

Assets Declaration Ordinance 2019, Immovable property allowed to be declared at rate of 2.25pc

ISLAMABAD: The undeclared domestic immovable property has been allowed to be declared at the effective rate of 2.25 percent under the Assets Declaration Ordinance 2019.

According to the comments of Member Tax Reform Commission (TRC) Ashfaq Tola on the Assets Declaration Ordinance 2019 issued here on Wednesday, domestic immovable property has been offered to be declared effectively at 2.25% (i.e. 150% of FBR value X 1.5% tax rate). This is a huge concession as currently any purchaser of immovable property has to pay taxes equivalent to approximately 3% at least (advance income tax, stamp duties, etc). Meagre 2.25% penalty to declare the immovable property will be discriminatory to compliant citizens.

The rates for domestic immovable properties have been prescribed at 2.25% effectively. For example, if the FBR prescribed value of a property is Rs 10,000,000 then the same will be required to be declared at Rs 15,000,000 minimum. The tax at 1.5% will be required to be paid on value of Rs 15,000,000 instead of Rs 10,000,000 which will be Rs 225,000. Therefore, effective rate of tax will become (Rs 225,000/Rs 10,000,000) 2.25%.

He said that the public companies as defined in ITO 2001 have been excluded from availing the benefit of declaration. Public company has been defined in section 2(47) of the ITO which means: A listed company; b. A company in which 50% or more shares are held by federal or provincial government; a foreign government and a foreign company wholly owned by a foreign government and a unit trust including mutual fund.

This means other companies, such as private companies, etc, are eligible to avail the amnesty. There will be complications for auditors of such companies who had already audited the financial statements of such companies and had provided an unqualified opinion. There may also be litigations against such auditors by shareholders who had relied upon such audit reports in past. Therefore, to avoid complications, all the companies as defined in section 80(2)(b) of ITO shall be barred from availing the scheme, the tax expert said.

The tax expert said that the dependents of a public office holder have been barred from availing the scheme. However, no mechanism has been provided to ascertain such dependency. This may lead to frivolous litigations as well as triggering constitutional embargo of equal rights as every citizen has equal rights and cannot be barred from his rights due to his/her blood relation with other citizen.

The definition of holder of public office creates ambiguity as the same has been referred from Voluntary Declaration of Domestic Assets Act, 2018 ("Act 2018") which includes holder of public office during "ten preceding years". It is unclear whether the duration of ten preceding years commences from promulgation of Act 2018 or this ordinance, Ashfaq Tola said.

With respect to undeclared bank accounts, it has not been made clear whether the values taken should be closing balances or the credit entries. It transpires from the language of the relevant

provisions of the ordinance that closing balance is to be accounted for. However, tax rate should be applicable on credit entries instead of closing balance. Closing balances of undeclared bank accounts are mostly virtually nil, as these bank accounts are used to perform transactions only as witnessed in joint investigation report of recent fake accounts case.

Cash balances are required to be deposited in bank account and are required to be maintained therein up to 30 June 2019. The time limit for maintaining such balance is too short and may lead to future whitening of black or untaxed money as cash may be borrowed from informal channels for two months and may be deposited into bank accounts, he added.

Repatriation of foreign assets should be allowed a timeframe of at least six months instead of repatriation (if opted by declarant) on or before declaration as repatriation involves legal complications in maturity/redemption of long-term investments such as investments in insurance policies, securities, debentures, mutual funds, etc.

No mechanism has been provided in case any declarant intends to revise his declaration within time frame. "We expect the same will be incorporated in the rules," he said.

There may be cases where a declarant has under-declared assets under Act 2018. If he opts to declare the same assets at increased values under this ordinance, a question may arise as to what would be the fate of his declaration under Act 2018 as according to Act 2018, such re-declaration is tantamount to mis-declaration, which in turn nullifies his declaration under Act 2018.

It has been provided that any amount of tax or default surcharge paid under the ordinance shall not be refundable. However, excess tax or default surcharge erroneously paid should be made refundable, he suggested.

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