Non-Residents

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1. **Section 2. Definitions.-**

   (37) “non-resident person” means a non-resident person as defined in Section 81;
   
   (1979: Sec 2(30))

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

2. **Section 6. Tax on certain payments to non-residents.-**

   (1979: Sec 80AA & 80AAA)

   (1) Subject to this Ordinance, a tax shall be imposed, at the rate specified in Division IV of Part I of the First Schedule, on every non-resident person who receives any Pakistan-source royalty or fee for technical services.

   (2) The tax imposed under sub-section (1) on a non-resident person shall be computed by applying the relevant rate of tax to the gross amount of the royalty or fee for technical services.

   (3) This section shall not apply to –

   (a) any royalty where the property or right giving rise to the royalty is effectively connected with a permanent establishment in Pakistan of the non-resident person;

   (b) any fee for technical services where the services giving rise to the fee are rendered through a permanent establishment in Pakistan of the non-resident person; or

   (c) any royalty or fee for technical services that is exempt from tax under this Ordinance.

   (4) Any Pakistani-source royalty or fee for technical services received by a non-resident person to which this section does not apply by virtue of clause (a) or (b) of sub-section (3) shall be treated as income from business attributable to the permanent establishment in Pakistan of the person.
3. **Section 7. Tax on shipping and air transport income of a non-resident person.**

   (1979: Sec 80 & 80A)

   (1) Subject to this Ordinance, a tax shall be imposed, at the rate specified in Division V of Part I of the First Schedule, on every non-resident person carrying on the business of operating ships or aircraft as the owner or charterer thereof in respect of –

   (a) the gross amount received or receivable (whether in or out of Pakistan) for the carriage of passengers, livestock, mail or goods embarked in Pakistan; and

   (b) the gross amount received or receivable in Pakistan for the carriage of passengers, livestock, mail or goods embarked outside Pakistan.

   (2) The tax imposed under sub-section (1) on a non-resident person shall be computed by applying the relevant rate of tax to the gross amount referred to in sub-section (1).

   (3) This section shall not apply to any amounts exempt from tax under this Ordinance.

4. **Section 11. Heads of income.**

   (1979: Sec 15)

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

5. **Section 21. Deductions not allowed.**

   (1979: Sec. 24)

   Except as otherwise provided in this Ordinance, no deduction shall be allowed in computing the income of a person under the head “Income from Business” for –

   (c) any salary, rent, brokerage or commission, profit on debt, payment to non-resident, payment for services or fee paid
by the person from which the person is required to deduct tax under Division III of Part V of Chapter X or section 233 of chapter XII, \(^1\) unless the person has \(^2\) paid or deducted and paid the tax as required by Division IV of Part V of Chapter X;

6. **Section 44. Exemptions under international agreements.**

(1) Any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.

(2) Any salary received by an individual (not being a citizen of Pakistan) shall be exempt from tax under this Ordinance to the extent provided for in an Aid Agreement between the Federal Government and a foreign government or public international organization, where –

(a) the individual is either \(^3\) not a resident individual or a resident individual solely by reason of the performance of services under the Aid Agreement;

(b) if the Aid Agreement is with a foreign country, the individual is a citizen of that country; and

(c) the salary is paid by the foreign government or public international organisation out of funds or grants released as aid to Pakistan in pursuance of such Agreement.

(3) Any income received by a person (not being a citizen of Pakistan) engaged as a contractor, consultant, or expert on a project in Pakistan shall be exempt from tax under this Ordinance to the extent provided for in a bilateral or multilateral technical assistance agreement between the Federal Government and a foreign government or public international organisation, where –

(a) the project is financed out of grant funds in accordance with the agreement;

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\(^1\) Substituted for the word “until” by the Finance Act, 2003.

\(^2\) Inserted by the Finance Act, 2003.

\(^3\) Substituted for the words “a non-resident” by the Finance Act, 2003.
(b) the person is either a non-resident person or a resident person solely by reason of the performance of services under the agreement; and

(c) the income is paid out of the funds of the grant in pursuance of the agreement.

7. **Section 46. Profit on debt.**

   (New)

   Any profit received by a non-resident person on a security issued by a resident person shall be exempt from tax under this Ordinance where—

   (a) the persons are not associates;

   (b) the security was widely issued by the resident person outside Pakistan for the purposes of raising a loan outside Pakistan for use in a business carried on by the person in Pakistan;

   (c) the profit was paid outside Pakistan; and

   (d) the security is approved by the Central Board of Revenue for the purposes of this section.

8. **Section 79. Non-recognition Rules.**

   (1979: 3rd Schedule)

   (1) For the purposes of this Ordinance and subject to sub-section (2), no gain or loss shall be taken to arise on the disposal of an asset -

   (a) between spouses under an agreement to live apart;

   (b) by reason of the transmission of the asset to an executor or beneficiary on the death of a person;

   (c) by reason of a gift of the asset;

   (d) by reason of the compulsory acquisition of the asset under any law where the consideration received for the disposal is
reinvested by the recipient in an asset of a like kind within one year of the disposal;

(e) by a company to its shareholders on liquidation of the company; or

(f) by an association of persons to its members on dissolution of the association where the assets are distributed to members in accordance with their interests in the capital of the association.

(2) Sub-section (1) shall not apply where the person acquiring the asset is a non-resident person at the time of the acquisition.

9. Section 81. Resident and non-resident persons.-
(1979: Sec 2(40), 2(30) & 2(40)(b))

(1) A person shall be a resident person for a tax year if the person is –

(a) a resident individual, resident company or resident association of persons for the year; or

(b) the Federal Government.

(2) A person shall be a non-resident person for a tax year if the person is not a resident person for that year.

10. Section 93. Taxation of members of an association of persons.-

(New)

(1) Where sub-section (3) of section 92 applies, the income of a member of an association of persons chargeable under the head “Income from Business” for a tax year shall include –

(a) in the case of a resident member, the member’s share in the total income of the association; or

(b) in the case of a non-resident member, the member’s share in so much of the total income of the association as is attributable to Pakistani-source income.
(3) The share of a loss referred to in sub-section (2) of a non-resident member shall be limited to the extent that the loss relates to the derivation of Pakistan-source income.

11. **Section 94. Principles of taxation of companies.**

   (3) A dividend paid by a non-resident company to a resident person shall be chargeable to tax under the head “Income from Business” or “Income from Other Sources”, as the case may be, unless the dividend is exempt from tax.

12. **Section 2(41). Permanent establishment.**

   “permanent establishment” in relation to a person, means a fixed place of business through which the business of the person is wholly or partly carried on, and includes –

   (a) a place of management, branch, office, factory or workshop, premises for soliciting orders, warehouse, permanent sales exhibition or sales outlet, other than a liaison office except where the office engages in the negotiation of contracts (other than contracts of purchase);

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

   (c) a building site, a construction, assembly or installation project or supervisory activities connected with such site or project but only where such site, project and its connect supervisory activities continue for a period or periods aggregating more than ninety days within any twelve-months period;
(d) the furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for such purpose \[^8\];

(e) a person acting in Pakistan on behalf of the person (hereinafter referred to as the “agent”), other than an agent of independent status acting in the ordinary course of business as such, if the agent –

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

(ii) has no such authority, but habitually maintains a stock-in-trade or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person; or

(f) any substantial equipment installed, or other asset or property capable of activity giving rise to income;

13. **Section 101. Geographical source of income.**

(1979: Sec 12)

(3) Business income of a non-resident person shall be Pakistan-source income to the extent to which it is directly or indirectly attributable to –

(a) a permanent establishment of the non-resident person in Pakistan;

(b) sales in Pakistan of goods merchandise of the same or similar kind as those sold by the person through a permanent establishment in Pakistan; \[^9\]; or

(c) other business activities carried on in Pakistan of the same or similar kind as those effected by the non-resident through a permanent establishment in Pakistan \[^10\]; or]

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\[^8\] The words “, but only where activities of that nature continue for the same or a connected project within Pakistan for a period or periods aggregating more than ninety [\^[days] within any twelve-month period” omitted by the Finance Act, 2003.

\[^9\] Substituted for the word “months” by the Finance Act, 2002.

\[^10\] The word “or” omitted by the Finance Act, 2003.
Section 101. Geographical source of income.

[(d) any business connection in Pakistan.]

Where the business of a non-resident person comprises the rendering of independent services (including professional services and the services of entertainers and sports persons), the Pakistan-source business income of the person shall include [in addition to any amounts treated as Pakistan-source income under sub-section (3)] any remuneration derived by the person where the remuneration is paid by a resident person or borne by a permanent establishment in Pakistan of a non-resident person.

(7) Profit on debt shall be Pakistan-source income if it is –

(a) paid by a resident person, except where the profit is payable in respect of any debt used for the purposes of a business carried on by the resident outside Pakistan through a permanent establishment; or

(b) borne by a permanent establishment in Pakistan of a non-resident person.

(8) A royalty shall be Pakistan-source income if it is –

(a) paid by a resident person, except where the royalty is payable in respect of any right, property, or information used, or services utilised for the purposes of a business carried on by the resident outside Pakistan through a permanent establishment; or

(b) borne by a permanent establishment in Pakistan of a non-resident person.

10 Substituted for the full stop by the Finance Act, 2003.
12 Substituted by the Finance Act, 2003. The substituted sub-section (4) read as follows: -

"(4) Where the business of a non-resident person comprises the rendering of independent services (including professional services and the services of entertainers and sports-persons), the Pakistan-source business income of the person shall include (in addition to any amounts treated as Pakistan-source income under sub-section (3)) any remuneration derived by the person where –

(a) the remuneration is paid by a resident person or borne by a permanent establishment in Pakistan of a non-resident; and

(b) the aggregate gross amount (before deduction of expenses) of the remuneration is sixty thousand rupees or more."
(11) A pension or annuity shall be Pakistan-source income if it is paid by a resident or borne by a permanent establishment in Pakistan of a non-resident person.

(12) A technical fee shall be Pakistan-source income if it is –

(a) paid by a resident person, except where the fee is payable in respect of services utilised in a business carried on by the resident outside Pakistan through a permanent establishment; or

(b) borne by a permanent establishment in Pakistan of a non-resident person.

(14) Any amount not mentioned in the preceding sub-sections shall be Pakistan-source income if it is paid by a resident person or borne by a permanent establishment in Pakistan of a non-resident person.

(16) An amount shall be foreign-source income to the extent to which it is not Pakistan-source income.

14. **Section 105. Taxation of a permanent establishment in Pakistan of a non-resident person.**

   (New)

(1) The following principles shall apply in determining the income of a permanent establishment in Pakistan of a non-resident person chargeable to tax under the head “Income from Business”, namely:-

   (a) The profit of the permanent establishment shall be computed on the basis that it is a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the non-resident person of which it is a permanent establishment;

   (b) subject to this Ordinance, there shall be allowed as deductions any expenses incurred for the purposes of the business activities of the permanent establishment including executive and administrative expenses so incurred, whether in Pakistan or elsewhere;
(c) no deduction shall be allowed for amounts paid or payable by the permanent establishment to its head office or to another permanent establishment of the non-resident person (other than towards reimbursement of actual expenses incurred by the non-resident person to third parties) by way of:

(i) royalties, fees or other similar payments for the use of any tangible or intangible asset by the permanent establishment;

(ii) compensation for any services including management services performed for the permanent establishment; or

(iii) profit on debt on moneys lent to the permanent establishment, except in connection with a banking business; and

(d) no account shall be taken in the determination of the income of a permanent establishment of amounts charged by the permanent establishment to the head office or to another permanent establishment of the non-resident person (other than towards reimbursement of actual expenses incurred by the permanent establishment to third parties) by way of:

(i) royalties, fees or other similar payments for the use of any tangible or intangible asset;

(ii) compensation for any services including management services performed by the permanent establishment; or

(iii) profit on debt on moneys lent by the permanent establishment, except in connection with a banking business.

(2) No deduction shall be allowed in computing the income of a permanent establishment in Pakistan of a non-resident person chargeable to tax under the head “Income from Business” for a tax year for head office expenditure in excess of the amount as bears to
the turnover of the permanent establishment in Pakistan the same proportion as the non-resident’s total head office expenditure bears to its worldwide turnover.

(3) In this section, “head office expenditure” means any executive or general administration expenditure incurred by the non-resident person outside Pakistan for the purposes of the business of the Pakistan permanent establishment of the person, including –

(a) any rent, local rates and taxes excluding any foreign income tax, current repairs, or insurance against risks of damage or destruction outside Pakistan;

(b) any salary paid to an employee employed by the head office outside Pakistan;

(c) any travelling expenditures of such employee; and

(d) any other expenditures which may be prescribed.

(4) No deduction shall be allowed in computing the income of a permanent establishment in Pakistan of a non-resident person chargeable under the head “Income from Business” for –

(a) any profit paid or payable by the non-resident person on debt to finance the operations of the permanent establishment; or

(b) any insurance premium paid or payable by the non-resident person in respect of such debt.

15. **Section106. Thin capitalization.**

(1) Where a foreign-controlled resident company (other than a financial institution or a banking company) has a foreign debt-to-foreign equity ratio in excess of three to one at any time during a tax year, a deduction shall be disallowed for the profit on debt paid by the company in that year on that part of the debt which exceeds the three to one ratio.

(2) In this section, -
“foreign-controlled resident company” means a resident company in which fifty per cent or more of the underlying ownership of the company is held by a non-resident person (hereinafter referred to as the “foreign controller”) either alone or together with an associate or associates;

“foreign debt” in relation to a foreign-controlled resident company, means the greatest amount, at any time in a tax year, of the sum of the following amounts, namely:-

(a) The balance outstanding at that time on any debt obligation owed by the foreign-controlled resident company to a foreign controller or non-resident associate of the foreign controller on which profit on debt is payable which profit on debt is deductible to the foreign-controlled resident company and is not taxed under this Ordinance or is taxable at a rate lower than the corporate rate of tax applicable on assessment to the foreign controller or associate; and

(b) the balance outstanding at that time on any debt obligation owed by the foreign-controlled resident company to a person other than the foreign controller or an associate of the foreign controller where that person has a balance outstanding of a similar amount on a debt obligation owed by the person to the foreign controller or a non-resident associate of the foreign controller; and

“foreign equity” in relation to a foreign-controlled resident company and for a tax year, means the sum of the following amounts, namely:-

(a) The paid-up value of all shares in the company owned by the foreign controller or a non-resident associate of the foreign controller at the beginning of the tax year;

(b) so much of the amount standing to the credit of the share premium account of the company at the beginning of the tax year as the foreign controller or a non-resident associate would be entitled to if the company were wound up at that time; and
(c) so much of the accumulated profits and asset revaluation reserves of the company at the beginning of the tax year as the foreign controller or a non-resident associate of the foreign controller would be entitled to if the company were wound up at that time; reduced by the sum of the following amounts, namely:-

(i) the balance outstanding at the beginning of the tax year on any debt obligation owed to the foreign-controlled resident company by the foreign controller or a non-resident associate of the foreign controller; and

(ii) where the foreign-controlled resident company has accumulated losses at the beginning of the tax year, the amount by which the return of capital to the foreign controller or non-resident associate of the foreign controller would be reduced by virtue of the losses if the company were wound up at that time.

16. **Section 107. Agreements for the avoidance of double taxation and prevention of fiscal evasion.**

(1979: Sec 163)

(1) The Federal Government may enter into an agreement with the government of a foreign country for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income imposed under this Ordinance and under the corresponding laws in force in that country, and may, by notification in the official Gazette make such provisions as may be necessary for implementing the agreement.

(2) Where any agreement is made in accordance with sub-section (1), the agreement and the provisions made by notification for implementing the agreement shall, notwithstanding anything contained in any law for the time being in force, have effect in so far as they provide for –

(a) relief from the tax payable under this Ordinance;
(b) the determination of the Pakistan-source income of non-resident persons;

c) where all the operations of a business are not carried on within Pakistan, the determination of the income attributable to operations carried on within and outside Pakistan, or the income chargeable to tax in Pakistan in the hands of non-resident persons, including their agents, branches, and permanent establishments in Pakistan;

d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and

e) the exchange of information for the prevention of fiscal evasion or avoidance of taxes on income chargeable under this Ordinance and under the corresponding laws in force in that other country.

(3) Notwithstanding anything in sub-sections (1) or (2), any agreement referred to in sub-section (1) may include provisions for the relief from tax for any period before the commencement of this Ordinance or before the making of the agreement.

17. **Section 114. Return of income.**

(1979: Sec 55, 56, 57, 72, 73, 74 & 81)

(1) Subject to this Ordinance, the following persons are required to furnish a return of income for a tax year, namely:

13[(b) any person not covered by clause 14[(a), (ab), (ac) or (ad)] who,-

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13 Substituted by the Finance Act, 2005. The original clause (b) read as follows:
(b) any person not covered by clause (a) or (ab) who –
(i) has been charged to tax in respect of any of the four preceding tax years;
(ii) claims a loss carried forward under this Ordinance for a tax year;
(iii) owns immovable property, with a land area of two hundred and fifty square yards or more, located in areas falling in the limits of a Metropolitan/Municipal Corporation, a Cantonment Board, or the Islamabad Capital Territory or owns any flat;
(iv) owns a motor vehicle (other than a motor cycle) in Pakistan;
(v) subscribes for a telephone including a mobile phone in Pakistan;
(vi) has undertaken foreign travel in the tax year other than travel by a non-resident person or any travel for the purposes of the Haj, Umrah, or Ziarat; or
(vii) is member of a club where the monthly subscription exceeds five hundred rupees or the admission fee exceeds twenty-five thousand rupees.

(vi) has undertaken foreign travel in the tax year other than travel by a non-resident person or any travel for the purposes of the Haj, Umrah, or Ziarat; or

18. **Section 115. Persons not required to furnish a return of income.**

(1979: Sec 55 & 58)

(3) The following persons shall not be required to furnish a return of income for a tax year solely by reason of sub-clauses (iii) through (vii) of clause (b) of sub-section (1) of section 114 –

(d) in the case of ownership of immovable property, a non-resident person.

19. **Section 127. Appeal to the Commissioner (Appeals).**

(1) Any person dissatisfied with any order passed by a Commissioner or a taxation officer under section 121, 122, 143, 144, 15162, 170, 182, 183, 184, 185, 186, 187, 188, or 189, or an order under sub-section (1) of section 161 holding a person to be personally liable to pay an amount of tax, or an order under clause (f) of sub-section (3) of section 172 [declaring] a person to be the representative of a non-resident person, or an order under section 221 refusing to rectify the mistake, either in full or in part, as claimed by the taxpayer or an order having the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the person, may prefer an appeal to the Commissioner (Appeals) against the order.

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14 The letters and word “(a) or (ab)” substituted by the Finance Act, 2006.
16 Substituted for the word “treating” by the Finance Act, 2003
20. **Section 142. Recovery of tax due by non-resident member of an association of persons.**

   *(1979: Sec 78)*

   (1) The tax due by a non-resident member of an association of persons in respect of the member’s share of the profits of the association shall be assessable in the name of the association or of any resident member of the association and may be recovered out of the assets of the association or from the resident member personally.

   (2) A person making a payment under this section shall be treated as acting under the authority of the non-resident member and is hereby indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

   (3) The provisions of this Ordinance shall apply to any amount due under this section as if it were tax due under an assessment order.

21. **Section 143. Non-resident ship owner or charterer.**

   *(1979: Sec 80)*

   (1) Before the departure of a ship owned or chartered by a non-resident person from any port in Pakistan, the master of the ship shall furnish to the Commissioner a return showing the gross amount specified in sub-section (1) of section 7 in respect of the ship.

   (2) Where the master of a ship has furnished a return under sub-section (1), the Commissioner shall, after calling for such particulars, accounts or documents as he may require, determine the amount of tax due under section 7 in respect of the ship and, as soon as possible, notify the master, in writing, of the amount payable.

   (3) The master of a ship shall be liable for the tax notified under sub-section (2) and the provisions of this Ordinance shall apply to such tax as if it were tax due under an assessment order.

   (4) Where the Commissioner is satisfied that the master of a ship or non-resident owner or charterer of the ship is unable to furnish the
return required under sub-section (1) before the departure of the ship from a port in Pakistan, the Commissioner may allow the return to be furnished within thirty days of departure of the ship provided the non-resident owner or charterer has made satisfactory arrangements for the payment of the tax due under section 7 in respect of the ship.

(5) The Collector of Customs or other authorised officer shall not grant a port clearance for a ship owned or chartered by a non-resident person until the Collector or officer is satisfied that any tax due under section 7 in respect of the ship has been paid or that arrangements for its payment have been made to the satisfaction of the Commissioner.

(6) This section shall not relieve the non-resident owner or charterer of the ship from liability to pay any tax due under this section that is not paid by the master of the ship.

22. Section 144. Non-resident aircraft owner or charterer.-
(1979: Sec 80A)

(1) A non-resident owner or charterer of an aircraft liable for tax under section 7, or an agent authorised by the non-resident person for this purpose, shall furnish to the Commissioner, within forty-five days from the last day of each quarter of the financial year, a return, in respect of the quarter, showing the gross amount specified in sub-section (1) of section 7 of the non-resident person for the quarter.

(2) Where a return has been furnished under sub-section (1), the Commissioner shall, after calling for such particulars, accounts or documents as he may require, determine the amount of tax due under section 7 by the non-resident person for the quarter and notify the non-resident person, in writing, of the amount payable.

(3) The non-resident person shall be liable to pay the tax notified under sub-section (2) within the time specified in the notice and the provisions of this Ordinance shall apply to such tax as if it were tax due under an assessment order.

\[The \text{words "shall be" omitted by the Finance Act, 2003.}\]
(4) Where the tax referred to in sub-section (3) is not paid within three months of service of the notice, the Commissioner may issue to the authority by whom clearance may be granted to the aircraft operated by the non-resident person a certificate specifying the name of the non-resident person and the amount of tax due.

(5) The authority to whom a certificate is issued under sub-section (4) shall refuse clearance from any airport in Pakistan to any aircraft owned or chartered by the non-resident until the tax due has been paid.

23. Section 152. Payments to non-residents.-

(1979: Sec 50(3) & 3(A))

(1) Every person paying an amount of royalty or fees for technical services to a non-resident person that is chargeable to tax under section 6 shall deduct tax from the gross amount paid at the rate specified in Division IV of Part I of the First Schedule.

18[(1A) Every person making a payment in full or part (including a payment by way of advance) to a non-resident person on the execution of –

(a) a contract or sub-contract under a construction, assembly or installation project in Pakistan, including a contract for the supply of supervisory activities in relation to such project; or

(b) any other contract for construction or services rendered relating thereto; or

(c) a contract for advertisement services rendered by T.V. Satellite Channels,

shall deduct tax from the gross amount payable under the contract at the rate specified in Division II of Part III of the First Schedule.]

19[(1B) The tax deducted under sub-section (1A) shall be a final tax on the income of a non-resident person arising from a contract.]
Subject to sub-section (3), every person paying an amount to a non-resident person (other than an amount to which sub-section (1) applies) shall deduct tax from the gross amount paid at the rate specified in Division II of Part III of the First Schedule.

Sub-section (2) does not apply to an amount –

(a) that is subject to deduction of tax under section 149, 150, 153, 155 \[or 156\];

(b) with the written approval of the Commissioner, that is taxable to a permanent establishment in Pakistan of the non-resident person;

(c) that is payable by a person who is liable to pay tax on the amount as representative of the non-resident person under sub-section (3) of section 172; or

(d) where the non-resident person is not chargeable to tax in respect of the amount.

Where a person claims to be a representative of a non-resident person for the purposes of clause (c) of sub-section (3), the person shall file a declaration to that effect with the Commissioner prior to making any payment to the non-resident person.

Where a person intends to make a payment to a non-resident person without deduction of tax under this section, the person shall, before making the payment, furnish to the Commissioner a notice in writing setting out –

(a) the name and address of the non-resident person; and

(b) the nature and amount of the payment.

The Commissioner on receipt of notice shall, within thirty days, pass an order accepting the contention or making the order under sub-section (6).
(6) Where a person has notified the Commissioner of a payment under sub-section (5) and the Commissioner has reasonable grounds to believe that the non-resident person is chargeable to tax under this Ordinance in respect of the payment, the Commissioner may, by \[order\] in writing, direct the person making the payment to deduct tax from the payment in accordance with sub-section (2).

(7) Sub-section (5) shall not apply to a payment on account of –

(a) an import of goods where title to the goods passes outside Pakistan, except on the import that is part of an overall arrangement for the supply of goods, their installation, and any commission and guarantees in respect of the supply where –

(i) the supply is made by the head office outside Pakistan of a person to a permanent establishment of the person in Pakistan;

(ii) the supply is made by a permanent establishment of the person outside Pakistan to a permanent establishment of the person in Pakistan;

(iii) the supply is made between associates; or

(iv) the supply is made by a resident person or a Pakistan permanent establishment of a non-resident person; or

(b) educational and medical expenses remitted in accordance with the regulations of the State Bank of Pakistan.

24. Section 153. Payments for goods and services.-

(1979: Sec 50(4))

(1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person or permanent establishment in Pakistan of a non-resident person -

(a) for the sale of goods;

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(b) for the rendering of services;

(c) on the execution of a contract, other than a contract for the sale of goods or the rendering of services,

shall, at the time of making the payment, deduct tax from the gross amount payable at the rate specified in Division III of Part III of the First Schedule.

(1A) Every exporter or an export house making a payment in full or part including a payment by way of advance to a resident person or permanent establishment in Pakistan of a non-resident person for the rendering of or providing of services of stitching, dyeing, printing, embroidery, washing, sizing and weaving, shall at the time of making the payment, deduct tax from the gross amount payable at the rate specified in Division IV of Part III of the First Schedule.

(2) The gross amount payable for a sale of goods shall include the sales tax, if any, payable in respect of the sale.

(4) The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) or (3) and after making such

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26 Substituted for the word "supply" by the Finance Act, 2003.
27 Inserted by the Finance Act, 2005.
28 The word "professional" omitted by the Finance Act, 2003.
29 Inserted by the Finance Act, 2006.
30 Omitted by the Finance Act, 2006. The omitted sub-section (3) read as follows:

(3) Every prescribed person making a payment in full or part (including a payment by way of advance) to a non-resident person on the execution of –

A a turnkey contract;
B a contract or sub-contract for the design, construction or supply of plant and equipment under a power project;
C a contract for advertisement services rendered by T.V. Satellite Channels,]

shall deduct tax from the gross amount payable under the contract at the rate specified in Division III of Part III of the First Schedule.

A Omitted by Finance Act, 2005. The omitted clause (a) read as follows:
A "(a) a turnkey contract;"

B Omitted by the Finance Act, 2005. The omitted clause (b) read as follows:
B "(b) a contract or sub-contract for the design, construction or supply of plant and equipment under a power project;"

C Added by the Finance Act, 2004.
D Added by the Finance Act, 2004.
enquiry as the Commissioner thinks fit, allow, by order in writing, any person to make the payment without deduction of tax.

(5) Sub-section (1) shall not apply to –

(a) a sale of goods where –

(i) the sale is made by the importer of the goods;

(ii) the importer has paid tax under section 148 in respect of the goods; and

(iii) the goods are sold in the same condition they were in when imported;

(b) a refund of any security deposit;

31[(ba) a payment made by the Federal Government, a Provincial Government or a local authority to a contractor for construction materials supplied to the contractor by the said Government or the authority;]

(c) the purchase of an asset under a lease and buy back agreement by a modaraba, leasing company, banking company or financial institution; or

(d) any payment for securitization of receivables by a Special Purpose Vehicle to the Originator 32[; or]

33[(e) a payment made by a Small Company as defined in section 2.]

34[(6) The tax deducted under this section shall be a final tax on the income of a resident person arising from transactions referred to in sub-section (1) or (1A):

Provided that sub-section (6) shall not apply to companies in respect of transactions referred to in clause (b) of sub-section (1).]

32 The full stop substituted by the Finance Act, 2005.
33 Inserted by the Finance Act, 2005.
34 Substituted by the Finance Act, 2006. The substituted sub-section (6) read as follows:
"(6) The tax deducted under this section shall be a final tax on the income of a resident person arising from transactions referred to in clause (a) or (c) of sub-section (1)."
The provisions of sub-section (6) in so far as they relate to payments on account of supply of goods from which tax is deductible under this section shall not apply in respect of any person being a manufacturer of such goods. The provision of this sub-section shall be deemed always to have been so enacted and shall have had effect accordingly.

Where any tax is deducted by a person making a payment to a Special Purpose Vehicle, on behalf of the Originator, the tax is credited to the Originator.

Every person from whom tax is being collected under this section shall disclose his National Tax Number to the withholding agent. In case of there being no National Tax Number (NTN), Computerized National Identity Card Number (CNIC) shall be provided. Where a person fails to disclose his NTN or CNIC number, as the case may be, at the time of collection or deduction of tax, the rate of withholding tax shall be two per cent over and above the rates specified in Division III of Part III of the First Schedule.

In this section, –

“prescribed person” means –

(a) the Federal Government;

(b) a company [other than a small company, as defined in clause (59A) of section 2];

(c) an association of persons constituted by, or under, law;

(d) a foreign contractor or consultant; [ ]
Section 155. Income from property.

(1979: Sec 50(7B))

(1) Every prescribed person making a payment in full or part (including a payment by way of advance) to any person on account of rent of immovable property (including rent of furniture and fixtures, and amounts for services relating to such property) shall deduct tax from the gross amount of rent paid at the rate specified in Division V of Part III of the First Schedule.

Explanation.—“gross amount of rent” includes the amount referred to in sub-section (1) or (3) of section 16, if any.

(2) The tax deducted under sub-section (1) shall be a final tax on the income from property.

(3) In this section, “prescribed person” means—

(i) the Federal Government;

(ii) the Provincial Government;

(iii) local authority;

(iv) a company;

(v) a non-profit organisation;

(vi) a diplomatic mission of a foreign state;

(vii) a certificated association of the profession.

Section 156. Allowances for tax deducted at source.

(1) The provisions of this section shall be applicable—

(a) to every person who is a tax payer, whether resident or non-resident;

(b) to every person who is a tax payer and is not a resident if he has income from property.

(2) If any tax is deducted from any income from property under this section, the tax payer shall be entitled to claim an allowance equal to such tax from the income-tax. The income-tax shall be calculated on the income before such deduction.

(3) The allowance referred to in sub-section (2) shall be subject to such deductions and conditions as the Central Government may by notification in the Official Gazette prescribe.

Section 157. Tax to be deducted at source from payments to non-residents.-

(1) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident.

(2) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident in respect of services performed in India or performed abroad and connected with any trade, business or profession carried on in India.

(3) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident in respect of income from property mentioned in sub-section (1) or (2) of section 16.

(4) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident in respect of income from property mentioned in sub-section (1) or (2) of section 16 and which is paid—

(a) for the purpose of research, development, or technical assistance,

(b) for the purpose of medical treatment, or

(c) to a diplomatic mission of a foreign state.

Section 158. Tax to be deducted at source from payments to resident individuals.-

(1) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to—

(a) any person resident in India;

(b) any person resident in India in respect of any income from property.

(2) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident in respect of—

(a) income from property mentioned in sub-section (1) or (2) of section 16;

(b) income from property mentioned in sub-section (1) or (2) of section 16 and which is paid—

(i) for the purpose of research, development, or technical assistance,

(ii) for the purpose of medical treatment,

(iii) to a diplomatic mission of a foreign state.

Section 159. Tax to be deducted at source from payments to resident individuals.-

(1) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to—

(a) any person resident in India;

(b) any person resident in India in respect of any income from property.

(2) The provisions of this section shall apply to every payment of income which is chargeable to tax as income from property and is paid to a non-resident in respect of—

(a) income from property mentioned in sub-section (1) or (2) of section 16;

(b) income from property mentioned in sub-section (1) or (2) of section 16 and which is paid—

(i) for the purpose of research, development, or technical assistance,

(ii) for the purpose of medical treatment,

(iii) to a diplomatic mission of a foreign state.
(ii) a Provincial Government;

(iii) local authority;

(iv) a company;

(v) a non-profit organization;

(vi) a diplomatic mission of a foreign state; or

(vii) any other person notified by the Central Board of Revenue for the purpose of this section.]

26. Section 172. Representatives.-

(1979: Sec 78 & 107)

(3) Subject to sub-sections (4) and (5), where a person is a non-resident person, the representative of the person for the purposes of this Ordinance for a tax year shall be any person in Pakistan –

(a) who is employed by, or on behalf of, the non-resident person;

(b) who has any business connection with the non-resident person;

(c) from or through whom the non-resident person is in receipt of any income, whether directly or indirectly;

(d) who holds, or controls the receipt or disposal of any money belonging to the non-resident person;

(e) who is the trustee of the non-resident person; or

(f) who is declared by the Commissioner by [an order] in writing to be the representative of the non-resident person.

(4) A bona fide independent broker in Pakistan who, in respect of any transactions, does not deal directly with, or on behalf of, a non-resident principal but deals with, or through a non-resident broker,

47 Substituted for the word "notice" by the Finance Act, 2003.
shall not be treated as a representative of the non-resident principal in respect of such transactions, if—

(a) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(b) the non-resident broker is carrying on such transactions in the ordinary course of its business and not as a principal.

(5) No person shall be declared as the representative of a non-resident person unless the person has been given an opportunity by the Commissioner of being heard.

27. **Section 218. Service of notices and other documents.**-

(1) Subject to this Ordinance, any notice, order or requisition required to be served on a resident individual (other than in a representative capacity) for the purposes of this Ordinance shall be treated as properly served on the individual if—

(a) personally served on the individual or, in the case of an individual under a legal disability or a non-resident individual, the representative of the individual;

28. **Section 237. Power to make rules.**-

(1979: Sec 165(1))

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in, and procedure by, which the income, profits and gains chargeable to tax and the tax payable thereon under this Ordinance shall be determined in the case of—

(i) income derived partly from agriculture and partly from other business; or

(ii) non-resident persons;

48 The words "or treated" omitted by the Finance Act, 2003.
Section 103. Foreign tax credit.-

(1) Where a resident taxpayer derives foreign source income chargeable to tax under this Ordinance in respect of which the taxpayer has paid foreign income tax, the taxpayer shall be allowed a tax credit of an amount equal to the lesser of—

(a) the foreign income tax paid; or

(b) the Pakistan tax payable in respect of the income.

(2) For the purposes of clause (b) of sub-section (1), the Pakistan tax payable in respect of foreign source income derived by a taxpayer in a tax year shall be computed by applying the average rate of Pakistan income tax applicable to the taxpayer for the year against the taxpayer’s net foreign-source income for the year.

(3) Where, in a tax year, a taxpayer has foreign income under more than one head of income, this section shall apply separately to each head of income.

(4) For the purposes of sub-section (3), income derived by a taxpayer from carrying on a speculation business shall be treated as a separate head of income.

(5) The tax credit allowed under this section shall be applied in accordance with sub-section (3) of section 4.

(6) Any tax credit or part of a tax credit allowed under this section for a tax year that is not credited under sub-section (3) of section 4 shall not be refunded, carried back to the preceding tax year, or carried forward to the following tax year.

(7) A credit shall be allowed under this section only if the foreign income tax is paid within two years after the end of the tax year in which the foreign income to which the tax relates was derived by the resident taxpayer.

(8) In this section, –

“average rate of Pakistan income tax” in relation to a taxpayer for a tax year, means the percentage that the Pakistani income tax (before allowance of the tax credit under this section) is of the taxable income of the taxpayer for the year;

“foreign income tax” includes a foreign withholding tax; and

“net foreign-source income” in relation to a taxpayer for a tax year, means the total foreign-source income of the taxpayer charged to tax in the year, as reduced by any deductions allowed to the taxpayer under this Ordinance for the year that –

(a) relate exclusively to the derivation of the foreign-source income; and

(b) are reasonably related to the derivation of foreign-source income in accordance with sub-section (1) of section 67 and any rules made for the purposes of that section.

30. Section 104. Foreign losses.-

(New)

(1) Deductible expenditures incurred by a person in deriving foreign-source income chargeable to tax under a head of income shall be deductible only against that income.

(2) If the total deductible expenditures referred to in sub-section (1) exceed the total foreign source income for a tax year chargeable to tax under a head of income (hereinafter referred to as a “foreign loss”), the foreign loss shall be carried forward to the following tax year and set off against the foreign source income chargeable to tax under that head in that year, and so on, but no foreign loss shall be carried forward to more than six tax years immediately succeeding the tax year for which the loss was computed.
(3) Where a taxpayer has a foreign loss carried forward for more than one tax year, the loss for the earliest year shall be set off first.

(4) Section 67 shall apply for the purposes of this section on the basis that –

(a) income from carrying on a speculation business is a separate head of income; and

(b) foreign source income chargeable under a head of income (including the head specified in clause (a)) shall be a separate head of income.

31. **Rate of Tax**

First Schedule  
*Division IV of Part I*  
Rate of Tax on Certain Payments to Non-residents

The rate of tax imposed under section 6 on payments to non-residents shall be 15% of the gross amount of the royalty or fee for technical services.

First Schedule  
*Division V of Part I*  
Rate of Tax on Shipping or Air Transport Income of a Non-resident Person

The rate of tax imposed under section 7 shall be –

(a) in the case of shipping income, 8% of the gross amount received or receivable; or

(b) in the case of air transport income, 3% of the gross amount received or receivable.
First Schedule
Deduction of Tax at Source

Payments to non-residents

(1) The rate of tax to be deducted from a payment referred to in sub-section (1A) of section 152 shall be 6% of the gross amount payable.

(2) The rate of tax to be deducted under sub-section (2) of section 152 shall be 30% of the gross amount paid.]

32. Exemption From Total Income

THE SECOND SCHEDULE

PART I

Clause 51[(72) Any profit on debt payable to a non-resident person,-

(i) in respect of such private loan to be utilized on such project in Pakistan as may be approved by the Federal Government for the purposes of this clause, having regard to the rate of profit and the terms of repayment of the loan and the nature of project on which it is to be utilized;

(ii) on a loan in foreign exchange against export letter of credit which is used exclusively for export of goods manufactured or processed for exports in Pakistan;

(iii) being a foreign individual, company, firm or association of persons in respect of a foreign loan as is utilized for industrial investment in Pakistan

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50 Substituted by the Finance Act, 2006. The substituted “Division-II” read as follows:

“Division II Payments to non-residents

The rate of tax to be deducted under sub-section (2) of section 152 shall be 30% of the gross amount paid.”

51 Substituted by the Finance Act, 2006. The substituted clause (72) read as follows:

“(72) Any profit on debt payable to a non-resident person in respect of such private loan to be utilized on such project in Pakistan as may be approved by the Federal Government for the purposes of this clause, having regard to the rate of profit and the terms of repayment of the loan and the nature of project on which it is to be utilized.”
provided that the agreement for such loan is concluded on or after the First day of February 1991, and is duly registered with the State Bank of Pakistan.]

(1979: Clause 75)

Clause 75. Any income of an agency of a foreign Government, a foreign national (company, firm or association of persons), or any other non-resident person approved by the Federal Government for the purposes of this clause, from profit on moneys borrowed under a loan agreement or in respect of foreign currency instrument approved by the Federal Government.

(1979: Clause 77)

Clause 77. Any profit derived by a non-resident person (whether a citizen of Pakistan or otherwise) in respect of the Islamic mode of financing, including istisna, morabaha, musharika

(1979: Clause 77-B)

53[ ]

54[ ]

55[ ]

56[ ]

52 Omitted by the Finance Act, 2006. The omitted clause (73) read as follows:

“(73) Any profit on debt payable to a non-resident person on a loan in foreign exchange against export letter of credit which is used exclusively for export of goods manufactured or processed for exports in Pakistan.”

53 Omitted by the Finance Act, 2006. The omitted clause (76) read as follows:

“(76) Any profit on debt payable to a non-resident person being a foreign individual, company, firm or association of persons in respect of a foreign loan as is utilised for industrial investment in Pakistan provided that the agreement for such loan is concluded on or after the First day of February 1991, and is duly registered with the State Bank of Pakistan.”

54 Substituted for the colon by the Finance Act, 2003.

55 Omitted by the Finance Act, 2003. The omitted clause (87) read as follows:

“(87) Any income derived by a non-resident person from foreign investment in 7th issue of Pak rupee denominated WAPDA Energy Bonds issued under the WAPDA Energy Bonds (7th Issue) Regulations, 1997.”
Clause 57[(88A)] Notwithstanding omission of clause (88), the existing holders of Federal Government Securities and redeemable capital shall continue to have benefit of exemption till the maturity of the securities and redeemable capital.]

(1979: Clause 80)

Clause (132A) Payments made on or after the first day of July, 1991, for the supply of plant, equipment and machinery to Hub Power Company Limited by a non-resident being a foreign individual, company, firm or association of persons.

33. Reduction In Tax Rates

THE SECOND SCHEDULE

PART II

Clause (16) In the case of a non-resident company, rate of deduction of tax under section 150 on dividends received from a company engaged exclusively in mining operations, other
than petroleum, shall be 7.5 per cent of the gross amount of dividend.

(1979: Clause 11)

34. Exemption From Specific Provisions

SECOND SCHEDULE

PART IV

Clause 19. The provisions of sections 113 and 151 shall not apply to non residents, (excluding local branches or subsidiaries or offices of foreign banks, companies, associations of persons or any other person operating in Pakistan), in respect of their receipts from Pak rupees denominated Government and corporate securities and redeemable capital, as defined in the Companies Ordinance, 1984 (XLVII of 1984), listed on a registered stock exchange, where the investments are made exclusively from foreign exchange remitted into Pakistan through a Special Convertible Rupee Account maintained with a bank in Pakistan.

(1979: Clause 30)

Clause (41) The provisions of sub-section \[60^{(1B)} of section 152\] shall not apply in respect of a non-resident person unless he opts for the presumptive tax regime:

Provided that a declaration of option is furnished in writing within three months of the commencement of the \[61^{[tax]}\] year and such declaration shall be irrevocable and shall remain in force for three years.

\[60\] The brackets, words and figures "(7) of section 153" substituted by the Finance Act, 2006.

\[61\] Substituted for the word "income" by the Finance Act, 2003.