

CHAPTER III TAX ON TAXABLE INCOME

PART I COMPUTATION OF TAXABLE INCOME

9. Taxable income.- The taxable income of a person for a tax year shall be the total income [under clause (a) of section 10] of the person for the year reduced (but not below zero) by the total of any deductible allowances under Part IX of this Chapter of the person for the year.

10. Total Income.- The total income of a person for a tax year shall be the sum of the ²[]
³(a) Person's income under all heads of income for the year; and
(b) person's income exempt from tax under any of the provisions of this Ordinance.]

11. Heads of income.- (1) For the purposes of the imposition of tax and the computation of total income, all income shall be classified under the following heads, namely:-

- ✓ (a) Salary;
- ✓ (b) Income from Property;
- ✓ (c) Income from Business;
- ✓ (d) Capital Gains; and
- ✓ (e) Income from Other Sources.]

(2) Subject to this Ordinance, the income of a person under a head of income for a tax year shall be the total of the amounts derived by the person in that year that are chargeable to tax under the head as reduced by the total deductions, if any, allowed under this Ordinance to the person for the year under that head.

(3) Subject to this Ordinance, where the total deductions allowed under this Ordinance to a person for a tax year under a head of income exceed the total of the amounts derived by the person in that year that are chargeable to tax under that head, the person shall be treated as sustaining a loss for that head for that year of an amount equal to the excess.

(4) A loss for a head of income for a tax year shall be dealt with in accordance with Part VIII of this Chapter.

1 The words etc. inserted by the Finance Act, 2012.

2 Substituted for "person's income under each of the heads of income for the year." by the Finance Act, 2012.

3 Clauses (a) and (b) inserted by the Finance Act, 2012.

4 Clauses (b) to (e) substituted by the Finance Ordinance, 2002.

CASE LAW CITATION u/s 11: Ocean Pakistan Limited through Chief Executive Officer, Islamabad v. Additional Commissioner Inland Revenue, (Audit-I), Islamabad and 2 Others [2018 PTD 996 = (2019)119 TAX 333]; Commissioner Inland Revenue Zone-II, RTO, Hyderabad v. Jamshoro Power Company Ltd. [2017 PTD 237 (H.C.Kar.); S. Nasim Ahmed Shah and 115 others v. State Bank of Pakistan through Governor and another [2017 PTD 2029 (H.C.Kar.); Pakistan Industrial Development Corp. v. Federation of Pakistan [1992 PTD 576 = (1992) 65 TAX 84 (S.C.Pak.); Crescent Investment Bank Ltd. v. ITAT [2005 PTD 2599 = (2006) 93 TAX 172 (H.C.Lah.); Pakistan Industrial Development Corp. v. Federation of Pakistan [1992 PTD 576 = (1992) 65 TAX 84 (S.C.Pak.); General Bank of Netherlands Ltd. v. CIT, Central Karachi [1991 PTD 687 = (1991) 63 TAX 149 (S.C.Pak.); Karachi Sind Development Corporation v. CIT, West Zone, Karachi [1989 PTD 472 = (1989) 59 TAX 104 (H.C.Kar.) = PTCL 1990 CL. 210]; CIT, Lahore Zone, Lahore v. Mian Muhammad and Sons [1990 PTD 868 = (1990) 62 TAX 111 (H.C.Lah.); Evershine Paints v. CIT [1995 PTD 614 = (1995) 71 TAX 48 (H.C.Kar.)]. See our published book "INCOME TAX DIGEST".

LEGISLATIVE HISTORY: Section 11(1)-Substitution.-The substituted clauses (b) to (e) read as under:

- (b) income from property;
- (c) income from business;
- (d) capital gains; and
- (e) income from other sources."

(5) The income of a resident person under a head of income shall be computed by taking into account amounts that are Pakistan-source income and amounts that are foreign-source income.

(6) The income of a non-resident person under a head of income shall be computed by taking into account only amounts that are Pakistan-source income.

PART II

HEAD OF INCOME: SALARY

12. Salary.— (1) Any salary received by an employee in a tax year, other than salary that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Salary”.

(2) Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including -

(a) any pay, wages or other remuneration provided to an employee, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fees, gratuity or work condition supplements (such as for unpleasant or dangerous working conditions) ¹ [;]

² []

(b) any perquisite, whether convertible to money or not;

(c) the amount of any allowance provided by an employer to an employee including a cost of living, subsistence, rent, utilities, education, entertainment or travel allowance, but shall not include any allowance solely expended in the performance of the employee’s duties of employment;

(d) the amount of any expenditure incurred by an employee that is paid or reimbursed by the employer, other than expenditure incurred on behalf of the employer in the performance of the employee’s duties of employment;

(e) the amount of any profits in lieu of, or in addition to, salary or wages, including any amount received -

(i) as consideration for a person’s agreement to enter into an employment relationship;

(ii) as consideration for an employee’s agreement to any conditions of employment, or any changes to the employee’s conditions of employment.

¹ Substituted for the colon by the Finance Act, 2015. Earlier it was substituted for the Semi-colon by the Finance Act, 2009.

² Proviso omitted by the Finance Act, 2015. Earlier it was inserted by the Finance Act, 2009.

CASE LAW CITATION u/s 12. Muhammad Asif and Others v. The Federation of Pakistan ad Others [2017]116 TAX 335 = 2018 PTD 806f; District Headmasters/Principals Association District Mullan through President v. Federation of Pakistan [2015 PTD 1714 (H.C.Lah.) = PTCL 2015 CL. 832]; Sajjad Ali and others v. Secretary (Withholding Tax), Islamabad and 6 others [2012 PTD 1279 = (2012) 106 TAX 100 (H.C.Pesh.); Syed Nasir Ali and 33 others v. Pakistan through Secretary Ministry of Law, Islamabad and 3 others [2010 PTD 1924 = (2010) 102 TAX 132 (H.C.Kar.); CIT, Companies-II, Karachi v. Tariq Mohsin Siddiqui [2007 PTD 290 = (2007) 95 TAX 275 (H.C.Kar.); Employees Action Committee v. Govt. of Pakistan and others [2006 PTD 2875 = (2007) 95 TAX 100 (H.C.Lah.); Malik Muhammad Inam and others v. Federation of Pakistan and others [2006 PTD 2277 = (2007) 95 TAX 3 (S.C.Pak.) = PTCL 2007 CL. 206 = 2006 SCMR 1670f; CIT, Companies Zone-I, Lahore v. Khalid Sharif c/o Sargron Services Ltd., Lahore [2006 PTD 2630 (H.C.Lah.); See also published book “INCOME TAX DIGEST”.

LEGISLATIVE HISTORY: Section 12(2)(a) Proviso-Omission.—The omitted proviso read as under:—

“Provided that any bonus paid or payable to corporate employees receiving salary income of one million rupees or more (excluding bonus) in tax year 2010, shall be chargeable to tax at the rate provided in paragraph (2) of Division I of Part I of the First Schedule.”

- (iii) on termination of employment, whether paid voluntarily or under an agreement, including any compensation for redundancy or loss of employment and golden handshake payments;
- (iv) from a provident or other fund, to the extent to which the amount is not a repayment of contributions made by the employee to the fund in respect of which the employee was not entitled to a deduction; and
- (v) as consideration for an employee's agreement to a restrictive covenant in respect of any past, present or prospective employment;
- (f) any pension or annuity, or any supplement to a pension or annuity; and
- * (g) any amount chargeable to tax as "Salary" under section 14. →
- Where an employer agrees to pay the tax chargeable on an employee's salary, (3) the amount of the employee's income chargeable under the head "Salary" shall be grossed up by the amount of tax payable by the employer.
- (4) No deduction shall be allowed for any expenditure incurred by an employee in deriving amounts chargeable to tax under the head "Salary".
- (5) For the purposes of this Ordinance, an amount or perquisite shall be treated as received by an employee from any employment regardless of whether the amount or perquisite is paid or provided –
- (a) by the employee's employer, an associate of the employer, or by a third party under an arrangement with the employer or an associate of the employer;
- (b) by a past employer or a prospective employer; or
- (c) to the employee or to an associate of the employee [or to a third party under and agreement with the employee or an associate of the employee.]
- (6) An employee who has received an amount referred to in sub-clause (iii) of clause (e) of sub-section (2) in a tax year may, by notice in writing to the Commissioner, elect for the amount to be taxed at the rate computed in accordance with the following formula, namely:–

$$A/B\%$$

where –

A is the total tax paid or payable by the employee on the employee's total taxable income for the three preceding tax years; and

B is the employee's total taxable income for the three preceding tax years.

(7) Where –

(a) any amount chargeable under the head "Salary" is paid to an employee in arrears; and

(b) as a result the employee is chargeable at higher rates of tax than would have been applicable if the amount had been paid to the employee in the tax year in which the services were rendered,

¹ Words inserted by the Finance Ordinance, 2002.

the employee may, by notice in writing to the Commissioner, elect for the amount to be taxed at the rates of tax that would have been applicable if the salary had been paid to the employee in the tax year in which the services were rendered.

(8) An election under sub-section (6) or (7) shall be made by the due date for furnishing the employee's return of income or employer certificate, as the case may be, for the tax year in which the amount was received or by such later date as the Commissioner may allow.

13. Value of perquisites.-(1) For the purposes of computing the income of an employee for a tax year chargeable to tax under the head "Salary", the value of any perquisite provided by an employer to the employee in that year that is included in the employee's salary under section 12 shall be determined in accordance with this section.

(2) This section shall not apply to any amount referred to in clause (c) or (d) of sub-section (2) of section 12.

¹[(3) Where, in a tax year, a motor vehicle is provided by an employer to an employee wholly or partly for the private use of the employee, the amount chargeable to tax to the employee under the head "Salary" for that year shall include an amount computed as may be prescribed.]

²[]

(5) Where, in a tax year, the services of a housekeeper, driver, gardener or other domestic assistant is provided by an employer to an employee, the amount chargeable to tax to the employee under the head "Salary" for that year shall include the total salary paid to the domestic assistant ³[such house keeper, driver, gardener or other domestic assistant] in that year for services rendered to the employee, as reduced by any payment made ⁴[to the employer] for such services.

¹ Sub-section (3) substituted by the Finance Ordinance, 2002.

² Sub-section (4) omitted by the Finance Ordinance, 2002.

³ Substituted for "domestic assistant" by the Finance Ordinance, 2002.

⁴ Substituted for "by the employee" by the Finance Ordinance, 2002.

CASE LAW CITATION u/s 13: Muhammad Iqbal Ghori v. CIT, Karachi [2008 PTD 1075 = (2008) 98 TAX 80 (H.C.Kar.) = PTCL 2008 CL. 391]; CIT/WT, Companies Zone, Faisalabad v. Rana Asif Tauseef C/o Rana Hosiery & Textile Mills (Pvt.) Ltd., Faisalabad [2000 PTD 497 = (2000) 81 TAX 7 (H.C.Lah.); Commissioner Inland Revenue (Zone-IV) v. Saima Packaging (Pvt.) Ltd. [2017 PTD 2413 (H.C.Kar.); Fancy Foundation v. Commissioner of Income Tax, Karachi [2017 PTD 1687 (S.C.Pak.) = PTCL 2017 CL. 708 = 2017 SCMR 1395]; Commissioner of Income Tax Karachi v. Hassan Associates (Pvt.) Ltd. and another [2017 SCMR 1652]. See our published book "INCOME TAX DIGEST".

LEGISLATIVE HISTORY: Section 13(3)-Substitution.-The substituted sub-section (3) read as under:

"(3) Subject to sub-section (4), where, in a tax year, a motor vehicle is provided by an employer to an employee wholly or partly for the private use of the employee, the amount chargeable to tax to the employee under the head "Salary" for that year shall include the amount computed in accordance with the following formula, namely:-

where,

A is the cost to the employer of acquiring the motor vehicle or, if the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease;

B is -

(a) where the vehicle is wholly for private use, fifteen per cent;

(b) where the vehicle is only partly for private use, seven and a half per cent; and
any payment made by the employee for the use of the motor vehicle or for its running costs."

(Ax B) - C

(b) "services" includes the provision of any facility; and

(c) "utilities" includes electricity, gas, water and telephone.]

14. Employee share schemes.-(1) The value of a right or option to acquire shares under an employee share scheme granted to an employee shall not be chargeable to tax.

(2) Subject to sub-section (3), where, in a tax year, an employee is issued shares under an employee share scheme including as a result of the exercise of an option or right to acquire the shares, the amount chargeable to tax to the employee under

1 Sub-section (12) substituted by Finance Ordinance, 2002.

2 The words etc. inserted by the Finance Ordinance, 2002.

3 Sub-section (14) substituted by the Finance Ordinance, 2002.

4 Substituted for "such rate, if any, as the Federal Government may, by notification, specify" by the Finance Act, 2002.

Section 13(12)-Substitution.-The substituted sub-section (12) read as under:

"(12) Where, in a tax year, accommodation or housing is provided by an employer to an employee, the amount chargeable to tax to the employee under the head "Salary" for that year shall include -

(a) where the employer or an associate owns the accommodation or housing, the fair market rent of the accommodation or housing; or

(b) in any other case, the rent paid by the employer for the accommodation or housing, as reduced by the amount of any payment made by the employee for the accommodation or housing."

Section 13(14)-Substitution.-The substituted sub-section (14) read as under:

"(14) In this section, "benchmark rate" means the State Bank of Pakistan discount rate at the commencement of the tax year; "services" includes the making available of any facility; and "utilities" includes electricity, gas, water and telephone."

head “Salary” for that year shall include the fair market value of the shares determined at the date of issue, as reduced by any consideration given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire the shares.

(3) Where shares issued to an employee under an employee share scheme are subject to a restriction on the transfer of the shares -

(a) no amount shall be chargeable to tax to the employee under the head “Salary” until the earlier of -

(i) the time the employee has a free right to transfer the shares; or

(ii) the time the employee disposes of the shares; and

(b) the amount chargeable to tax to the employee shall be the fair market value of the shares at the time the employee has a free right to transfer the shares or disposes of the shares, as the case may be, as reduced by any consideration given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire the shares.

PART III HEAD OF INCOME: INCOME FROM PROPERTY

15. Income from property.-(1) The rent received or receivable by a person¹ [for] a tax year, other than rent exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head "Income from Property".

(2) Subject to sub-section (3), "rent" 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.

(3) This section shall not apply to any rent received or receivable by any person in respect of the lease of a building together with plant and machinery and such rent shall be chargeable to tax under the head "Income from Other Sources".

²[(3A) Where any amount is included in rent received or receivable by any person for the provision of amenities, utilities or any other service connected with the renting of the building such amount shall be chargeable to tax under the head "Income from Other Sources".]

(4) Subject to sub-section (5), where the rent received or receivable by a person is less than the fair market rent for the property, the person shall be treated as having derived the fair market rent for the period the property is let on rent in the tax year.

(5) Sub-section (4) shall not apply where the fair market rent is included in the income of the lessee chargeable to tax under the head "Salary".

³[(6) Income under this section derived by an individual or an association of persons shall be liable to tax at the rate specified in Division VIA of Part I of the First Schedule.

(7) The provisions of sub-section (1), shall not apply in respect of an individual or association of persons who derive income chargeable to tax under this section not exceeding two hundred thousand rupees in a tax year and does not derive taxable income under any other head.]

[15A. Deductions in computing income chargeable under the head "Income from Property".- (1) in computing the income of a [company] chargeable to tax under the head "Income from Property" for a tax year, a deduction shall be allowed for the following expenditures or allowances, namely:—

¹ Substituted for the word "in" by the Finance Act, 2003.

² Sub-section (3A) inserted by the Finance Act, 2003.

³ Sub-sections (6) & (7) inserted by the Finance Act, 2016. Earlier different sub-sections (6) & (7) omitted by the Finance Act, 2013. Earlier it was inserted by the Finance Act, 2006.

⁴ Section 15A inserted by the Finance Act, 2013.

⁵ Substituted for the word "person" by the Finance Act, 2016.

CASE LAW CITATION u/s 15: CIT/MT, Sialkot Zone v. Magbool Ahmed Gill [2007 PTD 1757 = (2007) 96 TAX 165 (H.C.Lah.)); Mehran Associates Ltd. v. CIT, Karachi [1993 PTD 69 = (1992) 66 TAX 246 (S.C.Pak.); Miss. Babra Sharif v. CIT [1994 PTD 79 = (1993) 68 TAX 124 (H.C.Lah.) = PTCL 1994 CL 167]; CIT, Central Zone 'C', Karachi v. M. Hussain Ahmad [1992 PTD 30 = (1991) 65 TAX 129 (H.C.Kar.); CIT Central Zone-D, Karachi v. Muhammad Sardar [2005 PTD 1040 = (2005) 91 TAX 467 (H.C.Kar.)], see our published book "INCOME TAX DIGEST".

LEGISLATIVE HISTORY: Section 15(6) & (7)-Omission.-Before omission by the Finance Act, 2013. Sub-sections (6) & (7) read as under:—

"(6) Income under this section shall be liable to tax at the rate specified in Division VI of Part I of the First Schedule.

(7) The provisions of sub-section (1), shall not apply in respect of a taxpayer who:—

- (i) is an individual or association of persons;
- (ii) derives income chargeable to tax under this section not exceeding Rs. 150,000 in a tax year; and
- (iii) does not derive taxable income under any other head."

Section 15A(1)(X)(i)

- (a) In respect of repairs to a building, an allowance equal to one-fifth of the rent chargeable to tax in respect of the building for the year, computed before any deduction allowed under this section;
- (b) any premium paid or payable by the [company] in the year, computed building against the risk of damage or destruction;
- (c) any local rate, tax, charge, or cess in respect of the property or the rent from the property paid or payable by the [company] to any local authority or government in the year, not being any tax payable under this Ordinance;
- (d) any ground rent paid or payable by the [company] in the year in respect of the property;
- (e) any profit paid or payable by the [company] in the year on any money borrowed including by way of mortgage, to acquire, construct, renovate, extend, or reconstruct the property; *Mark cap, interest.*
- (f) where the property has been acquired, constructed, renovated, extended, or reconstructed by the [company] with capital contributed by the House Building Finance Corporation or a scheduled bank under a scheme of investment in property on the basis of sharing the rent made by the Corporation or bank, the share in rent and share towards appreciation in the value of property (excluding the return of capital, if any) from the property paid or payable by the [company] to the said Corporation or the bank in the year under that scheme, *Mark cap, interest.*
- (g) where the property is subject to mortgage or other capital charge, the amount of profit or interest paid on such mortgage or charge;
- ²(h) any expenditure, not exceeding six per cent of the rent chargeable to tax in respect of the property for the year computed before any deduction allowed under this section, paid or payable by the [company] in the year wholly and exclusively for the purpose of deriving rent chargeable to tax under the head, "Income from Property" including administration and collection charges;
- (i) any expenditure paid or payable by the [company] in the tax year for legal services acquired to defend the [company]'s title to the property or any suit connected with the property in a Court; and
- (j) where there are reasonable grounds for believing that any unpaid rent in respect of the property is irrecoverable, an allowance equal to the unpaid rent where—
- (i) the tenancy was bona fide, the defaulting tenant has vacated the property or steps have been taken to compel the tenant to vacate the property, and the defaulting tenant is not in occupation of any other property of the [company];

substituted for the word "person" by the Finance Act, 2016.

se (h) substituted by the Finance Act, 2015.

5A(1)(h)-Substitution.—The substituted clause (h) read as under:—

(h) any expenditure (not exceeding six per cent of the rent chargeable to tax in respect of the property for the year computed before any deduction allowed under this section) paid or payable by the [company] in the tax year wholly and exclusively for the purpose of deriving rent chargeable to tax under the head, "Income from Property" including administration and collection charges;

PART IV
HEAD OF INCOME: INCOME FROM BUSINESS

Division I

Income from Business

18. Income from business.-(1) The following incomes of a person for a tax year, other than income exempt from tax under this Ordinance, shall be chargeable to tax under the head "Income from Business" -

- ①
- (a) the profits and gains of any business carried on by a person at any time in the year;
 - (b) any income derived by any trade, professional or similar association from the sale of goods or provision of services to its members;
 - (c) any income from the hire or lease of tangible movable property; →
 - (d) the fair market value of any benefit or perquisite, whether convertible into money or not, derived by a person in the course of, or by virtue of, a past, present, or prospective business relationship ²[.]
- ³[Explanation.—For the purposes of this clause, it is declared that the word 'benefit' includes any benefit derived by way of waiver of profit on

*Req. Basis
Commission
of 1/6/12*

1 Section 17 omitted by the Finance Act, 2006.
2 Semi-colon and word "and" substituted by the Finance Act, 2011.
3 Explanation inserted by the Finance Act, 2011.

CASE LAW CITATION u/s 18: Wisal Kamal Fabrics (Pvt.) Ltd., Lahore v. Commissioner Inland Revenue, Lahore and another [2019 PTD 1077]; Farrukh Shahzad v. Commissioner Inland Revenue (Legal) RTO, Rawalpindi and Others [2019 SCMR 1375 = 2018 PTD 2009 = (2019)119 TAX 210 = 2019 PTCL 286]; Commissioner of Income Tax (Legal) Islamabad v. Messrs Askari Commercial Bank Limited, Rawalpindi [2018 PTD 1089 = 2018 PTCL 832]; American Express Bank Ltd. Karachi v. CIT, Companies I, Karachi. [2009 PTD 1791 = (2010) 101 TAX 40 (H.C.Kar.) = PTCL 2011 CL. 38]; Central, Karachi v. Habib Bank Executors & Trustees Co. Karachi [(1986) 53 TAX 59 (S.C.Pak.)]; CIT, Central, Karachi v. Fa Cotton Ginning and Pressing Industries Ltd. and another [1991 PTD 573 = (1991) 63 TAX 120 (S.C.Pak.)]; CIT/WT, Companies Zone, Peshawar v. Sarhad Development Authority, Peshawar [2008 PTD 270 = (2008) 97 TAX 55 (H.C.Pesh.) = PTCL 2008 CL. 305]; Lucky Cement Ltd. v. CIT, Companies Zone, Circle-5, Peshawar [2006 PTD 578 = (2006) 94 TAX 59 (H.C.Pesh.)]. See published book "INCOME TAX DIGEST".

LEGISLATIVE HISTORY: Section 17-Omission.-The omitted section 17 read as under:

"17. Deductions in computing income chargeable under the head "Income from Property".-(1) In computing the income of a person chargeable to tax under the head "Income from Property" for a tax year, a deduction shall be allowed for the following expenditures or allowances, namely:-

- (a) In respect of repairs to a building, an allowance equal to one-fifth of the rent chargeable to tax in respect of the building for the year, computed before any deduction allowed under this section;
- (b) any premium paid or payable by the person in the year to insure the building against the risk of damage or destruction;

debt or the debt itself under the State Bank of Pakistan, Banking Policy Department's Circular No. 29 of 2002 or in any other scheme issued by the State Bank of Pakistan;]

(e) any management fee derived by a management company (including a modaraba [management company].)

²[*Explanation.*— For the removal of doubt it is clarified that income subject to taxation under sections 5A, 5AA, 6, 7 and 7A shall not be chargeable to tax under this section.]

(2) Any profit on debt derived by a person where the person's business is to derive such income shall be chargeable to tax under the head "Income from Business" and not under the head "Income from Other Sources".

³[(3) Where a ⁴[lesser], being a scheduled bank or an investment bank or a development finance institution or a modaraba or a leasing company has leased out any asset, whether owned by it or not, to another person, any amount paid or payable by the said person in connection with the lease of said asset shall be treated as the income of the said ⁴[lesser] and shall be chargeable to tax under the head "Income from Business".]

⁵[(4) Any amount received by a banking company or a non-banking finance company, where such amount represents distribution by a mutual fund ⁶[or a Private Equity and Venture Capital Fund] out of its income from profit on debt, shall be chargeable to tax under the head "Income from Business" and not under the head "Income from Other Sources".]

19. Speculation business.-(1) Where a person carries on a speculation business —

- (a) that business shall be treated as distinct and separate from any other business carried on ⁷[by] the person;
- (b) this Part shall apply separately to the speculation business and the other business of the person;
- (c) section 67 shall apply as if the profits and gains arising from a speculation business were a separate head of income;
- (d) any profits and gains arising from the speculation business for a tax year computed in accordance with this Part shall be included in the person's income chargeable to tax under the head "Income from Business" for that year; and
- (e) any loss of the person arising from the speculation business sustained for a tax year computed in accordance with this Part shall be dealt with under section 58.

¹ Words etc. inserted by the Finance Ordinance, 2002.

² Explanation inserted by the Finance Act, 2018.

³ Sub-section (3) inserted by the Finance Act, 2003.

⁴ Substituted for the word "lesser" by the Finance Act, 2014.

⁵ Sub-section (4) inserted by the Finance Act, 2003.

⁶ Words inserted by the Finance Act, 2007.

⁷ The word inserted by the Finance Ordinance, 2002.

(2) In this section, “speculation business” means any business in which a contract for the purchase and sale of any commodity (including ¹[stocks] 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 jobbing ²[arbitrage] to guard against any loss which may arise in the ordinary course of the person’s business as such member.

Division II

Deductions: General Principles

✓ 20. Deductions in computing income chargeable under the head “Income from Business”.- (1) Subject to this Ordinance, in computing the income of a person chargeable to tax under the head “Income from Business” for a tax year, a deduction shall be allowed for any expenditure incurred by the person in the year ³[wholly and exclusively for the purposes of business].

where animals which have been used for the purposes of agriculture, horticulture, stock raising, or become

one year or is pre-commencement expenditure, the person must depreciate or amortise the expenditure in accordance with sections 22, 23, 24 and 25.

¹[(3) Subject to this Ordinance, where any expenditure is incurred by an amalgamated company on legal and financial advisory services and other administrative cost relating to planning and implementation of amalgamation, a deduction shall be allowed for such expenditure.]

21. Deductions not allowed.- Except as otherwise provided in this Ordinance, no deduction shall be allowed in computing the income of a person under the head "Income from Business" for -

(a) any cess, rate or tax paid or payable by the person in Pakistan or a foreign country that is levied on the profits or gains of the business or assessed as a percentage or otherwise on the basis of such profits or gains;

(b) any amount of tax deducted under Division III of Part V of Chapter X from an amount derived by the person;

²[(c) any expenditure from which the person is required to deduct or collect tax under Part V of Chapter X or Chapter XII, unless the person has paid or deducted and paid the tax as required by Division IV of Part V of Chapter X;

Provided that disallowance in respect of purchases of raw materials and finished goods under this clause shall not exceed twenty per cent of purchases of raw materials and finished goods:

Provided further that recovery of any amount of tax under sections 161 or 162 shall be considered as tax paid.]

Section 21(l)

(b) expenditures on account of –

- (i) utility bills;
- (ii) freight charges;
- (iii) travel fare;
- (iv) postage; and
- (v) payment of taxes, duties, fee, fines or any other statutory obligation;]

(m) any salary paid or payable exceeding ¹[fifteen] thousand rupees per month other than by a crossed cheque or direct transfer of funds to the employee's bank account; ²[]

(n) except as provided in Division III of this Part, any expenditure paid or payable of a capital nature ³[; and]

⁴[(o) any expenditure in respect of sales promotion, advertisement and publicity in excess of ⁵[ten] per cent of turnover incurred by pharmaceutical manufacturers.]

commenced, and

“percentage of completion method” means the generally accepted accounting principle under which revenue and expenses arising under long-term contract are recognised by reference to the stage of completion of the contract, as modified by sub-section (2).

PART V

HEAD OF INCOME: CAPITAL GAINS

37. Capital gains.- (1) Subject to this Ordinance, a gain arising on the disposal of a capital asset by a person in a tax year, other than a gain that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Capital Gains”.

¹[(1A) Notwithstanding anything contained in sub-sections (1) and (3), gain ²[under sub-sections (3A) and (3B)], ³[] by a person in a tax year, shall be chargeable to tax in that year under the head Capital Gains at the rates specified in Division VIII of Part I of the First Schedule.]

- 1 Sub-section (1A) inserted by the Finance Act, 2012.
- 2 Substituted for the words “arising on the disposal of immovable property” by the Finance Act, 2019.
- 3 Words and comma “held for a period up to two years,” omitted by the Finance Act, 2014.

CASE LAW CITATION vs 37: Farrukh Shahzad v. CIR (Legal) RTO, Rawalpindi and Others [2018 SCMR 1375 = 2011 PTD 2009 = (2019)119 TAX 210 = 2019 PTCL 286]; Lalazar Shipping (Pvt.) Ltd. v. CIT [2011 PTD 637 = (2011) 103 TAX 347 (H.C.Kar.) = PTCL 2011 CL. 733]; CIT v. Mahmood Ali [2008 PTD 82 = (2008) 97 TAX 194 (H.C.Lah.) = PTCL 2008 CL. 211]; CIT, Companies-I, Karachi v. National Bank of Pakistan, Karachi [2007 PTD 1670 = (2007) 96 TAX 177 (H.C.Kar.)]; Model Town Society Ltd. v. ITAT and others [2006 PTD 2456 (S.C.Pak.) = PTCL 2007 CL. 188 = 2006 SCMR 1867]; Crescent Investment Bank Ltd. v. ITAT [2005 PTD 2599 = (2006) 93 TAX 172 (H.C.Lah.)]; Ebrahim Brothers (Pvt. Ltd. v. CIT, Karachi [1992 PTD 1693 = (1992) 66 TAX 6 (S.C.Pak.)]; Julian Hoshang Dinshaw Trust & others v. ITO, Circle XVIII, South Zone, Karachi South [1992 PTD 1 = (1992) 65 TAX 102 (S.C.Pak.) = PTCL 1992 CL. 181 = 1992 SCMR 250]. See our published book “INCOME TAX DIGEST”.

(2) Subject to sub-sections (3) and (4), the gain arising on the disposal of a capital asset by a person shall be computed in accordance with the following formula, namely:—

$$A - B$$

where —

A is the consideration received by the person on disposal of the asset; and
B is the cost of the asset.

(3) Where a capital asset has been held by a person for more than one year,¹ [other than shares of public companies including the vouchers of Pakistan Telecommunication Corporation, modaraba certificates or any instrument of redeemable capital as defined in the Companies Ordinance, 1984 (XLVII of 1984),] the amount of any gain arising on disposal of the asset shall be computed in accordance with the following formula, namely:—

$$A \times \frac{3}{4}$$

where A is the amount of the gain determined under sub-section (2).

²[(3A) Notwithstanding anything contained in sub-section (3), the amount of any gain arising on disposal of immovable property being an open plot shall be computed in accordance with the formula specified in the Table below, namely:—

TABLE

S.No.	Holding Period	Gain
(1)	(2)	(3)
1.	Where the holding period of open plot does not exceed one year	A
2.	Where the holding period of open plot exceeds one year but does not exceed eight years	A x 3/4
3.	Where the holding period of open plot exceeds eight years	0

where A is the amount of the gain determined under sub-section (2).

(3B) Notwithstanding anything contained in sub-section (3), the amount of any gain arising on disposal of immovable property being a constructed property shall be computed in accordance with the formula specified in the Table below, namely:—

TABLE

S.No.	Holding Period	Gain
(1)	(2)	(3)
1.	Where the holding period of constructed property does not exceed one year	A
2.	Where the holding period of constructed property exceeds one year but does not exceed four years	A x 3/4
3.	Where the holding period of constructed property exceeds four years	0

where A is the amount of the gain determined under sub-section (2).]

¹ The words etc. inserted by the Finance Act, 2010.

² Sub-section 3A & 3B inserted by the Finance Act, 2019.

...succeeding the tax year for which the loss was first computed.]

38. Deduction of losses in computing the amount chargeable under the head "Capital Gains".-(1) Subject to this Ordinance, in computing the amount of a person chargeable to tax under the head "Capital Gains" for a tax year, a deduction shall be allowed for any loss on the disposal of a capital asset by the person in the year.

(2) No loss shall be deducted under this section on the disposal of a capital asset where a gain on the disposal of such asset would not be chargeable to tax.

(3) The loss arising on the disposal of a capital asset by a person shall be computed in accordance with the following formula, namely:—

A - B

where -

A is the cost of the asset; and

B is the consideration received by the person on disposal of the asset.

(4) The provisions of sub-section (4) of section 37 shall apply in determining component A of the formula in sub-section (3).

(5) No loss shall be recognized under this Ordinance on the disposal of the following capital assets, namely:—

- (a) A painting, sculpture, drawing or other work of art;
- (b) jewellery;
- (c) a rare manuscript, folio or book;
- (d) a postage stamp or first day cover;
- (e) a coin or medallion; or
- (f) an antique.

- ¹[(1) any amount received by a person from Approved Income Payment Plan or Approved Annuity Plan under Voluntary Pension System Rules, 2005² [(-)] subject to sub-section (3), any amount or fair market value of any property received without consideration or received as gift, other than gift received from grandparents, parents, spouse, brother, sister, son or a daughter.]

⁴[]

(2) Where a person receives an amount referred to in clause (k) of sub-section (1), the amount shall be chargeable to tax under the head "Income from Other Sources" in the tax year in which it was received and the following nine tax years in equal proportion.

(3) Subject to sub-section (4), any amount received as a loan, advance, deposit⁵ [for issuance of shares] or gift by a person in⁶ [a tax year] from another person (not being a banking company or financial institution) otherwise than by a crossed cheque drawn on a bank or through a banking channel from a person holding a National Tax Number⁷ or a shall be treated as income chargeable to tax under the head "Income from Other Sources" for the tax year in which it was received.

(4) Sub-section (3) shall not apply to an advance payment for the sale of goods or supply of services.

⁸[(4A) Where -

- (a) any profit on debt derived from investment in National Savings Deposit Certificates including Defence Savings Certificate paid to a person in arrears or the amount received includes profit chargeable to tax in the tax year or years preceding the tax year in which it is received; and
- (b) as a result the person is chargeable at higher rate of tax than would have been applicable if the profit had been paid to the person in the tax year to which it relates,

the person may, by notice in writing to the Commissioner, elect for the profit to be taxed at the rate of tax that would have been applicable if the profit had been paid to the person in the tax year to which it relates.]

⁹[(4B) An election under sub-section (4A) shall be made by the due date for furnishing the person's return of income for the tax year in which the amount was received or by such later date as the Commissioner may allow by an order in writing.]

- 1 Clause (l) inserted by the Finance Act, 2005.
- 2 Substituted for the full-stop by the Finance Act, 2019. Earlier it was substituted for "; and" by the Finance Act, 2018. Earlier the word "and" inserted by the Finance Act, 2014.
- 3 Clause (la) inserted by the Finance Act, 2019.
- 4 Clause (m) omitted by the Finance Act, 2018. Earlier it was inserted by the Finance Act, 2003.
- 5 The words inserted by the Finance Act, 2018. Earlier it was inserted by the Finance Act, 2014.
- 6 Substituted for the words "an income year" by the Finance Ordinance, 2002.
- 7 The word "Card" omitted by the Finance Act, 2006.
- 8 Sub-section (4A) inserted by the Finance Act, 2003.
- 9 Sub-section (4B) inserted by the Finance Act, 2003.

LEGISLATIVE HISTORY: Section 39(1)(m)-Omission.-The omitted clause (m) read as under:

"(m) income arising to the shareholder of a company, from the issuance of bonus shares."

(5) This section shall not apply to any income received by a person in a tax year that is chargeable to tax under any other head of income or subject to tax under section 5, 6 or 7.

40. Deductions in computing income chargeable under the head "Income from Other Sources".-(1) Subject to this Ordinance, in computing the income of a person chargeable to tax under the head "Income from Other Sources" for a tax year, a deduction shall be allowed for any expenditure paid by the person in the year to the extent to which the expenditure is paid in deriving income chargeable to tax under that head, other than expenditure of a capital nature.

(2) A person receiving any profit on debt chargeable to tax under the head "Income from Other Sources" shall be allowed a deduction for any Zakat paid by the person² [] under the Zakat and Ushr Ordinance, 1980 (XVIII of 1980), at the time the profit is paid to the person.

(3) A person receiving income referred to in clause³ [] (f) of sub-section (1) of section 39 chargeable to tax under the head "Income from Other Sources" shall be allowed -

- (a) a deduction for the depreciation of any plant, machinery or building used to derive that income in accordance with section 22; and
- (b) an initial allowance for any plant or machinery used to derive that income in accordance with section 23.

(4) No deduction shall be allowed to a person under this section to the extent that the expenditure is deductible in computing the income of the person under another head of income.

(5) The provisions of section 21 shall apply in determining the deductions allowed to a person under this section in the same manner as they apply in determining the deductions allowed in computing the income of the person chargeable to tax under the head "Income from Business".

⁴[(6) Expenditure is of a capital nature if it has a normal useful life of more than one