

# PAKISTAN STOCK BROKERS' ASSOCIATION

(A company setup under section 42 of the Companies Act 2017)

Regd. Office: Mezzanine Floor, Trading Hall, Stock Exchange Building, Stock Exchange Road,  
Off. I.I. Chundrigar Road, Karachi.

Tel: 021-32401278-79 E-mail: psamail024@gmail.com

Ref: PSBA-N0820-01

August 18, 2020

**MR. MUHAMMAD LUKMAN**

Chief Executive Officer

National Clearing Company of Pakistan Limited

Karachi

**Subject: Collection of Capital Gain Tax and it's adjustment by National Clearing Company of Pakistan Limited (NCCPL)**

Dear Sir,

We have been approached by our members raising concerns on the subject matter.

It has been noticed that NCCPL observes a financial year while collecting capital gains tax on a monthly basis and adjust, the loss brought forward, if any, at the year-end.

This accounting treatment might be convenient to NCCPL but yields an opportunity loss to our members/investors from whom the monthly collection is being made without any monthly adjustment of losses brought forward.

Since adjustments are given at year-end, therefore, it implies that NCCPL does not deposit 100% of the amount so collected, on monthly basis, in the National Exchequer as it has to give credit at the year-end.

Therefore, it would not be improper to conclude that on the one hand our members/investors are losing opportunity income and on the other hand NCCPL is earning on monthly collections.

Though, our members desire that the monthly collection of CGT should be after adjustment of losses carried forward.

However, keeping in view the time required to adjust the prevailing systems, you are hereby requested to consider either of the following three options:

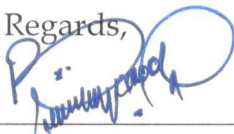
1. **Top Priority** - Adjust losses brought forward from the monthly collection, with immediate effect; or
2. Pass on the profit earned by NCCPL on the additional monthly collection, without any retention; or
3. If you cannot adjust your systems due to any reason, whatsoever, than a reconciliation statement be provided reflecting:
  - a. Total amount of Capital Gain Tax;
  - b. Amount of losses brought forward;
  - c. Net amount;
  - d. Amount collected on a monthly basis.

Residual of the monthly collection will reveal the exact month after which any amount collected on a monthly basis will be an additional amount on which a minimum one-month KIBOR rate should be applied to make up the opportunity loss of members/investors.

Please do not hesitate to contact the undersigned should you so desire.

Thanking You,

Best Regards,

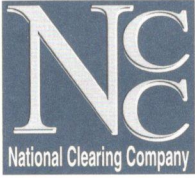


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**BILAL FAROOQ ZARDI**

Secretary General

Cell# 0300 - 266 2516



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NCCPL/CS/271/20

August 25, 2020

**Mr. Bilal Farooq Zaidi**

Secretary General

**Pakistan Stock Brokers Association**

Mezzanine Floor; Trading Hall, Stock Exchange Building

I.I. Chundrigar Road, Karachi

**RE: COLLECTION OF CAPITAL GAIN TAX (“CGT”) AND ITS ADJUSTMENT BY NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED (“NCCPL”)**

Dear Sir,

This is with reference to your letter dated August 18, 2020 through which you have cited the concerns raised by securities brokers over adjustment of carry forward losses at year end. In the said letter, it has been mentioned that NCCPL collects CGT on monthly basis without adjusting the brought forward losses while its adjustment is made at year end which results in opportunity loss to tax payers. Further, it has also been requested that in case if this practice is continued in future, the interest earned by NCCPL on these floats (amount of CGT collected without adjustment of carry forward losses) should be reimbursed to tax payers.

At the outset, we would like to reiterate that NCCPL has developed an automated CGT system to compute, determine, collect and deposit CGT in order to discharge its role in accordance with requirements stipulated in the Income Tax Ordinance, 2001 (“Ordinance”) and Income Tax Rules, 2002. Further, the CGT related floats are maintained in a separate bank account opened and operated exclusively for this purpose and interest earned on this bank account is deposited in national exchequer along with CGT amounts.

As regards to your query regarding manner of adjustment of carry forward losses, we are reproducing herewith the relevant provisions of the Ordinance for ready reference:

**Quote**

*Section 37A (5) of the Ordinance*

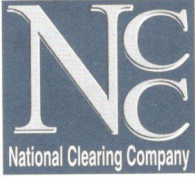
*Notwithstanding anything contained in this Ordinance, where a person sustains a loss on disposal of securities in a tax year, the loss shall be set off only against the gain of the person from any other securities chargeable to tax under this section and no loss shall be carried forward to the subsequent tax year:*

*Provided that so much of the loss sustained on disposal of securities in tax year 2019 and onwards that has not been set off against the gain of the person from disposal of securities chargeable to tax under this section shall be carried forward to the following tax year and set off only against the gain of the person from disposal of securities chargeable to tax under this section, but no such loss shall be carried forward to more than three tax years immediately succeeding the tax year for which the loss was first computed.*

**NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED**

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### Unquote

The above provision was carefully reviewed with M/s. KPMG Taseer Hadi & Company, Chartered Accountants (our tax advisor) and the manner of adjustment was also discussed with other subject matter specialists. These consultative discussions transpired that Section 37A(5) of the Ordinance is a non-obstante clause i.e. it has an overriding effect and hence capital loss of the tax year 2020 shall first be set off against capital gain of tax year 2020, then the net capital gain, if any, shall be available for set off against brought forward capital losses pertaining to tax year 2019 because law provides setting-off mechanism of the loss of the current year as a first step and only then second step becomes applicable for adjustment of brought forward losses from previous tax year(s). NCCPL, based on above interpretation of law, has adopted this practice in accordance with regulatory requirement stipulated in the Ordinance and not from perspective of accounting convenience.

As regards your recommendation to pass on the profit earned on these floats without any retention by NCCPL, we are reproducing herewith the relevant provision of the Ordinance for your ready reference:

### Quote

#### **Rule 4 of the Eight Schedule to the Ordinance**

*Payment of tax collected by NCCPL to the Board - The amount collected by NCCPL on behalf of the Board as computed in the manner laid down under this Schedule shall be deposited in a separate bank account with National Bank of Pakistan and the said amount shall be paid to the Board along with interest accrued thereon on yearly basis by July 31st next following the financial year in which the amount was collected.*

### Unquote

In compliance with the above referred provision, the amount collected by NCCPL from tax payers in respect of their CGT obligation is deposited in a separate bank account opened with National Bank of Pakistan (being used exclusively for CGT related float) and any profit earned on this account accrues to Federal Board of Revenue which is deposited in the national exchequer along with CGT on periodic basis.

Hope the above explanation will suffice the queries raised through aforementioned letter. Please feel free to contact the undersigned for any clarification required on the matter.

Yours sincerely,

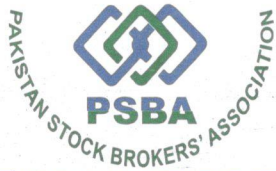
For and on behalf of  
National Clearing Company of Pakistan Limited

**Imran Ahmed Khan**  
Chief Financial Officer &  
Company Secretary

### **NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED**

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PSBA-N0920-01

September 11, 2020

**MR. IMRAN AHMED KHAN**

Chief Financial Officer & Company Secretary  
National Clearing Company of Pakistan Limited  
Karachi.

Subject: **COLLECTION OF CAPITAL GAIN TAX AND IT'S ADJUSTMENT BY  
NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED (NCCPL)**

Dear Sir,

Please refer to your letter NCCPL/CS/271/20 dated August 25, 2020, wherein, you have explained your understanding in the matter. In the letter, you have also mentioned that the matter has also been discussed and reviewed with your tax consultant and other subject matter specialists.

Though, you might be comfortable discussing with your tax consultant, but please allow us to raise our concerns based on the fact that these tax consultants have no responsibility due to disclaimer/caveats in their opinion, and normally escape under the word opinion.

Our members, being directly affected by the opinion of the one of the tax consultants when at the time of disposal of PSX shares, tax consultant written opinion was sought by PSX which could not be sustained and thereafter each member was penalized and taxed amounting to Rs. 10 million, approximately.

Therefore, it is earnestly requested that in order to achieve desired results, both sides should discuss this matter with an open mind to facilitate the investors/tax payers.

**Objective of this discussion:**

**The objective is to bring back the liquidity with the investors, which has been stuck for 12 months and will ultimately be available in the 13<sup>th</sup> month. This liquidity has certain cost attached to it, therefore, opportunity cost.**



The objective is not to conceal income or asking for tax rebates or tax concessions.

Being, stock brokers' representatives, we always endeavour towards liquidity which is the basic element for further growth. Therefore, timing of tax collection is also very important.

Hence, from the above, we establish that this discussion may please be focused on:

1. Liquidity;
2. Opportunity cost; and
3. Timing of tax collection.

In your reply, you have quoted Rule 4 of the Eighth Schedule which is reproduced below as:

*Payment of tax collected by NCCPL to the Board.— The amount collected by NCCPL on behalf of the Board as computed in the manner laid down under this Schedule shall be deposited in a separate bank account with National Bank of Pakistan and the said amount shall be paid to the Board along with interest accrued thereon on yearly basis by July 31st next following the financial year in which the amount was collected.*

*Bold and underline added for emphasis*

You have also verbally confirmed that the bank account, as stated above, is an escrow account and it is clear from the above rule that interest accrued is also being passed on to the FBR on yearly basis.

We reproduce Rule 13D of the Income Tax Rules, 2002 as follows:

**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.



Please acknowledge that Rule 13D(2) clearly reflects the mind set of legislature when it states that **Capital loss arising on disposal of securities in any tax year shall be set off against capital gain arising from the disposal of securities.**

We can establish that legislature is clear that **capital loss shall be set off against capital gain.** The inclusion of words **tax year** was just because that it was only allowed recently through Finance Act, 2019.

Since, these Rules were last amended on February 10, 2017, therefore these Rules **DO NOT** incorporate changes made in Income Tax Ordinance, 2001, through Finance Act, 2019.

From the above we determined that:

1. Payment to FBR is required on yearly basis (Rule 4 of Eighth Schedule);
2. Capital loss be set off first against capital gain (Rule 13D(2)).

Hence, our all objectives can be achieved if NCCPL considers capital loss as opening balance and adjust capital gains on monthly basis to determine tax collection.

Please do not hesitate to contact the undersigned should you so desire.

Thanking you,

Warm Regards,

**BILAL FAROOQ ZARDI**

Secretary General

Cell# 0300- 266 2516

Cc:

**Mr. Muhammad Lukman** - CEO - NCCPL.

**Mr. Shauzab Ali** - Commissioner SMD - SECP.



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**NCCPL/CS/295/20**

**September 15, 2020**

**Mr. Bilal Farooq Zardi**

Secretary General

**Pakistan Stock Brokers Association**

Mezzanine Floor; Trading Hall, Stock Exchange Building

I.I. Chundrigar Road, Karachi

**RE: COLLECTION OF CAPITAL GAIN TAX (“CGT”) AND ADJUSTMENT OF CARRY FORWARD LOSSES**

Dear Sir,

This is with reference to your recent letter dated September 11, 2020 and earlier communication exchanged in this respect. Through these communications, you have cited the concerns raised by securities brokers (“SBs”) over adjustment of carry forward losses at year end and have asked NCCPL to consider carry forward losses as opening balances and adjust the same with monthly capital gains to determine capital gain tax demand at the end of each month.

At the outset, we understand the concern raised by SBs and appreciate the initiative of Pakistan Stock Brokers’ Association (“PSBA”) to pursue this matter to bring back the liquidity to capital market and to save opportunity cost of SBs. Rest assured, NCCPL will work together with PSBA to achieve this objective in the best interest of capital market.

We would also refer to our earlier letter reference NCCPL/CS/271/20 dated August 25, 2020 through which we had explained that current treatment of capital losses brought forward from previous tax years is in accordance with Section 37 A (5) of the Income Tax Ordinance, 2001 (“Ordinance”). We had shared that above referred provision is a non-obstante clause having an overriding effect and hence current tax year’s capital loss will be set off against current tax year’s capital gain and thereafter the net capital gain, if any, shall be available for set off against brought forward capital losses because law provides setting-off mechanism of the loss sustained in current year as a first step and then adjustment of brought forward losses from previous tax year(s) becomes applicable as a second step.

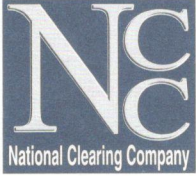
It was further mentioned that NCCPL had shared the said interpretation with its tax advisor and a few subject matter experts and have applied this treatment in the tax year 2019-20 after seeking their endorsements in this respect.

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Through PSBA's recent letter, you had referred to Clause 13D (2) of the Income Tax Rules 2002 ("Rules") in isolation and you have also pointed out that Clause 13D has not been amended consequent to amendments introduced through Finance Act, 2019 in the CGT regime. We understand that clause 13D (2) should be read along with 13D (3) and with reference to Section 37A (5) which specifies a limitation period of three tax years immediately succeeding the tax year for which the loss was first computed and hence adjustment of loss of one year at the very inception of the next year will distort this position.

Therefore, in the given situation, either clarification should be sought from Federal Board of Revenue ("FBR") to decide manner of adjustment of capital losses brought forward from previous tax years or alternatively amendments in the Rules and its alignment with Section 37A (5) should be pursued with FBR to cater for adjustment of brought forward losses to determine capital gain and tax thereon at each month end.

Further, NCCPL has referred this matter to the Tax Consultative Committee ("Committee") formed to comprehensively review and implement tax reforms for betterment of capital market. It has been suggested that Committee will include seeking clarification from FBR on the proposed treatment in its recommendations and tax reform aimed to enhance liquidity in the capital market and to save opportunity loss caused to SBs due to existing treatment.

In addition to, NCCPL has also engaged its tax advisor to draft requisite amendments in the Rules to cater the proposed treatment of brought forward losses. These amendments will be submitted to FBR to seek its approval in due course.

Hope the above explanation will suffice the queries raised through aforementioned letter. Please feel free to contact the undersigned for any clarification required on the matter.

**Yours sincerely,**

**For and on behalf of  
National Clearing Company of Pakistan Limited**

**Imran Ahmed Khan**  
Chief Financial Officer &  
Company Secretary

Cc:  
Mr. Shauzab Ali - Commissioner SMD - SECP

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