

SUI GENERIS TALE OF HAKA & BACCA

(HAKA THE INVESTOR – BAKA THE ADVISOR)

Presented By:
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Chairman
Fiscal Laws Committee, ICAP





“I am careful to pay every single penny on my taxes. I don’t have any money offshore.”

- **Jerry Della Femina**

Mr. Haka is a filthy rich Pakistani.

He wants to invest his fortune . He

meets with Mr. Bacca who is a well

known personal wealth management

advisor.



Resources

Current

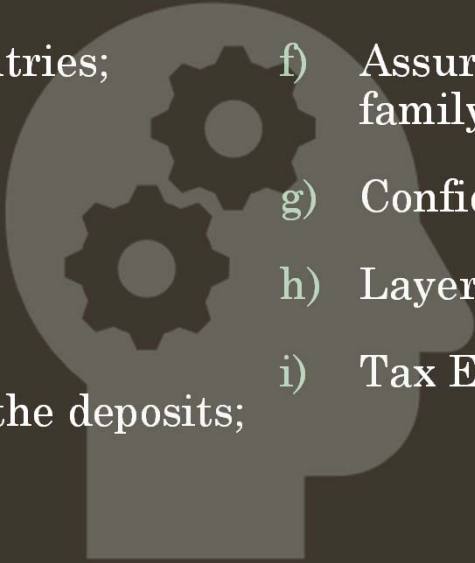
- Real Estate
- Agricultural Income
- Import/Exports Commissions

Potential

- Under/Over Invoicing
- Prize Bonds
- PTR
- Hawala Business
- Offshore Company



Reasons of creating offshore assets


- 
- a) Political risk in home countries;
 - b) Sound Banking Systems;
 - c) Assets protection;
 - d) Currency diversification;
 - e) Higher Interest Rates for the deposits;
 - f) Assurance availability of funds for family expenditures abroad;
 - g) Confidentiality
 - h) Layering of ill gotten wealth
 - i) Tax Evasion

What is an offshore asset?

- The term 'offshore' simply means to be located or based outside of a nation's boundaries.
- For Pakistanis, the term offshore means to be located or based outside Pakistan.
- Similarly an Offshore Asset means an asset located or based outside Pakistan.



Major Tax Havens

- 
- i. Luxembourg;
 - ii. Cayman Islands;
 - iii. Isle of Man;
 - iv. Jersey;
 - v. Ireland;
 - vi. Mauritius;
 - vii. Bermuda;
 - viii. Monaco;
 - ix. Switzerland;
 - x. Bahamas

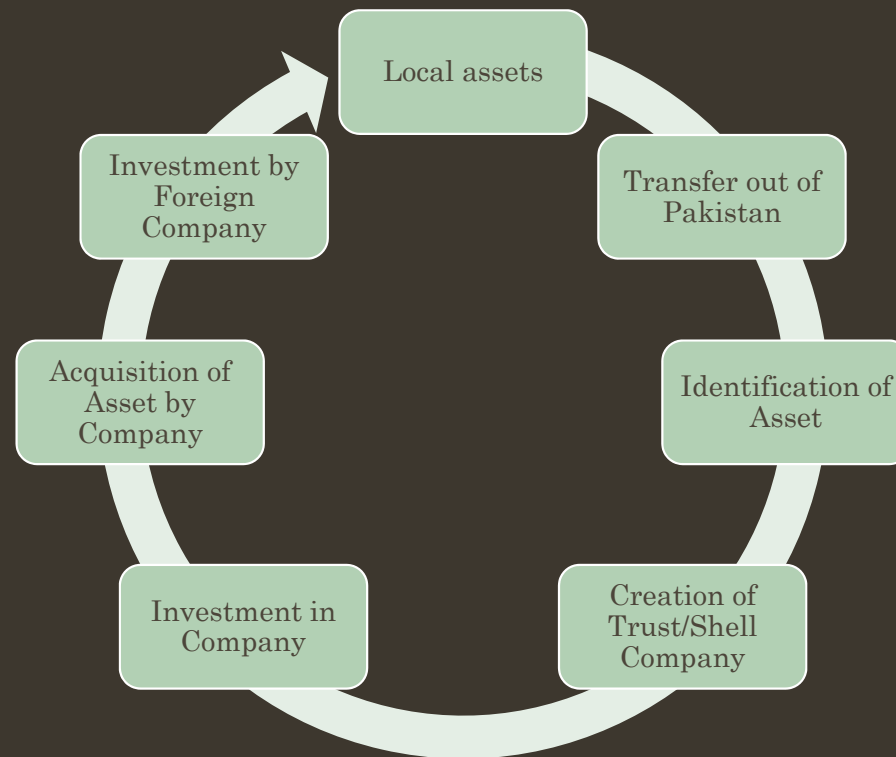
Source: <http://fortune.com/go/finance/world-best-tax-havens-countries-corporate-business/>

Bottlenecks in stopping flight of Capital

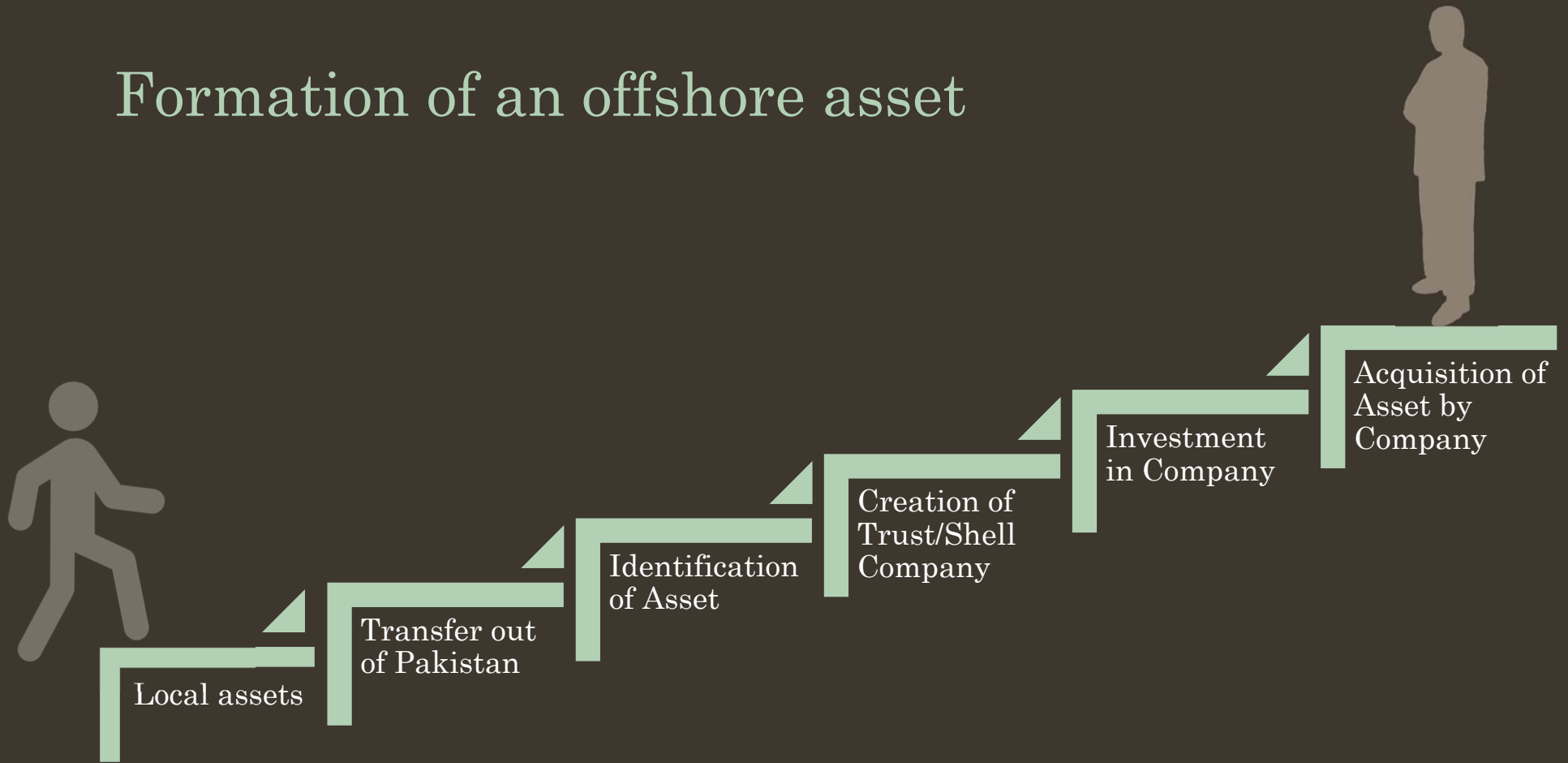
- a) Unrestricted outflow of funds
- b) Private Foreign Currency Accounts
- c) Protection of Economic Reforms Act
- d) Informal Channels – Hawala Business
- e) Unholy business of Foreign Agent Commission
- f) Misinterpretation of Foreign Exchange Laws
- g) Lack of Enforcement Capabilities



Formation of an offshore asset

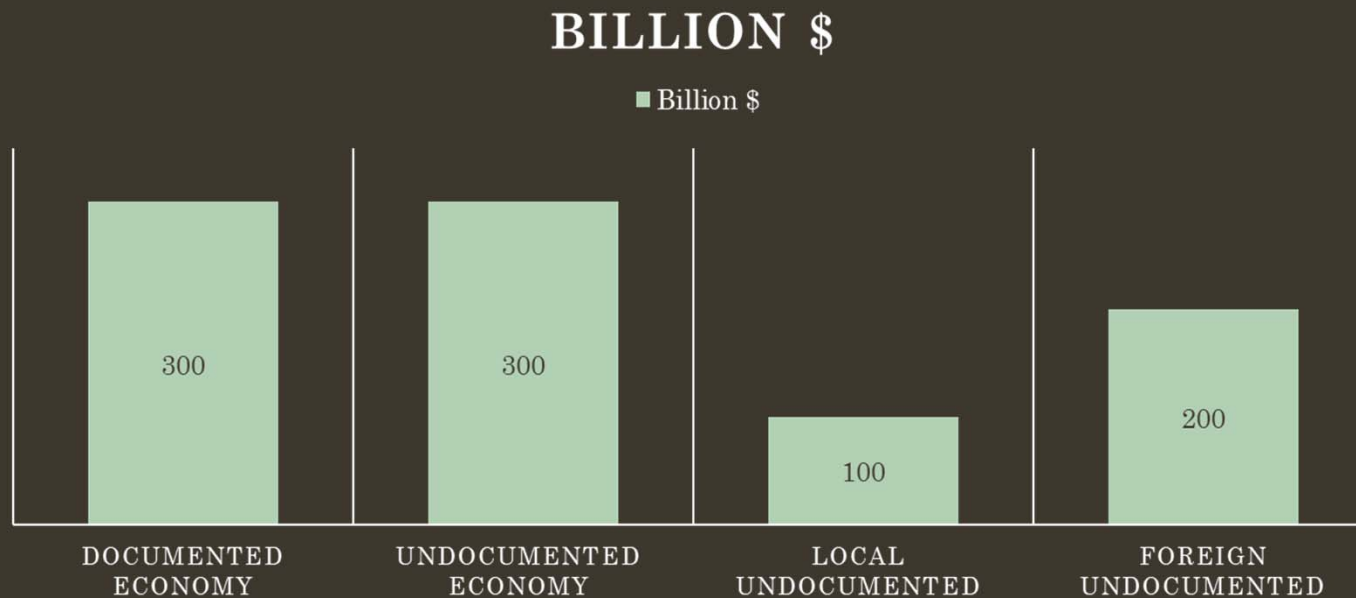


Formation of an offshore asset



Current quantum of offshore assets held by Pakistanis

- Estimated to be \$ 200 Billion



Declaration/Repatriation is Inevitable

- The OECD has been active in facilitating automatic exchange
- OECD and FATCA together with support of G20 countries and other stakeholders have been involved in the implementation of the Standard for Automatic Exchange of Financial Information in Tax matters.
- The standard requires the information to be shared which consists of details of financial assets. The tax administrations then exchanges that information to relevant authority considering all legal laws.

Declaration/Repatriation is Inevitable

- To implement the standard, there need to be fulfilled four requirements which are listed below:
- Requirement 1: Translating the reporting and due diligence rules into domestic law, including rules to ensure their effective implementation;
- Requirement 2: Selecting a legal basis for the automatic exchange of information;
- Requirement 3: Putting in place IT and administrative infrastructure and resources;
- Requirement 4: Protecting confidentiality and safeguarding data

Requirement of Companies Act 2017 (Currently in abeyance)

- **Section 452 – Companies’ Global Register of beneficial ownership**
- Every shareholder or officer of the company is required to disclose his shareholding in foreign company or body corporate.
- All the information is required to be submitted to Commission along with annual return by the company.
- The Commission shall keep all records provided by the companies in their register i.e. Companies ‘Global Register of Beneficial Ownership

Foreign Exchange/Currency laws - History

With Effect From	Law Reference	Gist
11-03-1947	Foreign Exchange Regulations Act, 1947 (Sections 4 and 5)	<ul style="list-style-type: none"> Any person, other than authorised dealer, is restricted to deal in foreign exchange. No person is allowed to make payment out side Pakistan except from foreign exchange acquired through authorised dealer.
10-01-1972	The foreign Assets' (Declaration) Regulation, 1972	<ul style="list-style-type: none"> As per the regulation, it was mandatory on every person to declare any moveable or immovable property held in any country other than Pakistan before 15-02-1972. The moveable property was required to be repatriated into Pakistan before 15-03-1972. A bonus of 45% of amounts of foreign exchange repatriated was allowed by State Bank of Pakistan. The rupees equivalent of foreign exchange repatriated was also made exempt from chargeability of any tax. The ban was in effect upto enactment of Protection of Economic Reforms Act, 1992 (i.e. 01-12-1992), however, the law was not implemented in its essence neither any inquiries were made with respect to outflow of capital from Pakistan.
01-07-1979	Income Tax Ordinance, 1979 – Section 13.	<ul style="list-style-type: none"> Unexplained Investments etc. deemed to be income
01-07-1985	Clause (5), (6); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: <ul style="list-style-type: none"> Any amount invested in Special National Funds Bonds Any amount invested in Foreign Exchange Bearer Certificates
16-03-1991	Clause (6A); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: <ul style="list-style-type: none"> Any amount of foreign exchange deposited in any foreign currency account

Foreign Exchange/Currency laws - History

02-04-1991	Clause (6B); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: Any amount invested in the acquisition of US Dollar Bearer Certificate.
16-12-1999	Clause (6A); Part IV; 2 nd Sch. Amended vide SRO 1344/99	<ul style="list-style-type: none"> Section 13 shall not apply on: Any amount of foreign exchange deposited in any foreign currency account upto 15-12-1999
19-02-1998	Clause (6C); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: Any amount invested in acquisition of 3 years foreign currency bearer certificates
05-06-1998	Clause (6D); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: rupees withdrawn or assets created out of such withdrawal in rupees from private foreign currency accounts, or encashment of Foreign Exchange Bearer Certificates, U.S. Dollar Bearer Certificates and Foreign Currency Bearer Certificates, provided that the conversion from foreign currency or encashment of certificates takes place before the first day of September, 1998.
05-08-1998	Clause (6D); Part IV; 2 nd Sch.	<ul style="list-style-type: none"> Section 13 shall not apply on: rupees withdrawn or assets created out of such withdrawal in rupees from private foreign currency accounts, or encashment of Foreign Exchange Bearer Certificates, U.S. Dollar Bearer Certificates and Foreign Currency Bearer Certificates.
01-12-1992	Protection of Economic Reforms Act, 1992	<ul style="list-style-type: none"> Freedom to bring, hold, sell and take out foreign currency Immunities to foreign currency accounts Secrecy of bonafide banking transactions shall be strictly observed by all banks and financial institutions, by whosoever owned, controlled or managed.

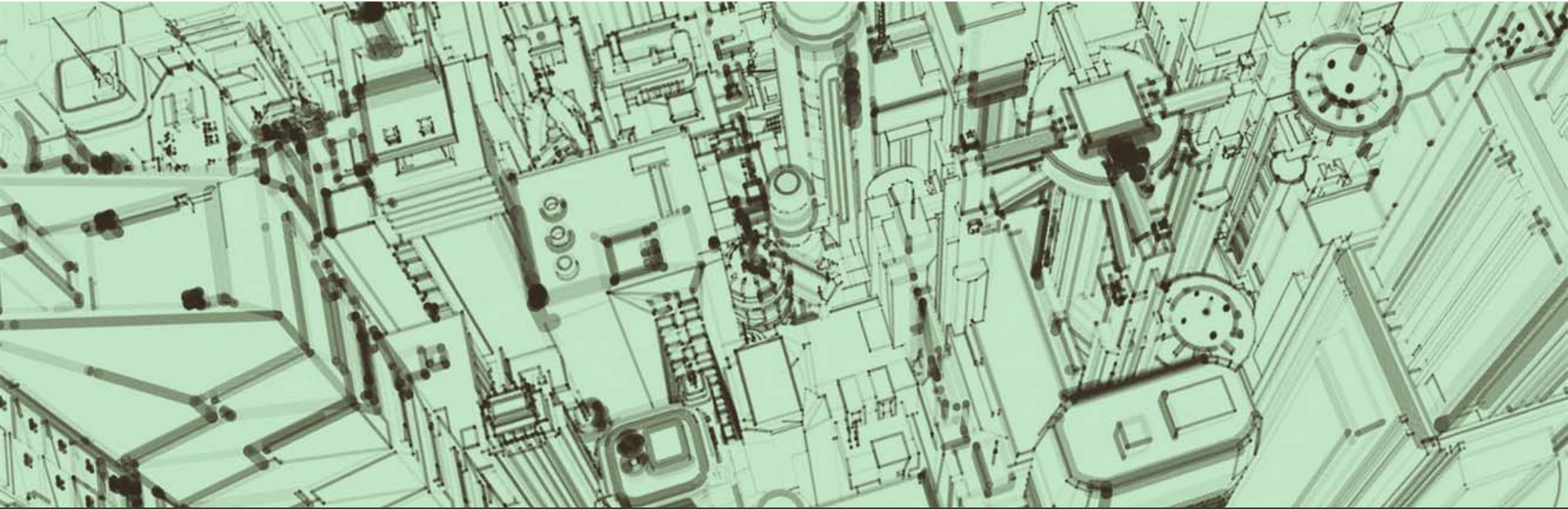
Foreign Exchange/Currency laws - History

29-05-1998	F.E. Circular 12	Suspension of Foreign Currency Accounts
06-08-1999	2000 SCMR 814 Irshad Ahmed Sheikh vs The State	Nothing that is contained in Protection of Economic Reforms Act, 1992 provides blanket protection regarding criminal acts and liabilities.
October 1999	Protection of Economic Reforms (Amendment) Ordinance, 1999	<ul style="list-style-type: none">• The immunity from inquiry was restricted to accounts and deposits upto 16-12-1999• Following were excluded from freedom to bring hold and operate foreign currency accounts:<ul style="list-style-type: none">○ Foreign exchange borrowed○ Export proceeds○ Proceeds from securities issued to sold to non-residents○ Export of services proceeds○ Earnings/profits of overseas branches Foreign exchange purchased from authorized dealers
01-07-2001	Income Tax Ordinance, 1979 – Section 13(2A)	Immunity to any amount of foreign exchange remitted by a person from outside Pakistan through normal banking channels that is encashed into Pakistani Rupees by a scheduled bank and a certificate from such bank is produced to that effect

Foreign Exchange/Currency laws - History

		Provisions of section 111 shall not apply on: <ul style="list-style-type: none">• Any amount of foreign exchange deposited in a foreign currency account upto 16-12-1999• Any amount invested in three years foreign currency bearer certificate• Rupees withdrawn or assets created out of such withdrawals in rupee from private foreign currency accounts, or encashment of foreign exchange bearer certificates, US dollar bearer certificates and foreign currency bearer certificates.
13-09-2001	Clause (5), 2 nd Schedule, Part IV, ITO	
28-09-2001	Foreign Currency Accounts (Protection) Ordinance, 2001	Section 3 provides protection of right to hold, operate foreign currency account without any restriction, however, the same does not put any restriction from inquiry with respect to source and declaration of amounts in such accounts
01-07-2002	Income Tax Ordinance, 2001 – Section 111(4)	Immunity to any amount of foreign exchange remitted by a person from outside Pakistan through normal banking channels that is encashed into Pakistani Rupees by a scheduled bank and a certificate from such bank is produced to that effect.
27-04-2006	2006 SCMR 1609 Khud-e-noor and others	Certain facilities have been given for the purpose of development and promotion of economic activities in the country but simultaneously, it is also to be checked that foreign currency is not moved out unauthorizedly otherwise it would promote offence of money laundering, as well as result of which public exchequer would be affected badly and its ultimate result has to be borne by the common man.





IMPACT OF AMNESTY SCHEME IN FOSTERING A CULTURE OF TRANSPARENCY AND DISCLOSURE



History of amnesty schemes

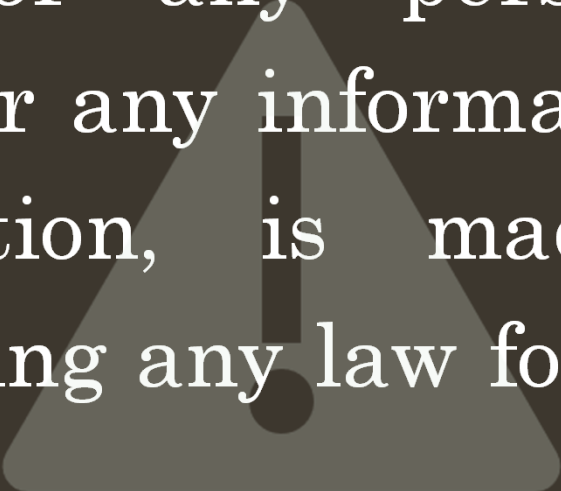
Years	Results/Description
1958	71,289 declarations were filed
1969	19,600 declarations were filed
1976	No data available
1997	Rs. 141 million tax was collected
2000	79,411 declarations were filed
2008	Rs. 2.8 billion were collected at a rate of 2% only.
2012	Scheme for funds invested in Stock Exchange
2013	50,000 non duty paid car owners were benefitted
2015	Voluntary compliance scheme; only 10,000 returns were filed.

Tax Rates for the scheme

Local/Foreign	Assets	Tax Rates
Foreign Assets	Liquid assets not repatriated	5%
	Immoveable assets	3%
	Liquid assets repatriated and invested in Government securities upto 5 years in US dollars denominated bonds with six-monthly profit payment in equivalent Rupees (rate of return 3%) and payable on maturity in equivalent Rupees	2%
	Liquid assets repatriated	
Local Assets	Foreign currency held in a foreign currency account in Pakistan as on the 31 st March, 2018 and encashed in equivalent Rupees.	2%
	Foreign currency held in a foreign currency account in Pakistan as on the 31 st March, 2018 which is invested in Government securities upto 5 years in US dollars denominated bonds with six-monthly profit payment in equivalent Rupees (rate of return 3%) and payable on maturity in equivalent Rupees.	
	Other Assets	5%

Legal framework to ensure confidentiality

Particulars of any person making a declaration, or any information received in any declaration, is made confidential notwithstanding any law for the time being in force.



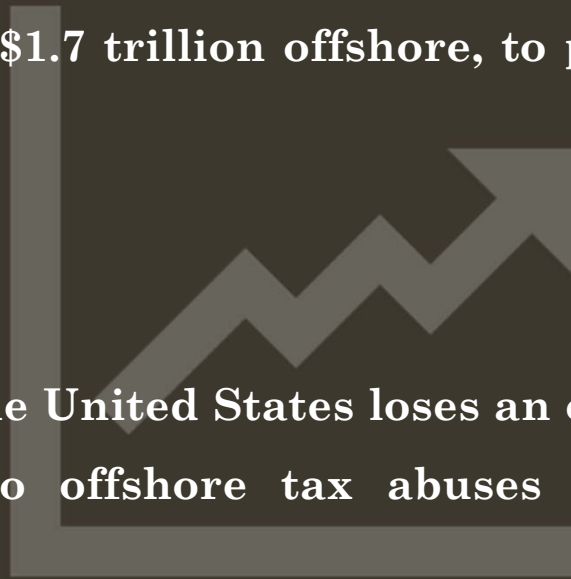
Impact of scheme on local economy

“The tax rate of 35% is impossible to provide an incentive to the large corporations, that have \$1.7 trillion offshore, to put their money back in the United States.”

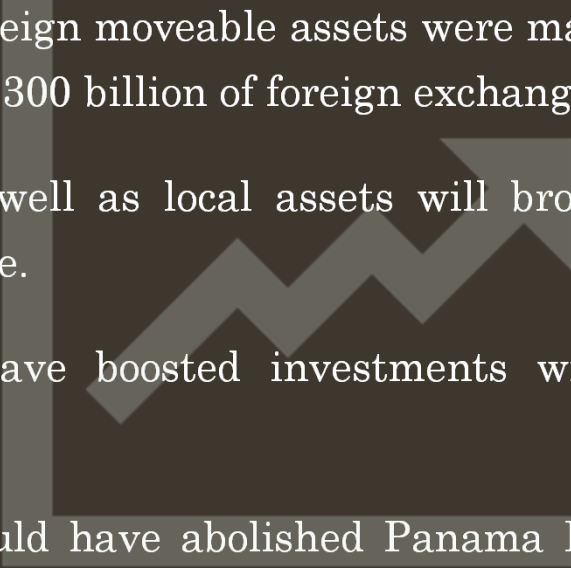
Frederick W. Smith

“Each and every year, the United States loses an estimated \$100 billion a year in tax revenues due to offshore tax abuses by the wealthy and large corporations.”

Bernie Sanders



Impact of scheme on local economy

- If repatriation of 50% of foreign moveable assets were made compulsory, it is estimated to contribute approximately \$ 300 billion of foreign exchange into the economy.
 - Declaration of foreign as well as local assets will broaden the tax base, resulting in increased revenues in future.
 - Capping outflow would have boosted investments within Pakistan, further helping economy
 - Reforms in real estate would have abolished Panama Leaks in every street of housing societies across the country.
 - Local real estate will compliment repatriated assets as an avenue for investment.
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5. AMNESTY SCHEMES IN OTHER JURISDICTIONS - INDIA

- An **Income Declaration Scheme** was launched in India on June 01, 2016.
- Declaration opportunity provided at 45% effective rate
- Payments were to be made in three installments

5. AMNESTY SCHEMES IN OTHER JURISDICTIONS - INDIA

The results of the scheme were as under (provisional figures up to August 2017):

- Over 64,200 people availed the scheme
- undeclared assets worth at least \$ 10 Billion were disclosed
- Taxes amounting to \$ 4.6 billion approximately were paid.

5. AMNESTY SCHEMES IN OTHER JURISDICTIONS - INDIA

- On November 8, 2016, Demonetization of Rs 500 and Rs. 1,000 notes was declared and, thereafter, Pradhan Mantri Garib Kalyan Yojna (“2nd Scheme”) was introduced.
- Black money worth \$ 750 million was disclosed by 21,000 people upto closure of scheme i.e. March 31, 2017.
- The 2nd scheme was introduced to declare local undeclared assets by paying 49.9 percent tax, surcharge and penalty.
- Also, a mandatory deposit of 25 percent of the black money was to be made in a zero-interest bearing account for four years.

5. AMNESTY SCHEMES IN OTHER JURISDICTIONS - INDONESIA

- **INDONESIAN MODEL**

Indonesia also introduced a tax amnesty scheme simultaneously with India.

- A total of 965,983 people availed the scheme
- Total declarations were \$ 366 billion surpassing the target of \$ 300 billion.
- The figure equals nearly 40 percent of Indonesia's gross domestic product (GDP).
- About 75 percent (\$ 275 billion) of these funds involved assets that were stashed domestically.
- the remainder assets (\$91 billion) were secretly stored abroad (mostly in Singapore).



5. AMNESTY SCHEMES IN OTHER JURISDICTIONS - INDONESIA

Clearance Levy Rates		
Declaration filing date	Onshore assets declared and Offshore assets declared and repatriated	Offshore assets declared but not repatriated
1 July, 2016 to 30 September, 2016	2% (if repatriated by 31 December, 2016)	4%
1 October, 2016 to 31 December, 2016	3% (if repatriated by 31 December, 2016)	6%
1 January, 2017 to 31 March, 2017	5% (if repatriated by 31 March, 2017)	10%

Thank You

