

**GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE**

C.No.4(39)ITP/2013

Islamabad, the 17th September, 2013.

Circular No. 10 of 2013
(Income Tax)

Subject: **CLARIFICATION IN RESPECT OF SECTION 236D OF THE INCOME TAX ORDINANCE, 2001- ADVANCE TAX ON FUNCTIONS AND GATHERING.**

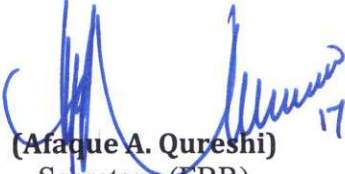
Queries have been received in the Board regarding issues in respect of section 236D of the Income Tax Ordinance, 2001. Other issues are clarified as under:

Sr. No.	Queries	Clarification
1.	What is the minimum threshold of the bill on which, tax is to be withheld?	Since section 236D is a new provision distinct from section 153, therefore there is no minimum threshold of the bill for the purposes of section 236D of the Income Tax Ordinance, 2001. Tax is to be collected on every bill irrespective of its amount. However, no tax is to be deducted if the gathering does not fall within the purview of "function" as defined in section 236D.
2.	At what time should the tax be withheld? i) At time of final payment Or ii) At each stage of payment.	As tax is to be collected on the total amount of bill, tax is to be withheld at the time of issuance of bill on the day the function is held.
3.	Once the advance tax is withheld, evidently we have to report the same to FBR. Is there any mechanism to report this advance tax withheld or this will be processed as per mechanism of tax	The tax withheld needs to be reported in monthly statement as per the provisions of section 165 of the Income Tax Ordinance, 2001.

	<p>deducted under section 153 and needs to be reported in monthly statements other than salary?</p> <p>What would be the frequency of reporting (quarterly?) and the time permissible for depositing the advance tax withheld (15 days?).</p>	<p>Payment of tax with held in State's Exchequer is to be made within 7 day from the date of function.</p>
4.	<p>To report the advance tax withheld, what would be the situation if our guest/client does not provide either NTN or CNIC? Can name and address provided be reported in such case?</p>	<p>The mandatory requirements under sub-section (1)(a) of section 165 needs to be followed which requires that the name, CNIC Number, NTN and address of each person from whom tax has been collected shall be furnished to the Commissioner in the monthly statement. People fix dates of wedding or other function after ensuring booking from the Hotels/Marriage Halls so they may not be in a position to avoid providing their CNIC/NTN.</p>
5.	<p>What would be the formula for tax deduction under section 236D so as to avoid the tax on tax trap?</p> <p>Whether the additional 10% to be collected, is to be shown separately on the folio/invoice as a separate line item below GST or is it to be made part of the Rate, in which case rate will be required to be grossed up.</p> <p>a) Where the client is a prescribed person for the purpose of section 153 of Income Tax Ordinance, 2001 and would have deducted 6% income tax on services while making payment to us.</p> <p>b) Where the client was not a prescribed person under section 153 of the Income Tax Ordinance, 2001.</p>	<p>Advance tax under section 236D is on the total amount of the bill inclusive of Sales Tax and required to be shown separately.</p> <p>It may, however, be pointed out that prescribed person for section 153 and section 236D is not the same person. In case of section 236D, prescribed person includes owner, lease holder, operator or a manager of a marriage hall, hotel etc. whereas for Section 153, it includes a company, Federal Government etc. when making payment to the hotel or marriage hall.</p>
6.	<p>In section 236D there is no exclusion provided for operation of this section. Hence please clarify if we should deduct</p>	<p>Yes, there is no exclusion provided for operation of this section in section 236D.</p>

	<p>advance tax from:</p> <ul style="list-style-type: none"> i) Federal Government and its ministries and departments. ii) Provincial Governments and its ministries and departments. iii) Local Government and its departments. iv) Persons registered in Tribal Areas and Azad Jammu Kashmir where Income Tax Ordinance, 2001 has not been extended. v) Foreign Diplomatic Missions and Foreign Diplomats. vi) UN Organizations and other organizations such as World Bank, IMF, USAID, DFD etc. 	
7.	<p>Our members are responsible tax payers and comply with tax provisions. Our industry is undergoing a lot of pressure due to various factors including law and order situations prevailing in the country and our business is very competitive. We would like to know from FBR, how FBR would ensure strict compliance of section 236D by commercial lawns, community places, marriage halls and large caterers. Over 90% of the business of functions, marriage is handled by them.</p>	<p>The provisions of section 236D shall be implemented through Income Tax Ordinance, 2001 wherever this section is applicable. Enforcement Wings of the Field Formations will be responsible for strict implementation of the Law.</p>
8.	<p>Would the withholding agent be liable for tax not collected under this section for instance and periods where the entire amount of invoice remains un-recovered, in case of credit transactions?</p>	<p>It is the responsibility of the withholding agents to collect advance tax under section 236D and in case of default the provisions of the Income Tax Ordinance, 2001 will be attracted. As the tax is to be collected at the time of issuance of the total bill, it is immaterial whether the invoice remains unrecovered or not.</p>
9.	<p>Whether the additional 10% to be collected is to be shown separately on the folio/invoice as a separate line item below GST or is it to be made part of the Rate, in</p>	<p>The query has already been clarified in Para-5 above.</p>

	GST or is it to be made part of the Rate, in which case rate will be required to be grossed up.	
10.	What is the procedure to collect tax u/s 236D where food items are supplied by person other than the hotel, marriage hall, marquee etc.?	<p>Where the supplier of food items etc is a person other than the owner of hotel or marriage Hall or other such place, the owner shall obtain bill of food items and collect advance tax under section 236D from the person holding the function.</p> <p>As clarified above, tax under section 236D is to be collected from the person issuing the bill. Moreover prescribed person means owner, an operator or manager of any hotel, marriage or banquet hall, club, lawn etc.</p>


 (Afaq A. Qureshi)
 Secretary (FBR)

17/9/2013