

Questions

- (b) the physical location of the natural resources in question
- (c) The place where the natural resources is used (as in the cases where ore is extracted from a mine located in one country by the royalty debtor or on his behalf)
- (d) **Income from mortgages on real property, ships (including mortgage bonds) if they are considered as interests in realty rather than as securities.**
1. In what manner and to what extent does taxation of such income depend on one or more of the following criteria :
- (a) the nationality or domicile of mortgagee or mortgager
- (b) the location of the mortgaged property
- (c) the registry or principal place of use of the mortgaged ship or aircraft
- (d) the place of registration of the mortgage (if differing from (b), or (c))

Replies

If the natural resources are situated in India, the entire royalty is taxable wherever it is paid.

The liability of such royalty depends solely on the place where the natural resources are located and not where they are smelted or processed.

Either or both of (b) and the second part of (c) are the determining factors.

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- (e) the place of origin or use of the capital secured by the mortgage

(e) Business profits

1. In what manner and to what extent does the taxation of business profits (i.e. income derived from carrying on industrial agricultural enterprises, which is not covered by any other income category listed in this questionnaire) depend on :

- (a) the nationality or domicile of the person or legal entity receiving the profits
- (b) The location of the business activity from which the profits are derived

Replies

This is no criterion.

The liability to taxes attaches to income, profits and gains accruing or arising or received in the country or under certain circumstances deemed to accrue, arise or be received in the country. The location of the business activity is thus a factor if it decides the place where income accrues or arises or is deemed to accrue or arise. Thus if the manufacture of certain

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2. Are national enterprises taxed on their profits from :

Replies

articles is done in India, but the sale takes place outside, and consequently the income also arises outside India, a part of such income attributable to the manufacturing operations in India is deemed to accrue or arise in India. If, on the other hand a product manufactured outside India is sold in India the entire income accrues or arises (not deemed to accrue or arise) in India and is liable to tax in India.

The taxation liability is determined not by the nationality of an enterprise but by the "residence" of the tax-payer. If a person is ordinarily resident in the country he is to pay tax on all income wherever arising throughout the world; otherwise the taxation liability attaches only to income actually arising or in certain circumstances deemed to arise in India. If however, an income arising abroad is

*Questions**Replies*

received in India it is taxable in India.

- | | |
|---|--|
| (a) all their business activities domestic and foreign | Yes. |
| (b) their business activities in a foreign country, only in so far as : | |
| (1) they are isolated or occasional | No. |
| (2) they are carried on through an independent agent | No. |
| (3) they are carried on through a "permanent establishment" | No. |
| 3. Are foreign enterprises taxed on their profits : | |
| (a) from all their business activities, domestic and foreign if : | No one of these criteria by itself determines the taxation liability in India, unless one or more |
| (1) they carry on isolated or occasional business activities within the country | of these singly or jointly are factors determining the place of accrual of income—or the place where a part of the in- |
| (2) they maintain an independent agent within the country | come can be deemed to accrue or arise. |

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- (3) they otherwise do business (maintain a "permanent establishment" carry on "trade" etc.) within the country
- (b) Attributable to their domestic transactions only
4. What constitutes a "permanent establishment", "doing business" or "carrying on trade"
5. Where a business enterprise is taxed only on certain items, parts or categories of its domestic or foreign activities how are its taxable and non-taxable profits apportioned :
- (a) a percentage of the total profits (or of the total domestic or foreign profits) of the enterprises (fractional apportionment) corresponding to the proportion of :

Replies

Please see the reply against item 2 above.

As noted above against items 2 and 3 these are not by themselves factors determining the taxation liability. These terms are not anywhere defined or explained in the taxation laws of India.

Where any apportionment is necessary, e.g. to determine what part of profits earned outside India may be *deemed* to accrue or arise in India, there is no fixed rule for determination

Questions

- (1) the taxable business activities to the entire business of the enterprises; if so how is this apportionment calculated, especially as to division of the overhead of the central office.
- (2) the value of the physical plant used in the taxable business as to the value of the entire plant of the enterprise.

- (b) the actual profits of the taxable business activity considered as a separate entity :

- (1) as assigned to it on the books of the enterprise.
- (2) as determined by the revenue authorities either through presumptions (*methods forfaitaire*) or through consideration of the taxable

Replies

of the part of profits attributable to activities or operations in India. It is made on reasonable estimation. Where in any concern profits derived within and outside India are not separately accounted for, one of the principles of determination of the profits derived within India is to take it at such proportion of the whole world profits as Indian turnover bears to the world turnover. (Also please see replies against (b) below.)

Ordinarily this is accepted.

The arms length method is not allowed. Unless the profits derived in India is not separately accounted for the method followed is as indicated against (a) above.

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activity for taxing purposes as an independent enterprise, substituting for the prices, fees, salaries etc. carried on its books those which would have prevailed between independent enterprises dealing at arms length.

- (c) Any other method or criteria.

6. Do special rules apply to :

- (a) enterprises operating wholly or in part in a possession, colony, mandate or other territory, under the jurisdiction of the country, but subject to a different legal regime from that of the metropolitan territory.

- (b) enterprises operating wholly or in part in a certain foreign country and being, by reason of doing business there, subject to a different tax regime from enterprises operating in other foreign countries

Replies

Does not arise.

No.

Questions

- (c) particular categories of enterprises, such as financial institutions (e.g. banks, insurance companies), international transport and communication enterprises, public service companies, mining industries, personal holding companies, moving picture producers and distributors—

- (d) business profits collected through an agent, trustee, representative, broker or other conduit or intermediary

- (e) business enterprises owned or controlled by a domestic or foreign agency

7. Are there any cases in which the same type of business profit is subject to a different tax treatment depending on the nationality or domicile of the enterprise, or the location

Replies

No. Except for insurance companies, the computation of the taxable profits of which is made according to certain rules.

Where the beneficiaries are not known, a trustee is generally treated as the assessee on behalf of the beneficiaries; similarly an agent of a foreign principal is treated for all purposes as the assessee on behalf of the principal.

No.

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of the property or the origin of the income involved. If so, do these differences concern :

- (a) the taxability as such
- (b) the tax rates
- (c) the permissible allowance deductions
- (d) the collection of the tax at source or from the recipient of the profit
- (e) the method of the tax assessment
- (f) any other aspect of the tax assessment or collection

8. Do any special rules prevail in relation with specific foreign countries on the basis of :

- (a) internal legal provisions granting tax relief on a reciprocal basis (e.g., for all foreign countries whose laws grant similar relief to citizens of the former country)

Replies

Companies not declaring dividend in India pay extra super-tax of $6\frac{1}{4}\%$ or $12\frac{1}{2}\%$ according as they are public or private companies. But if they make arrangements for declaring dividend in India, no extra super-tax would be payable.

Agreements for reciprocal relief obtain with Ceylon, Aden, Kenya, Tanganyika, Uganda, Zanzibar, Gold Coast, Nigeria, Sierra Leone, Gambia, and Mauritius. Lately there were similar agreements with the

Questions

- (b) International tax agreements

9. Do any special rules prevail in the application of special taxes on business profits as for instances :

- (a) Excess Profits Tax:

- (b) undistributed profits tax :

- (c) tax on illicit (i.e. black market) profits

Replies

United Kingdom and Burma, but they have been discontinued.

Arrangements for avoidance of double taxation between India and the United Kingdom are under consideration. Bilateral agreement for the avoidance of double taxation exists between India and Pakistan.

Excess Profits Tax 1940—the liability under this Act was in respect of profits earned between 1-9-1939 and 31-3-1946.

Business Profits Tax Act, 1947—the liability under this Act is in respect of profits earned on and from 1-4-1946.

No, but on distributed profits of companies a rebate is allowed at $6\frac{1}{4}\%$.

No.

- (f) Income from personal tangible property such as stocks, bonds, debentures and other notes and securities, debt or capital participations (including mortgages and mortgage debentures, if considered as personal rather than real, property under the domestic law).

Questions

1. In what manner and to what extent does the imposition of the tax depend on one or more of the following criteria :

- (a) the nationality or domicile of the owner of the note or security, or of his trustee or legal representatives
- (b) nationality or domicile of the payee of the income
- (c) the physical location of the note or security
- (d) the country of origin or investment of the capital represented by the note or security
- (e) the place of payment of the income

Replies

There are no such criteria under the Indian Law.

The country of investment is one of the criteria. If money is borrowed in a foreign country and is brought into and used in India, the interest is taxable in India.

This is also one of the criteria. If any income is received in India, it is taxable.

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- (f) the relationship between the payer company and the payee company, especially when the management or capital of the former is controlled by the latter

Replies

There is no such criterion under the Indian Law.

2. Is the rule stated under 1 *supra* modified in cases of collection of tax at the source

No.

3. Is the rule stated under 1 *supra* modified in cases where the right to the note and the security is held or administered by a trustee or a legal representative

No.

4. Is the rule stated under 1 *supra* modified in the case of bonds issued by a foreign or domestic Central or local government agency

In the case of bonds issued by a foreign government agency, the interest is taxable in India if it is received or brought into India, or if the recipient is a person ordinarily resident in India.

5. Does the rule stated under 1 *supra* differ, depending on whether the income is received in the form of interest or dividends

No.

(g) **Income from royalties or patents, trademarks and other commercial or industrial properties.**

Questions

1. In what manner and to what extent does the taxation of such royalties depend on the one or more of the following criteria :

(a) the nationality or domicile of the licensor or licensee

(b) the place where the property is used or reproduced

(c) the origin of the capital used in the exploitation of the patent etc.

Replies

Such income is taxable in India if it accrues or arises in India and for this purpose the place where the property is used or reproduced is the criterion. If, however, any such income, wherever accruing is received or brought into India or if the owner of the income is a person ordinarily resident in India, the income is taxable in India.

(h) **Income from royalties on copyrights and other intellectual properties**

1. In what manner and to what extent does the taxation of such royalties depend on one or more of the following criteria :

(a) the nationality or domicile of the licensor or licensee

The answers given for the head "g" above apply to these royalties also.

Questions

Replies

(b) the place where the property is used or reproduced

(c) the origin of the capital used in the exploitation of the copyright etc.

(j) **Private pensions and annuities.**

1. In what manner and to what extent does the taxation of such income depend on one or more of the following criteria :

(a) the nationality or domicile of the payer or payee

(b) the place of payment of the income

(c) the place where the consideration (services, premiums, capital) which gave rise to the pension or annuities was given

Taxability depends on criterion (c), but (b) also is one of the criteria. If however, the owner of the income is ordinarily resident in India, the income is taxable in India, wherever earned.

(k) **Earned income from personal services, private employment or liberal professions (fees, wages, salaries)**

1. Are nationals taxed on such income :

(a) if they reside abroad, while receiving such income from foreign sources

No, unless the income is received in India.

Questions

Replies

- (b) if they reside abroad, while receiving such income from domestic sources Yes.
- (c) if they reside in the country, while receiving such income from foreign sources Yes.
- (d) do the answers to (a)—(c) *supra* depend on the length of their foreign residents Yes, the length of foreign residence makes the person concerned *not* ordinarily resident in India.
2. Are foreigners taxed on such income :
- (a) if they reside abroad while receiving such income, from domestic sources (e.g. through collection at source) Yes.
- (b) if they reside in the country while receiving such income from foreign sources Yes.
- (c) do the answers to (a) and (b) *supra* depend on the length of their foreign or domestic residence Yes.
3. In what manner and to what extent do the answers to 1 and 2 *supra* depend on :

Questions

Replies

- (a) the nationality or domicile of the payer or payee (a) is not a criterion under the Indian law, but (b) is. Any income received in India is taxable.
- (b) the place of payment
4. Do the answers to 1 and 2 *supra* differ, if the fees, salaries or wages are paid :
- (a) by a Central or local government agency of the country The only exceptions are the salaries received by diplomatic personnel which are exempt, along with the salaries of their staff not being citizens of India. The salaries of Trade Commissioner or other official representative are also exempt on the basis of reciprocity. The staff of such a Trade Commissioner or representative are also exempt on the basis of reciprocity if the members of such staff are the subjects of the country represented.
- (b) by a foreign central or local government agency
- (c) to civil servants
- (d) to military personnel
- (e) to diplomatic or consular personnel
5. Indicate in answers 1 to 2 *supra* any difference in the tax treatment of liberal professions on the one side and

No difference.

Questions

personal services and private employment in the other

Note : Indicate special rules applying to any income category not included under a—k *supra*.

No separate answers are given against the various items in respect of the following queries which are dealt with as under :

- (1) Exceptions to the general rule based on international reciprocity not imposed by a tax agreement specially through allowance of a credit for foreign taxes paid on all or part of the same income.
.....there is no such exception.
- (2) Applicable tax rates, allowances and deductions in so far as they differ, for the same type of income with the nationality or domicile of any of the persons or the location of the property or income involved, whether imposed by a single tax provision or by a special tax measure applying to foreigners or foreign assets.

.....No distinction in tax rates is made on the basis of location of property or of income, but different rates apply to persons if they are not resident in the country. Some difference in the taxation rate exists for companies which do not declare dividend in India as distinguished from those declaring dividend in India.

3. Modifications, if any, of the legislative rule imposed by international tax agreement.

.....The only such agreement which has been so far made is that between India and Pakistan.

Replies

I R A Q

Income Taxation in Iraq

The only criterion employed for determining the treatment of Iraqi nationals and foreign nationals in matters of income taxation lies in deciding whether "a person is resident in Iraq" or "a person is not resident in Iraq". Article I of Income-Tax Law No. 36 of 1949 prescribes the definition of these two terms in the following paragraphs :

1. "Person resident in Iraq" means any person resident in Iraq and any body of persons incorporated under Iraq Law or whose principal place of business or of which the place of management or place of control is situated in Iraq; also any official of the Iraq Government outside Iraq; any Iraqi who is resident outside Iraq for temporary purposes and has a permanent place of residence or a principal place of business in Iraq; and also any Iraqi who is resident in Iraq during any years of assessment for a period of four months or more.

2. "Person not-resident in Iraq" means any non-Iraqi person whose residence is due to the fact that he is engaged in a salaried post in Iraq, or whose residence in Iraq is due to certain temporary purposes only; also any person who is resident outside Iraq, and derives in Iraq any income liable to tax or exercises by any means whatever any trade, business, profession or vocation in Iraq; and any body of persons not incorporated or registered in Iraq which carries on business or has an office or place of business therein.

Chargeable income, basis of assessment, appeals, exemptions, allowances, rates of tax are contained in the following summary extracted from Iraqi Income-Tax Law No. 36 of 1939 and its Amending Law No. 67 of 1943 and Income Surtax Law No. 63 of 1943.

Outlines of Income Tax in Iraq

Chargeable Income

Income tax in Iraq is levied mainly on income derived from :

1. Trade, business and professions.
2. Employment and allowances, pensions and annuities.
3. Interests, discounts and dividends and other incomes arising in Iraq and not subject to any other tax in Iraq.

Basis of Assessment

Assessment, calculated ordinarily for each year of assessment commencing on 1 April and ending on the following 31 March, is based on accounts certified by chartered accountants, or on bona fide systematic double-entry accounts.

Where no regular and reliable books are kept assessment is based on comparison with similar occupations and on information gathered from such sources as intercepts, returns and figures supplied by Customs and other departments and on enquiries from merchants, brokers etc.

Employers are charged with the deduction and payment of tax due by their employees.

Married women and children under eighteen in receipt of incomes have same added to those of their husbands and fathers respectively.

Agents carrying on business in Iraq on behalf of persons not resident in Iraq are charged in respect of incomes accruing to their principals from that business.

Appeals

Appeals against assessments may be submitted to the General Appeal Committee in Baghdad, Basrah and Mosul.

Further appeals especially where points of law are in question may be submitted to the Law Court of Cassation.

Exemptions

The following incomes are exempt from tax :

1. Agricultural income of cultivators from agricultural produce which is subject to *Istihalak* Tax, and income from immovable property which is subject to Property Tax.
2. The income of H. M. the King, the Crown Prince and the regent and the official, emoluments of foreign diplomatic and consular representatives and salaries of military and civilian members of H. M.'s forces and of the United Nations in Iraq.
3. Income of municipalities and undertakings for public services other than those undertaken for the purpose of private gain.
4. Income derived by owners of animals from the possession thereof and any other incomes subject to tax under this law which has been exempted by any other law.

Allowances

The following allowances are granted to individuals resident in Iraq, situated as shown on the first day of the relative year of assessment :

1. To a bachelor or widower-ID 150.
2. To a married man with no child or a widower with child or children-ID 200.
3. To a married man having one child-ID. 250 with an increase of ID-15 for each additional child until a maximum sum of ID. 300 is reached irrespective of the number of children.

No allowances are granted on account of children over eighteen years of age.

Rate of Tax

Tax for each year of assessment is reached at the following rates after deducting the allowances as above :

- At the rate of 6% up to ID. 150.
- At the rate of 9% over ID. 150 and up to ID. 500
- At the rate of 12% over ID. 500 and up to ID. 1200
- At the rate of 15% on any amount over ID. 1200

The last rate is levied upon the chargeable income, whatever be the amount, of any person not resident in Iraq for a period of four months or more during the year of assessment.

A Sur-tax is levied on incomes exceeding ID. 1500 in addition to Income-Tax as follows :

- (a) Where individuals resident in Iraq are concerned and on all incomes liable to Income-Tax where non-resident individuals are concerned, at the following rates :

- At the rate of 5% up to ID. 1000.
- At the rate of 10% on any amount over ID. 1000 upto ID. 2000
- At the rate of 15% on any amount over ID. 2000 upto ID. 3000
- At the rate of 20% on any amount over ID. 3000 upto ID. 4000
- At the rate of 25% on any amount over ID. 4000 upto ID. 5000
- At the rate of 30% on any amount over ID. 5000 upto ID. 6000
- At the rate of 35% on any amount over ID. 6000 upto ID. 7000
- At the rate of 40% on any amount over ID. 7000 upto ID. 8000
- At the rate of 45% on any amount over ID. 8000

- (b) Where bodies of persons are concerned :

- At the rate of 10% up to ID. 1000.
- At the rate of 15% over ID. 1000 and up to ID. 2000.
- At the rate 20% over ID. 2000 and up to ID. 3000.
- At the rate 25% on any amount over ID. 3000.

Questionnaire on the tax treatment of foreign national's assets and transactions.

Part II

The question of temporary purposes appearing in the definition of "non-resident person" has been, for practical purposes limited up to three calendar years by the authorities concerned so that a foreign national coming to Iraq and working as an employee or otherwise is treated as a "non-resident" for three consecutive years after which he becomes liable to Income-Tax on the same footing and enjoys the same rebates granted to Iraqi nationals and other persons "resident in Iraq".

No regard is taken of whether a person liable to Iraqi Income-Tax on profits arising in or received in Iraq is liable to tax on the same profits outside Iraq. The imposition of Income-Tax is embodied in Article 3 of Law No. 36 of 1939 which prescribes that tax shall be charged and collected from :

- (a) Any person resident in Iraq on incomes arising in Iraq or elsewhere notwithstanding that all or any part of such incomes may not have been received in Iraq.
- (b) Any person not resident in Iraq on incomes arising in Iraq notwithstanding that all or part of such incomes may not have been received in Iraq, including incomes received in Iraq.

All facilities are granted in Iraq to newspaper reporters and news gathering agencies as far as income taxation is concerned.

PAKISTAN

I. Income-Tax

- (a) Structure and underlying principles of income-tax system

1. The Pakistan income-tax is a global tax chargeable for each financial year which begins on the first of April. It is payable in respect of the total income of the previous year :

- (i) Individuals
- (ii) Hindu undivided families
- (iii) Companies and local authorities
- (iv) Firms and
- (v) Associations of persons (Section 3).

The Pakistan Income-Tax Act does not take domicile or nationality into account. The concept used is that of residence and for the purpose of determining taxable income the tax payers are classified in three categories :

- (i) Persons resident and ordinarily resident in Pakistan,
- (ii) Persons resident but not ordinarily resident in Pakistan,
- (iii) Persons not resident in Pakistan (Section 4(1)).

Section 4A of the Income-Tax Act defines those three categories for the various individuals and entities who are subject to the income-tax, along the following lines :—

- “(a) An individual is resident in Pakistan in any year if he—
- (i) is in Pakistan in that year for a period amounting in all to one hundred and eighty-two days or more; or
 - (ii) maintains or has maintained for him a dwelling place in Pakistan for a period or periods amounting in all to one hundred and eighty-two days or more and is in Pakistan for any time in that year; or
 - (iii) having within the four years preceding that year been in Pakistan for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in Pakistan for any time in that year otherwise than on an occasional or casual visit; or

- (iv) is in Pakistan for any time in that year and the Income-Tax Officer is satisfied that such individual having arrived in Pakistan during that year is likely to remain in Pakistan for not less than three years from the date of his arrival.

- (b) A Hindu undivided family, firm, or other association of persons is resident in Pakistan unless the control and management of its affairs is situated wholly without Pakistan ;

and

- (c) A company is resident in Pakistan in any year (a) if the control and management of its affairs is situated in that year wholly in Pakistan, or (b) if its income arising in Pakistan in that year exceeds its income arising without Pakistan in that year.”

The above is the test for determining whether a person is “resident” or “non-resident”. The further sub-division between “resident and ordinarily resident and resident but not ordinarily resident” is made as below (Section 4 B) :

- (a) An individual is “not ordinarily resident” in Pakistan in any year if he has not been resident in Pakistan in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in Pakistan for a period of or for periods amounting in all to more than two years.
- (b) A Hindu undivided family is deemed to be “ordinarily resident” in Pakistan.
- (c) A company, firm or other association of persons is “ordinarily resident” in Pakistan if it is resident in Pakistan.

It may be added that for the purpose of determining whether a person is resident or not, the circumstances of the previous year, i. e. the year in which the income has been

received and not those of the year for which the assessment is to be made, have to be considered.

The principles which govern the determination of taxable income in each of the three categories are as follows:—

(1) Persons “resident and ordinarily resident” in Pakistan

Such persons are subject to tax :

- (i) on income received or deemed to be received in Pakistan in the previous year (Section 4(1) (a)).
- (ii) on income accruing or arising or deemed to accrue or arise in Pakistan in the previous year (Section 4 (1) (b) (i);
- (iii) on income accruing or arising without Pakistan (Section 4 (1) (b) (ii) ;
- (iv) on all amounts brought into Pakistan during the previous year out of income which accrued before the beginning of such year and after the 1st day of April 1933—Section 4 (1) (b) (iii).

(2) Persons “resident but not ordinarily resident” in Pakistan

Such persons are subject to tax :

- (i) on income received or deemed to be received in Pakistan (Section 4 (1) (1) (a) ;
- (ii) on income accruing or arising or deemed to accrue or arise in Pakistan in the previous year (Section 4 (1) (b) (i) ;
- (iii) on such an amount of income, profits or gains which accrued or arose without Pakistan as is derived from a business controlled in or a profession or vocation set up in Pakistan or is brought into Pakistan during the previous year (Section 4 (1) (b) (ii) and second proviso to Section 4 (1) (c)) and;

- (iv) on all amounts brought into Pakistan during the previous year out of income which accrued outside Pakistan before the beginning of such year and after the 1st day of April 1933 (Section 4 (1) (b) (i)).

(3) “Non-resident” i. e. Persons not resident in Pakistan

Such persons are subject to tax :

- (i) on income received or deemed to be received in Pakistan during the previous year (Section 4 (1) (a)) and
- (ii) on income accruing or arising or deemed to accrue or arise in Pakistan during the previous year (Section 4 (1) (c)).

Under the third proviso to Section 4 (1), in the case of persons resident, a sum of Rs. 4,500/- is deducted from the income arising abroad in the previous year but not brought into Pakistan. Income from agriculture accruing or arising within Pakistan is exempt from federal income tax (Section 4 (3) (viii)) but not that accruing or arising outside Pakistan, which is treated just like any other income in the hands of any individual or entity subject to tax in any one of the three above mentioned categories. Agricultural income taxation falls within the jurisdiction of the Provinces, some of which resort to such taxation.

The circumstances under which income is deemed to accrue in Pakistan are the following :—

- (i) Income accruing or arising whether directly or indirectly through or from any business connection in Pakistan or any property, asset or source of income in Pakistan or through or from any money lent at interest in Pakistan (Section 42(1). In the case of a business of which all the operations are not carried out in Pakistan, only such profits as are reasonably attributable to that