

**Government of Pakistan
(Revenue Division)
Federal Board of Revenue**

Islamabad, the 11th February, 2011

**NOTIFICATION
Income Tax**

S.R.O. 112(1)/2011.- In exercise of the powers conferred by sub-section (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Board of Revenue is pleased to direct that the following further amendments shall be made in the Income Tax Rules, 2002, the same having been previously published vide Notification No. SRO. 865(I)/2010 dated 7th September, 2010, as required by sub-section (3) of the said section, namely:-

In the aforesaid Rules, in Chapter-II, after Part-II, the following new Part shall be added, namely:-

“Part III

**COMPUTATION OF CAPITAL GAIN ON DISPOSAL OF SECURITIES UNDER
SECTION 37A OF THE INCOME TAX ORDINANCE, 2001**

13A. Acquisition of Securities.- (1) A security may be acquired through purchase, exchange, bonus issue, right issue, gift, bequest, inheritance, leverage schemes and derivative contracts.

(2) A security may be acquired in the electronic book entry form or in the form of physical certificate.

(3) A security may be acquired through the trading platform provided by a stock exchange or through off market transactions.

(4) In case of securities other than units of an open mutual fund, broker's bill for the purchase, broker generated computerized ledger statement of the investor's brokerage account, CDC statement of the investor's CDC sub account and payment of cost of acquisition through cheques shall be supportive evidence of acquisition of securities.

(5) In case of units of an open end mutual fund, certified statement of investor's account provided by the asset management company shall be supportive evidence of acquisition of securities.

13B Disposal of securities.- (1) A security may be disposed of through sale, gift, exchange or transfer by the security holder in any other way.

(2) A security may be disposed of in the electronic book entry form or in the form of physical certificate.

(3) A security may be disposed of through the trading platform provided by a stock exchange or through off market transactions.

(4) In case of securities other than units of an open mutual fund, broker's sale proceeds or difference bill, broker generated computerized ledger statement of the investor's brokerage account, CDC statement of the investor's CDC sub-account and proof of payment through cheques shall be supportive evidence of disposal of securities.

(5) In case of units of an open end mutual fund, certified statement of investor's account provided by the asset management company shall be supportive evidence of disposal of securities.

13C. Holding period.- (1) Securities held for a period upto a maximum of one eighty-two days and for a period upto a maximum of three sixty-five days shall be taken as held for six months and one year respectively.

(2) In case of short positions, holding period shall be the period intervening between the date when a security is sold short and the date when the security is purchased to cover the short position.

(3) In case of futures contracts, holding period shall be the period intervening between the date of entry into a futures contract and the date of exit from such contract.

13D. Computation of capital gain or loss.- (1) Capital gain or loss arising on the disposal of any security shall be computed on the basis of First In First Out (FIFO) inventory accounting method.

(2) Capital loss arising on disposal of securities in any tax year shall be set off against capital gain arising from the disposal of securities during that tax year to determine the taxable capital gain arising from the disposal of securities.

(3) Capital loss arising on disposal of securities in any tax year shall not be carried to a subsequent tax year.

13E. Computation of capital gain or loss on derivatives.- (1) In case of long position in deliverable futures contracts, capital gain or loss shall be computed as the difference between cost of acquisition of securities underlying the futures contract and the consideration from disposal of those securities to close the long position at or before maturity of the contract.

(2) In case of short position in deliverable futures contracts, capital gain or loss shall be computed as the difference between the consideration from short sale of securities underlying the futures contract and the cost of acquisition to purchase those securities to close the short position on or before maturity of the contract.

(3) In case of cash settled futures contracts, capital gain or loss shall be the cash payment which the investor respectively receives from or makes to the other party to such contract to settle the contract on or before maturity of the contract.

(4) In case of options, capital gain or loss shall be the difference between exercise price of the options and the consideration from disposal of the securities underlying such options.

(5) In case of contracts of right, capital gain or loss shall be the difference between cost of acquisition of right shares underlying the contract and the consideration from disposal of those shares.

13F. Capital loss adjustment disallowed in certain cases.- (1) Capital loss adjustment as provided in rules 13D and 13E shall not be admissible in the following cases, namely:-

- (a) **Wash Sales** where capital loss realized on disposal of a specific security by an investor is preceded or followed in one month's period by purchase of the same security by the same investor, thus maintaining his portfolio.

Explanation.- Wash sale is sale of a security at loss and repurchase of the same security soon before or afterwards the sale so as to realize an unrealized loss to make it claimable as a set off against capital gain. The security sold in a wash sale is repurchased with the aim to re-acquiring it at or near its sale value in order to maintain the risk return profile of portfolio;

- (b) **Cross trades** where coordinated reshuffle of securities between two related accounts of the same investor, between two related accounts of the related investors, between two membership cards of the same broker or between two related brokerage houses is undertaken and securities accumulating unrealized losses are sold to related accounts to artificially realize capital losses in one account without actually selling the securities to an outsider and the artificial losses so realized in an account are then used to minimize capital gain tax liability on the capital gain realized in the same account; and

- (c) **Tax Swap Sales** where the investor having realized loss (as in the case of a wash sale) on a particular security does not repurchase the same security but chooses another similar security in the same sector thus not only minimizing or eliminating altogether liability on account of tax on capital gain, but also maintaining the portfolio broadly at the same risk return profile.

13G. Exemption from tax on capital gain.- Exemption shall be applicable as provided under the Ordinance.

13H. Payment of tax on capital gain.- (1) Every investor shall calculate tax on capital gain arising on securities held for a period upto six months, and above six months to one year, after the end of each tax year at the prescribed rates.

(2) Every investor other than individual investor shall e-file statement of advance tax on capital gain on the prescribed format within seven days after the end of each quarter with the tax authority having jurisdiction in the case.

(3) The liability to pay the due tax on capital gain shall lie on the investor who held the securities during the period for which tax on capital gain is to be paid and, in case of any benami accounts, on the investor who de facto owns the securities carried in such accounts.

13I. Maintenance of records.- (1) Every investor shall maintain accounts and records separately for each of his brokerage accounts regarding his securities business which sufficiently enable for verification of the discharge of his obligations under these rules.

(2) Without prejudice to the generality of the foregoing provision, every investor shall maintain in particular the following accounts and records, namely:-

- (a) fortnightly ledger statements of the investor's brokerage account or each brokerage account if there are more than one account whether in the investor's own name or any benami accounts, generated by his broker;
- (b) fortnightly CDC statements of the investor's CDC sub account or each CDC sub account corresponding to each brokerage account, if there are more than one brokerage account whether held in the investor's own name or any benami accounts;
- (c) record of security holdings and their value carried in the investor's brokerage account as on 30th June of each year;
- (d) record of cash carried in the investor's brokerage account as on 30th June of each year;
- (e) record of funds deposited in the investor's brokerage account; and
- (f) record of funds withdrawn from the investor's brokerage account.

13J Liability of broker.- (1) Every broker or stock exchange's member, before closing the brokerage account of an investor, shall require an investor to obtain a tax clearance certificate from the concerned tax authority to the effect that the investor has no tax liabilities outstanding against him.

(2) Any broker or stock exchange's member who closes an investor's brokerage account without obtaining a tax clearance certificate and the investor disappears from the market without satisfying the tax authorities that he has no tax liabilities outstanding against him, such broker shall be liable to discharge such investor's outstanding tax liabilities to the satisfaction of tax authorities.

13K. Violations and penalties.- Any investor who, in discharge of his obligations under these rules, violates any provision of the rules shall be liable to penalty and other charges provided in the Ordinance.

13L. Definitions.- (1) In this Part, unless the context otherwise requires,-

- (a) **borrowed security** means a security which an investor borrows under any security lending and borrowing scheme approved by the Securities and Exchange Commission of Pakistan, with an aim to returning the security to its lender, at any later date;
- (b) **capital gain** means the difference between consideration from disposal of a security and the price paid or would have been paid for acquisition of such security when former exceeds the later, provided that capital gain, in case of a borrowed security, means the difference between consideration received from short selling of the borrowed security and the price paid or payable to purchase it for its return to the lender of such security;
- (c) **capital loss** means the difference between cost of acquisition of a security and the consideration from disposal of that security when the former exceeds the later;
- (d) **cost of acquisition** of any security means the market price of the security which the investor pays or would have paid to purchase such security, provided that cost of acquisition,-
- (i) in case of a right share, means the discounted price at which the right shares are issued to a share holders by the issue;
 - (ii) in case of a security acquired through bequest or inheritance means the market price of security at which the deceased person making bequest or leaving the inheritance, as the case may be, paid or would have paid to purchase such security;
 - (iii) in case of bonus issue means the market price of bonus shares immediately following the bonus issue which the investor would have paid to purchase the bonus shares; and
 - (iv) in case of initial public offering, the actual price paid to the issuer shall be treated as the cost of acquisition of such securities.
- (e) **consideration from disposal** of any security means the market price of a security which the investor receives or would have received on the sale of that security;
- (f) **derivative products** means a financial product which derives its value from the underlying security or other asset, may be traded on a stock exchange of Pakistan and includes deliverable futures contracts, cash settled futures contracts, contracts of rights and options;
- (g) **date of acquisition** shall be determined as under, namely:-
- (i) in case of security in electronic book entry form, earlier of the dates on which the investor makes the purchase or otherwise gets

title to the security and the security is transferred to the investor's brokerage account, CDC sub account or the concerned broker's or stock exchange's member's CDC Group Account;

- (ii) in case of any security in the physical certificate form, earlier of the dates on which selling broker or stock exchange's member sells the security, the date on which an investor acquires physical possession of the security, the date on which investor's name is entered on the security or the date on which the issuing company enters the investor's name in the record of its security holders;
 - (iii) in case of acquisition of a security on account of a nomination under section 80 of the Companies Ordinance, 1984 (XLVII of 1984) under bequest or inheritance, the date of death of the person making such bequest or leaving such inheritance, or the date of transmission by succession or under a will by the deceased, as the case may be, which ever is earlier;
 - (iv) in case of acquisition of a security under a futures contract, the date of entry into the futures contract;
 - (v) in case of a borrowed security, the date on which the investor purchases the security to cover his short position and to return the security to the security lender; and
 - (vi) in case of conversion of global depository receipts into shares, the closing price of shares on the day of such conversion shall be treated as acquisition cost of such shares.
- (h) date of disposal** of any security in the electronic book entry form means,-
- (i) the date on which the investor sells or otherwise disposes of the security and the security is transferred from the investor's brokerage account, CDC sub-account or the concerned broker's or stock exchange's member's CDC Group Account, whichever is earlier;
 - (ii) in case of any security in the physical certificate form means the date on which selling broker sells the security or the date on which the issuing company deletes the seller's name from the record of its security holders, whichever is earlier;
 - (iii) in the case of a security underlying a futures contract, means the date of exit from futures contract; and
 - (iv) in the case of a borrowed security means the date on which the borrower short sells the borrowed security after borrowing it from the security lender;

- (i) **date of entry into futures contract** means, in case of a long position, the date on which securities underlying the futures contract are purchased and are transferred to the investor's brokerage account and, in case of a short position, the date on which securities underlying the futures contract are sold short;
- (j) **date of exit from futures contract** means, in case of a long position, the date on which securities underlying the futures contract are sold and are transferred from the investor's brokerage account and, in case of a short position, the date on which securities underlying the futures contract are purchased to cover the short position;
- (k) **date of exercise of option** means the date of acquisition of a security underlying an option and is the date on which option is exercised to acquire the underlying security;
- (l) **exercise price** is the cost of acquisition of a security underlying an option and is the price of securities underlying an option which the investor paid to purchase the underlying securities on exercise of the option;
- (m) **holding period** shall be calculated as prescribed under the provisions of sub-section (2) of section 37A of the Income Tax Ordinance, 2001;
- (n) **investor** means every person who invests in securities and includes every broker who makes investments in such securities; and
- (o) **jurisdiction of tax authority** means the jurisdiction of the tax office in which business of the securities is being carried on by a person and where such business is carried on in more than one place, the person's principal place of business.

(2) All other words and expressions not specifically defined in these rules shall have the meanings assigned to them under the Ordinance.

13M. Quarterly statements.- Quarterly statements shall be e-filed in the following format, namely:-

Statement of Capital gains tax liability

**Part – I
Particulars of investor’s account**

1. Investor’s Name(s)
 - (i)
 - (ii)
 - (iii)
2. Complete Address(es)
 - (i)
 - (ii)
 - (iii)
3. Brokerage Account No.
4. Date of Opening of Brokerage Account.....
5. Type of Account (individual, joint, AOP, firm, company).....
6. Name of Brokerage Firm/ Company.....
7. Contact No. and Address of Brokerage Firm/ Company
8. CDC sub account No.....
9. Total Value of Shares carried in account as on 30th June
10. Total Cash carried in account as on 30th June.....
11. Tax period (tax year/quarter)
12. Capital gain during the tax period
13. Capital Loss during the tax period.....
14. Net gain/loss.....
15. Tax on capital gain payable for the tax period.....
(Calculated in part II, III & IV of summary of transactions)

Investor’s Name

Signature.....

Date.....

Part – IV
Summary of shares held for more than one year – no tax payable

Sales					Purchases					Capital Gain (Loss)	CGT payable
Date of Sale	Particulars of Shares	No. of Shares	Sale price per share	Sale Proceeds	Date of purchase	Particulars of Shares	No. of Shares	Purchase price per share	Total Purchase Price		

Investor's Name
 Brokerage Account No.....
 Signature.....
 Date.....

Part – V


Affidavit

I S/O CNIC No..... resident ofholding brokerage account No. with the brokerage firm.....and holding CDC sub account No.....with Central Depository Company do hereby solemnly affirm that particulars of my account given in Part I and the particulars of share transactions conducted during the tax period given in Part – II, III and IV of the summary of share transactions are true and correct and in accordance with the ledger statements and CDC statements of my account for the above mentioned tax period.

I further affirm that nothing has been concealed or incorrectly stated regarding my account. I know that in case any particulars of my account and share transactions conducted during the above mentioned tax period and given under rule 13M of the Income Tax Rules, 2002 as mentioned above are found to be false being not in conformity with ledger statements and CDC statements of my account, I am liable to be penalized in accordance with rule 13K of the Income Tax Rules, 2002.

Deponent (investor’s name)
Signature
Date”.

[C.No. 3(9)/ITR/2008-Part-I



(Asrar Raouf)
Additional Secretary
Revenue Division
Feb 11, 2011