Daily Tax News (DTN)

Huzaima & Ikram
June 05, 2012

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Kind regards

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Amendments needed to bring clarity to CGT laws

The questioning about source of investment made in equity markets is still an issue despite proposed legislation about investment in the stock markets under Capital Gains Tax (CGT) laws in the Finance Bill, 2012 as certain other provisions of laws also need to be amended, said a senior tax expert at a post budget seminar organised by the Karachi Tax Bar Association (KTBA) on Monday.

Through a presidential ordinance in April 2012, the source of amount made to capital markets was given special relaxation to attract more foreign and local investments in the country. The ordinance now made part of Finance Bill, 2012 for the approval from the Parliament.

"It is a good step to attract investment in the stock markets," said Abdul Qadir Memon, a board member of the Karachi Stock Exchange (KSE) and former president of the Pakistan Tax Bar Association. "But to bring clarity in the law the authorities should also give protection it from section 111 of the Income Tax Ordinance, 2001," he added.

The section 111 of the Income Tax Ordinance deals with unexplained income or hidden assets of taxpayers.

He said that revenue authorities estimated Rs5 billion from capital gains tax in the next fiscal year.

While giving a detailed presentation on changes brought through the Finance Bill in direct taxes, he said that the federal finance minister and other authorities had repeatedly announced for reducing the turnover tax from one percent to half percent.

"To give effect this change there should be an amendment in section 113, which deals with minimum tax," he added. He said that reduction in turnover tax would cost the Federal Board of Revenue (FBR) an estimated Rs11 billion.

He highlighted the imposition of withholding tax at one percent as every manufacturer now responsible to collect this tax at the time of sale to distributors, dealers and wholesalers from the persons whom such sales have been made. "The change has been brought to broaden the tax base through documentation of economy," he added.

Recently, the business community had rejected the FBR notification of making mandatory requirement of CNIC and NTN for filing sales tax return. "Since sale tax are filed through e-filing

then all the details of identity required to be submitted," Memon said.

Commenting on the incentive provided to salaried and individuals through rationalizing the income tax rate, he said through this change about 68,000 taxpayers would be out of tax net. "The government should introduce measures to increase the number of taxpayers," he suggested.

Majid Khandwala, FCA, senior partner Ernst and Young Ford Rhodes Sidat Hayder and Company also gave a detailed presentation on indirect taxes. He said that the FBR had not issued any notification on relaxing NTN and CNIC requirement till May-end as reported in media.

He said that in the finance bill the authorities allowed the excise duty on air tickets travelling from Pakistan to foreign destinations.

He said that stakeholders had agreed this and from July 2012 this new change will be applicable. "However, there is need to resolve the demand created between July 1, 2007 to June 30, 2012," he added. – *Courtesy The News*

LCCI welcomes cut in turnover tax

The Lahore Chamber of Commerce and Industry (LCCI) on Monday appreciated the government for accepting its demands regarding cut in the turnover tax and bring down the rate of the withholding tax for commercial importers, a statement said on Monday.

LCCI president Irfan Qaiser Sheikh said that the Lahore Chamber understands that these taxation measures were long overdue and would help revive trade and industry, it said.

The reduction in tax on exports, increase in cash withdrawal limit, decrease in tax slabs from the existing 17 to five and application of the same general sales tax rate are also good steps for the economy, he said, adding that the allocation of Rs10 billion for Export Development Fund (EDF) and raise in the tax exemption ceiling would also strengthen the economy by giving boost to businesses.

The Lahore Chamber of Commerce and Industry president, however, said that the business community is expecting an announcement regarding building of dams, but no such announcement was made. He said that it would have been wiser

on the part of the government if it had presented a roadmap for coal-based power generation in the budget.

He suggested the government to bring down the markup rate, as in Pakistan the interest rates are the highest in the region and making Pakistani merchandise uncompetitive.

The Lahore Chamber of Commerce and Industry president said that the markup rate in Pakistan is 16 percent, while in India it is 10.5 percent and in Bangladesh it is 11 percent and the government would have to bring it in line with the region for bringing down the cost of doing business.

He urged the government to initiate mega projects as it would not only support 44 ancillary industries, but would create the much-needed job opportunities in the country. – *Courtesy The News*

Input tax adjustment: Controversial SRO to be retained

The Federal Board of Revenue has decided to retain the SRO 191(I)/2012 and amend the notification during current month to limit disallowance of input tax adjustment under the revised scheme of documentation of unregistered buyers. Sources told here on Monday that the SRO191 is still in abeyance and sales tax returns to be filed in June 2012 would not carry basic particulars of their unregistered buyers.

The FBR had suspended the applicability of SRO191(I)/2011 up to May 31, 2012 and importers, exporters and manufacturers would not be required to submit the computerised National Identity Card Numbers (CNICs) and National Tax Number (NTNs) of their unregistered buyers in sales tax returns to be filed in June 2012. Under the new scheme, the FBR has decided that the SRO 191(I)/2012 would continue to operate in 2012-13 with amendments to the controversial clauses of the notification.

This would require re-drafting of the SRO191 to limit disallowance of input tax adjustment. In this regard, the clause pertaining to disallowing input tax adjustment may be limited to 10% of the amount of input tax claimed. Sources were of the view that the SRO to be retained in present form except that provision of disallowing input tax adjustment shall be limited to 10 percent of the amount of input tax claimed, they added. When asked about documentation measures under Finance Bill (2012-13), tax experts raised questions about the implementation of new documentation measure to collect one percent tax from supplies of manufacturers

to their wholesalers and distributors as the same documentation scheme in sales tax under SRO191 has failed to achieve the desired results.

In the Finance Bill 2012-13 requires from manufacturers to deduct 1 percent tax from their traders and distributors, the sources informed expectedly it would be emerged as a new controversy. According to details, tax experts informed that this amendment seeks to require the manufacturers to collect tax at one percent per cent of the gross amount of sales to distributors, dealers and wholesalers.

The terms distributors, dealers and wholesalers have not been defined in the Ordinance. Accordingly, unless so defined, the definition in the compatible laws or general commercial meanings shall apply. Such tax is to be collected from all such persons irrespective of amount of sale and status of the distributor, dealer and wholesaler as to National Tax Number (NTN) to ensure documentation of economy, experts said.

The question arises that in cases of un-registered buyers how can manufacturer be able to collect particulars of their customers to generate payment challan. It is important to note that same amendment without involving of tax amount was introduced through sales tax notification 191 which was remain non operational.

Tax experts further raise questions over application of collection of tax. Since manufacturer is supplier and remains at the mercy of customers for collection of its payment particularly under tough economic condition payment recovery is already a problem now burdened with additional requirement to collect tax on behalf of government, if he failed he has to pay at his pocket besides facing penal action, which makes whole scheme creating vulnerable position to existing registered industries.

It seems that government rather providing relief to the existing taxpayers failed to adopt measure which directly hit undocumented sector rather putting existing taxpayers in stress, this collection of tax at the time of sale shall be adjustable by the distributors, dealers and wholesalers against their tax liability, experts added. – *Courtesy Business Recorder*

Isaf container scam: FTO's recommendations made part of Finance Bill

A number of recommendations of the Federal Tax Ombudsman (FTO) Report on the Isaf Container Scam have been made part of the Finance Bill (2012-13) including change in the definition of smuggling under Customs Act 1969 to punish those persons involved in pilferage of transit goods which would be treated as offence of "smuggling".

Sources told here on Monday that the report of FTO Dr Muhammad Shoaib Suddle in his report on Isaf container scam had given a number of viable recommendations to improve customs procedures and bring legal changes in Customs Act, 1969 to avoid missing containers scam in future. Most of the recommendations of the FTO has been incorporated in the Finance Bill (2012-13) to streamline customs rules and procedures.

One of the key recommendations was to amend the definition of smuggling under Customs Act 1969. The definition of smuggling has not been changed by the FBR since 1969 despite the fact that cases of pilferage of transit goods have taken place in the past time and again. The old definition of smuggling was operative across the country without any change for the last many years.

A person involved in the pilferage of Afghan transit containers cannot be treated as smuggling under the existing provisions of the Customs Act. This most important issue was highlighted by Dr Suddle in his report on Isaf Container Scam for amendment in section 2(s) of the Customs Act, 1969.

Through Finance Bill (2012-13), the Federal Board of Revenue (FBR) has proposed amendment in the Customs Act 1969 as recommended in the FTO"s report of "Isaf Container Scam". The FBR has proposed that in order to ensure observance of laws regarding transit trade, a provision with regard to en route pilferage of transit goods has been proposed to be included in the definition of "smuggle" in section 2(s) of the Customs Act, 1969.

Sources said that following change in the definition of smuggling, the pilferage of Afghan transit containers would be treated as a serious offence of smuggling which would be subjected to punishment of imprisonment. The containers meant for Afghanistan in case confiscated in Pakistan would treated by the customs officials under the relevant of provisions of smuggling. The persons involved in crime of missing transit containers would be covered under the definition of smuggling under section 2(s) of

the Customs Act, 1969. This is for the first time that the FBR has amended the definition of smuggling as per recommendations of the FTO.

This is the major amendment in the Customs Act 1969 to effectively tackle the issue of missing containers under the definition of smuggling. Such persons could be given punishment of imprisonment up to 14 years period for missing Afghanistan transit containers in Pakistan. In this regard, the FBR has also proposed amendment in section 156 of the Customs Act. In section 156 of the Act, the punishment of whipping has been proposed to he removed.

For contravention of rules and conditions of transit, punishment of imprisonment for a term not exceeding five years has proposed. Obsolete reference of omitted sections such as sections 79A and 131A of the Act has been proposed to be deleted. Penal provisions pertaining to Customs Computerised System have been proposed to be made more stringent by declaring attempt to make unauthorised access to or improper use of and attempt to interfere with the computerised system as offences. For the above reasons, amendments have been proposed in the respective columns against serial numbers 3(1), 45, 64, 89(i), 92, 101, 102 and 103 of the Table in said section, proposed amendment in Customs Act added. – *Courtesy Business Recorder*

Registration Act: BoR to table amendment bill in next Sindh Assembly session

The Board of Revenue (BoR) would table Registration Act 1908, (amendment), in upcoming session of Sindh Assembly scheduled to start from June 8. With approval of summary of amendment in Registration Act 1908, from the provincial cabinet, BoR is working to make a bill which would be tabled in assembly session for final approval.

Informed sources inside the BoR told this scribe that a team of technical experts was working on this task, while they are also getting legal assistance from the law department. Summary of amendment in Registration Act 1908, approved by Sindh Cabinet on June 2, stated that: According to sub-section (1) of section 21, of Registration Act 1908, no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. Sub-section (4) of the same section provides that no non-

testamentary document containing a map or plan of the property comprised therein shall be accepted for registration unless it is accompanied by a true copy the map or plan.

In the light of the above provisions of law and to ensure that only rightful owner of the property executes the sale deeds the sub-registrars were directed by the BoR to obtain the latest certified copies of entries of record of rights before registration of sale deeds etc. However, since there is no mandatory provision in the Registration Act, for producing authenticated title documents of the property under sale, the courts have held in number of cases that sub-registrars could not refuse registration of documents on the plea of non-production of title documents, it stated.

Summary further stated that the Honorable High Court has taken notice of this matter in CP No D2464/2009 and has passed following order on 05-03-2010. "It is high time, the BoR Secretary & Senior Member may check registration of frivolous transaction on the basis of bogus entries and questionable title. We would direct Senior Member to look into the matter and issue appropriate directions to Registrar Property and Sub-Registrar of Property not to execute any registered conveyance or sale deed without authenticated and valid and clear title in respect of land more particularly revenue land may it be temporary, wahi chahi leases etc. If it is found that such transaction is registered, serious departmental action be taken against delinquent".

Besides this, the Managing Director Karachi Water and Sewerage Board through his letter No MD/KW&SB/2011/8212, dated 10-06-2011, has communicated a decision of meeting chaired by Governor Sindh on 20-04-2011 according to which no dues certificate is to be declared a mandatory requirement for selling and purchasing properties in the metropolis. In the light of the above facts a draft of Bill for amendment in the Registration Act 1908 may be moved in the provincial assembly, summary concluded. – *Courtesy Business Recorder*

KTBA organises post-budget seminar

Karachi Tax Bar Association (KTBA) organised a post-budget seminar at a local hotel here on Monday. Munawar Sheikh, president KTBA welcomed the chief guest, speakers and participants. He expressed his views on the growth of economy, saying that it is important to bring such segment of society in the tax net which is still not contributing.

He further said the importance of tax laws lies in the confidence building, which is being hampered due to unnecessary creation of tax demand to achieve tax projected targets and such actions are not in accordance with the sprit of scheme of laws. Overall economic impact of the budget on the economy was analysed by the Syed Masoud Ali Naqvi. He highlighted the impact of economy and was of the view that GDP ratio to tax still needs important attention and for the growth of the economy, the policies should be consistent, which shall give impetus to the economy. Abdul Qadir Memon former president Pakistan Tax Bar Association highlighted the changes made through Budget 2012-13 on indirect and direct taxes. A large number of KTBA members were present on the occasion. – *Courtesy Business Recorder*

FBR urged to suspend its April 2 circular

An SOS has been sent to the Federal Board of Revenue (FBR) to immediately suspend its circular of April 2, withdrawing policy concession for exports given through its circular of October 5, 2009 in the selection of Final Tax Regime (FTR) cases for audit for current year as well as for previous years, ie multiple audit.

Taxation Committee of Towel Manufacturers' Association of Pakistan (TMA) Chairman M Muzzammil Hussain, in a letter sent to the FBR Chairman on June 1, has requested his urgent intervention as the concession has been withdrawn without consultation with TMA.

As per Income Tax Ordinance 2001, exporters are covered under Presumptive Tax Regime (PTR) and tax is deducted at source by the bank on realisation of export proceeds and the same is final discharge of tax liability irrespective of the fact whether a taxpayer has earned profit or suffered loss. These cases were never selected for audit in the past due to the simple fact that the tax deducted at source is final discharge of tax liability as per law.

It has further been pointed out in the letter that in 2009 the field officers attempted to select cases of exporter tax payers etc covered under PTR for audit. In the meetings with FBR, TMA had made representations not to select cases of exporters etc who were covered by PTR for audit as this will only cause harassment and will widen the trust between taxpayers and FBR.

Member Direct Tax (Policy) after discussions had issued policy directives to the field officers that if the cases of exporters etc are

covered under PTR, they should not be selected for audit. But in case any discrepancy or concealment is found, the same should be addressed through amendment of assessment as provided in law.

Muzzammil Hussain said that exports of the country are under serious difficulty and declining and this withdrawal of FBR policy of October 5, 2009 without consultation, will seriously impact exports and exporters. Field officers will harass taxpayers and there will be absolutely no revenue gain. This withdrawal is counter-productive and will lead to significant reaction from all trade bodies whose members fall under PTR exporters.

In its circular of October 5, 2009, FBR had said that it had been receiving representations from the taxpayers and various trade bodies against the selection of FTR cases for audit and against the selection of a case for audit for the current year as well as for the previous years, contending that such practices put them under undue pressure/harassment which are against the spirit of taxpayer's facilitation. It further said that the matter had been examined in the Board and it is evident that:

---- In cases of individuals falling under FTR, where the individual's wealth statement and the wealth is properly reconciled through wealth reconciliation statement satisfactorily, there appears no ground for selection of a case for audit.

---- Also, in FTR cases of AOPs and companies, there is no justification for selection of a case for audit, if no discrepancy is discernable in the particulars of declared income and tax.

---- Cases for audit are required to be selected under section 177, on the basis of given parameters. Income Tax law also provides for amendment of an assessment, if warranted by the facts of the case. Therefore, there is no justification to select a case for audit for multiple tax years (current year as well as the previous years), as this practice causes harassment to the taxpayers.

It was, therefore, decided that:

---- The cases of individuals falling under FTR shall not be selected for audit if wealth is accurately and properly reconciled by the tax payers through wealth statement and wealth reconciliation statement.

---- FTR cases other than individuals shall not be selected for audit and discrepancy, if any, found in such cases shall be addressed through amendment of assessment as provided under the Income Tax law.

---- A case shall be selected for audit for the current year only and discrepancy, if any, noticed in the previous year's declarations the same shall be addressed by amendment of the relevant assessment.

All the Directors General, LTUs and Directors General, RTOs were reminded that the taxpayers facilitation being the focal aim of the ongoing reform process, any practice denting the taxpayers' confidence must be avoided through prudent application of the provisions of income tax law. It was further desired that the instructions contained in paragraph 2 above may be brought to the knowledge of all concerned for compliance.

On April 2, however, Secretary (ITP), Revenue Division, FBR informed Chief (Taxpayers Audit-ll) that instructions on the issue of selection of cases for audit contained in the letter of October 5, 2009 "are withdrawn with immediate effect." Copies of the letter were also forwarded to all chief commissioners, regional tax offices/large taxpayer units. – *Courtesy Business Recorder*

S.R.O. 606(I)/2012, Islamabad, the 1st June, 2012.– In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990, the Federal Governmet, in supersession of its Notification No. S.R.O. 563(I)/2012, dated the 25th May, 2012, is pleased to exempt the whole amount of default surcharge and penalties payable by a person against whom an amount of sales tax is outstanding on account of illegally adjusted input tax, subject to the following conditions:–

(i) whole of the principal amount of illegally adjusted sales tax is paid by the 25th June, 2012; and

(ii) any case, compliant or proceedings filed by the registered person before any court of law, Federal Tax Ombudsman or any other authority is withdrawn by the said date.

2. Any criminal proceedings lodged by the department shall abate from the date of complying with the above conditions by the registered person.

S.R.O. 607(I)/2012, Islamabad, the 2nd June, 2012.– In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990 and sections 53 and 148 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to exempt Hybrid Electric Vehicles (HEV) falling under PCT Code 87.03, on import from so much of the customs duty, sales tax and withholding tax, as are in excess of 75% of the applicable rates thereof.

2. Depreciation in the duties and taxes, in case of old and used HEVs, shall be admissible at the rate of 2% per month subject to a maximum of 60%.

S.R.O. 608(I)/2012, Islamabad, the 1st June, 2012.– In exercise of the powers conferred by clause (b) of sub-section (2) of section 3 of the Sales Tax Act, 1990, the Federal Government is pleased to specify that sales tax shall be charged at the lower rate of five per cent on import and supplies of black tea.

2. This Notification shall take effect on and from the 2nd day of June, 2012.

S.R.O. 996(I)/2011, Islamabad, the 26th October, 2011.– WHEREAS the Islamic Republic of Pakistan and the Kingdom of Spain have executed a Convention for the Avoidance of Double Taxation and the

Prevention of Fiscal Evasion with respect to Taxes on Income on 2nd June, 2010, as set out in the Annexure to this notification;

NOW, THEREFORE, in exercise of the powers conferred by section 107 of the Income Tax Ordinance, 2001 [XLIX of 2001], the Federal Government is pleased to direct that the Convention shall enter into force with effect from 18th May, 2011 and its provisions shall have effect,

(i) in respect of taxes withheld at source on amounts paid or credited to non-residents, with the effect from 18th May, 2011;

(ii) in respect of other taxes, with effect from Tax Year 2010-2011; and

(iii) in all other cases, with effect from 18th May, 2011.

Annexure

Convention Between The Islamic Republic of Pakistan And the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The Kingdom of Spain and the Islamic Republic of Pakistan, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and to promote and strengthen the economic relations between the two countries, have agreed as follows:

CHAPTER I
Scope of the Convention

Article 1
Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2
Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts

of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Spain;

i) the income tax on individuals;

ii) the income tax on corporations; and

iii) the income tax on non residents;

(hereinafter referred to as "Spanish Tax"):

b) in Pakistan;

the income tax :

(hereinafter referred to as " Pakistan Tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax law.

CHAPTER II
Definitions

Article 3
General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, its territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

b) the term "Pakistan" when used in a geographical sense means Pakistan as defined in the constitution of the Islamic Republic of Pakistan and includes the air space and any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction with respect to the natural resources of the seabed and subsoil and superjacent waters;

c) the terms "a Contracting State" and "the other Contracting State" mean Spain or Pakistan as the context requires;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term "enterprise" applies to the carrying on of any business;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "competent authority" means:

   i) in Spain: the Minister of Economy and Finance or his authorized representative; and

   ii) in Pakistan: the Federal Board of Revenue or its authorized representative;

j) the term "national" means:

   i) any individual possessing the nationality of a Contracting State;

   ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of

management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop,

f) a permanent sales outlet; and

g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf

of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III
Taxation of income

Article 6
Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting or use in any other form of immovable property.

4. Where the ownership of shares or other rights directly or indirectly entitles the owner of such shares or rights to the enjoyment of immovable property, the income from the direct use, letting or use in any other form of such right to the enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7
Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that has owned directly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 50 per cent of the voting shares of the company paying the dividends;

b) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company that has owned directly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 25 per cent of the voting shares of the company paying the dividends;

c) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State

or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising from a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and:

a) is that State or the central bank, a political subdivision or local authority thereof;

b) the interest is paid by the State in which the interest arises or by a political subdivision, a local authority or statutory body thereof;

c) the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision, local authority or export financing agency thereof;

d) is a public financial institution which is financed exclusively by the State, or political subdivision and local authority thereof.

4. The term “interest” as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-

claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films, tapes and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties

arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Fees for technical services

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" as used in this Article means payments of any kind received as a consideration 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 any construction, assembly or like project undertaken by the recipient; or

(b) consideration which would be income of the recipient chargeable under the head "Income from employment".

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein and the technical services in respect of which the fees are paid are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment, then such fees for technical services shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14
Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of shares or other rights which, directly or indirectly, entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of

such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Income from employment

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and sportspersons

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised by an artiste or a sportsperson in a Contracting State are supported wholly or substantially from the public funds of either Contracting State or a political subdivision or a local authority thereof, within the framework of cultural or sports exchange programs approved by both Contracting States. In such a case, the income derived from those activities shall only be taxed in the Contracting State where the artiste or sportsperson is a resident.

Article 18

Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

Government service

1.

a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.

a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20
Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21
Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

CHAPTER IV
Methods for elimination of double taxation

Article 22
Elimination of double taxation

1. In Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in Pakistan, Spain shall allow:

i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Pakistan;

ii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Pakistan.

b) Where in accordance with any provision of the Convention income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In Pakistan, double taxation shall be eliminated as follows:

Subject to the provisions of the laws of Pakistan regarding the allowance as a credit against Pakistan tax, the amount of the Spanish tax payable under the laws of Spain and in accordance with the provisions of this Convention whether directly or by deduction by a resident of Pakistan in respect of income from sources within Spain which has been subjected to tax both in Pakistan and Spain shall be allowed as a credit against the Pakistan tax payable in respect of such income but in an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.

CHAPTER V
Special provisions

Article 23
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and

connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action

resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes of every kind and description or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used

for such other purposes under the law of the requesting State and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Members of diplomatic missions and consular posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

CHAPTER VI

Final provisions

Article 27

Entry into force

1, The Governments of the Contracting States shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force on the ninetieth (90) calendar day following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

(i) in respect of taxes withheld at source on amounts paid or credited to non-residents, on or after the date on which the Convention enters into force;

(ii) in respect of other taxes, for taxation years beginning on or after the date on which the Convention enters into force; and

(iii) in all other cases, on or after the date on which the Convention enters into force.

Article 28

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination before the end of any calendar year beginning on or after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

i. regarding taxes periodically assessed at source, in respect of taxes on income relating to any taxable year beginning on or after the first day of July in the calendar year next following that in which the notice is given.

ii. regarding all other cases, the first day of July in the calendar year next following that in which the notice is given.

In Witness Whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at Madrid this 2nd day of June, 2010, in the English and Spanish languages, both texts being equally authentic. In case of divergence of interpretation between any of the texts, it shall be resolved in accordance with the procedure regulated under Article 24 of this Convention.

For the Islamic Republic of Pakistan	For the Kingdom of Spain
Sd/	Sd/
Makhdoom Shah Mahmood Qureshi	Elena Salgado Mendez
Minister for Foreign Affairs	Second Vice President of the Government and Minister for Economic Affairs and Finance

P R O T O C O L

At the moment of signing the Convention between the Kingdom of Spain and the Islamic Republic of Pakistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

I. Entitlement to treaty benefits

(i) The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax treaties) may be applied to the treatment of such abuses.

(ii) It is understood that the benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State.

(iii) The provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of shares or other rights in respect of which the dividend is paid, the creation or assignment of the debt-claim in respect of which the interest is paid, the creation or assignment of rights in respect of which the royalty is paid to take advantage of these Articles by means of that creation or assignment.

II. With reference to Article 11, paragraph 3, d)

Public financial institution will include:

a) In Spain,

ICO: Instituto de Crédito Oficial

CESCE: Compañía Española de Seguros de Crédito a la Exportación

COFIDES: Compañía Española de Financiación del Desarrollo

b) in Pakistan, the State Bank of Pakistan,

c) any other institution of either Contracting State the capital of which is wholly owned by the government of a Contracting State, or of its political subdivisions or local authorities, as it may be agreed upon between both Contracting States through a mutual agreement procedure.

In Witness Whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Madrid this 2nd day of June, 2010, in the English and Spanish languages, both texts being equally authentic. In case of divergence of interpretation between any of the texts, it shall be resolved in accordance with the procedure regulated under Article 24 of this Convention.

For the Islamic Republic of Pakistan	For the Kingdom of Spain
Sd/	Sd/
Makhdoom Shah Mahmood Qureshi Minister for Foreign Affairs	Elena Salgado Mendez Second Vice President of the Government and Minister for Economic Affairs and Finance

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S.R.O. 1149(I)/2011, Islamabad, the 27th December, 2011.– In exercise of the powers conferred by subsection (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Board of Revenue is pleased to direct that the fllowing further amendments shall be made in the Income Tax Rules, 2002, the same having been previously published *vide* Notifitaion No. SRO 715(I)/2011, dated 20th July, 2011, as required by sub-section (3) of the said section, namely:–

(i) in rule 13E, after sub-rule (5), the following new sub-rules shall be added, namely:–

"(6) Profit made on sale of borrowed shares shall be treated as capital gain when such shares are acquired for their return to Authorized intermediary. Period intervening between acquisition and disposal of such borrowed shares shall determine the holding period in which the capital gain or loss falls. Specific Identification Method shall be used to determine the acquisition cost and consideration for disposal of such securities. The difference between cost of such acquisition and consideration received against disposal (net off all borrowing costs) of such shares shall be treated as capital gain or loss. This rule shall be appliable to the securities borrowed in accordance with the Securities Lending and Borrowing Scheme approved by Securities and Exchange Commission of Pakistan.

(7) Profit made on disposal of shares acquired under Margin Finance Scheme, Margin Trading Scheme or other Financing or Leverage schemes approved by Securities and Exchange Commisison of Pakistan shall be treated as capital gain. The difference between cost of acquisition (inclusive of borrowing cost) and consideration received against disposal of such shares shall determine the quantum of capital gain or loss.";

(ii) in rule 13F, in sub-rule (1), for clause (a), the following shall be substituted, namely:–

"(a) **Wash Sales** where capital loss realized on sale of specific security by an investor in preceded or followed in one month's period by purchase of the same securities by the same investor whereby the transaction falls within one month between same two parties or their related parties where one was seller and other was buyer and they change places becoming buyer and seller respectively, thus, maintaining the portfolio;";

(iii) in rule 13H, in sub-rule (2), for the word "Seven", the words "twenty one" shall be substituted; and

(iv) for rule 13J, the following shall be substituted, namely:–

"**13J. Exchange of information.–** Information regarding member, broker, investor of a stock exchange required by the Federal Board of Revenue shall be obtained directly from National Clearing Company of Pakistan Limited (NCCPL).".

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2012 PTR 1192 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH "A" BENCH, CHANDIGARH

H.L. KARWA, Vice President and T.R. Sood, Accountant Member

FACTS/HELD

1. **Dept hauled up for CPC Fiasco & unnecessarily harassing assessee but spared of costs on the ground that AO & CIT(A) were "only doing their duty"**

2. The assessee filed an e-return disclosing income of Rs. Nil which was arrived at after setting off against the current year's income of 9.53 crores, the brought forward losses of Rs. 12.43 crores. In the electronic processing, the loss set off was shown at Zero and a demand of Rs. 3 crores was raised. The assessee filed a rectification application u/s 154. The AO rejected the application on the ground that the assessee had "not claimed any loss" while the CIT (A) rejected it on the ground that "set off of losses cannot be a matter of rectification". The assessee filed an appeal before the Tribunal anddemanded costs u/s 254(2B) for the hardship. HELD by the Tribunal:

   (i) The AO & CIT (A) were not justified in rejecting the assessee's claim because as the losses had already been determined in the earlier years, the same were required to be allowed as set off against current income of the assessee. The CPC itself later issued a rectification order setting off losses of Rs. 9.53 crores though it still did not mention carry forward of losses. The assessee's plea for **costs** u/s 254(2B) for "**unnecessary hardship**" cannot be accepted because the lower authorities were only "**doing their duty**".

   (ii) As regards the CPC, observed:

> We would like to take this opportunity to bring to the notice of CBDT that after the procedure of Central processing of returns, many issues have come before various forums where **unnecessary demands** have been raised due to **non-grant of TDS**, wrong

computation of income, adjustment of the previous year demand which have already been deleted by the jurisdictional assessing officer. Therefore, we would like to urge the CBDT to take up this matter **urgently** and establish **proper coordination** between the assessing authority and Central Processing Authority so that these problems are immediately solved and **unnecessary litigation** can be avoided. Copy of this order should be forwarded to the Chief Commissioner of Income-tax, Chandigarh and Chairman of CBDT for necessary action.

Appeal partly allowed.

IT Appeal No. 332 (CHD.) of 2012 (Assessment Year 2009-10].
Decided on: 23rd May, 2012.

JUDGMENT

Per T.R. Sood:– (Accountant Member)

In this appeal the assessee has raised the following grounds:

"1 As per the facts and circumstances of the case and as per the provisions of law, the ld. CIT(A) has erred in not amending the order of the Assessing Officer by adjusting the brought forward losses claimed in the return and reducing the income to Nil.

2. As per the facts and circumstances of the case and as per the provisions of law, the brought forward losses be set off against the current year income and the intimation as well as the rectification order be amended and the demand be vacated accordingly.

3. As per the facts and circumstances of the case and as per the provisions of law, the assessee has been put to unjustified inconvenience by resorting to appeals at various levels. It is prayed that exemplary cost should be awarded in terms of subsection (2B) of section 254 of Income-tax Act, 1961 for forcing the assessee to file this appeal."

2. Ground Nos. 1 and 2 - After hearing both the parties we find that the assessee had filed its return through electronic media in which the income of Rs. 9,53,75,262/- was declared. However, there were carry forwarded losses of Rs. 12,43,94,853/- out of which a loss amounting to Rs. 9,53,75,262/- was set off during the year and the balance amount was carry forwarded to the future years. In the electronic processing the loss set off was shown at Zero. Accordingly the assessee made an application u/s 154 of the Act for rectification of the same. The application was

rejected by stating that the assessee had filed return declaring income and no loss was claimed by the assessee.

3. On appeal, it was mainly stated that the assessee had incurred losses in the earlier year, the same should have been allowed to be set off against the current income and the rejection of set off of losses was not justified.

4. The ld. CIT(A) rejected this application by stating that the scope of rectification proceedings was limited and it was also observed that set off of losses cannot be a matter of rectification and in this regard reliance was placed on *CIT vs. Chaltan Vibhag Udyog Khand Sahakari Mandli Ltd.*, 282 ITR 385. It was also observed that after 1.6.1999 no adjustment to the total income declared by the assessee, can be made. Since the intimation was issued to the assessee after 1.6.1999, the rectification was not possible.

5. Aggrieved by the above order, the assessee has filed an appeal before the Tribunal. The ld. counsel of the assessee submitted that the assessee had filed return electronically in which the income of Rs. 9,53,75,262/- was declared. However, the assessee had claimed set off of carry forward losses to this extent out of total carry forward losses of Rs. 12,43,94,853/-. In this regard he referred to page 16 of paper book which is schedule of losses carried over to future years. The schedule clearly shows that the total losses were Rs. 12,43,94,853/- out of which losses amounting to Rs. 9,53,75,262/- was set off during the year and the balance loss of Rs. 2,90,19,591/- was carry forwarded. He referred to page 24 which is a copy of the intimation u/s 143(1) of the Act and pointed out that the first Column which reads – as provided by tax payer in return of income clearly shows the loss of previous year adjusted was at Rs. 12,43,94,853/- which clearly shows that the assessee had made a claim of loss and therefore, the Assessing Officer and the ld. CIT(A) are wrong in saying that the assessee had not claimed any loss. In fact, the loss allowed to be set off is shown as Zero which means electronically no set off of loss was allowed and the demand was raised against which the assessee had filed rectification application. He then referred to page 45 and pointed out that later on rectification order was issued by Centralized Processing Centre (in short 'CPC') through which loss amounting to Rs. 9,53,75,262/- was adjusted. However, it does not show the balance loss to be carry forward. Accordingly the authorities below were wrong in stating that the assessee had never claimed loss and this loss should be allowed to be set off as well as loss which is not absorbed during the year should be allowed to be carry forward.

6. On the other hand, the ld. DR for the revenue strongly supported the order of the ld. CIT(A).

7. We have heard the rival submissions carefully and find force in the submissions of the ld. counsel of the assessee. The copy of return as

well as the processing done by the CPC clearly shows that the assessee had claimed set off of losses amounting to Rs. 9,53,75,262/- out of total carry forwarded losses of Rs. 12,43,94,853/-. Further the assessee had also filed the copy of return for earlier years which shows that the losses were returned in those years. Once the losses have been claimed the same were required to be allowed as set off after verification that such losses were determined losses. We do not agree with the findings of the ld. CIT(A) that set off of losses cannot be a matter of rectification in view of the judgment of Hon'ble Gujarat High Court in case of *CIT vs. Chaltan Vibhag Udyog Khand Sahakari Mandli Ltd.*,282 ITR 385. In that case the issue was regarding rectification of priority of carry forwarded items i.e. of deduction of carry forward losses, current development rebate etc. In the background of that decision it was held as under:

> "that the question of the order of priority amongst different items like carry forward loss business of earlier years, unabsorbed development rebate of earlier years, etc., was not free from doubt. The action u/s 154 of the Act could not be sustained in the absence of any mistake apparent from the record and no rectification was permissible."

Therefore, from the above it is clear that the issue was quite different i.e. what is the priority for adjusted carry forward losses, development rebate etc., whereas in case before us, simple issue is whether the carry forward losses can be set off or not? Therefore, we are of the opinion that if the losses have already been determined the same were required to be allowed as set off against current income of the assessee. In fact, the CPC has itself later on issued a rectification order (see page 45) wherein the losses to the extent of Rs. 9,53,75,262/- has been allowed to be set off. However, there is no mention of carry forward of losses. Therefore, we set aside the order of the ld. CIT(A) and direct the Assessing Officer to verify the figures of losses determined already on record and allow the set off as well as carry forward of such losses.

8. Ground No. 3 - The ld. counsel of the assessee submitted that the assessee has been unnecessarily put to hardship by way of raising a demand in excess of Rs. 3.00 crore and unnecessary litigation by the Department. Therefore, suitable cost should be imposed on the revenue.

9. On the other hand, the ld. DR for the revenue submitted that the Assessing Officer was doing his duty while adjudicating the matter and therefore, no cost should be imposed. Further no cost can be possibly imposed on the appellate authority. Therefore, this is not a fit case for levy of cost.

10. We have heard the rival submissions carefully and agree with the ld. DR for the revenue that the orders have been passed while performing the statutory duties by the Assessing Officer and therefore, it is not a fit case for levy of cost. The appellate authorities normally

express their judicial opinion and therefore, opinion expressed by the ld. CIT(A) in this case also remains only a judicial opinion. His judicial opinion may not be correct but that does not call for levy of cost. Hence we decline to accept the request that the cost should be imposed on the revenue.

11. However, we would like to take this opportunity to bring to the notice of CBDT that after the procedure of Central processing of returns, many issues have come before various forums where unnecessary demands have been raised due to non-grant of TDS, wrong computation of income, adjustment of the previous year demand which have already been deleted by the jurisdictional assessing officer. Therefore, we would like to urge the CBDT to take up this matter urgently and establish proper coordination between the assessing authority and Central Processing Authority so that these problems are immediately solved and unnecessary litigation can be avoided. Copy of this order should be forwarded to the Chief Commissioner of Income-tax, Chandigarh and Chairman of CBDT for necessary action.

12. In the result, appeal filed by the assessee is partly allowed.

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