



Critical Study of Section 236C of Income Tax Ordinance, 2001

There is a great confusion created by the various published versions of Income Tax Ordinance, 2001 (ITO) available in the market and the official version of ITO (updated up to Finance Act, 2024) existing on FBR's website. None of those exhibits the correct and authentic version of section 236C.

In order to understand the exact status of different provisions of this section we have to go back in the chronology of this section, which briefly is as below:

1. Section 236C was inserted in the ITO by section 15(55) of the Finance Act, 2012, dated 26-06-2012 comprising of the following three sub-sections:

"236C. Advance Tax on sale or transfer of immovable property.–

- (1) Any person responsible for registering or attesting transfer of any immovable property shall at the time of registering or attesting the transfer shall collect from the seller or transferor advance tax at the rate specified in Division X of part IV of the First Schedule.
- (2) The Advance tax collected under sub-section (1) shall be adjustable.
- (3) The advance tax under this section shall not be collected in the case of Federal Government, Provincial Government or a Local Government."

2. The original sub-section (3) was omitted by section 9(59) of the Finance Act, 2015, dated 30-06-2015.
3. Section 5(44) of the Finance Act, 2016, dated 24-06-2016 once again inserted the following sub-section (3) in this section:

"(3) Advance tax under sub-section (1) shall not be collected if the immovable property is held for a period exceeding five years."

4. Income Tax (Amendment) Ordinance, 2016 was promulgated on 31st July, 2016. It's section 2(2) made the following amendments in the existing section 236C:
 - (a) Substituted the period of "five years" in sub-section (3) with "three years"; and

- (b) Inserted sub-section (4) to this section, dealing with non-application of provisions of this section, which read as follows:

"(4) Sub-section (1) shall not apply to:–

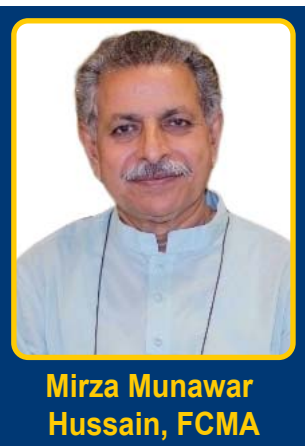
- (a) a seller, if the seller is dependent of:
 - (i) a Shaheed belonging to Pakistan Armed Forces; or
 - (ii) a person who dies while in the service of the Pakistan Armed Forces or the Federal and Provincial Government; and
- (b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority."

This Ordinance was valid upto 27-11-2016 & was extended upto 26-03-2017. In the meanwhile it was presented before the National Assembly on 11th August, 2016. However, it lapsed on 02-12-2016 upon enactment of the Income Tax (Fourth Amendment) Act, 2016; hence, all amendments made through it became redundant.

5. The Tax Laws (Amendment) Ordinance, 2016 was promulgated on 31-08-2016, w.e.f. 01-07-2016. Section 3(6) of this Ordinance made the following changes in section 236C:

- (a) Inserted the following Proviso to sub-section (1) of section 236C:

"Provided that this sub-section shall not apply to a seller, being the dependent of a Shaheed belonging to Pakistan Armed Forces or a person who dies while in the service of the Pakistan Armed Forces or the service of Federal Government or Provincial Government, in respect of first sale of immovable property acquired from or allotted by the Federal Government or Provincial Government or any authority duly certified by the official allotment



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authority, and the property acquired or allotted is in recognition of or for services rendered by the Shaheed or the person who dies in service."

- (b) Omitted sub-section (4) which was inserted by Income Tax (Amendment) Ordinance, 2016

This Ordinance was valid upto 28-12-2016. In the meanwhile the Ordinance was laid before the National Assembly on 07th September, 2016. The National Assembly (by passing a resolution on 28-11-2016) extended the validity of this Ordinance upto 26-04-2017. None of the subsequent relevant legislations (i.e., the Income Tax (Fourth Amendment) Act, 2016 & the Finance Act, 2017) validated this Ordinance. Eventually, the Tax Laws (Amendment) Ordinance, 2016 lapsed on 24-04-2017; thenceforth, all amendments made through this Ordinance became redundant.

6. The Income Tax (Fourth Amendment) Act, 2016, dated 02-12-2016. Section 2(3) of that Act made the following amendments in section 236C:

- (a) Substituted the period of "five years" in sub-section (3) by "three years"; and
(b) Inserted sub-section (4) to this section, dealing with Non-application of provisions of this section, which read as follows:

"(4) Sub-section (1) shall not apply to:-

- (a) a seller, if the seller is dependent of:
(i) ¹[a seller, if the seller is dependent of:] a Shaheed belonging to Pakistan Armed Forces; or
(ii) a person who dies while in the service of the Pakistan Armed Forces or the Federal and Provincial Government; and

- (b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority."

7. Section 4(58) of the Finance Act, 2017, dated 20-06-2017 made the following amendments in section 236C:

- (a) Inserted expression ", recording" after the word "registering" wherever appearing in sub-section (1).
(b) Following 'Explanation' was inserted at the end of sub-section (1):

"Explanation,- For removal of doubt, it is clarified that the person responsible for registering, recording or attesting transfer includes person responsible for registering, recording or attesting transfer for local authority, housing authority, housing society, co-operative society and registrar of properties."

- (c) Inserted the following Proviso to sub-section (2):

"Provided that where immovable property referred to in sub-section (1) is acquired and disposed of within the same tax year, the tax collected under this section shall be minimum tax."

8. Section 6(60) of the Finance Act, 2019, dated 30-06-2019 substituted the word "five" for the word "three" appearing in sub-section (3) of section 236C.
9. Section 6(61) of the Finance Act, 2020, dated 30-06-2020 substituted the word "four" for the word "five" appearing in sub-section (3) of section 236C.
10. Section 4(3) of the Tax Laws (Amendment) Ordinance, 2021, dated 11-02-2021 inserted the following second proviso to sub-section (1) of section 236C:

"Provided further that if the seller or transferor is a non-resident individual holding Pakistan Origin Card (POC) or National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card (CNIC) who had acquired the said immovable property through a Foreign Currency Value Account (FCVA) or NRP Rupee Value Account (NRVA) maintained with authorized banks in Pakistan under the foreign exchange regulations issued by the State Bank of Pakistan, the tax collected under this section from such persons shall be final discharge of tax liability in lieu of capital gains taxable under section 37 earned by the seller or transferor from the property so disposed of."

This Ordinance lapsed on 10th June, 2021; hence, amendments made through it became redundant. Subsequently, the same proviso was inserted by the Finance Act, 2021.

11. Section 7(87) of the Finance Act, 2021, dated 30-06-2021 made the following amendments in sub-section (1) of section 236C:

- (a) In the explanation, after the words "co-operative society", the expression ", public and private real estate projects registered/ governed under any law, joint ventures, private commercial concerns" shall be inserted;
(b) In the proviso, for the full stop at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

"Provided further that if the seller or transferor is a non-resident individual holding Pakistan Origin Card (POC) or National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card (CNIC) who had acquired the said immovable property through a Foreign Currency Value Account (FCVA) or NRP Rupee Value Account (NRVA) maintained with

authorized banks in Pakistan under the foreign exchange regulations issued by the State Bank of Pakistan, the tax collected under this section from such persons shall be final discharge of tax liability in lieu of capital gains taxable under section 37 earned by the seller or transferor from the property so disposed of.”

12. Section 5(48) of the Finance Act, 2022, dated 30-06-2022 omitted sub-section (3) of section 236C.
13. Section 7(25) of the Finance Act, 2023, dated 26-06-2023 made the following amendments in section 236C:
 - (a) In sub-section (1), for the words “Any person”, the words “Subject to sub-section (2A), any person” were substituted; and
 - (b) Sub-section (2A) was inserted as below:

“(2A) Notwithstanding anything contained in any other law, for the time being in force, any person responsible for registering, recording or attesting transfer of any immovable property shall not register, record or attest transfer unless the seller or transferor has discharged its tax liability under section 7E and evidence to this effect has been furnished to the said person in the prescribed mode, form and manner.”
14. Section 8(34) of the Finance Act, 2024, dated 29-06-2024 made the following amendments in section 236C:
 - (a) after the expression “Provincial Government” occurring for the first time, the expression “or a war wounded person while in service of Pakistan Armed Forces or Federal or Provincial Government or an ex-serviceman and serving personnel of armed forces or ex-employees or serving personnel of Federal and Provincial Government” shall be inserted; and
 - (b) after the expression “who dies in service”, the expression “or a war wounded person while in service of Pakistan Armed Forces or Federal or Provincial Government or an ex-serviceman and serving personnel of armed forces or ex-employees or serving personnel of Federal and Provincial Government”

These amendments cannot be incorporated in section 236C. The proviso wherein these amendments could have been made was inserted in sub-section (1) of section 236C by the Tax Laws (Amendment) Ordinance, 2016, dated 31-08-2016, which lapsed due to operation of Article 89 of the Constitution of Islamic Republic of Pakistan. Subsequently, that Ordinance never converted into an Act of the Parliament. Resultantly, the referred proviso did not become part of section 236C(1).

Summary of Discussion

Based on the above study, the correct version of section 236C of the ITO, as on today (i.e., after incorporating amendments by the Finance Act, 2024), should have been as follows:

² [236C. Advance Tax on sale or transfer of immovable Property.–

(1) ³[Subject to sub-section (2A), any person] responsible for registering ⁴[, recording] or attesting transfer of any immovable property shall at the time of registering ⁵[, recording] or attesting the transfer shall collect from the seller or transferor advance tax at ⁶the rate specified in Division X of Part IV of the First Schedule ⁷[.]

⁸[]

⁹[Provided further that if the seller or transferor is a non-resident individual holding Pakistan Origin Card (POC) or National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card (CNIC) who had acquired the said immovable property through a Foreign Currency Value Account (FCVA) or NRP Rupee Value Account (NRVA) maintained with authorized banks in Pakistan under the foreign exchange regulations issued by the State Bank of Pakistan, the tax collected under this section from such persons shall be final discharge of tax liability in lieu of capital gains taxable under section 37 earned by the seller or transferor from the property so disposed of.]

¹⁰[Explanation.– For removal of doubt, it is clarified that the person responsible for registering, recording or attesting transfer includes person responsible for registering, recording or attesting transfer for local authority, housing authority, housing society, co-operative society ¹¹[, public and private real estate projects registered/governed under any law, joint ventures, private commercial concerns] and registrar of properties.]

(2) The Advance tax collected under sub-section (1) shall be adjustable ¹²[:]

¹³[Provided that where immovable property referred to in sub-section (1) is acquired and disposed of within the same tax year, the tax collected under this section shall be minimum tax.]

¹⁴[(2A) Notwithstanding anything contained in any other law, for the time being in force, any person responsible for registering, recording or attesting transfer of any immovable property shall not register, record or attest transfer unless the seller or transferor has discharged its tax liability under section 7E and evidence to this effect has been furnished to the said person in the prescribed mode, form and manner.]

¹⁵[]

¹⁶[(4) Sub-section (1) shall not apply to:–

- (a) a seller, if the seller is dependent of:
- (i) ¹⁷[a seller, if the seller is dependent of:] a Shaheed belonging to Pakistan Armed Forces; or
- (ii) a person who dies while in the service of the Pakistan Armed Forces or the Federal and provincial Government; and
- (b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority.]

Recommendation to Federal Board of Revenue

Perusal of section 236C of the ITO reveals that there are different drafting, legal and constitutional mistakes in this section. In order to rectify the law and remove the anomalies in section 236C, it is hereby recommended that through an Act of the Parliament the following amendments should be made:

1. Non-existent (but appearing in FBR's official version of ITO) First Proviso to sub-section (1) should be inserted. It should be worded as below:

“Provided that this sub-section shall not apply to a seller, being the dependent of a Shaheed belonging to Pakistan Armed Forces or a person who dies while in the service of the Pakistan Armed Forces or the service of Federal Government or Provincial Government or a war wounded person while in service of Pakistan Armed Forces or Federal or Provincial Government or an ex-serviceman and serving personnel of armed forces or ex-employees or serving personnel of Federal and Provincial Government, in respect of first sale of immovable property acquired from or allotted by the Federal Government or Provincial Government or any authority duly certified by the official allotment authority, and the property acquired or allotted is in recognition of or for services rendered by the Shaheed or the person who dies in service or a war wounded person while in service of Pakistan Armed Forces or Federal or Provincial Government or an ex-serviceman and serving personnel of armed forces or ex-employees or serving personnel of Federal and Provincial Government.”

This insertion should be made effective retrospectively (i.e., w.e.f. 01-07-2016).

2. FBR places the “Explanation” in sub-section (1) before the provisos, which is not correct. Both the provisos of sub-section (1) should be placed before the “Explanation”.

3. The expression “a seller, if the seller is dependent of:” appearing in sub-clause (i) of clause (a) of sub-section (4) should be omitted.

End Notes

1. Apparently, these words seem to be repetition of the expression appearing in clause (a) above.
2. Section 236C inserted by the Finance Act, 2012, dated 26-06-2012.
3. Substituted for “Any person” by the Finance Act, 2023, dated 26-06-2023.
4. Word, etc., inserted by the Finance Act, 2017, dated 19-06-2017.
5. Word, etc., inserted by the Finance Act, 2017, dated 19-06-2017.
6. Should have been “the” instead of “he”.
7. Colon was substituted for full stop by section 3(6)(a) of the Tax Laws (Amendment) Ordinance, 2016, dated 31-08-2016 effective from 01-07-2016. That Ordinance was valid upto 28-12-2016 and extended upto 26-04-2017 by a resolution of National Assembly passed on 28-11-2016, thereafter it lapsed. Thus, the law came to the position as it was before that amendment.
8. Proviso was inserted by section 3(6)(a) of the Tax Laws (Amendment) Ordinance, 2016, dated 31-08-2016 effective from 01-07-2016. This Ordinance was valid upto 28-12-2016 and extended upto 26-04-2017 by a resolution of National Assembly passed on 28-11-2016, thereafter it lapsed. Thus, the law came to the position as it was before that amendment. The Proviso sought to be inserted read as below:
“Provided that this sub-section shall not apply to a seller, being the dependant of a Shaheed belonging to Pakistan Armed Forces or a person who dies while in the service of the Pakistan Armed Forces or the service of Federal Government or Provincial Government, in respect of first sale of immovable property acquired from or allotted by the Federal Government or Provincial Government or any authority duly certified by the official allotment authority, and the property acquired or allotted is in recognition of or for services rendered by the Shaheed or the person who dies in service.”
9. Proviso inserted by the Finance Act, 2021, dated 30-06-2021. Earlier the same was inserted by the Tax Laws (Amendment) Ordinance, 2021, dated 19-02-2021.
The Finance Act, 2021 inserted it as second proviso, whereas the proviso inserted by the Tax Laws (Amendment) Ordinance, 2016 does not exist as explained in the preceding foot note. Hence, it should have been the only proviso.
10. Explanation inserted by the Finance Act, 2017, dated 19-06-2017.
11. Words, etc., inserted by the Finance Act, 2021, dated 30-06-2021.
12. Substituted for full stop by the Finance Act, 2017, dated 19-06-2017.
13. Proviso inserted by the Finance Act, 2017, dated 19-06-2017.
14. Sub-section (2A) inserted by the Finance Act, 2023, dated 26-06-2023.
15. Sub-section (3) omitted by the Finance Act, 2022, dated 30-06-2022. Earlier it was inserted by section 5(44) of the Finance Act, 2016, dated 24-06-2016. Earlier it was omitted by section 9(59) of the Finance Act, 2015, dated 29-06-2015. Before omission it read as below:
“(3) Advance tax under sub-section (1) shall not be collected if the immovable property is held for a period exceeding “[[four] years].”
* Substituted for “five” by section 6(61) of the Finance Act, 2020, dated 30-06-2020. Earlier substituted “five” for “three” by section 13(60) of the Finance Act, 2019, dated 30-06-2019. Earlier “three years” were substituted for “five years” by section 2(3)(a) of the Income Tax Laws (Fourth Amendment) Act, 2016, dated 02-12-2016. Earlier the same amendment was made by section 2(2)(a) of the Income Tax (Amendment) Ordinance, 2016, dated 31-07-2016, which lapsed on its presentation before the National Assembly on 11-08-2016. Before omission in 2015 it read as below:
“(3) The advance tax under this section shall not be collected in the case of Federal Government, Provincial Government or a Local Government.”
16. Sub-section (4) inserted by section 2(3)(b) of the Income Tax (Fourth Amendment) Act, 2016, dated 02-12-2016. Earlier it was omitted by section 3(6)(b) of the Tax Laws (Amendment) Ordinance, 2016, dated 31-08-2016 effective from 01-07-2016. Earlier it was inserted by section 2(2)(b) of the Income Tax (Amendment) Ordinance, 2016, dated 31-07-2016. This section as sought to be inserted and later on omitted by the Income Tax (Amendment) Ordinance, 2016 & the Tax Laws (Amendment) Ordinance, 2016 read as below:
“(4) Sub-section (1) shall not apply to:–
(a) a seller, if the seller is dependent of:
(i) a Shaheed belonging to Pakistan Armed Forces; or
(ii) a person who dies while in the service of the Pakistan Armed Forces or the Federal and provincial Government; and
(b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority.”
17. Words already appear in the Gazette as beginning paragraph of clause (a), hence, seem to be superfluous.

About the Author: Mirza Munawar Hussain is a Fellow member of ICMA, PIPFA & ICSP & law graduate. He served the industry and profession for more than four decades. He remained Council Member of ICMA & President of PIPFA. He served as member of committees of SAFA & IFAC. Mr. Mirza authored various books on Taxation, Commercial Laws & Corporate Laws. Since 1992 he is a practicing accountant.