

A New Amnesty Scheme: “ Assets Declaration Ordinance, 2019”



Zafar Iqbal Kalanauriⁱ

The present PTI government headed by Imran Khan, while it was sitting in opposition, had criticised every tax amnesty scheme that the previous PML-N government had introduced; the accusation then was that these amnesties gave a clean chit to tax evaders. In power, faced with the unmovable mass of Pakistan's tax apparatus, the PTI has launched its own tax amnesty scheme. Faced with a Rs270 billion shortfall in tax collection this fiscal year, it is clear that being in power is teaching the PTI new lessons. The government appears to be in hot water, both politically and economically. The economic initiatives it has taken have not been effective. It has failed to resolve the issues, which it promised to overcome. Apparently, it also failed to keep its promise of not turning to the IMF to bail Pakistan out of a current account deficit. The scheme gave the tax dodgers a chance to come clean through what can be dubbed a 'generous' amnesty scheme for undeclared local and foreign assets.

Globally a lot of countries have launched such money-whitening schemes in the past and have reaped dividends. The critics of the schemes should bear in mind that over 25 countries have tried this course-and, in some cases, more than once. In Pakistan, too, it is the eleventh time since 1958 that amnesty has been offered to net assets that have escaped the tax net.

Following are some of the precedents in this context:

In October 2016, the Indian tax amnesty had drawn \$9.8 billion in asset declarations. A four-month amnesty for tax evaders in India resulted in the declaration of hidden assets worth nearly \$10 bn. The Income Declaration Scheme, allowed citizens to report assets previously undeclared to the tax authorities, without risk of prosecution. A charge of 45 per cent was to be levied on the assets declared under the scheme. The scheme implied a boost to government revenue of Rs294 billion. The amnesty attracted 64,275 declarations, with the average amount declared standing at Rs10.2 million. The initiative followed a similar one launched in 1997 that yielded revenue of Rs97.6 billion. In 2014 that 30 to 40 per cent of Indian real estate transactions involved an illicit cash payment. Firm progress in reducing tax evasion boosted the credibility of Mr Modi's government, which made this a key part of its 2014 election manifesto. The US-based group Global Financial Integrity has estimated that Indians sent \$343 bn of assets abroad illicitly between 2002 and 2011.

Innumerable American states have had tax amnesties.

For example, the Los Angeles administration had collected \$18.6 million in its 2009 tax amnesty programme, claiming that the amount was \$8.6 million more than was expected and that businesses saved \$6.7 million in penalties. The state of Louisiana had brought in \$450 million from its 2009 tax amnesty programme, three times more than what was expected.

On June 26, 2012, the United States Internal Revenue Service (IRS), which is the nation's tax collection agency, had said its off-shore voluntary disclosure programmes had collected more than \$5 billion in back taxes, interest and penalties from 33,000 voluntary disclosures made under the first two programmes.

According to reports of the Reuters, Financial Times, the New York Times, Canadian Tax Amnesty Service and the Wall Street Journal etc., the United States Internal Revenue Service, the Boston Globe and the Sydney Morning Herald etc., during 2014, an amnesty scheme was offered in Australia, prompting thousands of rich Australian to come forward to declare billions of dollars in untaxed assets and income stashed in bank accounts in Switzerland and in other countries. The vast majority of voluntary disclosures were related to income and shares.

In Canada, a tax amnesty scheme called the "Voluntary Disclosure Programme" already exists for income tax and Excise related offences. The Canada Revenue Agency has given this relief for a 10-year period prior to the

date of filing and covers unfiled tax returns and unfiled information returns such as offshore asset form. Eligible taxpayers receive full penalty relief, and avoid any possible tax evasion prosecution.

In Belgium, during 2004, the country's legislative house had adopted a law allowing individuals subject to Belgian income tax to regularize the undeclared, or untaxed, assets they held before June 1, 2003.

In 2004, Germany had also granted a tax amnesty in connection with tax evasion.

The largest Islamic country, Indonesia, had netted about \$9.61 billion in March 2017. The country had previously given such incentives in 1964, 1984 and 2008 also.

In 2003, South Africa had enacted the Exchange Control Amnesty and Amendment of Taxation Laws Act, a tax amnesty.

In 2012, the Spanish government had announced a tax evasion amnesty for undeclared assets or those hidden in tax havens. Repatriation was allowed by paying a 10 percent tax, with no criminal penalty.

Italy had first introduced a tax amnesty in 2001. In 2009, the Italian tax amnesty subjected repatriated assets to a flat tax of 5 per cent and succeeded in whitening a huge amount. About 80 billion Euros in assets were declared, which resulted in tax revenues of 4 Billion Euros. The Bank of Italy had estimated that Italian citizens held around 500 billion Euros in undeclared funds outside the country.

In 2007, a Russian tax amnesty programme had collected \$130 million in the first six months. The Russian programme, however, was not open to anyone previously convicted of tax crimes such as tax evasion.

On September 30, 2010, the government of Greece had granted tax amnesty to millions of Greek citizens by paying just 55 percent of the outstanding debts.

Under an initiative of the Organisation for Economic Cooperation and Development (OECD), 104 countries have signed an agreement, the Standard for Automatic Exchange of Financial Information in Tax Matters¹, to share the banking information of their citizens. They have made it mandatory for depositors from foreign countries to share their national tax numbers (NTN) with banks.

This was done to curb tax avoidance and evasion in the countries that are signatories to this agreement. However, it is not clear whether inter-government information-sharing will be done only upon request, or otherwise. It is also unclear from the documents whether the information would be shared only in cases where the aggregate deposit is over USD \$250,000.

The government's amnesty offer is that if people bring their foreign currency deposits into the country, they will have to pay 4 per cent tax. However, if they prefer to maintain their account abroad, they will have to declare their total assets and give 6 per cent tax to whiten these assets.

Those who have been maintaining foreign currency accounts abroad have been done a favour by the government. The new banking laws and the OECD agreement have made it difficult for them to maintain their accounts in other countries, especially after Pakistan was been put on the grey list by the FATF (Financial Action Task Force) regime.

Some tax experts are of the view that once people who have accounts abroad are comfortable with the legal cover, they might transfer money back to their home country. But the realistic estimate is that it might get Pakistan an inflow of around \$2 billion to \$5 billion, a much-needed sum in the face of the current account deficit.

One of the biggest factors here would be to trust the government and, more so, the FBR officials who have gained the reputation of becoming 'official' extortionists.

Foreign currency account holders, similarly, have the facility of the 1992 Act, which was also introduced by Nawaz Sharif, to transfer money from such accounts abroad, provided the amount is less than USD \$10,000.

Pakistani citizens are already allowed to maintain foreign currency accounts, with no questions asked by the FBR. This has helped Pakistanis to hold around USD \$6 billion in local banks. If everyone who holds a foreign currency account in Pakistan were to avail this amnesty, the government would be able to bag \$120 million (approximately Rs. 13.8 billion).

Foreign currency account holders can whiten this money by surrendering their dollars to the bank and getting a certificate from them. In this case, their loss is usually the difference between the open-market rates of the US dollar, or any other foreign currency, which are usually 1 per cent to 2 per cent higher than the rates offered by the bank.

The offer that people can whiten their foreign currency account's assets held in the country by paying four per cent tax, is not very different from the existing policy regarding foreign currency accounts. The State Bank has already said that, for the purpose of calculating tax on foreign currency accounts the official equivalent rate would be admissible.

Financial sector experts believe that much of the Pakistani assets abroad are in real estate, which may not be declared by their owners. If they do declare, they can whiten these assets by paying tax at the rate of 4 per cent.

¹ https://www.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_97892642165

Tax amnesty is defined as “grant of an opportunity to a specific class of society to declare their undeclared assets by payment of a meagre amount of tax in addition to grant of immunity from default surcharge, penalties and prosecution”. It is introduced by the governments to fulfil the slogan of increasing tax revenues by tapping the informal economy, and was therefore offered in several European countries in addition to Malaysia, Canada, the USA, India and Pakistan.

The history of Pakistan is witness to the grant of tax amnesties in various decades with the slogan of improving the tax-to-GDP ratio, tapping the informal economy, and increasing tax revenues, but are seen by the compliant taxpayers as an incentive for being non-compliant. Interestingly most of the amnesties in Pakistan were announced before general elections and were reckoned by the compliant taxpayers as an attempt to clean the ill-gotten money made during the tenure. No country in the world is as generous as Pakistan in the grant of tax amnesties for the aforementioned reason.

People successfully managed to transfer their ill-gotten money to off-shore destinations from Pakistan due to the weak taxation system, the Economic Protection Act 1992², and other reasons, and purchased offshore assets without declaring them in their tax returns. Consequent upon making an agreement with the OECD, Pakistan started receiving data of such resident Pakistanis from different countries.

The PTI Federal Government has promulgated the Assets Declaration Ordinance, 2019³ on May 14, 2019. This Ordinance is a step in the right direction, which was necessitated by the prevailing circumstances of the economy and tax culture of Pakistan where not only a sizeable part of assets is undeclared / under-declared, but is also being held in the form of *benami* assets. Benami Transactions (Prohibition) Act, 2017 has become operational in 2019 owing to the issuance of relevant Rules⁴ whereby holding of *benami* assets is declared as illegal. It was, therefore, imperative to bring a transitional declaration mechanism for providing an opportunity to bring these assets into the documented economy.

Similarly, application of the automatic exchange of information under the Common Reporting Standard (CRS) of the OECD has resulted in availability of substantial information with the Federal Board of Revenue (FBR) about foreign assets of Pakistanis which information is, and has the potential of, being used for the identification of assets / expenditures currently out of the documented system.

Under these circumstances, it is a requisite gesture on part of the Federal Government to provide an opportunity for declaration of such assets / expenditure before any significant prosecution drive is undertaken.

Moreover, there are various tax disputes where the amounts are outstanding due to the pendency of cases in Courts of law. Subject to certain restrictions, the Ordinance also caters for the payment of such demands without any penal consequences. Due to the above changes of circumstances, the Assets Declaration Ordinance, 2019 is different in certain aspects from the similar law of April 2018 (Previous Scheme).

There are certain matters for which we understand that a necessary clarification will be issued in due course. It is also expected that issuance of Ordinance by the Federal Government will be followed by announcement of Amnesties by the Provincial Governments, so as to encourage declaration of services revenue not yet declared and to allow payment of related services tax thereon. Under this Ordinance, any person may make a declaration in respect of ‘undisclosed assets’, ‘undisclosed expenditure’, ‘undisclosed sales’ and ‘*benami* assets’. Whilst the Previous Scheme only allowed such individuals who were Citizens of Pakistan to file the declarations, this Ordinance does not make any such restriction.

The Ordinance will apply to undisclosed assets acquired, undisclosed expenditure incurred and undisclosed sales made up to June 30, 2018 and *benami* assets acquired or held on or before the date of declaration. In respect of *benami* assets declared under the Ordinance, it is our view that income earned from such assets during the tax year 2019 will remain chargeable to tax in the respective tax year.

Exclusions: Following persons and assets are not eligible under this Ordinance: holders of public office (as defined in the Voluntary Declaration of Domestic Assets Act, 2018⁵ their *benamidars* (as defined in the Benami Transactions (Prohibition) Act, 2017⁶, their spouses and dependents; a public company as defined in section 2(47) of the Income Tax Ordinance, 2001⁷;

² http://www.na.gov.pk/uploads/documents/1334289655_675.pdf

³ <http://download1.fbr.gov.pk/Docs/20195251351512475AssetsDeclarationOrdinanceGazettecopy.pdf>

⁴ <http://download1.fbr.gov.pk/Docs/20195202253644193AmnestyDraftRules.pdf>

⁵ <http://download1.fbr.gov.pk/Docs/20186131562119310VoluntaryDeclarationofDomesticAssetsAct,2018.pdf>

⁶ http://www.na.gov.pk/uploads/documents/1485947203_112.pdf

⁷ <http://download1.fbr.gov.pk/Docs/2017831181435412IncomeTaxOrdinance2001updatedupto30.06.2017.pdf>

Proceeds or assets that are involved in or derived from the commission of a criminal offence, gold and precious stones, bearer prize bonds and other such bearer securities, share certificates, bonds or any other bearer assets; and Assets for which proceedings are pending in any court of law.

Amnesty for unpaid tax demands: This Ordinance also provides that for any outstanding tax demand determined by the tax authorities, the declarant can discharge the same without any default surcharge and penalty. This concession is available even in those cases where the matter is pending before any Court of Law. Section 10 of the Ordinance provides that the amount of tax or default surcharge paid under the Ordinance is not refundable. Necessary amendment is needed in this regard to exclude the payments under the Ordinance made in respect of matters pending before any Court of law, so that the same are refunded to the declarants in case the matter is ultimately decided in their favour by the Court of law.

Valuation of assets: Valuation of assets (other than domestic immovable properties) is to be the fair value that is the price which the asset would ordinarily fetch on sale in open market on the date of declaration but in no case less than the cost of acquisition of the asset. For foreign assets, the rate of exchange to be used shall be the one prevailing on the date of declaration.

With regard to domestic immovable properties, the value shall not be less than 150% of the FBR notified value or DC value, as may be applicable in that particular case.

Revaluation of immovable properties: The Ordinance also provides an opportunity to increase the valuation of those immovable properties, which were already declared under the Income Tax Ordinance, 2001, or voluntary declaration of domestic Assets Act, 2018. However, this shall not be construed to result in any negative repercussion for declarations already made under the above laws as long as the value has been in line with FBR notified value or DC value, as the case may be.

Conditions for declaration including repatriation: Any cash held in Pakistan as declared under the Ordinance is required to be deposited in declarant's bank account and to be retained up to June 30, 2019. The Ordinance does not require mandatory repatriation of foreign assets, however, foreign liquid assets not repatriated are required to be deposited in declarant's foreign bank account on or before June 30, 2019. Foreign liquid assets repatriated are required to be deposited into declarant's own bank account in Pakistan or invested into Pakistan Banao Certificate or any foreign currency denominated bonds, issued by the Federal Government. We understand that the term "Foreign Liquid Assets" has to be construed as defined in the Previous Scheme; however, no enabling provision is available in the Ordinance.

Rates of tax : Declaration under this Ordinance shall be chargeable to tax at the following rates:

S. No.	Undisclosed assets, sales or expenditure	Rate of tax
1.	All assets except domestic immovable properties	4%
2.	Domestic immovable properties	1.5%
3.	Foreign liquid assets not repatriated	6%
4.	Unexplained expenditure	4%
5.	Undisclosed Sales	2%

Date of declaration and payment of tax : Declaration under this Ordinance has to be filed by June 30, 2019. Payment of tax can be made upto June 30, 2020 (in case the payment is not made by the said date, the declaration shall be null and void); however, any payment after June 30, 2019 shall attract default surcharge at the following rates.

S. No.	Time of payment of tax	Rate of Default Surcharge (%age of tax amount)
1.	July 1, 2019 – September 30, 2019	10%
2.	October 1, 2019 – December 31, 2019	20%
3.	January 1, 2020 – March 31, 2020	30%
4.	April 1, 2020 – June 30, 2020	40%

Payment of tax in respect of foreign assets has to be made in accordance with the Rules to be prescribed by the State Bank of Pakistan.

Overriding effect and confidentiality: The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. All confidentiality provisions of the Income Tax Ordinance, 2001 and Right of Access to Information Act, 2017⁸ shall apply to declarations made under this Ordinance, except for disclosure of information to any authority exercising its powers under the Income Tax Ordinance, 2001; Sales Tax Act, 1990⁹; Federal Excise Act, 2005¹⁰ and Customs Act, 1969¹¹ for the purpose of enabling such authority to exercise its powers under these laws. It is worth mentioning here that unlike the Previous Scheme, there are no provisions in the Ordinance for imposition of fine / for imprisonment of any person in breach of confidentiality provisions.

Declaration not admissible as evidence : Nothing contained in the declaration made under this Ordinance shall be admitted as evidence against the declarant for the purpose of any proceedings relating to imposition of penalty or for the purpose of prosecution under any law.

Effect of declaration and incorporation in books: Declarants shall be entitled to incorporate the undisclosed assets, undisclosed sales, undisclosed expenditure and *benami* assets in their books of account once the same are declared and tax paid thereon under the Ordinance. It is our view that in respect of *benami* assets, the requirement of transferring the same to the beneficial owner under the Benami law will not be applicable once the same is declared in accordance with the provisions of this Ordinance.

No allowance, credit or deduction: This is a very important anti-abuse provision in the Ordinance, which was not included in the Previous Scheme. Under this new concept, the declarant shall not be allowed to claim any allowance, credit or deduction in respect of assets declared and incorporated in the books in consequence of such declaration. This effectively means that whenever the declared asset will be used for the purpose of business or disposed of, the tax consequences will be dealt by excluding the impact of values declared and incorporated under this Ordinance. The Federal Government has promulgated the Assets Declaration Ordinance, 2019 on May 14, 2019. This Ordinance is a step in the right direction, which was necessitated by the prevailing circumstances of the economy and tax culture of Pakistan where not only a sizeable part of assets is undeclared / under-declared, but is also being held in the form of *benami* assets.

Assets Declaration Scheme-2019 shall provide an opportunity to the general public to regularise both domestic and foreign assets/expenditures, including Benami assets/accounts, at the rate of 4 percent and declaration of foreign assets, if not repatriated back into Pakistan, at 6 percent.

The scheme can be availed by all companies, associations of persons and all citizens of Pakistan wherever they may be, except holders of public office, their spouses and dependent children; and undisclosed income and domestic assets held by the persons in Pakistan, except where proceedings are pending in any court of law in respect of the domestic assets. The provisions of this Ordinance shall not apply to any proceeds or assets that are involved in or derived from the commission of a criminal offence.

The scheme would be applicable up to June 30, 2019 and there would be no extension in the deadline of June 30. The public office holders and their dependents, as defined under Income Tax Ordinance 2001, cannot avail the Assets Declaration Ordinance 2019. The Benamidars of the public office holders are also not entitled to avail the scheme.

Under the scheme, the domestic and foreign assets would be legalised at the rate of 4 percent. This is subject to the condition that the amount should be held in a bank account. The foreign liquid assets repatriated into Pakistan would be subject to 4 percent tax and foreign liquid assets not repatriated into Pakistan would be legalised on payment of 6 percent tax (additional 2 percent tax). The new scheme imposed restriction that the declared amount would have to be deposited into a bank account for availing it. For the whitening of immovable properties, the real estate assets must be declared on FBR's notified values. The FBR's declared values of immovable properties would be taken for payment of tax for legalisation of immovable properties. The value should not be less than 150 percent of the FBR's value and it can be legalised on payment of 1.5 percent tax. The government has passed the Benami Law and anyone having Benami properties/accounts does not take benefit of the scheme, can face harsh punishments like confiscation of assets and jail under the law. The owners of Benami assets can avail the scheme to avoid punishments. The Benami law is operational and provide

⁸ http://www.na.gov.pk/uploads/documents/1506960942_594.pdf

⁹ <http://download1.fbr.gov.pk/Docs/2017831184658713SALESTAXACT,1990Amededupto01.07.2017.pdf>

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<http://download1.fbr.gov.pk/Docs/2019531455213647FEDERALEXCISEACT2005amendedupto11thmarch2019.pdf>

¹¹ <http://download1.fbr.gov.pk/Docs/2015911119353372DraftCustomsActUpdated30.06.2015.pdf>

the stick that empowers FBR to imprison those found guilty of it. This is perhaps the last opportunity to those who want to avail this scheme. Given the fact that now the data of all regulators such as FBR, SBP, SECP, Nadra and FIA as well as others' has been integrated to broaden the tax base. According to FBR sources it had obtained data about 150,000 account holders from 28 countries that would also help the FBR bring them into tax system. If the FBR value of any property stands at Rs 1 million then its declaration would go up to Rs 1.5 million under this scheme. The businessmen out of the sales tax net can also avail the scheme. The business community can legalise their undeclared sales tax on payment of 2 percent of the total calculated sales tax. Sales tax liabilities can be cleared on payment of 2 percent tax under the scheme.

A major difference between the old scheme ,Voluntary Declaration of Domestic Assets Ordinance, 2018 and Foreign Assets (Declaration and Repatriation) Ordinance, 2018 and the new one is that now it would be mandatory for the declarant to become tax filer. Under the old scheme, it was not mandatory for the declarant to become tax filer. A major facilitation has been provided to the business community under the scheme as they have been allowed to revise their balance sheets. Under the new scheme, provision for revision of balance sheet has been provided. Under the old scheme, the cash in hand was allowed and now all cash in hand has to be declared in the bank accounts under the new scheme. Dr Hafeez Shaikh said, "We have tried to make this scheme very easy to understand and implement. The basic purpose of the scheme is not to generate revenue but to document the economy and to bring dead assets into the economy and make them functional. The philosophy behind the plan is not to "intimidate" people but to encourage businessmen to participate in the legal economy, the adviser said. The move was intended to bring undeclared assets held either at home or abroad into the regular economy, which has long suffered from rising deficits and chronic underinvestment. The purpose of this scheme is for assets, which are kind of dead assets, to be part of the economy, to make them operational". Facing a budget deficit, the International Monetary Fund expects to top 7 percent of gross domestic product this year and under pressure to find billions of dollars to reduce the gap, the government is expected to step up efforts to raise tax. In a country where only a million people out of a population of more than 200 million pay income tax, increasing the amount of tax raised has been a problem for successive governments. The IMF plan will require the government to bring the primary budget deficit, which excludes debt servicing costs, down to 0.6 percent of GDP next year from a forecast level of more than 2 percent. That will require it to squeeze around \$5 billion in extra taxes or spending cuts from Pakistan's roughly \$300 billion economy next year alone. The amnesty represents a turnaround for Prime Minister Imran Khan who accused previous governments of using amnesties to clean up illegally acquired wealth hidden outside Pakistan. Shaikh, who joined the government last month following a shakeup of Pakistan's top economic policy makers, defended the IMF accord from opposition criticisms, saying the belt-tightening measures expected to be required were in the country's own interests. "I think that the things we are going to do are the ones which Pakistan needs at present," he said. This month Pakistan agreed a \$6 billion loan package from the IMF to bolster its faltering economy, which is expected to see a sharp slowdown in growth to 2.9 percent this year from 5.2 percent last year, according to IMF projections. Details of the package, which must still be approved by the IMF board, are sketchy but are expected to include raising taxes, increasing energy prices as well as loosening controls on the rupee currency, which has lost a third of its value over the past year.

ⁱ **Zafar Iqbal Kalanauri**, Advocate Supreme Court of Pakistan, Arbitrator, Mediator , Adjunct Faculty of Law at SAHSOL, Lahore University of Management Sciences (LUMS), SAF Center, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan. Cell: (92) 300- 4511823 E-mail:kalanauri@gmail.com ; Web: <http://www.zklawassociates.com>