where no appropriation is made you should set the repayment against the earliest debt first, following the Rule in Clayton's Case (1816 MR Ch Vol. 1, 572).

**35. Sec. 2(22) Employment**

Definition of employment has been expanded to include directors and other office holders in the management of a company. Further persons holding positions for fixed or ascertainable remuneration are also treated as having employment. Public office holders are also employees. A public office is one which is concerned with people as a whole.

The word 'employment' connotes the existence of a jural relationship of master and servant between the employer and the employee; that is, between the person paying and the person being paid. A master is one who not only directs what and when a thing is to be done but how it is to be done, and the servant is bound to carry out the instructions given by such masters. However the right to control the manner of work is not exhaustive test for determining the relationship of employer and employee. [Silver Jubilee Tailoring House v. Chief Inspector AIR 1974 4 SC 37].

The servant has as such no discretion of his own in the carrying out of the instructions except such minor discretion as may be left to him by his master. In short, in determining the relationship of master and servant, test is whether having regard to nature of work there is due control and supervision by the employer. [Harpreet Singh Sardar v CIT (1991) 187 ITR 679 (All).]

**36. Sec. 2(23) Fee for technical services  
Managerial**

The verb 'manage' comes from the Italian *maneggiare* (to handle — especially a horse), which in turn derives from the Latin *manus* (hand). Managerial means "of or relating to the function or responsibility or activity of management". Management means administrative control over the affairs of others, careful guarding of an asset. It is also used as an act or instance of guiding. (various dictionaries)

**Technical**

Technical is an adjective which has the following meanings as per different dictionaries: [source: [www.answers.com](http://www.answers.com)]

- i. of, relating to, or derived from technique.
- a. having special skill or practical knowledge especially in a mechanical or scientific field: a technical adviser.
  - b. used in or peculiar to a specific field or profession; specialized: technical terminology.
- ii.
  - a. belonging or relating to a particular subject: technical expertise.
  - b. of, relating to, or involving the practical, mechanical, or industrial arts or the applied sciences: a technical school.
- iii.
  - a. Abstract or theoretical: a technical analysis.
  - b. of, relating to, or employing the methodology of science; scientific.
- iv. According to principle; formal rather than practical: a technical advantage.
- v. Industrial and mechanical; technological.

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**Explanation (contd.)**

- vi. Relating to or based on analysis of market indicators, such as trading volume and fluctuations in securities prices, rather than underlying economic conditions such as corporate earnings, inflation, and unemployment: a technical correction in the stock market.

**Consultancy**

- i. The act or an instance of consulting.
- ii. A business or agency offering expert or professional advice in a field: opened a financial consultancy. ([www.answers.com](http://www.answers.com))

**37. Sec. 2(24) Financial institution**

Definition given in Section 2(15A) of the Companies Ordinance, 1984 has been adopted for this Ordinance. The said definition is reproduced below:

“financial institution” includes:—

- (a) a company or an institution whether established under any special enactment and operating within or outside Pakistan which transacts the business of banking or any associated or ancillary business through its branches;
- (b) a modaraba, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company; and
- (c) such other institution or company authorized by law to undertake any similar business, as the Federal Government may, by notification in the official Gazette, specify for the purpose.”

**Financial institution-effect of amendment in Tax year 2005**

The CBR vide its circular No. 1 of 2005 dated 05-07-2005 explained the amendment in the definition of a financial institution as under:

“A bad debt was previously deductible only in respect of money lent by a financial institution. A “financial institution” was defined, in clause (24) of section 2, to mean an institution “notified” under the Companies Ordinance. This had restricted the applicability as most of the financial institutions were not covered by this provision. To enlarge the scope of the provision, the expression “notified” has been substituted by “defined”.”

**38. Sec. 2(25) Finance society**

**Tax rate**

As per definition of “company” given in the ordinance, a finance society is a company. However, it was allowed to an opt for tax rate applicable to an individual if found beneficial to the finance society as explained by the CBR in Circular No. 7 of 2003 in the following words:

“Providing income tax rate for cooperative society or finance society.

A new paragraph has been added in Division II of Part-I of First Schedule whereby Cooperative Societies shall be liable to pay tax at the rate applicable to a public company or an individual, whichever is beneficial to the taxpayer.”

The explanation given by the CBR is not full. In fact the amendment is for a society including a cooperative society.

**Effect of amendment in the Finance Act, 2008**

The optional (concessional) treatment given in para (ii) of Division II of Pt. of the First Schedule to the Income Tax Ordinance was deleted in the FA, 2008.

**39. Sec. 2(26) Firm**

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**Explanation (contd.)**

Definition given in section 80 has been adopted for the whole Ordinance. A firm means the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

**40. Sec. 2(27) Foreign source income**

According to definition given in Section 101 adopted for the whole Ordinance, all income which is not Pakistan source income shall be treated as foreign source income. See notes under section 101 for Pakistan source income.

**41. Sec. 2(28) House Building Finance Corporation**

House Building Finance Corporation Ltd., the oldest housing finance institute of Pakistan, was established as a statutory Federal body in 1952 under an Act of Parliament (Act xviii) with the objective of providing financial assistance for the construction of houses. Subsequently, HBFC's scope was diversified into domains like purchase, repair and renovation of houses. Later-on HBFC's mission was evermore reformed to specifically target the needs of the low and middle income strata of the country by providing Small and Medium Housing (SMH) Solutions.

(Source: <http://www.hbfc.com.pk/default.asp?pgid=6>)

**42. Sec. 2(29) Income**

**i. Inclusive definition and taxability of all income unless exempt**

The Ordinance does not attempt to provide any comprehensive definition of income for tax purposes; but gives an inclusive definition. Supreme Court of India while explaining concept of income in their Statute stated that being inclusive definition it adds several artificial categories to the concept of income but on that account the expression 'income' does not lose its natural connotation. Anything which can properly be described as income is taxable under the tax law unless it is exempted therein. *Emil Webber v. CIT* [1993] 200 ITR 483 (SC)/*Kedar Narain Singh v. CIT* [1938] 6 ITR 157 (All.). It was observed that the idea behind providing inclusive definition in section 2(24) is not to limit its meaning but to widen its net. The word 'income' is of widest amplitude, and it must be given its natural and grammatical meaning. *CIT v. G.R. Karthikeyan* [1993] 68 Taxman 145/201 ITR 866 (SC).

**ii. Quality of Income**

The income bears its quality as income, if it is received by the assessee or it is accrued or arisen to the assessee or if fictionally deemed to be received or deemed to have accrued or arisen to him. *CIT v. A.B.V. Gowda* (1986) 157 ITR 697 (Kar.)

**iii. Widened scope treats the following amounts also as income**

- a. Any amount chargeable to tax under this ordinance (even if the amount is not in the character of income in its ordinary meaning).
- b. Any amount from which tax is collected or deducted at source under Sections 148, 150, 152 (1), 153, 154, 156, 156A, 233, 233A and 234 of the Ordinance.
- c. Any amount treated as income under any provision of this ordinance.
- d. Any loss of income is also income.

**iv. Exclusion of Bonus shares from income**

Declaration, issue or payment of bonus shares issued after July 1, 2002 shall neither be income in the hands of recipient nor in the hands of the domestic company with effect from 1-7-2002..[Circular No. 13 of 2002]

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**Explanation (contd.)**

**43. Sec.2 (29A) Income Year**

The concept of income year is applicable in respect of proceedings relating to the repealed Ordinance or where any action in the present Ordinance is linked to previous periods covered under the repealed Ordinance. The definition of income

year under the repealed Ordinance at the time of repeal was as under:

Section 2(26): “**income year**”, in relation to any assessment year (hereafter in this clause, referred to as ‘the said assessment year’), means-

- (a) the financial year next preceding the said assessment year;
- (b) (omitted by the Finance Act, 1995)
- (c) or such period as the Central Board of Revenue may, in the case of a person or class of persons or any source of income, specify by notification in the official Gazette, and includes any period which, under any provision of this Ordinance, is deemed to be an income year, or in respect of which a return of total income is required to be furnished, or any income is liable to be determined or assessed, or any tax is payable.

**Explanation:-**

- (a) Where, in any case,-
  - (i) (omitted by the Finance Act, 1995)
  - (ii) (omitted by the Finance Act, 1995)
  - (iii) both sub-clause (a) and sub-clause (c) apply, the income year as specified under clause (c) shall be deemed to be the income year of the assessee in respect of his income from all sources; and
  - (iv) the sources of income of an assessee include two or more sources in respect of which income years have been specified under clause (c), the income year of the said income years ending last shall be deemed to be the income year of the assessee in respect of his income from all sources except the sources to which clause (c) applies; and
- (b) as used in sub-clause (c), “period” means any period of twelve months, or any period of more or less than twelve months, and includes any such period as may commence from, or end on, any date, including a date falling before the commencement, or after the end, as the case may be, of the financial year next preceding the said assessment year.”

**44. Sec. 2(29C) Industrial undertaking**

- i. In CIT v. Textile Machinery Corporation (1971) 80 ITR (436-37) it was observed that:  
“Industrial undertaking therefore would normally be in its ordinary acceptation, some industrial concern or enterprise or adventure which is undertaken to be done by the person concerned. Whether the industrial undertaking covers a complex of ideas both physical and non-physical and we will not choose one at the cost of the other. It is a complex of ideas and methods of practical execution and, therefore, must necessarily involve both tangible and intangible consideration.”
- ii. **Subject to process- connotation**  
Subject to a process or treatment is usually with the aim of readying for some purpose, improving, or remedying a condition; "process cheese"; "process

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**Explanation (contd.)**

- iii. Manufacture – discussed earlier.

**45. Manufacturing of goods and subjection of material- section 2(29C)**



The phrase 'engaged in subjection of goods or materials to any process which substantially changes their original conditions' is, therefore, to be interpreted by distinguishing it from 'manufacture of goods or materials'. In order to give true meaning to the provisions and by construing the two parts together harmoniously, it would be safe to conclude that the legislature has intended to cover a wider range of eventualities and not merely manufacturing of goods and materials by using the conventional methods.

Data processing through various machines, equipments and other modes would also be covered within the meaning of 'subjection of goods and materials to any process'.

Telenor Pakistan (Pvt) Ltd vs, ATIR and 3 others 2017 PTD 1181 [Isl. HC]

**46. Sec.2 (30) Intangible**

Definition given in section 24 is reproduced below which has been adopted for the whole Ordinance.

"intangible" means any patent, invention, design or model, secret formula or process, copyright, trade mark, scientific or technical knowledge, computer software, motion picture film, export quotas, franchise, licence, intellectual property or other like property or right, contractual rights and any expenditure that provides an advantage or benefit for a period of more than one year (other than expenditure incurred to acquire a depreciable asset or unimproved land)."

**47. Sec. 2(30A) Investment company**

Rule 2 (xxvi) of the NBFC (Establishment and Regulation) Rules, 2003:- "investment company" means a company registered with the Commission under rule 38 to engage principally or wholly in buying and selling securities of other companies and includes a company, not being a holding company, the investment of which in the share capital of other companies at any one time is of an amount equivalent to eighty per cent of the aggregate of its own paid up capital and free reserves but does not include a bank or an insurance company or a corporation which is a member of a stock exchange"

**48. Sec. 2(30B) Leasing company**

The amended definition when read with Rule 2 (xxx) of the NBFC (Establishment and Regulation) Rules, 2003 means a company licensed by the SECP to undertake leasing. Leasing includes financial services provided on operating lease or finance lease basis in accordance with IAS-17.

**49. Sec. 2(31) Liquidation**

**i. Meaning**

'Liquidation' refers to the process by which a company (or part of a company) is brought to an end, and the assets and properties of the company redistributed. Liquidation can also be referred to as winding-up or dissolution, although dissolution technically refers to the last stage of liquidation. Liquidation may either be compulsory (sometimes referred to as a creditors' liquidation) or voluntary (sometimes referred to as a shareholders' liquidation, although some voluntary liquidations are controlled by the creditors).

**ii. Liquidation and intention to do business**

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**Explanation (contd.)**

Mere fact that a company has not gone into liquidation does not establish that it has the intention to do business. CIT v. Lahore Electric Supply Co. Ltd. (1966) 60 ITR 1 (SC)

Maintaining of an office till completion of liquidation does not mean that company is carrying on business. *Chrestian Mining Co. Ltd. v. CIT* (1964) 53 ITR 565 (Cal.)

**50. Sec. 2(33) Minor Child**

The definition of “minor child” given in the Income Tax Ordinance, 2001 is gender neutral and any individual below the age of 18 years at the end of a tax year is treated as minor child. For section 90, however, for a parent, ‘minor child’ does not include a married daughter.

*N.B.* In some other laws of the country upper age limit is different for male and female individuals.

**51. Sec. 2(34) modaraba, Sec 2(35) modaraba certificate**

Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 deals with the business of Modaraba in Pakistan. Definitions of Modaraba and Modaraba Certificate given in the said ordinance are as under:

**Modaraba**

“Modaraba” means a business in which a person participates with his money and another person with his efforts or skill or both his efforts and skill and shall include Unit Trusts and Mutual Funds by whatever name called.

**Modaraba certificate**

“Modaraba Certificate” means a certificate of definite denomination issued to the subscriber of the Modaraba acknowledging receipt of money subscribed by him.

Comparable instrument in companies is called “share”.

Modaraba would be considered a company even prior to amendment in the Finance Act, 1992 in the Income Tax Ordinance, 1979. 2011 PTD 2148 [Kar.H.C.]

**52. Sec. 2(35A) Mutual fund**

In common parlance a mutual fund is a pool of money that is managed by an investment company. A mutual fund offers investors a variety of goals, depending on the fund and its investment charter. Some funds, for example, seek to generate income on a regular basis. Others seek to preserve an investor's money. Still others seek to invest in companies that are growing at a rapid pace. Funds can impose a sales charge, or load, on investors when they buy or sell shares. Many funds these days are no load and impose no sales charge.

Closed-end mutual funds technically speaking are not mutual funds, however, many investors and our law treats them as such. Closed-end funds differ from open-end (mutual) funds in that they issue a set number of shares and are listed on stock exchanges like other shares. Like open-ended funds, they invest in the stock of a number of different companies, but unlike open-ended mutual funds, they do not issue and redeem new shares. Because the share prices are dictated by the market, they often trade at discounts, and in some cases premiums, to their net asset value.

**Effect of adopted definition of Modaraba**

State enterprises mutual fund Karachi was held to be Modaraba for the purposes of income tax Ordinance also. It was held that since definition of Modaraba as given in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 has been adopted by the Income Tax Ordinance and section 2(i)(a) of the said

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**Explanation (contd.)**

Modaraba Ordinance treats Mutual funds as Modaraba, it will be Modaraba for Income Tax Purposes too. 2011 PTD 886 [Kar. HC]

**53. Sec. 2(35B) Non-banking finance company (NBFC)**

According to Non-Banking Finance Companies (NBFC) (Establishment and Regulation) Rules, 2003 an NBFC means a non-banking finance company that is licensed by the Commission to engage in one or more forms of business in terms of rule 5 provided that its memorandum and articles of association permit it to do so, and includes asset management company, discount house, housing finance company, investment adviser, investment finance company, leasing company, venture capital company and such other company or body corporate as the Federal Government may, by notification in the Official Gazette, specify for the purpose;”

**54. Sec. 2(36) Non-profit organization (NPO)**

An institution for the charitable benefit of a large and important body of poor persons is a public charity. In Law Lexicon with reference to the case of A.C. v. Pearce, 2Atk 87. An NPO should be registered under any of the following law:

- a. Trusts Act 1882;
- b. Societies Registration Act, 1860;
- c. Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961;
- d. Local Government Ordinance, 2001;
- e. Religious Endowments Act 1863; or
- f. Companies Ordinance, 1984

**NPO-Relevant rules of the Income Tax Rules, 2002**

211. Procedure for approval of non-profit organization
212. Decision on application
213. Refusal to grant approval
214. Validity of the approval
215. Finalisation of applications
217. Power to withdraw approval
218. Appeal against a decision of Commissioner
219. Institution granted approval before commencement of these laws
220. Relaxation of requirements or conditions
- 220A. Procedure for approval for purpose of clause (3) of clause (58) of Part I of the Second Schedule.
- 220B. Approval and appointment of certification agencies

**55. Sec. 2(37) Non-resident person**

The Ordinance first defines a resident person and then declares that a person who is not resident will be non-resident. (Section 81). Residency is determined with reference to each tax year. Status is determined as per the following parameters:

- i. The Federal government, a provincial government and a local government in Pakistan are resident persons.
- ii. An **individual shall be resident** if he remains in Pakistan for [183]<sup>143</sup> days during the tax year continuously or continually.
- iii. An official or employee of Federal or Provincial Government even if remained posted abroad during a tax year shall be treated as resident individual.
- iv. **Resident company**

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**Explanation (contd.)**

A company shall be a resident company for a tax year if –

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143 Inserted by the Finance Act, 2003.

- (a) it is incorporated or formed by or under any law in force in Pakistan;  
or
  - (b) the control and management of the affairs of the company is situated *wholly* in Pakistan at any time in the year.
- v. **An AOP shall be resident** if the control and management of the affairs of the association is situated *wholly or partly* in Pakistan at any time in the year.

**56. Sec. 2(38A)**

By amending Income Tax Ordinance, 2001, at the time of inserting S.2(38A) through Finance (Amendment) Ordinance, 2009, Worker Welfare Fund Ordinance, 1971 was also to be amended accordingly; but it was not done. Levy of WWF is by the officers mentioned in section 2(38A) is unlawful [unless corresponding amending is brought in the WWF Ordinance, 1971.] 2011 PTD (Trib.) 748.

**57. Sec.2 (39) Originator, sec. 2(57) securitization, sec. 2(60) special purpose vehicle**

All these concepts have been taken from the Companies (Asset Backed Securitization) Rules, 1999. Securitization is designed to improve the risk profile of the issuer. Originator is the entity whose business gives rise to the cash flows securitized. Pools of financial assets are sold to special purpose vehicle (SPV). SPV finances this purchase of assets through issuance of marketable investment instruments. A security agent/administrator is appointed for collecting cash flows and taking enforcement action when necessary. Asset backed instruments are generally purchased by a variety of investors including but not limited to banks, financial institutions and funds. A trustee is appointed which is guardian of the interest of the investors.

Definitions as given in the ABS rules, 1999 are as under:

- i. **Originator**  
It means a person who transfers any assets in the form of present or future receivables to a special purpose vehicle (SPV) as a consequence of securitization.
- ii. **Securitization**  
It means a process whereby any Special Purpose Vehicle raises funds by issue of Term Finance Certificates or any other instruments with the approval of the Securities and Exchange Commission of Pakistan (SECP), for such purpose and uses such funds by making payment to the Originator and through such process acquires the title, property or right in the receivables or other assets in the form of actionable claims.”
- iii. **Special purpose vehicle**  
It means a special purpose vehicle which is registered under the ABS rules, 1999 with the commission.
- iv. **Income tax provisions relating to securitization business rules**
  - a. Income of SPV shall be exempt. However, if any income arises to SPV after completion of the process of securitization, it shall be returned to the originator in whose hands it shall be taxable.
  - b. The provisions of section 151, <sup>144</sup>[153 and 233] shall not apply to special purpose vehicle on amounts for the purpose of

**Explanation (contd.)**

- securitization. Cl. (38) Pt. IV, 2<sup>nd</sup> Sch.
- c. Irrespective of method of accounting adopted by the taxpayer, transfer of assets by an originator to an SPV shall be treated a financing transaction only. Sec. 28(2)
  - d. Section 153 shall not apply to any payment for securitization of receivables by an SPV to an Originator. Sec. 153 (5)(g)
  - e. Where any tax is deducted by a person making a payment to an SPV, on behalf of an originator, credit of tax shall be taken by the Originator. Sec. 153(6)
  - f. Any lease rental paid by a person of an asset used for his business to an SPV on behalf of an Originator shall be eligible deduction in his hands. Sec. 28(1)(b)
  - g. Financial cost of securitization shall be allowable in the hands of the Originator. The cost will be determined by taking difference of the amount taken by the originator and the amount of receivables securitized with the SPV. Sec. 28(1) (j)

**58. Sec. 2(40) Pakistan source of income** - See notes under section 101.

**59. Sec. 2(41) Permanent Establishment**

i. **Meaning**

The concept of Permanent Establishment (PE) is of fundamental importance in taxation of the non-residents. Whether a person has PE or not can be ascertained from the criteria given in this definition. A place of business from which a person carries on his business either wholly or partly is called PE of that person. Apart from it, other situations/arrangements, etc. are also included in the definition of PE. They are as under:

- a. place of management;
  - b. branch;
  - c. office;
  - d. factory or workshop;
  - e. premises for soliciting orders;
  - f. warehouse;
  - g. permanent sales exhibition or sales outlet other than a liaison office. However, a liaison office which engages in the negotiation of contracts other than contracts of purchase is included in PE.
  - h. a mine;
  - i. oil or gas well;
  - j. quarry;
  - k. a place of extraction of natural resources;
  - l. agricultural property;
  - m. pastoral (devoted to raising sheep or cattle) property;
  - n. forestry property;
  - o. a building site –for at least 90 days in the preceding 12 months;
  - p. a project of construction, assembly or installation- for at least 90 days in the preceding 12 months;
  - q. supervisory activities in respect of a building site or a project of construction, assembly or installation- for at least 90 days in the preceding 12 months;
  - r. any substantial equipment installed;
-

**Explanation (contd.)**

- s. furnishing of services (including consultancy) through employees or other personnel;
- t. A principal shall be treated to have a PE if he has an agent in Pakistan who:
  - i. has and habitually exercises an authority to conclude contracts on behalf of his principal.
  - ii. habitually maintains stock-in-trade or other merchandise from which such merchandise or stock-in-trade is supplied to other persons on behalf of the principal.
- ii. **Effect of amendments in the Finance Acts 2003 and 2005**
  - a. Before the Finance Act, 2003 for having a PE on account of furnishing of services e.g. consultancy it was necessary that such activities take place for 90 days during the 12 months on a single or connected projects. This limitation was removed through the Finance Act, 2003.
  - b. In the Finance Act, 2006, for treating a building site, project of construction, assembly or installation and supervisory services relating thereto as PE, minimum period of 90 days existence in the preceding 12 months was made compulsory. No such condition existed before the Finance Act, 2006.
- iii. **What is fixed place of business?**  
 The OECD commentary on Double Taxation refers to a “fixed place” as a link between the place of business and a specific geographical point. It has to have a certain degree of permanency. It is emphasized that to constitute a “fixed place of business”, the foreign enterprise must have at its disposal certain premises or a part thereof. Phillip Baker in his Commentary on Double Taxation Conventions and International Tax Law (3rd edition) states that the nature of the fixed place of business is very much that of a physical location, i.e. one must be able to point to a physical location at the disposal of the enterprise through which the business is carried on. On the other hand, possession of a mailing address in a state without an office, telephone listing or bank account- has been held not to constitute a permanent establishment. Further, the fixed place of business need not be owned or leased by the foreign enterprise provided it is at the disposal of the enterprise in the sense of having some right to use the premises for the purposes of its business and not solely for the purposes of the project undertaken on behalf of the owner of the premises. [2005-TIOL-103-ITAT-DEL-SB]
- iv. **Permanent establishment**  
 Where it was proved that ZTE Corporation has its office and telephone numbers in Pakistan, it was treated as having PE in Pakistan. 2009 PTD (Trib.) 590.

**60. Sec. 2(42) Person**

The followings shall be treated as persons for the purposes of this Ordinance, namely:—

- (a) an individual;
  - (b) a company or association of persons incorporated, formed, organized or established in Pakistan or elsewhere;
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**Explanation (contd.)**

- (c) the Federal Government, a foreign government, a political subdivision of a foreign government, or public international organization.

*N.B.* Definition of company and association of persons should also be consulted as explained in these notes to determine status as person. Tax rate and withholding deduction/collection obligations and minimum tax liabilities are different for different persons.

**61. Sec. 2(43) Pre-commencement expenditure**

According to Section 25, “pre-commencement expenditure” means any expenditure incurred before the commencement of a business wholly and exclusively to derive income chargeable to tax, including the cost of feasibility studies, construction of prototypes, and trial production activities, but shall not include any expenditure which is incurred in acquiring land, or which is depreciated or amortised under section 22 or 24.

**62. Sec. 2(44A) Principal officer****i. Principal Officer**

In the light of case reported as ITO v. Official Liquidator [1977] 106 ITR 119 (AP), with reference to section 2(44A)(b), the following two ingredients must be satisfied :

- (a) he must be a person connected with the administration of the company or association of persons upon whom the Commissioner has served a notice of treating him as the principal officer thereof; management or administration of the company; and
- (b) the ITO must have served upon him a notice of his intention of treating him as the principal officer of the company. The satisfaction of only any one of the two conditions or ingredients will not attract this clause.

**ii. Official Liquidator as principal officer**

An Official Liquidator is principal officer of the company within the meaning of section 2(35). The fact that there are no assets of the company in his hands and that ex-directors were liable for the income-tax arrears of the company, will not alter this legal position - ITO v. Official Liquidator [1977] 106 ITR 119 (AP).

**iii. Manager and Managing Director as principal officers**

A managing director is not one of the persons falling under the category of principal officer enumerated under sub-clause (a) or (b) of section 2(35). The managing director cannot be equated with the manager. Even if he is construed as one entrusted with or entitled to the management of the company, he should have been served with a notice by the ITO of his intention to treat him as the principal officer in order that he may be brought under sub-clause (b) of section 2(35) - ITO v. Joseph [1972] 83 ITR 362 (Ker.). Taxman 183 (Delhi).

**iv. Manager as principal officer**

The word ‘manager’ in section 2(12) of the 1922 Act includes liquidator of a company - CIT v. Official Liquidator of the Agra Spg. & Wvg. Mills Co. Ltd. [1934] 2 ITR 79 (All.).

**v. Any Person can be treated as principal officer –conditions:**

**Explanation (contd.)**

Person treated as principal officer need not be heard before issue of notice.  
 Hungerford Investment Trust Lt. vs. Income Tax Officer (1983) 142 ITR 601 (Cal.)

**63. Sec. 2(47) Public company**

The CBR vide its circular No. 1 of 2005 dated 05-07-2005 explained the amendment in the definition of a 'public company' in the following words:

"Definition of 'public company' was extended in 2003 to include 'a company in which shares are held by a foreign government or foreign company owned by a foreign government.' The percentage of holding was, however, not specified with the implication that even a nominal percentage of such share holdings would entitle a company to the tax benefits available to a public company.

Sub-clause (ab) of clause (47) of section 2 has been amended and the condition of at least 50% share holdings by a foreign Government (or a foreign company owned by a foreign Government) has been inserted. This will bring parity vis-à-vis companies in which the Federal or the Provincial Governments hold shares.

(Circular no. 1 of 2005)

**64. Sec. 2(47A) Real estate investment trust Scheme**

The Real Estate Investment Trust Regulations, 2008 have been notified by the SECP. The definition of REIT scheme as defined in these rules states that "REIT Scheme" means a real estate investment trust which is a closed-end scheme launched by the REIT Management Company and registered under these REIT Regulations, 2008 and includes Developmental REIT Scheme and Rental REIT Scheme. REITMC means a REIT management company licensed by the Commission as a NBFC to launch REIT Scheme and provide REIT Management Services;

**65. Rent**

Rent as per section 15(2) means any amount received or receivable by the owner of land or a building as consideration for the use or occupation of, or the right to use or occupy, the land or building, and includes any forfeited deposit paid under a contract for the sale of land or a building. Un-adjustable advances received from a tenant are also to be treated as rent over a period of ten tax years. For details refer to section 16.

**66. Sec. 2(50) to sec. 2 (53) Resident company, resident individual, resident person and resident taxpayer****Importance of residential status**

Incidence of taxation varies with change in the status of residence. It serves as reference point regarding jurisdiction of taxation on income earned by a person in Pakistan or abroad. The first point to settle for correct determination of tax is determination of residency status. For example Section 113 dealing with minimum tax is applicable only to resident companies and not to non-residents. Similarly, withholding tax provisions also make a differentiation between the two categories in some cases. Rate of withholding tax on certain payments to non-residents is also different. So while determining tax liability, first of all check legal status of a person (i.e. whether an individual or company, etc.), then its residential status (resident or non-resident) and finally the type of business or income. Where the person is non-resident, consult the tax treaty if entered into Pakistan and the country in which that person is resident.

**67. Sec. 2(54) Royalty**

Important terminology used in Royalty is explained as under:



**Explanation (contd.)**i. **Trademark**

A trademark is a word, phrase, symbol or design, or combination of words, phrases, symbols or designs, which identifies and distinguishes the source of the goods or services of one party from those of others.

ii. **Patent**

A grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.

iii. **Copyright**

According to the Copyright Ordinance, 1962, a copyright is defined as under: “3. Meaning of Copyright. (1) For the purpose of this Ordinance, “copyright” means the exclusive right, by virtue of, and subject to, the provisions of this Ordinance:-

- (a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely:-
    - (i) to reproduce the work in any material form;
    - (ii) to publish the work;
    - (iii) to perform the work in public;
    - (iv) to produce, reproduce, perform or publish any translation of the work;
    - (v) to use the mark in a cinematographic work or make a record in respect of the work;
    - (vi) to broadcast the work, or to communicate the broadcast of the work to the public by a loudspeaker or any other similar instrument;
    - (vii) to make any adaptation of the work;
    - (viii) to do in relation to translation or an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi);
  - (b) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely:-
    - (i) to reproduce the work in any material form;
    - (ii) to publish the work;
    - (iii) to use the work in a cinematographic work;
    - (iv) to show the work in television;
    - (v) to make any adaptation of the work;
    - (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
  - (c) in the case of a cinematographic work, to do or authorize the doing of any of the following acts, namely:-
    - (i) to make copy of the work;
    - (ii) to cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
    - (iii) to make any record embodying the recording in any part of the sound track associated with the work by utilizing such sound track;
    - (iv) to broadcast the work;
-

**Explanation (contd.)**

- (d) in the case of a record, to do or authorize the doing of any of the following acts by utilizing the record, namely:-
- (i) to make any other record embodying the same recording;
  - (ii) to use the recording in the sound track of a cinematographic work;
  - (iii) to cause the recording embodied in the record to be heard in the public;
  - (iv) to communicate the recording embodied in the record by broadcast.
- (2) Any reference in sub-section(1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a part thereof.”

**Trademark and trade name**

The Hon'ble Karachi High Court in PLD 1991 Kar. 158 has discussed at length the distinction between the trade name and the trademark while appreciating the difference between the connotation of these expressions. The view of the Taxation Officer that a product cannot have two different trademarks having different owners/sources is not supported with any reasoning or legal provisions. It is a fact on record that Trademark Registry has registered separately the trademark “Nestle®” on Ribbon, and “Milkpak ®” which clearly indicates that under the relevant laws, there is no bar or prohibition for product for more than one trademark. 2008 PTD (Trib.) 779

**68. Payments on account of use of satellite-** payments on account of use of satellite facilities was treated as commercial profits under the Income Tax Ordinance, 1979.

Now the definition is changed and it is included in the definition of royalty. See case law on the subject as 2002 PTD (Trib.) 2679, and 2011 PTD (Trib.) 1716.

**69. License fee paid to parent company**

License fee paid by a car manufacturing company to its parent company was held to be royalty. 2012 PTD (Trib.) 5

**70. Sec. 2(55) Salary** –see comments under section 12

**71. Sec.2(63) Tax**

In our view, this definition is wide enough to cover a tax on tax also as the legislative entries have to be given widest possible meaning. Hence, in our opinion, imposition of tax on tax is within the legislative competence of the law makers under Entry 47[of the Federal Legislative List in the Constitution] as the word tax is wide enough to embrace in it any sum or amount leviable or payable under the Ordinance. 2010 PTD 1924 [Karachi High Court]

**Explanation (contd.)****72. Sec. 2(59A) Small company**

A company formed on or after the first day of July, 2005 under the Companies Ordinance, 1984, otherwise than by the splitting up or the reconstitution of company already in existence is called a small company provided it fulfills the criteria mentioned in the table below. Applicable tax rates to small company are given in the last column.

Tax year	Maximum paid up capital plus undistributed reserves (Million Rs.)	Maximum number of employees	Maximum annual turnover (Million Rs.)	Rate of Tax applicable
2006	25	Not fixed	200	20%
2007	25	Not fixed	200	20%
2008	25	250	250	20%
2009	25	250	No limit	Income attributable to turnover in Millions Rupees is: Upto 250 20% Above 250 upto 350 25% Above 350 upto 500 30% Above 500 35%
2010	25	250	250	20%
2011	25	250	250	25%
2012	25	250	250	25%
2016	50	250	250	25%

With effect from July 01, 2008, a small company has also been declared a prescribed person to deduct tax under section 153 of the Ordinance.

**73. Sec. 2(61) Speculation business****i. Definition**

As per definition given in section 19(2), which has been adopted for whole ordinance by its inclusion in section 2, a “speculation business” means any business in which a contract for the purchase and sale of any commodity (including stock and shares) is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity, but does not include a business in which –

- (a) a contract in respect of raw materials or merchandise is entered into by a person in the course of a manufacturing or mercantile business to guard against loss through future price fluctuations for the purpose of fulfilling the person’s other contracts for the actual delivery of the goods to be manufactured or merchandise to be sold;
- (b) a contract in respect of stocks and shares is entered into by a dealer or investor therein to guard against loss in the person’s holding of stocks and shares through price fluctuations; or
- (c) a contract is entered into by a member of a forward market or stock exchange in the course of any transaction in the nature of

**Explanation (contd.)**

jobbing arbitrage to guard against any loss which may arise in the ordinary course of the person's business as such member.

- ii. **Whether repetition of transactions is necessary to constitute speculation business?**
    - a. Neither repetition nor continuity of similar transactions is necessary to constitute a transaction an adventure in the nature of trade and even a single transaction may constitute speculation business. CIT v. Bholachand Ankilal [1981] 131 ITR 554 (MP).
    - b. There is nothing in the context of Explanation no. 2 to show that a single speculation transaction, even though it is an adventure in the nature of trade cannot amount to speculative business - CIT v. Ganga Prasad Birla (HUF) [1992] 63 Taxman 145/[1993] 199 ITR 173 (Cal.).
- 74. Sec. 2(62) Stock in trade**
- i. **Meaning**  
Section 35(7)- "stock-in-trade" means anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale or exchange, and any materials or supplies to be consumed in the production or manufacturing process, but does not include stocks or shares.
  - ii. **Immovable property as stock in trade**  
Where the immovable property is held as 'stock in trade' and it is the business of the assessee to buy and sell such property for profit then, in such circumstances the (immovable) property will not constitute capital asset. Thus in such circumstances i.e. when immovable property is held as stock in trade, the gain realized on its sale can be brought to tax as business profits under section 22 of the Ordinance, 1979. Resultantly, all gain realized on sale of immovable property is not necessarily capital gain and can, therefore, be brought to tax by the DCIT as revenue gain/ business profits where the situation so warrants.[2004 PTD (Trib.) 480]
- 75. Sec. 2(66) Taxpayer**  
The following persons shall be taxpayers:
- i. any person who earns or derives an amount chargeable to tax under the Ordinance.
  - ii. a representative of a taxpayer as defined at sr. no. i above
  - iii. a person who is required to withhold tax under chapter XII or part V of chapter X of this ordinance.
  - iv. any person who is required to furnish a return of income.
  - v. any person who is required to pay tax under the Ordinance.
- Note:** Taxpayer and assessee are two different expressions. Income Tax Ordinance, 1979 deals with an assessee while Income Tax Ordinance, 2001 deals with a taxpayer. However, where a provision is expressly stated to apply to an assessee under the repealed Ordinance, only then provisions of the Income Tax Ordinance, 2001 shall apply to an assessee. This ratio is derived from the case reported as CIT /Wealth Tax Zone –C (Legal), Lahore v. Messrs Idrees Cloth House, Lahore 2008 PTD 1420 [Lah. HC]
- 76. Sec. 2(67) Tax Treaty**
- i. **Tax importance of a tax treaty**

**Explanation (contd.)**

Pakistan has entered into tax treaties with a number of other countries for avoidance of double taxation of income and prevention of fiscal evasion by citizens of the relevant countries. Tax treaties have overriding effect not only on the provisions of this ordinance but also on all other laws for the time being in force in Pakistan. Therefore, tax implication of a transaction involving a resident / citizen of these countries should be determined, inter alia, with reference to the relevant tax treaty.

ii. **Treaty shopping**

It is the use by the taxpayer of a treaty between two states although the taxpayer is not a resident in any of them. This can be done, at least in theory, by the tax payer setting up a company in one of the states and using it as a “conduit” to pass income through the state under the treaty provisions.

iii. For text of all tax treaties visit [www.knowyourtax.com](http://www.knowyourtax.com)

**77. Sec. 2(68) Tax year**

See notes under section 74. Each tax year is an independent year. Income of one tax year cannot be assessed in another tax year unless specifically mentioned so in the Ordinance. Tax rates are prescribed with reference to tax years. Similarly, amendments and tax concessions in law are usually made with effect from a particular tax year.

**78. Sec. 2(70) Trust, Sec. 2(72) Units, Sec. 2(73) Unit trust**

i. **Trust**

As per section 80, “trust” means an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner, or declared and accepted by the owner for the benefit of another, or of another and the owner, and includes a unit trust.

The person who reposes or declares the confidence is called the “author of the trust”; the person who accepts the confidence is called the “trustee”; the person for whose benefit the confidence is accepted is called the “beneficiary”; the subject-matter of the trust is called “trust-property” or “trust-money”; the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the “instrument of trust”.

**Three certainties of a trust**

Three things are necessary for the creation of a trust namely:-

- a. The words used should be such that they are construed as imperative.
- b. The subject matter of the trust must be certain. and
- c. The object or persons intended to have the benefit of the trust must be certain.

These are called the ‘three certainties of a trust’ [Snell’s Principles of Equity, 27<sup>th</sup> Edition]

**Explanation (contd.)**

- ii. **Unit trust**  
 As per section 80, a unit trust means any trust under which beneficial interests are divided into units such that the entitlements of the beneficiaries to income or capital are determined by the number of units held.  
 In the U.K. the term "unit trust" is synonymous with "mutual fund" as it is used in North America.
- 79. **Sec. 2(71) Underlying ownership**  
 Underlying ownership as per section 98, in relation to an entity, means an ownership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals.
- 80. **Sec. 2(74) Venture capital companies and venture capital fund**
  - i. **Venture capital company-**  
 As per NBFC (Establishment and Regulation) Rules, 2003 a "venture capital company" means a company licensed by the Commission to invest in venture projects through equity or other instruments whether convertible into equity or not and provides managerial or technical expertise to venture projects, or acts as a management company for management of venture capital fund.
  - ii. **Venture capital fund**  
 It means a fund licensed under rule 26 of the NBFC (Establishment and Regulation) Rules, 2003.
  - iii. **Purpose and functioning of venture capital funds**  
 Venture capital is equity or equity featured capital seeking investment in new ideas, new companies, new productions, or new services that offer the potential of high returns on investment. Venture capital can be supplied directly by the investors or through special venture capital funds. These venture capital funds act as financial intermediaries between investors (e.g. individuals, corporations, pension funds, banks and insurance companies) and portfolio firms.
  - iv. **Special treatment in the Income Tax Ordinance, 2001**
    - a. Profits and gains derived between the first day of July, 2000 and the thirtieth day of June, <sup>145</sup>[2014] both days inclusive, by a venture capital company and venture capital fund shall be exempt. Cl. (101), Part I, Second Schedule.
    - b. Minimum tax under section 113 shall not be charged on a venture capital company and venture capital fund whose income is exempt under the Ordinance. Cl. (11) P. IV of 2<sup>nd</sup> Schedule.
    - c. The provisions of sections 150, 151 and 233 shall not apply to a Venture Capital Company. Cl.(38A), Pt. IV of 2<sup>nd</sup> Schedule.
- 81. **Sec. (19B) Definitions introduced in the FA, 2008**  
 The definitions of "addressee", "automated", "electronic", "electronic signature", "information", "information system", "originator" and "transaction" have been introduced in the FA, 2008 and the same have been taken from the Electronic Transactions Ordinance, 2002 (LI of 2002. The definitions are as under:
  - i. "addressee" means the person intended by the originator to receive the electronic communication but does not include an intermediary;

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145 Substituted for the word "connect" by the Finance Act, 2010.

**Explanation (contd.)**

- ii. “automated” means without active human intervention;
- iii. “electronic” includes electrical, digital, magnetic, optical, biometric, electrochemical, wireless or electromagnetic technology;
- iv. “electronic signature” means any letters, numbers, symbols, images, characters or any combination thereof in electronic form, applied to, incorporated in or associated with an electronic document, with the intention of authenticating or approving the same, in order to establish authenticity or integrity, or both;
- v. “information” includes text, message, data, voice, sound, database, video, signals, software, computer programs, codes including object code and source code;
- vi. “information system” means an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing information;
- vii. “originator” means a person by whom, or on whose behalf, electronic document purports to have been generated or sent prior to receipt or storage, if any, but does not include an intermediary;
- viii. “transaction” means an act or series of acts in relation to creation or performance of rights and obligations;

**82. Authority to perform functions of taxation officer**

We are of the opinion that in the light of provisions of \*sub-sections (13) and (65) of section 2 of the Income Tax Ordinance, 2001 the Addl. Commissioner is legally competent “authority” under the Income Tax Ordinance, 2001, to perform the functions of Taxation Officer as delegated to him by the Commissioner. 2007 PTD (Trib.) 2319.

The intended word is “clauses”.

**83. Sec. (31A) Local Government introduced in the FA, 2008.**

The FA, 2008 has introduced definition of “Local Government”. The definition as given in the provincial local government ordinance, 2001, has been adopted for the purposes of Income Tax Ordinance, 2001, which is reproduced below:

‘local government’ includes-

- (a) a District Government or a City District Government and Zila Council;
- (b) a Tehsil Municipal Administration and Tehsil Council;
- (c) a Town Municipal Administration and Town Council; and
- (d) a Union Administration and Union Council;

Note : In the case of Sind instead of the word “Tehsil”, the word “Taluka” is used.

**84. Explanation always retrospective**

- i. In CIT vs. Asbestos Cement Industries Ltd. (1993 SCMR 1276) which was delivered in a tax matter and held that explanation is not a substantive enactment but declaratory. A declaratory legislation has always a retrospective effect.
- ii. Explanation to a section is always retrospective so far as it explains the original provision. Al-Rai Flour Mills Lahore v. CIT Coy. I Lahore 2008 PTD 838 [Lah. HC]

**85. Words relating to a particular industry or trade**

In PLD 1971 SC 205, it was observed that first rule is that general statute will *prima facie* be presumed to use words in their popular sense and the second rule is that if a

statute is one passed with reference to a particular trade, business or transaction,

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**Explanation (contd.)**

words are used therein which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning which may differ from the ordinary or popular meaning.

- 86.** In the case law reported as *Collector of E.C Bombay v. M.S. Parle Exports (Pvt) Ltd.* (AIR 1989 Sc 644) referred with approval in 2009 PTD 809 (Kar. H.C), it has been observed that “the words used in the provision imposing taxes or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them.”

**87. Cotton fabrics and textile made-ups**

‘Cotton fabrics’ falls within the definition of “textile made ups”. 2009 PTD (Trib.) 2163

**88. Law of interpretation of words in a statute**

The law of interpretation with that regard is very clear and leaves no doubt that an interpretation given in one statute of particular connotation is not to be used or made applicable for other laws unless it has been so adopted in the said laws. Furthermore, the principle that where a particular word is not interpreted by a statute, the ordinary dictionary meanings are applicable, is widely applied principle of interpretation. The Courts have never considered it safe to import the meaning from other statutes while dealing with some issues under another statute. There is, therefore, obviously no question of treating a hotel to be an industry for the purpose of the determination of property tax for the reason that the same has been so treated by the Federal Government through its circular referred above. 2009 PTD 1868 [Lah. H.C]

**89. Words in different statutes**

Meanings of words given in one statute cannot be imported or read into any other statute unless so expressly authorized by the legislature. For the purposes of 2001 Ordinance, whether an entity qualifies to be an 'industrial undertaking' needs to be determined exclusively with reference to the provisions of section 2(29C) of the Ordinance. 2014 PTD (Trib.) 397

**90. Manufacturing or not - Industrial undertaking**

"The process undertaken by it, in no manner, can be held to be either manufacturing or a manufacturing process. The raw material or gas purchased remains the same when sold to customers except for the sub-division by filling in cylinders. The principle or the ratio settled in the aforesaid judgment of the Calcutta High Court can very well be referred to refuse the claimed concession/exemption by the assessee. Learned Judicial Member rightly found that no process was involved which could be termed as subjection of goods into manufacturing process or could itself be called as manufacturing. I am also in agreement with him that no new product was brought into existence which was distinct or different from the feed in material. The case-law relied upon by the assessee, as observed earlier, is not only distinguishable but also runs counter to the proposition in being put forth by the assessee. All the reported judgments relied upon explain the terms "manufacturing" and "manufacturing process" in the perspective of Sales Tax Acts. The only case on the income tax side on which I could lay my hands upon appears to High Court." 1999 PTD 793 (Trib.) upheld upto the Supreme Court of Pakistan as reported in 2014 PTD (Trib.) 397

- 91.** Income from "operation and maintenance of Generators" cannot be treated as trading activity. 2014 PTD 593 [Sindh HC]



**92. Electrical Home appliances are consumer goods****Explanation (contd.)**

The issue that electrical home appliances fall within the category of consumer goods has already been settled by this Tribunal in judgment reported as 2013 PTD 1413. CIR Zone-VIII, RTO Lah. Vs. Haier Pakistan (Pvt.) Ltd. 2015 PTD (Trib.) 2059

**93. Non-Durable Consumer Goods:**

Consumer non durable goods are purchased for immediate or almost immediate consumption and have a life span ranging, from minutes to three years. Examples of Non durable goods include fast moving consumer goods such as cosmetics and cleaning products, food, fuel, beer, cigarettes, medication, office supplies, packaging and containers, paper and paper products, personal products, Rubber (Tyres and Tubes), plastics, textiles, clothing and footwear.

To test that whether a consumer goods is a fast moving goods or not can be ascertained from the characteristics of consumer goods including fast moving consumer goods which are as under:--

- (a) Frequent Purchase
- (b) High Turnover and Low gross Profit Rate
- (c) Extensive sale network

The appellant is an authorized dealer for distribution of Tyre and tubes for three companies that is the General Tyre and Rubber Company of Pakistan Limited, Panther Tyres Limited, Bridgestone Private Limited. The appellant was held to be dealing in fast moving consumer goods. 2013 PTD (Trib.) 1413

**94. Interpretation of terms not defined in the Act but having technical meaning**

First, where an enactment uses a term which has both an ordinary and a technical meaning, the question as to which meaning the term is intended to have is determined by the context. If the context is technical, the presumption is that the technical meaning of the term is intended to be used; otherwise the ordinary meaning is taken as meant. Secondly, words used in a statute relating to a particular trade, business or transaction are to be construed as having the meaning which everybody conversant with that trade, business or transaction knows and understands. This is particularly so in construing the meaning of words in taxing statutes, as has been held by the Indian Supreme Court, which (view) we have no hesitation in subscribing to:-

"...in determining the meaning or connotation of words and expressions describing an article in a tariff Schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention."

CIT vs. Khurshid Ahmad and others 2016 PTD 1393 [SCP]

**95. Royalty**

Under the arrangement the petitioner was to use equipments of GETT for transmission of the calls beyond interconnectivity point and was to make payments to it in this behalf. ... Undoubtedly the term that has been used in the agreement between the parties is rendering of service and the service has been defined as well but the service that is rendered in the instant case depends upon the use of equipment. By virtue of the agreement the petitioner has the right to use equipment of GETT for which payments are made to it. The scope and definition of royalty is of wide ambit. In this behalf in case titled "India Cement Limited v. State of TN" (AIR 1990 SC 85) it was held that royalty is a tax. In another decision titled "International Development

Corporation Limited v. State of M.P." (AIR 1990 MP 112) it was held that concept of

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**Explanation (contd.)**

royalty inter alia means payment made to the owner of certain types of rights by those who are directed by the owners to exercise such rights. Another approach to the concept was taken by the Courts from Indian jurisdiction in case titled "State of W.B. v. Karosome Industries Limited (2004) 266 ITR 721) and it was held that royalty means compensation paid to landlord by occupier of land for occupation allowed by a contract between them. It is a share of the product or profit reserve by the owner for permitting another to use this property. In context of the diverse interpretation granted to the word royalty if the definition of the word in treaty it would be clear that scope of the concept is not included or conferred to any copyright or patent but includes the right to use any type of commercial or scientific equipment which may be tangible or intangible. Linkdotnet Telecom Ltd. Vs. Chief Commissioner IR 2016 PTD 1436 [Isl. HC]

**96. Tax on bonus shares being tax and imputable income**

The "amount" is the face value of bonus shares (per subsection (1) of section 236M) and the deduction of 5% thereof is the final tax (per subsection (7)) on the deemed income that (per subsection (6)) the face value represents. As also correctly submitted by learned counsel for the petitioner, once it is determined that section 2(28A) is engaged, then one has to work "backwards" (or in "reverse") from the amount of the final tax to determine the income that would, in the ordinary course, have resulted in a tax liability in the said sum. Since the taxpayer is an individual, in his case it is Division I of Part I of the First Schedule that applies, which sets out the relevant rates for individuals. An application thereof resulted in the figure of Rs. 68,805,863/- that, according to the petitioner, would result in a tax liability of Rs. 2,0641,734/-. As noted above the Department has not, as such, challenged the correctness of the petitioner's computation. Thus, we are of the view (subject to consideration of the Department's final point) that in the petitioner's case, it was the "imputable income" under section 2(28A) that had to be included in terms of clause (iii) of section 4B(2). The contrary submission by learned counsel for the Department cannot, with respect, be accepted. Mumtaz Hussain Khan vs Addl. Commissioner Inland Revenue and 4 others 2016 PTD 1667 [Sindh. HC]

**97. Section 2(28A) and tax deducted on bonus shares**

The language of the definition is clear. It refers simply to an amount "subject to final tax", and draws no distinction (even if otherwise valid, as to which we express no opinion) between those amounts which are not, per section 8 or section 169, to be brought to tax under any head of income on the one hand, and those amounts not included, listed or mentioned in either of these sections. Being "subject to final tax" means what it says. We therefore reaffirm the conclusion already arrived at above, namely that the petitioner's case comes within the scope of "imputable income" and hence the amount determined in terms of section 2(28A) is to be included in "income" by reason of clause (iii). ...Any amount, or any transaction, receipt or income to which the amount relates, which comes within the ambit of section 2(28A) cannot be (additionally) brought within the ambit of "income" by applying clause (ii). Mumtaz Hussain Khan vs Addl. Commissioner Inland Revenue and 4 others 2016 PTD 1667 [Sindh. HC]

**98. Primary burden of proving a receipt as income on the taxation officer**

The non-resident company was engaged in the business of providing investment and other services to its foreign clients. During the assessment year 2001-2002, it received certain payments from its agent Tapal Energy (Pvt.) Ltd. for providing services of

independent engineers and other consultants. The tax department claimed that the

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**Explanation (contd.)**

amount was taxable under section 12(5) as fee for technical services read with section 80(AA) of the repealed ordinance whereas the taxpayer claimed that the amounts were reimbursement of the expenses which were incurred by the taxpayer on behalf of its resident company, i.e. Tapal Energy (Pvt.) Ltd for arranging independent engineers and other consultants, whereas the taxpayer had not earned any income or profit whatsoever in respect of such payments. The Court held that the taxation officer did not consider the evidence available on record and could not discharge the onus, which primarily lies on the taxation officer to bring certain receipts within the definition of income. The Court agreed with the findings of the appellate authorities below that the re-imbursement was not income. It was held there was no question of law because there was a factual dispute created by the taxation officer with regard to nature of the receipt which has been elaborately dealt with by both the Appellate Forums in detail. CIT vs. King Pin Investment Ltd. 2017 PTD 1171 [Sindh HC]

**3. Ordinance to override other laws.-** The provisions of this Ordinance shall apply notwithstanding anything to the contrary contained in any other law for the time being in force.

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**Explanation**

**1. Consolidated Ordinance**

This section is in line with subtitle of the ordinance “an ordinance to consolidate and amend the law relating to income tax”.

**2. Tax Treaties**

Agreements of the Federal Government with foreign governments in accordance with section 107 of the ordinance and conditions specified in different notifications issued for implementing the agreement shall have overriding effect over other provisions of this ordinance and other laws.

**3. Exemptions given in other Laws**

Where conditions for exemption are given in another law, conditions for exemption may be seen with reference to that law. For example, a non-trading Modaraba is given exemption from tax provided that 90 % or more of its profits are distributed as dividend. The exemption is given in the Income Tax Ordinance, 2001, as well as and in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980. The profit referred in the Income Tax Ordinance, 2001 has to be construed as profit computed as per provisions of the Modaraba Ordinance and not as per Income Tax Ordinance which determines taxable income.

The proviso to section 54 which restricted application of Section 3 has been deleted in the Finance Act, 2008.

**4. Subsequent legislation- a help for existing legislation**

While discussing whether cooperatives societies were included in the definition of company under the clause “a body corporate formed by or under any law for the time being in force” in the repealed Ordinance or not, the Supreme Court observed that subsequent inclusion of cooperative societies by a positive act of legislation (section 80(2)(v) of the Income Tax Ordinance, 2001) is a conclusive proof of the fact that the same were not included in the earlier enactment (section 2(16) of the repealed Ordinance, 1979). CIT /WT Coy. Zone II, Lahore v. LCCHS, Lahore 2009 PTD 799 [SC]

**5. Special Law to prevail over general law**

- i. It is an elementary principle of law that where there is a conflict between special and general provision of law, the special provision shall prevail (reference is invited to the case of Lt. General (Retd.) Shah Rafi Alam v. Lahore Race Club, 2004 CLD 373.
- ii. The special law would prevail over general law regardless of timing until and unless the effect of a special law is nullified in the general law expressly, categorically and with clear words. 2004 PTD (Trib.) 204

**6. OGRA Ordinance vs. Income Tax Ordinance, 2001**

Accordingly, had section 8(5) of the OGRA Ordinance been extending any 'exemption' from income tax, on the basis of section 54 of the 2001 Ordinance, department could have made a valid case for denial of any such exemption to appellant and that too if it is held, that 2001 Ordinance was subsequent in time to OGRA Ordinance. Since, this is not a case of exemption, clearly the provisions of section 3 of the Ordinance assume the character of 'general provisions' whereas those contained in section 8(5) of the OGRA Ordinance are to be considered as 'special provisions' and have to be complied

with and given precedence over general provisions of section 3 of the 2001 Ordinance.

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**Explanation (contd.)**

The denial of deduction of GDS by the revenue could have again sustained if the provisions of the 2001 Ordinance had categorically disallowed the same by referring to section 8(5) of the OGRA Ordinance. This is clearly not the case. Here, in fact, section 8(5) of the OGRA Ordinance cautiously, expressly and knowingly treat the amount as an allowable deduction under section 20(1) of the 2001 Ordinance which had already been promulgated by the time OGRA Ordinance was legislated. Therefore, by reference to principle that special law shall prevail over the general law this amount has to be allowed to the appellant. 2014 PTD (Trib.) 397

**7. Special law vs. general law**

- i. Special law would prevail over general law regardless of timing until and unless the effect of a special law is nullified in the general law expressly, categorically and with clear words. 2004 PTD (Trib.) 204 rel. 2014 PTD (Trib.) 397
- ii. In the case of Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582) it was held that a special statute would prevail over the Income Tax Ordinance and consequently the provisions of Economic Reforms Ordinance, 1992 being subsequent in time and being special in their nature would prevail over the provisions of section 80(d) of the then Income Tax Ordinance, 1979 qua the protection given by the former Ordinance under section 6 thereof to the assesses.
- iii. In Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) wherein it has been held that the NAB Ordinance is a special law and hence would prevail over general laws. So also in the case of I.G. HQ Frontier Corps and others v. Ghulam Hussain and others (2004 SCMR 1397) it was held that a special statute overrides a general statute even though the latter may have been earlier in time. Quoted in Amjad Qadoos vs Chairman, National Accountability Bureau, (Nab), Islamabad and others 2014 PTD 525 [SC.Pak]