

**IMMOVABLE PROPERTY – VALUATION,  
CAPITAL GAIN TAX AND RATES**

**FURTHER AMENDMENTS INTRODUCED VIDE  
INCOME TAX (AMENDMENT)  
ORDINANCE, 2016**

***Prepared By***

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**REFERENCE: SECTION 37, 111, 68, 236C, (Sch. I, Part I, Div. VIII),**  
**(Sch. I, Part I, Div. VIII)**

## **A. HISTORIC PERSPECTIVE:**

### **Fair Market Value:**

- Earlier, vide a circular letter no. 7(13), dated: June 29, 1993, the Board issued instructions regarding valuation of Immovable property by the Commissioners. The Board instructed that the values fixed by the provincial authorities should be made the basis of valuation.
- It was proposed vide Finance Bill 2016 that fair market value of any property shall be determined without taking into consideration the value fixed or notified by any provincial authority.
- However, FA 2016 altogether barred Commissioner from determining Fair Market Value of Immoveable Property. The same was made to be determined on the basis of valuation made by a panel of approved valuers of the State Bank of Pakistan ("SBP").

### **Capital Gain Tax Rates:**

- Finance Act 2012 ("FA 2012") for the first time brought capital gain arising out of disposal of immovable property to tax subsequent to 18<sup>th</sup> constitutional amendment, wherein, entry number 50 in Federal Legislative List empowers the Federal Government to levy this tax.
- Prior to FA 2016 and after FA 2012, capital gains on immovable property sold after holding upto one year and upto two years were charged to tax at the rates of 10% and 5%, respectively, whereas, capital gains on property sold after holding for a period of more than two years were exempt from tax.
- FA 2016 levied capital gain tax at the rate of 10% on sale of a property held for a period upto five years, whereas, capital gains on property sold after holding for a period of more than five years were exempt from tax.
- A comparison of tax rate with previous years is provided below:

<b>Holding Period</b>	<b>TY 2013 to TY 2016</b>	<b>TY 2017</b>
Upto one Year	<b>10%</b>	<b>10%</b>
More than one year but less than two years	<b>5%</b>	
More than two years but less than five years	<b>Nil</b>	
More than five years	<b>Nil</b>	<b>Nil</b>

## **B. AMENDMENT:**

### **Fair Market Value:**

- The real estate sector strongly opposed the amendments introduced vide FA 2016, especially in section 68 of Income Tax Ordinance, 2001 (“ITO”), which resulted in further amendment in ITO after prolonged deliberations among Ministry of Finance, FBR, Tax Policy Experts, representatives from Real Estate Sector and other stock holders.
- The amendments are as briefly described as under:
- Amendment in section 68 of ITO is made and FBR is empowered to determine and notify the fair market values of the immovable property. The rates to be notified have been agreed for the major cities and the same will be notified by the FBR soon, however, until the determination of such values by FBR, values already determined for the purpose of stamp duty shall be deemed to be fair market values.
- Furthermore, it has also been made clear that following values shall not be less than the values determined for the purpose of stamp duty or by FBR, as the case may be:
  - Consideration received on disposal of property;
  - Value of property at the time of purchase; and
  - Valuation of property under section 111
- This means that the powers of district officer under rule 228 of Income Tax Rule, 2002 to fix a higher value of constructed property, than value under section 68 of ITO, for the purpose of section 111 of ITO, has been curbed.
- Furthermore, in light of decision by Honourable Supreme Court (2009 PTD 1279), proceedings cannot be initiated, under provisions of section 122 and likes, for the periods prior this amendment on the basis of Fair market values determined under section 68 of ITO. However, legality of proceedings on the basis of other information (undisclosed asset, bank account) will remain untouched.

It has further been explained that if the determined fair market value is different from auction price, the higher of the two values shall be applicable.

### Advance Tax on Sale/Disposal or Purchase:

- Moreover, the holding period for exemption from adjustable advance tax on sale or transfer of immovable property has been reduced to 3 years from 5 years. Also, such advance tax has been exempted if the seller is dependent of a Shaheed of Pakistan Armed Forces (“PAF”) or of a person who dies while in the service of PAF or Federal and Provincial Governments. The advance tax has also been exempted on first sale of property acquired or allotted as an original allottee.
- Limit for exemption of advance tax on purchase of immovable property has also been enhanced from 3 million to 4 million.

### Capital Gain Tax Rates:

- Capital Gain Tax has been exempted on sale of property if the seller is dependent of a Shaheed of PAF or of a person who dies while in the service of PAF or Federal and Provincial Governments. Capital Gain Tax has also been exempted on first sale of property acquired or allotted as an original allottee.
- For the cases other than above, following Capital Gain Tax rates shall be applicable:

#### **a. For property acquired on or after July 01, 2016**

Holding Period	Tax Rate
Upto one year	10%
One to two years	7.5%
Two to three years	5%
More than three years	0%

#### **b. For property acquired before July 01, 2016**

Holding Period	Tax Rate
Upto three years	5%
More than three years	0%

- Capital Gain Tax rates have been reduced by 50% in case of first sale of property acquired or allotted to ex-servicemen and serving personnel of Federal and Provincial Governments, being original allottee of the property.

## ILLUSTRATION:

- Following is an example illustrating the difference in revenues accrued to the exchequer in case of an open Plot in Defence Phase VIII, Karachi (assumed to be sold within one year).

	DC Valuation		Value determined by FBR	
Value per Square Yard	1,990		20,000	
Area	1,000		1,000	
Total Value of Area	1,990,000		20,000,000	
Advance Tax on Purchase (assumed Filer)	0%	-	2%	400,000
Advance Tax on Sale (assumed Filer)	1%	19,900	1%	200,000
<b>Total Revenues to Exchequer</b>		<b>19,900</b>		<b>600,000</b>

## Disclaimer:

*This publication gives an overview of further amendments introduced vide Income Tax (Amendment) Ordinance, 2016, and is prepared for the general use of our clients/other users, and shall not be construed as an expert advice relating to a particular matter. No representation and/ or warranty (written or inferred) are extended as to the completeness of contents. You should not act upon or take decision(s) on the basis of the information without soliciting professional advice.*

**Karachi: Monday, August 01, 2016**