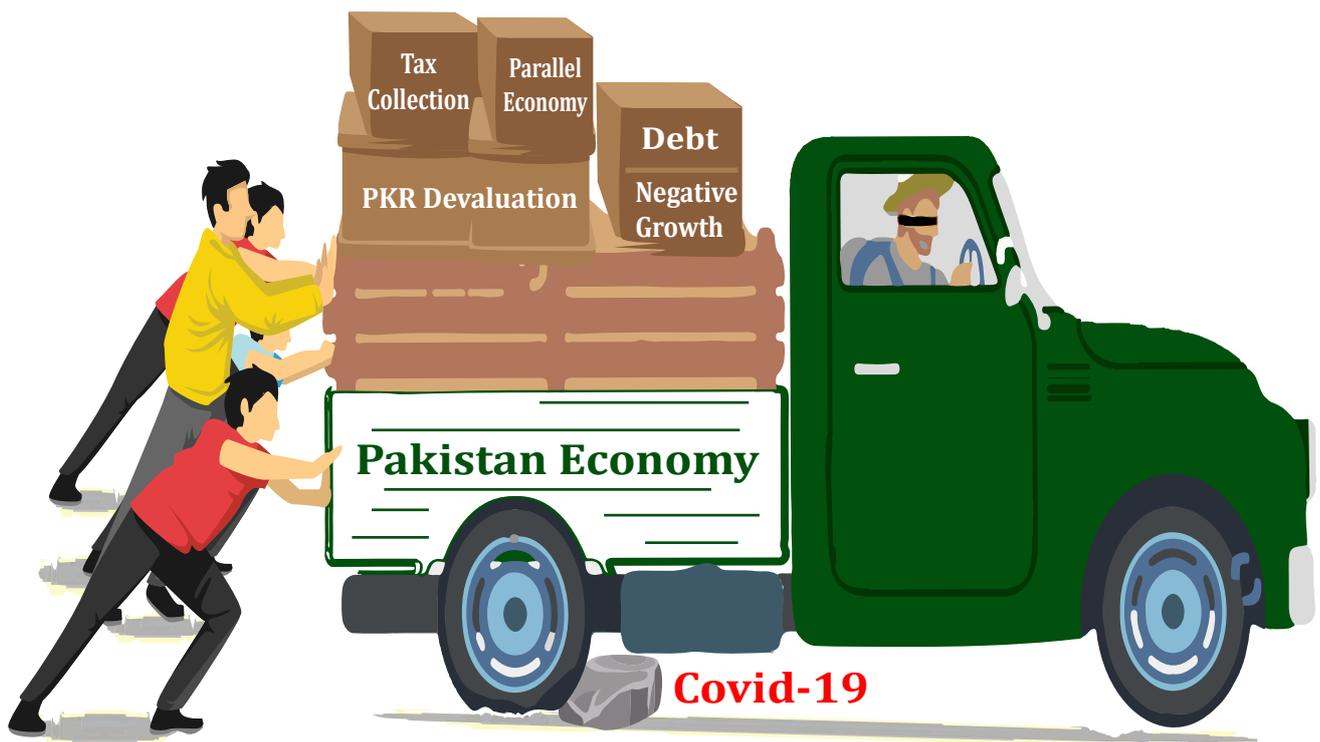


Budget 2020-21



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Prologue:

Finance Bill 2020-21 ("The Bill") for the fiscal year 2020-21 was laid before National Assembly on 12th June 2020. The bill has proposed amendments in Income Tax Ordinance, 2001 ("ITO"), Sales Tax Act, 1990 ("STA"), Federal Excise Act, 2005 ("FEA") among other laws.

We have prepared our comments on significant amendments proposed in ITO, STA & FEA. The comments presented are brief and detailed comments will follow after passage of the bill in the National Assembly along with passage of Provincial Finance Bills in respective Provincial Assemblies.

Our comments are based on publicly available copies of the Finance Bill. The interpretations of the amendments are based on our understanding of tax law and past practices.

These comments are provided for general use of public and should not be used for any specific transaction. We do not guarantee that these interpretations will be acceptable by the tax department.

The comments are prepared for general business understanding of masses. In case of any technical query, kindly contact us.

Please feel free to provide your feedback for further improvements in the document.

Warm Regards

TOLA ASSOCIATES

Saturday, 13th June 2020

BUDGET BRIEF

The Federal Government has announced 'Corona-Budget' for the year 2020-21, emphasizing on 'expansionary fiscal policy' despite high fiscal deficit, aimed to achieve balance between countering pandemic and turnaround sick economy. No pro-growth and reforms-oriented budget announced to bring back economy on track. Pakistan's GDP growth contracted to -0.38% in 2019-20 facing worst recessionary effects due to tight monetary and fiscal policies pursued for the last two years, which hit the private sector the hardest and paralyzed economy.

The key highlights of the Federal Budget 2020-21 are as under;

KEY HIGHLIGHTS:

- The total outlay of the Federal budget 2020-21 is Rs.7.3 trillion which is 11% lower than the size of the budget estimates 2019-20.
- The projected interest payment in the budget is estimated at Rs.2,946 billion, which is 9% higher than the revised figures of Rs. 2,709 billion in 2019-20.
- Current expenditure of the country is estimated at Rs. 6,345 billion vs. Rs.6,372 billion a year ago.
- The total federal expenditure is estimated at Rs. 7,136 Billion.
- The current expenditure accounts 88.90% of the total estimated expenditures which is huge.
- Defence budget is estimated at Rs. 1,289 billion which is 5% higher than the revised figures of Rs.1227 billion last year.
- Federal Government will phase-out subsidies by Rs. 140.50 billion from Rs.349.5 billion in 2019-20 to Rs. 209 billion in 2020-21 mainly in power sector, which will fuel inflation.
- Provincial share in NFC is estimated at Rs. 2,874 billion.
- The size of the PSDP is estimated at Rs. 1,324 billion, which includes Federal PSDP Rs.650 billion and provincial PSDP is estimated at Rs. 676 billion.
- Federal Government has projected 27% growth in the FBR's tax revenue vs. current year projected figures of Rs.3908 billion.

- With the projected GDP growth is 2.1% and inflation of 6.5% during 2020-21, FBR's projected tax revenues growth by 27% is unrealistic.
- Under the ongoing recession and pandemic effects, FBR's tax revenue would be around Rs. 4,300 billion, consequently would further appreciate the tax gap and increase fiscal deficit.

FBR's Tax Revenue for 2020-21			
(Rs in Billion)	Revised 2019-20	Budget 2020-21	% change
Tax Revenue	4,208	5,464	30%
FBR Taxes	3,908	4,963	27%
Direct Taxes	1,623	2,043	26%
Indirect Taxes	2,285	2,920	28%
Other Taxes	300	501	67%
Non-Tax Revenues	1,296	1,108	-15%
Gross Revenue Receipts	5,504	6,573	19%
Less provincial Share	2,402	2,873	20%
Net Revenue Receipts	3,102	3,700	19%

- Out of the non-tax revenues of Rs.501 billion, Federal government govt. relying on petroleum levy to accomplish its targets and estimated massive funds worth Rs. 450 billion in 2020-21, which is 73% higher than last year.
- Federal Government's fiscal deficit would be Rs. 3,436 billion during 2020-21 which is estimated on the provincial surplus of Rs. 242 billion.
- Therefore, the overall fiscal deficit of the country would be Rs. 3,194 billion during 2020-21, which is hereafter;

(Rs in billion)	2020-21
Federal Revenue	3,700
Total Federal Expenditure	7,136
Federal Budget Deficit	-3,436
Estimated Provincial Surplus	242
Overall Fiscal Deficit	-3,194
% of GDP	-7%

- The financing of the budget deficit is the most critical factor for the economy and financing of fiscal deficit to remain a key challenge for the policy makers.

BUDGET BRIEF

- Federal government would rely more on domestic financing for the fiscal deficit in 2020-21, which includes 74% through domestic resources and 26% through external resources. The details of the financing are as under;

Financing of Budget Deficit	
(Rs in billion)	2020-21
Gross External loans	2,223
Debt Repayments & servicing	(1,413)
A. Net External Financing	810
i-Banks	889
ii- Non-Banks	1,395
iii- Privatization	100
B. Domestic Financing	2,384
Grand Total	3,194

- Federal Government has had high fiscal deficit of 8.9% of GDP in 2018-19. While projected figure of fiscal deficit would be 9.4% in 2019-20. Therefore, country has experienced two consecutive high fiscal deficits, which is unprecedented in the history.
- The next year's fiscal deficit is estimated at Rs. 3,195 billion which is 7% of GDP. Whereas primary balance is estimated at -0.5% of GDP.
- To curtail the fiscal deficit, Federal Govt. has cut the size of national PSDP by 18% to Rs. 1,324 billion vs. Rs. 1,613 billion year ago. This has strategized by the policy makers when country needed to stimulate the economy for jobs creation and economic development.
- Federal PSDP is estimated at Rs.650 billion for 2020-21 which is 7.27% lower than last year.

Size of National PSDP cut down in Federal Budget 2020-21			
(Rs in bln)	Revised 2019-20	Budget 2020-21	% change
Size of PSDP	1613	1324	-18%

- The country's mark-up is the biggest expense of the current expenditure, which is 46% of total current expenditure
- On one hand government has increased the salaries and pensions, but on the other hand

appreciated its own expenditure by 7% in 2020-21.

- Mark up payments and Defence budget constitutes 67% of the total current expenditure, details are as follows;

Break-up Of current expenditure			
(Rs in bln)	Revised 2019-20	Budget 2020-21	% change
Mark-up Payment	2,709	2,946	9%
Pension	463	470	2%
Defence affairs and services	1,227	1,289	5%
Grants and transfers	1,177	904	-23%
Subsidies	349	209	-40%
Pay and pension (budgeted last yr)	79	0	-100%
Provision for contingencies (budgeted last yr)	115	50	-57%
Running for civil Govt.	445	475	7%
Total Current expenditure	6,372	6,344	-0.4%

- The slippage in provincial surplus whose probability is higher under present scenario, will likely increase the fiscal deficit and exhaust fiscal space of the country.
- Country's larger share of taxes comes from indirect taxes which is contingent with the economic activity and GDP growth. If Pandemic worsens going forward, country's tax revenues growth to drop further.
- Pakistan has missed almost all economic targets set for 2019-20 including agriculture sector, industry, services sector, tax revenue, investment etc. Next fiscal year targets mainly depend on the magnitude, duration and persistence of measures taken and its capacity for containment against COVID-19.
- Budget 2020-21 document lacks prudent strategy by Federal Government that how ambitious growth of 27% in tax revenues is going to be achieved, and ignored the ground realities
- The budget 2020-21 lacks clarity about Public Sector Entities and circular debt which is close to Rs.2 trillion. Without effective implementation of

BUDGET BRIEF

the reforms in these two key areas, productive capacity of the economy cannot be improved.

- According to the Economic Survey 2019-20, 27.3 million workforce working in informal economy mainly in wholesale and retail trade could lose their jobs due to covid-19. The length and depth of the COVID-19 is not only unpredictable but also elevating uncertainty for private sector of country. The expected loss of employment between 12.5 to 19.1 million under moderate and complete lockdown. This budget 2020-21 has not addressed the socio-economic vulnerabilities of around 57% of the population of the country. Therefore, if pandemic persist, ongoing recession could deepen and 'V-shaped' recovery to 2.1% in GDP growth and 27% growth in tax revenues is uncertain.

Continue from next page

Amendments in Income Tax Ordinance, 2001

1. DEFINITIONS – S. 2

The bill proposes to introduce following new definitions in section 2 of ITO:

- Integrated Enterprises – a person integrated with board through approved fiscal electronic device and software and who fulfills obligation and requirements for integration as may be prescribed.
- IRIS – a web-based computer programme for operation and management of Inland Revenue Taxes administered by the Board.
- Local Government – will have the same meaning as contained in local government acts of provinces and Islamabad Capital territory.

The bill also proposes to amend the definition of non-profit organizations to include organizations for the welfare of general public.

2. TAX ON SHIPPING OF A RESIDENT PERSON – S. 7A

The bill proposes to charge tax at the rate of USD 0.75 per gross registered tonnage per annum for a Pakistan resident ship owning company registered with SECP after the 15th November 2019 and having its own seaworthy vessel registered under Pakistan flag.

The applicability of section 7A has been proposed to be extended till 30th June 2023 from 30th June 2020.

3. INCOME FROM PROPERTY – S. 15, 15A

Section 15 and section 15A of ITO provides that Individuals and AOPs earning income from property shall be charged tax as separate block of income as per slab rates provided under Division VIA, Part I, First Schedule to ITO with certain limited claimable expenditures. One such expenditure is allowed to the extent of 6% on account of collection and administration charges. An option has also been provided to an individual and AOP, having income from property exceeding Rs. 4 million in a tax year, to pay tax under normal tax regime.

The bill proposes to remove above threshold of Rs. 4 million to provide an option to all Individuals and AOPs to opt for charging of tax under normal regime as per slab rates provided in Division I, Part I of First Schedule to ITO. After opting for normal taxation,

these taxpayers will also be eligible to claim adjustment of expenses incurred to earn such incomes.

The bill also proposes to reduce the limit of above 6% expenditure to 2% in case of separate block of income.

4. INCREASE IN THRESHOLD FOR PAYMENT OF EXPENSE AND SALARIES IN CASH – 21(L), 21(M)

Under section 21(l) currently, the threshold to for payment of any expense is Rs. 10,000 per transaction and Rs. 50,000 per account per year. These thresholds have been proposed to be increased to Rs. 25,000 and Rs. 250,000, respectively.

Under section 21(m) currently, the threshold for payment of salaries in cash is Rs. 15,000. This threshold has been proposed to increase to Rs. 25,000.

These increase in thresholds will promote ease of compliance and ease of doing business.

5. DISALLOWANCE OF EXPENDITURES – 21(P), 21(Q)

The bill proposes to prescribe limits and conditions for allowance of utility expenditures.

The bill also proposes to disallow expenditure by an industrial undertaking in proportion of supplies made to sales tax unregistered persons. However, this proportionate disallowance will only be applicable in cases where supplies equal or exceed Rs. 100 million per person. Moreover, this proportionate disallowance will not exceed 20% of total expenditure claimed under this clause. It has also been proposed to empower Board to exempt persons or classes of persons from this clauses on the basis of hardship.

6. REDUCED DEPRECIATION AND LEASE RENTALS – S. 22, 28

The bill proposes to allow the depreciation allowance for a depreciable asset for only half year in the first year of use for assets introduced after 01-07-2020. For the year of disposal for such assets, 50% depreciation expenses will be allowed.

Currently under section 22, a depreciable asset is depreciated for full year in the year of first use and no depreciation is allowed in the year of disposal.

Amendments in Income Tax Ordinance, 2001

For example, a business put to use an asset worth Rs. 10 million first time during tax year 2021. The asset has a tax depreciation rate of 10%. The asset will be disposed off in during 2022. As per current provisions, tax depreciation of Rs. 1 million will be allowed during 2021 while no depreciation will be allowed during 2022. Whereas, as per proposal, the depreciation allowance for year 2021 will be 0.5 million (Rs. 10 million x 10% /2) only. However, depreciation allowance for tax year 2022 will be Rs. 0.475 million [(Rs. 10 million – 0.5 million) x 10% /2]

The bill also proposes to reduce deemed principal of a passenger transport vehicle not plying for hire to Rs. 2.5 million for the purpose of determining deductible lease rentals.

For example, a business purchases a passenger transport vehicle not plying for hire on lease with principle amount of Rs. 6 million and yearly lease rentals of Rs. 0.8 million. The proposal will treat the principal as Rs. 2.5 million and will rework the lease rental on Rs. 2.5 million principal amount.

The proposal will discourage new investments and expansions as increased tax outflow due to reduced depreciation allowance may not be financially feasible for new projects.

7. CAPITAL GAINS ON IMMOVABLE PROPERTY – HOLDING PERIOD AND TAX RATES REDUCED – S. 37

FA 2019 changed the capital gain tax regime and increased the holding periods for the purpose of exemptions. FA 2019 also segregated buildings from open plot and implemented separate holding periods for exemptions of capital gain tax. The bill now proposes to again merge building and open plot and have implemented same holding period and tax rates for both as under:

Holding Period	Proposed Gain	Current Gain	
		Open Plot	Constructed
Up to one year	100%	100%	100%
1 to 2 years	75%	75%	75%
2 to 3 years	50%		
3 to 4 years	25%		
4 to 8 years	0%	0%	0%
More than 8 years			

Amount of Gain	Proposed Tax Rate	Current Tax Rate
Upto 5 million	2.5%	5%
5 to 10 million	5%	10%
10 to 15 million	7.5%	15%
More than 15 million	10%	20%

Moreover, the bill also proposes to reduce holding period from 5 years to 4 years for exemption from payment of advance tax on sale of immovable property under section 236C of ITO.

8. TAX CREDIT FOR CHARITABLE DONATIONS – S. 61

Section 61 provides tax credits to persons paying donations to non-profit organizations. The credit is computed on the basis of tax assessed, taxable income and actual amount of donation. The amount of donation for the purpose of calculating tax credit is restricted to 20% and 30% for a company and others, respectively.

The bill proposes to reduce the restrictions to 10% and 15% for company and others, respectively, in case where donation is made to an associate.

9. ADDITIONAL REQUIREMENTS FOR NON-PROFIT ORGANIZATIONS – 100C

Non-profit organizations (NPOs), trusts and welfare institutions, in order to be eligible for hundred percent tax credit are also being required to file a statement of voluntary contributions and donations received in the preceding tax year.

Surplus funds of the NPOs, which are not spent during the year for welfare, are taxed at the rate of 10% with certain exclusions. One such exclusion is funds which could not be spent due to any obligation or restriction placed upon the NPO by the donor. However, where the donor is an associate of the NPO, such a restriction can be a mechanism to shift profit to the NPO. Therefore, amendment is being made so that the above exclusion does not apply in case where the donor is an associate of the NPO.

10. TAX CREDIT FOR ENLISTMENT – 65C

Section 65C provides tax credit of 20% and 10% for first two years and next two years, respectively, for enlistment in Pakistan Stock Exchange.

Amendments in Income Tax Ordinance, 2001

The bill proposes to restrict this tax credit for companies listed up to 30th June 2022 only.

11. SPECIAL PROVISIONS RELATED TO BUILDERS AND DEVELOPERS – S. 100D

Special incentives were provided to Builders and Developers vide The Tax Laws (Amendment) Ordinance No. 1 of 2020 dated 19th April 2020. The ordinance was issued by the president as the Parliament was not in session. The bill now proposes to introduce these incentives and make part of ITO through parliament. Our detailed comments on the Ordinance may be found through link [<https://bit.ly/3cSxlGt>] **Annexure A**

12. DISALLOWANCE OF PROFIT ON DEBT PAYABLE TO ASSOCIATE ENTERPRISE – S. 106A

The bill proposes that foreign profit on debt claimed (if equal to or more than Rs. 10 million) by a foreign controlled resident company (except insurance or banking company) shall be restricted up to 15% of taxable income before depreciation, amortization, and such foreign profit on debt. The unclaimed amount is proposed to be carryforward for next three years. This proposal will apply for profit on debt accrued after 01-07-2020.

For example, taxable profit before depreciation, amortization and profit on debt is Rs. 100 million and such profit on debt is Rs. 25 million. In this case, only Rs. 15 million (Rs. 100 million x 15%) will be allowed to be adjusted during current year and remaining Rs. 10 million will be carried forward to next three years to be added in next year's profit in debt.

13. TURNOVER TAX ON PE – S. 113

Currently turnover tax under section 113 is applicable to residents' companies, certain individuals and AOPs. Since Permanent Establishments ("PE") of non-resident companies do not fall under definition of resident company as per section 83 of ITO, these Pes are not currently covered under section 113. The bill proposes to also include these PEs under applicability of turnover tax.

14. RETURN OF INCOME INSTEAD OF STATEMENT OF FINAL TAXATION – S. 114, 115

Under section 115, a person whose income is subject to final tax is required to furnish a statement instead of a return of income u/s 114. In order to simplify the tax law for compliance purposes and to promote ease of doing business, the statement declaring income subject to final tax is being incorporated as a part of the return u/s 114(2). It is also proposed that the commissioner compulsorily approve return revision requests in cases of bonafide omission or wrong statement. However, it is unclear as to who will decide about any omission or wrong statement to be bonafide.

15. TAXPAYER'S PROFILE – S. 114A

The bill proposes to introduce requirement of filing a profile by following taxpayers electronically:

- Every person applying for registration under section 181;
- Every person deriving income chargeable to tax under the head, "income from business";
- Every person whose income is subject to final taxation;
- Any non-profit organization as defined in clause (36) of section 2;
- Any trust or welfare institution; and
- Any other person prescribed by the Board.

The profile:

- Shall be in the prescribed form and shall be accompanied by such annexures, statements or documents as may be prescribed;
- Shall fully state, in the specified form and manner, the relevant particulars of—
 - Bank accounts;
 - Utility connections;
 - Business premises including all manufacturing, storage or retail outlets operated or leased by the taxpayer;
 - Types of businesses; and
 - Such other information as may be prescribed;
- Shall be signed by the person being an individual, or the person's representative where section 172 applies; and

Amendments in Income Tax Ordinance, 2001

- Shall be filed electronically on the web as prescribed by the Board.

The profile shall be furnished

- On or before the 31st day of December 2020 in case of a person registered under section 181 before the 30th day of September 2020; and
- Within ninety days registration in case of a person not registered under section 181 before the 30th day of September 2020.

The profile shall be updated within ninety days of change in any of the relevant particulars of information as mentioned in clause (b) of subsection (2).

The bill further proposes a penalty of Rs. 2,500 for each day of default from the due date with minimum penalty of Rs. 10,000 in case of failure to furnish or update the tax profile. The bill also proposes to exclude the name of the person from Active taxpayers' list in such scenario. The taxpayer's name shall be reincluded in Active Taxpayer's list after filing of the profile along with payment of surcharge of Rs. 20,000, Rs. 10,000 and Rs. 1,000 for company, AOP and Individual, respectively.

16. REVISION OF WEALTH STATEMENT – S. 116

Currently, for revision of wealth statement, Commissioner's approval is not required under section 116.

The bill proposes that the wealth statement shall be revised after approval from Commissioner. It also proposes that in cases of bonafide omission and wrong statements, the Commissioner shall compulsorily approve the revision request.

It is also proposed that no revision shall be allowed after expiry of five years from the due date of filing of return of that year.

17. AUTOMATED ADJUSTED ASSESSMENT – S. 20

In order to rectify computational errors, the returns filed by the taxpayers shall now be initially processed within six months of filing of return by making adjustments for any arithmetical errors, any incorrect

claims, any deductions, tax credits or losses which are not allowable under the Ordinance. Such processing shall be done automatically through the system.

Following are the conditions for automated adjusted assessment:

- No adjustment shall be made unless system generated notice is given to taxpayer;
- Any response received from taxpayer shall be considered before making adjustment;
- If no response is received within 30 days, adjustments shall be made; and
- Where no adjustments have been made within six months of filing of return, amounts specified in the return as declared by the taxpayer shall be deemed to have been taken as adjusted amounts on the day the return was filed.

18. AMENDMENT OF ASSESSMENT – S. 122(5)

Currently, the commissioner is empowered to amend an assessment under section 122(5) where, on the basis of definite information acquired through audit or otherwise, he is satisfied that:

- Any income chargeable to tax has escaped assessment;
- Total income has been under assessed, or assessed at too low a rate, or has been subject to excessive relief or refund; or
- Any amount under a head of income is misclassified.

The bill proposes to empower commissioner to amend an assessment under section 122(5) where, on the basis of audit or on the basis of definite information, he is satisfied as above.

The bill proposes to provide a free hand to the commissioner to acquire the so-called definite information from any source and to amend the assessment putting the said information to the test of audit and scrutiny. Moreover, the bill also proposes to empower the commissioner to directly amend the assessment on the basis of an audit under section 122(5) irrespective of the fact whether he acquires definite information or not.

19. AGREED ASSESSMENT – S. 122D

In order to facilitate taxpayers and reduce the burden on the formal appeal system, amendment is being

Amendments in Income Tax Ordinance, 2001

made to the effect that where a taxpayer in response to a notice for amendment intends to get his case settled, he may file offer of settlement before the Assessment Oversight Committee for resolution of his dispute.

Agreed Assessment shall not apply in cases involving concealment of income or where interpretation of question of law is involved having effect on other cases.

20. APPEAL TO COMMISSIONER (APPEALS) – S. 127

The procedure for applying for appeal contained in Income Tax Rules has now proposed to be incorporated in Section 127 of ITO. Further the fee which had been Rs 1000/- has been revised upward as follows:

Where appeal is against an assessment:

- Appellate is a company, five thousand rupees
- Appellate is not a company, two thousand and five hundred rupees

Appeal in other cases:

- Appellate is a company, five thousand rupees
- Appellate is not a company, one thousand and five hundred rupees.

Further the bill proposes that Commissioner (Appeals) shall not admit any documentary material or evidence which was not produced before Officer Inland Revenue unless he is satisfied that appellate was prevented by any sufficient cause.

21. DEPOSIT OF 10% OF DEMAND BEFORE FILING APPEAL TO ATIR – S. 129, 131

The bill proposes to make it compulsory for the Commissioner (Appeals) to specify the amount of tax upheld in his order.

The bill also proposes to attach proof of payment of 10% of the tax amount upheld by Commissioner (Appeals) along with Appeal documents and make it a precondition to deposit 10% of the amount upheld before admission of Appeal by Appellate Tribunal.

The proposal is against the decisions of superior courts which has held that recovery of tax demand cannot be forced until the order has been scrutinized

by at least one independent forum. The superior courts have decided the first independent forum to be the Appellate Tribunal, therefore, forcing taxpayer to pay 10% demand before filing appeal to Appellate Tribunal will be against the superior court orders and it will be nothing but a bargained justice.

22. ALTERNATE DISPUTE RESOLUTION – S. 134A

The bill has proposed some changes in provisions related to ADR as follows:

- The committee previously comprising an officer of Inland Revenue not below the rank of a Commissioner, now will comprise of **Chief Commissioner Inland Revenue**.
- Currently the taxpayer was allowed to nominate a person from panel notified by the FBR. Now FBR will nominate these persons.
- Currently Retired Judge was also part of committee now proposed to be removed.
- The FBR shall communicate the order of appointment of committee to the court of law or forum where dispute is pending and the Commissioner.
- Currently automatic stay of recovery was granted up to the date of decision by committee when application was made to ADR committee. Now stay has to be given by committee on application which may give maximum stay up to 120 days in aggregate.

If the aggrieved person has not communicated the order of withdrawal to Commissioner within 60 days of the service of decision of the committee, the decision shall not be binding on the Commissioner.

23. TAX ON PAYMENTS TO NON-RESIDENTS – S. 152

Taxes deducted on payments made to non-resident persons under section 152 have been made minimum in following cases:

- Payments for advertisement services to non-resident media persons.
- Payment to PE of non-resident for goods, services, and contracts except where the payment received by a company being manufacturer of such goods.

Amendments in Income Tax Ordinance, 2001

Moreover, FA 2019 empowered the commissioner to issue certificate to the person making payment to non-resident person to allow him to make payment after deduction of only 30% of the tax. This approval is only in case of payments that constitute part of an overall arrangement of a cohesive business operation. The credit of such tax deducted shall be allowed to the permanent establishment of non-resident person in Pakistan. The bill proposes to restrict such limit of 30% to 25%.

Furthermore, the withholding tax rates have been reduced to 3% in case of specified services in line with withholding tax deduction on services provided by local companies.

It is needless to mention that Double Taxation Treaty, if any, between Pakistan and the country of residence of the non-resident person shall prevail in case of any conflict between the two.

24. ADVANCE TAX AT IMPORT – S. 148

In order to provide a level playing field to commercial importers viz-z-viz manufacturers, remove distortions in the incidence of income tax on the import of capital goods and raw materials, plug revenue leakages and facilitate manufacturing by SMEs, a paradigm shift in the current regime is being introduced by shifting from person-specific rates to goods specific rates cascaded according to the type of goods, with tax @1% for capital goods, 2% for raw materials and 5.5% for finished goods irrespective of status of the importer. However, the prevailing concessional rates on certain items such as remeltable scrap of iron and steel, potassic and urea fertilizers, LNG, Gold, Cotton, goods that were importable by manufacturers under the rescinded SRO 1125(I)/2011 dated 31.12.2011, mobile phones etc. are being maintained.

The products have been specified in Part I, II and III of newly introduced Twelfth Schedule to ITO.

Another major proposal is withdrawal of clause (72B) Part IV of Second Schedule. Clause (72B) provided a venue for the industrial undertakings to claim exemption certificate from applicability of section 148 on import of their raw materials.

Value of goods in case of items listed under Third Schedule to STA have been proposed to be the retail price increased by sales tax payable in respect of import and taxable supply of the goods. For example, retail price of the item excluding sales tax is Rs. 100 and sales tax is Rs. 17, then the value of the items will be Rs. 117.

25. EXPEDITIOUS EXEMPTION CERTIFICATE TO LISTED COMPANIES – S. 153

To facilitate listed companies, amendment is being proposed to enable the Commissioner to issue exemption certificate, on the basis of advance tax payment for the years, within fifteen days of filing of application, failing which the certificate will be automatically issued through the system.

26. THRESHOLD TO BE A PRESCRIBED PERSON AS A WITHHOLDING AGENT – S. 153

Section 153 of ITO provides that an individual or AOP having turnover of Rupees **fifty million** or above in any of the previous tax year shall be treated as a prescribed person i.e. a withholding agent to deduct tax while making payments on account of supplies of goods, provision of services and execution of contracts. The definition also includes a person registered under the STA without any turnover threshold.

The bill proposes to increase the limit of Rupees fifty million to rupees hundred million. Similarly, threshold of Rupees hundred million has also been prescribed for a person registered under STA. this means that any person will not become a withholding agent merely due to registration under STA.

The bill also proposes to treat tax deduction on payment for toll manufacturing at par with supply of goods, i.e. to withhold tax at rates of 4% and 4.5% as the case may be.

27. WITHHOLDING TAX STATEMENT – FROM BIENNIAL TO QUARTERLY – S. 165

The bill proposes to make filing of withholding tax statement by the withholding agents on quarterly basis instead on biennial basis. The due dates for

Amendments in Income Tax Ordinance, 2001

submission of statements have been proposed as under:

Quarter ending	Due date
31 st March	20 th April
30 th June	20 th July
30 th September	20 th October
31 st December	20 th January

28. EXPEDITIOUS AUTOMATED REFUNDS – S. 170

The present system of manually verifying and processing refunds is outdated and prone to corruption. Therefore, to facilitate taxpayers, impart transparency and efficiency and promote ease of doing business, a provision is being proposed to enable board to make rules regulating procedures for expeditious processing and automatic payment of refunds directly into the bank accounts of the taxpayer by the Board through a centralized processing system.

29. REAL TIME ACCESS TO INFORMATION AND DATA BASES – S. 175A

A legal framework is, therefore, being proposed in law for real-time access to databases of various organizations for broadening of the tax base and checking tax evasion such as land record departments, excise and taxation departments, utility companies, visa and immigration offices, and others.

30. INCOME TAX AUDIT THROUGH ELECTRONIC MEANS - S. 177

In line with the ongoing pandemic safety requirements, the bill now proposes to introduce concept of conducting audit proceeding by Commissioner electronically through video links, or any facility as FBR may prescribe.

31. AUDIT ON THE BASIS OF SECTORAL BENCHMARKS – S. 177

The bill proposes to empower commissioner to determine taxable income on the basis of sectoral benchmark ratios in following situations where a taxpayer:

- Has not furnished record or documents including books of accounts;
- Has furnished incomplete record or books of accounts; or

- Is unable provide sufficient explanation regarding the defects in records, documents or books of accounts.

32. WITHDRAWAL OF CERTAIN WITHHOLDING TAX PROVISIONS

The bill proposes to withdraw following withholding tax provisions to reduce the cost of compliance and cost of doing business of the taxpayers:

Section	Short Description
236R	Collection of advance tax on education related expenses remitted abroad
235B	Tax on steel melters and composite units (normal withholding tax u/s 153 shall apply)
156B	Withdrawal of balance under pension fund
148A	Tax on local purchase of cooking oil or vegetable ghee by certain persons
236D	Advance tax on functions and gatherings
236F	Advance tax on cable operators and other electronic media
236J	Advance tax on dealers, commission agents and arhatis etc.
236U	Advance tax on insurance premium
236X	Advance tax on tobacco

33. COLLECTION OF ADVANCE TAX BY EDUCATIONAL INSTITUTIONS – S. 236I

Section 236I prescribes collection of advance tax @ 5% of the tuition fee. The bill proposes to withdraw this advance tax from persons appearing on Active Taxpayers' List.

34. ADVANCE TAX ON IMPORT OF MOBILE PHONES

The proposes the maintain the advance tax rates at the import of mobile phones in CBU condition. However, it is proposed that advance tax on mobile phones in CKD/SKD condition shall be zero up to C&F value USD 350, whereas, for values between USD 350 to USD 500 and Exceeding USD 500, advance tax will be Rs. 5,000 and Rs. 11,500, respectively.

35. ADVANCE TAX ON PROFIT ON DEBT

Currently, the rate of advance tax on profit on debt is 10% where profit on debt is up to Rs. 500,000 and 15% where it exceeds Rs. 500,000. The bill proposes a condition to be fulfilled by the taxpayer to submit a certificate to the bank that his profit on debt during the year will not exceed Rs. 500,000, if he wishes to be charged advance tax @ 10%.

Amendments in Income Tax Ordinance, 2001

The above proposal is completely irrational and illogical and is nothing but another tool to complicate the taxation system and burden the taxpayer of unnecessary documentation.

36. ADVANCE TAX ON PAYMENT OF DIVIDEND

Currently, as per section 5 of ITO, tax chargeable is 25% in case of a person receiving dividend income from a company where no tax is payable by such company, due to exemption of income or carryforward of business losses or claim of tax credits. Whereas the advance tax for such persons is 15% under Division I Part III of First Schedule to ITO.

The bill proposes to align the advance tax rate with tax rate charged and increase the advance tax from 15% to 25%.

37. ALIGNING WITHHOLDING AND CHARGING TAX RATES - RETURN ON INVESTMENT IN SUKUKS

Currently, the rate of tax u/s 5AA on return on investment in Sukuks received from a Special Purpose Vehicle is 25%. However, the withholding tax rate is 15%. The difference in the withholding and the charging rates is proposed to be removed by increasing withholding tax rate from 15% to 25%.

38. ENGINEERING SERVICES EXCLUDED FROM REDUCED WITHHOLDING RATES

Currently, engineering services have been included in specified services on which reduced withholding tax of 3% is applicable. The bill proposes to exclude such services from the list of specified services.

39. DONATION TO INSTITUTIONS - CLAUSE (61), PART I, SECOND SCHEDULE

Clause 61 provides the list of institutions, donations to whom are directly deductible from income of the donor. The bill proposes to add following institutions to the list:

- The Prime Minister's COVID-19 Pandemic Relief Fund-2020
- Ghulam Ishaq Khan Institute of Engineering Science and Technology (GIKI)
- Lahore University of Management Sciences
- Dawat-e-Hadiya Karachi

- Baitussalam Welfare Trust
- Patients Aid Foundation
- Alkhidmat Foundation

40. SPECIFIED CHARITABLE INSTITUTIONS - CLAUSE (66), PART I, SECOND SCHEDULE

Clause 66 provides list of institutions whose income is exempt from income tax. The bill proposes to substitute the list and have segregated it into two tables namely table 1 and Table 2. Table 1 lists the institutions whose incomes are exempt while table 2 lists the institutions whose incomes are exempt subject to fulfillment of conditions provided in section 100C. Both the tables (with new institutes marked in red font) are provided in **Annexure B**.

41. SALE OF IMMOVABLE PROPERTY TO A REIT SCHEME - CLAUSE (99A), PART I, SECOND SCHEDULE

Currently, profits and gains on sale of immovable property to a developmental REIT scheme is exempt till 30th June 2020. The bill proposes to extend this exemption up to 30th June 2021.

42. WITHHOLDING TAX ON PAYMENT OF PROFIT ON DEBT TO NON-RESIDENT

The bill proposes that the rate of tax to be deducted in respect of payments to a non-resident individual, on account of profit on debt earned from a debt instrument, whether conventional or shariah compliant, issued by the Federal Government under the public debt act 1944 and purchased exclusively through a bank account maintained abroad, a non-resident rupee account repatriable or a foreign currency account maintained with a banking company in Pakistan shall be 10% of the gross amount paid which will be final tax.

The bill also proposes to exempt application of section 236P (advance tax on banking transactions other than cash) on such account.

The bill also proposes that the person shall not be liable register under IT and to file return under section 114.

Amendments in Income Tax Ordinance, 2001

43. REDUCED WITHHOLDING ON ESSENTIAL FOOD ITEMS

The bill proposes that the withholding tax rate on payment for selected goods supplied to Utility Stores Corporation of Pakistan shall be 1.5% from 7th April 2020 to 30th September 2020.

44. EXEMPTION FROM WITHHOLDING TAX ON IMPORT OF COVID-19 RELATED ITEMS

The bill proposes exemption from withholding tax under section 148 on import of 61 COVID-19 related hospital supplies and apparatus.

45. EXEMPTION FROM WITHHOLDING TAX U/S 153

The bill proposes exempt following persons under section 153 from withholding tax as recipient of payments:

- A provincial Government.
- A local authority.
- Persons who are resident of Azad Kashmir and execute contracts in Azad Kashmir only and produce a certificate to this effect from the concerned income tax authority.
- Persons receiving payments from a company or an association of persons having turnover of fifty million rupees or more or from an individual having turnover of fifty million rupees or more exclusively for the supply of agriculture produce including fresh milk, fish by any person engaged in fish farming, live chicken, birds and eggs by any person engaged in poultry farming and by an industrial undertaking engaged in poultry processing which has not been subjected to any process other than that which is ordinarily performed to render such produce fit to be taken to market.
- Companies receiving payments for the supply of electricity and gas.
- Companies receiving payments for the supply of crude oil.
- Hotels and restaurants receiving payments in cash for providing accommodation or food or both, as the case may be and
- Shipping companies and air carriers receiving payments for the supply of passenger tickets and for cargo charges of goods transported.

46. EXEMPTION FROM S. 148

The bill proposes to exempt following persons from withholding tax under section 148 at the time of import:

- The Federal Government
- A Provincial Government
- A Local Government
- A foreign company and its associations whose majority share capital is held by a foreign government.
- A person who imports plant machinery for execution of a contract with the Federal Government or a provincial government or a local government and produces a certificate from that government.
- Companies importing high speed diesel oil, light diesel oil, high octane blending component or kerosene oil, crude oil for refining and chemical used in refining thereof in respect of such imports and
- Petroleum (E&P) companies covered under the customs and Sales Tax Notification No. S.R.O.678(I)/2004, dated 7th August 2004, except motor vehicles imported by such companies.

47. EXEMPTION TO HAJJ GROUP OPERATORS

The bill proposes exemption from section 152 to hajj group operators while making payments to non-resident persons for hajj operations.

48. EXEMPTION FROM WITHHOLDING TAX TO THE EXTENT OF FOREIGN REMITTANCE

The bill proposes that provisions of section 231A (cash withdrawal from bank), 231AA (transactions in bank) and 236P (banking transactions other than cash) shall not apply to a Pak rupee account in a tax year to the extent of foreign remittances credited into such account during that tax year.

Amendments in Sales Tax Act, 1990

1. AMENDMENT IN DEFINITIONS – S. 2

1.1. Active Taxpayer - S. 2(1)

The definition and conditions for taxpayer to be in active taxpayer list issued by FBR is provided in Section 2(1) of STA. If a person is blacklisted or whose registration is suspended or **is blocked** as per section 21, he will not be considered as active taxpayer. The words “is blocked” being additional and irrelevant are now proposed to be omitted.

The person who fails to file **two consecutive monthly** or an annual withholding tax statement under section 165 of the Income Tax Ordinance, 2001(XLIX of 2001) will also not fall in definition of active taxpayer. The bill now proposes to extend the period of two consecutive months to three consecutive months.

1.2. Output tax – S. 2(20)

Provincial **sales tax** levied on services rendered or provided by person also come under ambit of federal output tax, and currently it is only applicable on services rendered in Islamabad Capital Territory as other provinces have already promulgated their respective sales tax on services acts. To streamline definition and bring clarity now the bill proposes to substitute the words “Provincial sales tax” with “Islamabad Capital Territory (Tax on Services), 2001(XLII of 2001)”.

1.3. Value of supply – S. 2(46)

The sales tax is charged at the rate of 17% on value of supply which is defined in section 2(46) of STA. Through FA 2019, a definition of value of supply for independent power producers was inserted to accommodate special requirements for this sector, whereby the amount received on account of energy purchase price only and the amount received on account of capacity purchase price, energy purchase price premium, excess bonus, supplemental charges etc. shall not be included in the value of supply. This had an effect of reduction in sales tax charged to consumers. Now bill proposes to include WAPDA in this definition also w.e.f. from 1st July 2019 so consumer of WAPDA also will get benefit of reduce sales tax.

A new definition for value of supply has been also proposed for supply of used vehicle, whereby if a

person is engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing, and it is now sold in the open market after making certain value additions i.e. not in the same condition as when imported or manufactured, the value of supply will be the difference between sale and purchase price of that vehicle, means the person will charge output tax only on value addition.

2. POWER OF TAX AUTHORITIES TO MODIFY ORDERS – S. 11C

Currently, where a taxpayer gets relief from High Court or Appellate Tribunal on any question of law, there is anomaly that if Commissioner or officer prefer an appeal against such order in Supreme Court, whether the High Court or Tribunal orders holds the field or not and officers of Inland Revenue still proceed against taxpayer on plea that matter has not attained finality in Supreme Court. In order to resolve, the bill proposes to insert new Section 11C in STA, whereby if such order issued by High Court or Tribunal on or after 1st July 1990, the Commissioner or an officer shall follow the said decisions until decision is reversed or modified by Supreme Court.

In case of decision of High Court or Tribunal is reversed or modified by Supreme Court, the Commissioner or Officer may within period of 1 year from date of receipt of such decision, modify the assessment order which is based on such decision, even after period of limitation has expired.

The bill proposes same amendments in FED Act.

3. SCOPE OF SALES TAX, WITHHOLDING OF SALES – S. 3 AND ELEVENTH SCHEDULE

After abolishment of Sales Tax Special Procedure (Withholding) Rules 2007, through FA 2019, the similar provisions were incorporated in Section 3(7) and newly inserted Eleventh Schedule of STA. As per Section 3(7) “The tax shall be withheld **by the buyer** at the rate as specified in the Eleventh Schedule, by any person or class of **persons** as withholding agent for the purpose of depositing the same.....” To remove anomaly in language, the bill proposes to remove the

Amendments in Sales Tax Act, 1990

words “by the buyer” and insert the words “being purchaser of goods or services” after words

“persons”. The bill also proposes changes in Eleventh Schedule as follows:

Entry no.	Before Amendment	After Proposed amendment
1.	<p>Withholding agent (a) Federal and provincial government departments; autonomous bodies; and public sector organizations (b) Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Registered persons</p> <p>Rate or extent of deduction 1/5th of Sales Tax as shown on invoice</p>	<p>Withholding agent (a) Federal and provincial government departments; autonomous bodies; and public sector organizations (b) Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Active Taxpayer</p> <p>Rate or extent of deduction 1/5th of Sales Tax as shown on invoice</p>
2.	<p>Withholding agent (a) Federal and provincial government departments; autonomous bodies; and public sector organizations (b) Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Person registered as a wholesaler, dealer or distributor</p> <p>Rate or extent of deduction 1/10th of Sales Tax as shown on invoice.</p>	<p>Withholding agent (a) Federal and provincial government departments; autonomous bodies; and public sector organizations (b) Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Active Taxpayer registered as a wholesaler, dealer or distributor</p> <p>Rate or extent of deduction 1/10th of Sales Tax as shown on invoice.</p>
3.	<p>Withholding agent Federal and provincial government departments; autonomous bodies; and public sector organizations</p> <p>Supplier category Un Registered</p> <p>Rate or extent of deduction Whole of the tax involved or as applicable to supplies on the basis of gross value of supplies.</p>	<p>Withholding agent Federal and provincial government departments; autonomous bodies; and public sector organizations</p> <p>Supplier category Person other than Active Taxpayer</p> <p>Rate or extent of deduction Whole of the tax involved or as applicable to supplies on the basis of gross value of supplies.</p>
4	<p>Withholding agent Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Un Registered</p> <p>Rate or extent of deduction 5% of gross value of supplies</p>	<p>Withholding agent Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)</p> <p>Supplier category Person other than Active Taxpayer</p> <p>Rate or extent of deduction 5% of gross value of supplies</p>
6.	<p>Withholding agent Registered persons purchasing cane molasses.</p> <p>Supplier category Unregistered persons</p> <p>Rate or extent of deduction Whole of sales tax applicable</p>	<p>Withholding agent Registered persons purchasing cane molasses.</p> <p>Supplier category Person other than Active Taxpayer</p> <p>Rate or extent of deduction Whole of sales tax applicable</p>

Amendments in Sales Tax Act, 1990

4. DETERMINATION OF TAX LIABILITY – S. 7

A registered person is entitled to deduct his input tax during the tax period for the purpose of taxable supplies made or to be made from his output tax liability under Section 7 of STA. Circular 1 of 1989 clarifies that input tax on wastage of Raw material during manufacturing is reclaimable. As a streamlining measure, now the bill proposes to empower the FBR to impose restrictions on wastage of material on which input tax has been claimed in respect of goods or class of goods. In our view, the claim of input is a taxpayer fundamental right and no restriction shall be placed.

5. TAX CREDIT NOT ALLOWED – S. 8

Section 8 prescribes instances when input tax cannot be claimed by taxpayer in a tax period. One of instance inserted through FA 2019, was that input tax on goods attributable to supplies made to un-registered person, on pro-rata basis, for which sale invoices do not bear the CNIC number or NTN of the recipient, will not be claimable. Now as a streamline measure, the bill proposes to include services also which are made to unregistered person and service invoice does not bear CNIC number or NTN of service recipient of service. We understand it is only applicable on services rendered in Islamabad Capital Territory.

6. CONDITION OF CNIC ON SUPPLIES MADE BY RETAILERS FURTHER RELAXED

Through FA 2019, Section 23 was amended to provide for condition of NTN or CNIC to be mentioned in tax invoice in respect of supply to unregistered persons. However, an exception from such requirement had been introduced for supplies made by a retailer where the transaction value inclusive of sales tax does not exceed rupees fifty thousand if sale is being made to an ordinary consumer.

Now, through the bill, this limit is proposed to be enhanced to Rs 100,000 from Rs 50,000 which is in line with proposals from small traders/retailers.

7. SALES TAX AUDIT THROUGH ELECTRONIC MEANS – S. 25

In line with the ongoing pandemic safety requirements, the bill now proposes to introduce concept of conducting audit proceeding by

Commissioner electronically through video links, or any facility as FBR may prescribe.

8. OFFENCES AND PENALTIES – S. 33

Entry no.	Before amendment	After proposed amendment
25	Any person, who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law	Any person, who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law
	Such person shall be liable to pay a penalty up to one million rupees, and if continues to commit the same offence after a period of six months after imposition of penalty as aforesaid, his business premises shall be sealed and an embargo shall be placed on his sales.	Such person shall be liable to pay a penalty up to one million rupees, and if continues to commit the same offence after a period of two months after imposition of penalty as aforesaid, his business premises shall be sealed till such time he integrates his business in the manner as stipulated under sub-section (9A) of section 3 or section 40C, as the case may be.
28.		Any person who is required to share information under section 56AB, fails to do so in the manner

Amendments in Sales Tax Act, 1990

	<p>as required under the law</p> <p>Such person shall pay a penalty of twenty-five thousand rupees for first default and fifty thousand rupees for each subsequent default.</p> <p>Newly proposed Section 56AB allows for access to NADRA and immigration databases.</p>
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9. AUTHORISED OFFICERS TO HAVE ACCESS TO PREMISES, STOCKS, ACCOUNTS AND RECORDS – S. 38

Section 38 empowers FBR or Commissioner to authorize any Officers of inland Revenue to have access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents are kept for any inquiry or investigation. Now the bill proposes, power to have real time electronic access to such officers to records of business. The bill also proposes to empower FBR to make rules relating to electronic real-time access for audit or survey of person liable to tax.

10. APPEAL TO COMMISSIONER (APPEALS) – S. 45B

The procedure for applying for appeal contained in Sales Tax Rules has now proposed to be incorporated in in Section 45B of STA. Further the fee which had been one thousand rupees has been revised upward as follows:

Where appeal is against an assessment:

- Appellate is a company, five thousand rupees
- Appellate is not a company, two thousand and five hundred rupees

Appeal in other cases:

- Appellate is a company, five thousand rupees
- Appellate is not a company, one thousand and five hundred rupees

Further the bill proposes that Commissioner (Appeals) shall not admit any documentary material or evidence which was not produced before Officer Inland Revenue unless he is satisfied that appellate was prevented by any sufficient cause.

These provisions have also been proposed in FED Act.

11. ALTERNATE DISPUTE RESOLUTION – S. 47A

The bill has proposed some changes in provisions related to ADR as follows:

- The committee previously comprising an officer of Inland Revenue not below the rank of a Commissioner, now will comprise of **Chief Commissioner Inland Revenue**.
- Currently the taxpayer was allowed to nominate a person from panel notified by the FBR. Now FBR will nominate these persons.
- Currently Retired Judge was also part of committee now proposed to be removed.
- The FBR shall communicate the order of appointment of committee to the court of law or forum where dispute is pending and the Commissioner.
- Currently automatic stay of recovery was granted up to the date of decision by committee when application was made to ADR committee. Now stay has to be given by committee on application which may give maximum stay up to 120 days in aggregate.
- If the aggrieved person has not communicated the order of withdrawal to Commissioner within 60 days of the service of decision of the committee, the decision shall not be binding on the Commissioner.

The bill proposes same amendments in Income Tax and FED Act.

12. SERVICE OF ORDER, DECISIONS, ETC THROUGH ELECTRONIC MEANS – S. 56

Currently, the service of notice, order on a resident individual is treated to be properly made if served personally, or through registered post or in manner prescribed for service of summons under the Code of Civil Procedure, 1908. The bill proposed that if individual is served notices or orders electronically through email or to the e-folder maintained for the

Amendments in Sales Tax Act, 1990

purpose of e-filing of sales tax-cum-Federal excise returns, it shall be treated proper service of notice or orders.

13. REAL TIME ACCESS TO NADRA AND IMMIGRATION DATABASES – S. 56A

In order to increase tax base and to crack on potential tax evasions, the bill proposes FBR to make arrangements to have real time access to information and database of following:

- National Database and Registration Authority (NADRA)
- Federal Investigation Agency and Bureau of Emigration and Overseas Employment
- Islamabad Capital Territory and Provincial and Local land record and development authorities.
- Islamabad Capital Territory and Provincial Excise and taxation Departments
- All Electricity suppliers and gas transmission and distribution companies.
- Any other agency, authority, institution or organization, notified by FBR.

The bill proposes same amendments in FED Act.

14. REPRESENTATIVE – S. 58

Section 58 provides provisions regarding representative of a taxpayer to represent it in department and appellate forums. In sub section 3, in provisions related to non-resident, a correction is proposed to substitute “tax year” by “tax period”. Further an explanation has been proposed that a non-resident shall have the same meaning assigned to it in Income Tax Ordinance, 2001. It may be noted that explanation shall have retrospective effect.

15. PAYMENT THROUGH BANKING CHANNEL – S. 73

The taxpayer is allowed input adjustment/refund, only if payment to supplier is made through banking channel. Through FA 2019 a condition for manufacturers was inserted whereby it was made mandatory for **manufacturers** to make all taxable supplies, exceeding certain monetary threshold, to a person who has obtained registration of sales tax, failing which the supplier shall not be entitled to claim credit adjustment or deduction of input tax as

attributable to such excess supplies to unregistered person. Now bill proposes to apply above provisions to all registered suppliers in value chain.

16. AMENDMENT IN FIFTH SCHEDULE - ZERO RATING

New entries 13 and 14 has been proposed w.e.f. 1st June 2020, to be added whereby the supply of raw material, components and goods for further manufacturer in Gawadar free zone and export thereof, shall be zero rated. However, if supplied from Gawadar is made to Tarriff area tax shall be charged on the value assessed on the Good Declaration for import. Supply of specified locally manufactured plant and machinery to manufacturers in Gawadar Free Zone shall be zero rated subject to certain conditions.

17. AMENDMENT IN SIXTH SCHEDULE – EXEMPT ITEMS

In Table 1:

- The amendment related to Gawadar Free Zone in entry no. 100A and newly inserted entry 100D about through Tax Laws (Amendment) Ordinance, 2019 is now proposed to made effective from 1st June 2020. Detailed comments maybe found on the following link: [<https://bit.ly/2C2nfpY>]
- The exemption under entry 103 related to import and supply of ships and all floating craft etc. which expires on 2020 is proposed to be extended to 2023.
- The bill proposes to insert new entry 154 whereby Dietic foods intended for consumption by children suffering from inherent metabolic disorder subject to the conditions that the importer shall acquire approval and quota from Ministry of Health Services, Regulation and Coordination is now exempted from sales tax.

In Table 3:

- Serial no 15A related to parts and components for manufacturing LED lights and bulbs, the scope of housing/ shell has been extended, and in case of Printed Circuit Boards for LED bare and stuffed Metal Clad also included in exemption.

Amendments in Sales Tax Act, 1990

18. AMENDMENT IN EIGHT SCHEDULE – REDUCE RATES

- Serial no. 56 the sales tax rate of Potassium Chlorate, used in match boxes, proposes to be increased from Rs 70 per kg to Rs 80 per kg.
- With respect to supplies made from retail outlets as are integrated with Board’s computerized system for real-time reporting of sale, the bill proposes reduction of rates from 14% to 12% to encourage documentation.

19. AMENDMENT IN TWELFTH SCHEDULE – VALUE ADDITION TAX ON IMPORT

The Twelfth Schedule prescribe rules for minimum value addition tax levied and collected at import stage from importer with exception in case of raw materials and intermediary goods meant for use in an industrial process which are subject to customs duty at a rate less than 16% ad valorem under First Schedule to the Customs Act, 1969. Now bill proposes to give such exemption to all raw materials and intermediary goods imported by a manufacturer for in-house consumption.

20. AMENDMENT IN NINTH SCHEDULE

Entry no.	Before amendment	After proposed amendment
2	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category: -- A. Not exceeding US\$ 30 B. Exceeding US\$ 30 but not exceeding US\$ 100 C. Exceeding US\$ 100 but not exceeding US\$200 D. Exceeding US\$ 200 but not exceeding US\$350 E. Exceeding US\$ 350 but not exceeding US\$500 F. Exceeding US\$ 500	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category: -- A. Not exceeding US\$ 30 (excluding smart phones) B. Exceeding US\$ 30 but not C. exceeding US\$ 100 (including smart phones valuing upto US\$ 30) D. Exceeding US\$ 100 but not exceeding US\$200 E. Exceeding US\$ 200 but not exceeding US\$350 F. Exceeding US\$ 350 but not exceeding US\$500 G. Exceeding US\$ 500

Continue from next page

Amendments in Federal Excise Act, 2005

1. ADJUSTMENT OF DUTIES OF EXCISE – S. 6

Section 6 provides provisions for adjustment of duty paid on goods used directly as input goods for the manufacturer or production of such goods.

The bill now proposes to empower the FBR to impose restrictions on wastage of material whereon input tax has been claimed. Similar provision has been proposed in STA also.

2. APPEALS TO THE APPELLATE TRIBUNAL – S. 34

The bill proposes that the Appellate Tribunal may proceed an appeal as per procedures laid down in sections 131 and 132 of the Income Tax Ordinance, 2001 and their related rules.

3. SELECTION FOR AUDIT BY THE BOARD – S. 42B

The section 42B lays down provisions for audit selection by FBR through computer ballot. Now bill proposes that FBR shall keep the parameters of selection of Audit confidential.

4. AUDIT – S. 46

The section 46 deals with audit to be conducted by officer inland revenue of the records and documents of any registered person. Through FA 2018 a condition was inserted that audit of a registered person under this section shall be conducted only once in every three years. Now the bill proposes to omit this sub section, whereby the audit can be conducted every year by officer.

5. AMENDMENT IN FIRST SCHEDULE

Items under first schedule shall be charged to FED at specified rates:

Entry no.	Before amendment	After proposed amendment
6a		Caffeinated energy drinks 2202.1010 2202.9900 25% of the retail price.

8	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. 24.02 Sixty-five per cent of retail price.	Cigars, cheroots, cigarillos and cigarettes of tobacco and tobacco substitutes Hundred percent of retail price
13	Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not colored or in the form of clinkers 25.23 [Two rupees] per kilogram	Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not colored or in the form of clinkers 25.23 [one rupee and Seventy-Five paise] per kilogram
8a		E-liquids by whatsoever name called, for electric cigarette kits Respective heading Rupees ten per ml
55C		Imported double cabin (4x4) pick-up vehicles 8704.2190 8704.3190 25% ad val
55D		Locally manufactured double cabin (4x4) pickup vehicles 8704.2190 8704.3190 7.5% ad val"; and
56	Filter rod for cigarettes 5502.0090 Rupee 0.75 per filter rod	Filter rod for cigarettes 5502.0090 Rupee s per filter rod

Amendments in Other Laws

1. CEASATION OF CAPITAL VALUE TAX

Section 7 of Finance Act 1989, levied capital value tax payable by every individual, association of persons, firms or company which acquires by purchase an asset to use it for more than twenty years. The bill proposes to repeal such CVT w.e.f. 17th April 2020 by amending section 7 of Finance Act, 1989.

2. AMENDMENTS OF THE PETROLEUM PRODUCTS SURCHARGE ORDINANCE, 1961 (XXX OF 1961):

The bill proposes that in respect of collection of levy of petroleum products produced in the Pakistan, the provisions of general sales tax payable under the Sales Tax Act, 1990 shall be applicable.

The bill proposes that in respect of the levy, collection and refund of the Petroleum Levy the provisions of the Sales Tax Act, 1990 shall be applicable.



COMMENTS ON TAX LAWS (AMENDMENT) ORDINANCE 2020

[CONSTRUCTION AMNESTY]





➤ PROLOGUE

A document titled ‘Tax Laws (Amendment) Ordinance 2020 (final version)’ (hereafter ‘Ordinance’) is circulating on social media. The Ordinance seeks to amend certain provisions of the Federal tax laws of Pakistan, and the Finance Act 1989. This will bring in to immediate effect, the recently proposed ‘special package for construction industry by Naya Pakistan Housing and Development Authority announced by the Prime Minister. We had also issued our comments on the aforesaid package on 4th April 2020. Should you wish to access the same, feel free to download it through our website link: <https://bit.ly/34LC4aH>. We are pleased to submit our comments on the effect of the said Ordinance.

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The comments in this document are based on the judgment and experience of the author, along with publicly available information. Therefore, it cannot be said with certainty that the author's comments are acceptable by everyone. Tola Associates does not accept nor assume any responsibility, whatsoever, for any purpose. This document is circulated electronically free of cost for general public to create tax awareness in the country.

The readers are advised to consult the actual text of the Ordinance when interpreting specific provisions, and to consult our tax department for clear advice on specific issues.

Lastly, we would like to extend our warm regards to all of you during these tough times. You can visit our website www.tolaassociates.com, or download our mobile Application, in order to access our monthly publications, and other publications similar to this, that are issued in light of (a) major development(s).

The aforesaid application can be downloaded from the links hereinbelow:

1. <https://goo.gl/QDM4ZM> (iOS)
2. <https://goo.gl/LFiWyx> (Android)

Best Regards

TOLA ASSOCIATES

Friday, April 17, 2020

A. CHANGE IN THE TAXATION REGIME FOR BUILDERS AND DEVELOPERS

The Ordinance has inserted a new Section in the Income Tax Ordinance 2001 (hereafter "ITO"), whereby, the income, profits and gains of any builder or developer, who opt for assessment under this section, shall be computed in accordance with rules and rates provided in the newly inserted **Eleventh Schedule**.

1. ELIGIBLE PERSONS

- An individual builder or developer who is registered as such with the FBR.
- A single object 'Company' or Association of Persons (hereafter "AOP") registered under the Companies Act 2017 or Partnership Act 1932, as the case may be.
- For 'builders' the sole object should be the construction of buildings and their disposal, whereas, for 'developers' the sole object should be development of any kind of land by itself, or otherwise.
- The company and AOP should be registered between the date of commencement of this ordinance to 31st December 2020.
- The company, LLP and AOP, should also be registered with FBR as a Builder or Developer, as the case may be, between the date of promulgation of this ordinance and 31st December 2020.

2. ELIGIBLE PROJECTS

- Projects that are:
 - Set up prior to the date of commencement of this Ordinance and completed on or before 30th September 2022 (hereafter "Existing projects").
 - Set up, on or after the commencement of this Ordinance, and before 31st December, 2020; and completed on or before 30th September, 2022 (hereafter "New Projects")
- The estimated project life shall not exceed 2.5 years.
- The project(s) shall commence:
 - In the case of a construction project, on the date when the layout plan is approved by the concerned authority; and
 - In case of developers, the date when the development plan is approved by the concerned authority.
 - Where the builder or developer has taken all necessary steps to procure all approvals, but such approval is delayed for more than 30 days, and resultantly the cut-off date of 31st December is not met, the Board has been empowered to provisionally accept commencement of such projects on a case to case basis.

- The date of completion:
 - For a builder, it shall be the date on which the grey structure is completed. Such grey structure shall only be considered as completed when the roof of the top floor has been laid as per the approved plan; and
 - For a developer, the date on which:
 - at least 50% of the total plots have been booked in name of buyers;
 - at least 40% of the sale proceeds have been received;
 - landscaping has been completed; and
 - at least 50% of the roads have been laid up to subgrade level as certified by the approving authority or NESPAK;

3. TAXATION

- With respect to existing projects, taxation of incomes earned up to tax year 2019 shall be taxed as per provisions of ITO prior to promulgation of this Ordinance.
- The income earned for tax year 2020 of both existing projects and new projects will be a separate block of income under the head income from business.
- No expenditure or losses shall be deductible from income.
- No tax credit shall be allowed to compute tax liability.
- No advance tax adjustment shall be allowed from tax payable, except advance tax paid under section 236K of ITO after promulgation of this ordinance on purchase of Immovable property utilized in an eligible project.
- There shall be no refund of any tax collected or deducted under the Ordinance.
- Turnover tax or alternate corporate tax under section 111 or 113C shall not be applicable to eligible builders and developers.

4. RATES OF TAXES AND TAX LIABILITY

- Tax liability shall be computed on the basis of fixed rates provided in the Eleventh Schedule inserted through the Ordinance. The fixed rates are provided at end of the document.
- The aforementioned rates will be applicable for computing tax liability for the project on an annual basis as per the formula *infra*, which shall be final tax:

Tax liability as per the rates mentioned in Rule
10 of the Eleventh Schedule

Estimated project life in years

For example, if a commercial building is to be constructed in Karachi with a covered area of

10,000 square feet, the tax rate applicable will be Rs. 250 per square feet, and will take 2 years for completion. The total tax Liability will be Rs. 2,500,000/- and the liability of 1st Year will be Rs 1,250,000 i.e. Rs 2,500,000/2.

- In case of existing incomplete projects, the estimated project life shall be treated as three years, from tax year 2020 through to tax year 2022, and the tax payable shall be reduced by the percentage of completion up to the last day of the accounting period pertaining to tax year 2019, as declared in the registration form.

- In case of development of plots and construction of buildings on the same plots, both rates shall apply.

For example, where a commercial plot is developed in Karachi, and a commercial building is constructed thereon, the applicable tax rates will be Rs. 250 per square yard of land area developed plus Rs. 250 per square feet of area covered.

- The tax so computed shall be paid in advance in 4 equal quarterly installments under Section 147 of ITO.
- For low-cost projects developed or approved by Naya Pakistan Housing and Development Authority (hereafter “NAPHDA”), or under the Ehsaas Programme, the tax rates levied will be reduced by 90%. For example, where tax levied is Rs. 100 per square feet for a builder, if the same builder is operating under NAPHDA, the tax rate will Rs. 10 per square feet.
- In case of development of plots and construction of buildings on the same plots for low cost housing and all projects developed by NAPHDA, the higher rates shall apply.

For example, where a low-cost housing building is constructed in Karachi having covered area more than 3,000 Square feet on a land area developed for the purpose covering more than 250 square yards, as per the rates table, the rate of tax for development is Rs. 150 per square yards and for construction is Rs. 125 per square feet, therefore, higher rate i.e. Rs. 150 per square yards of land developed will be applied.

In terms of the rates, it needs to be clarified as to whether the higher rate per unit of area will be considered or the higher ‘total tax amount’ will be considered. For instance, in the aforesaid example if covered area is 4,000 square feet and land developed area is 300 square yards, then as per a plain reading of the aforesaid provision, the tax liability will be Rs. 45,000 only [Rs. 150 (i.e. higher rate) x 300]. Whereas, the tax liability will be higher

if lower tax rate is used i.e. Rs. 500,000 [Rs. 125 x 4,000]. We understand that this is an omission while drafting the rules and needs further consideration.

Moreover, it also needs to be clarified whether the aforesaid discount of 90% is applicable where the development and construction is on the same plot in case of ‘low cost housing’.

5. REGISTRATION WITH FBR AND FILING OF RETURN

- A builder or developer shall electronically register a project on IRIS through FBR website on or before the 31st day of December, 2020 through submission of following:
 - registration form as may be prescribed which shall include, inter alia, details of a member or shareholder of a builder or developer, as the case may be.
 - a developer who is also a builder in case of a project shall submit two separate forms for registration as a developer and as a builder.
 - an irrevocable option to be assessed under this Schedule in respect of each project
- A builder or developer availing this scheme shall electronically file a return of income and wealth statement as may be prescribed accompanied with evidence of payment of due tax.

6. CERTIFICATION

- Every builder or developer shall be required to obtain and provide to the Board, in the prescribed manner, a certificate from the approving authority, or map approving authority or NESPAK, as the case may be, to the following effect:
 - ‘Total land area’, ‘covered area’ and ‘saleable area’ of the project in square foot or square yard
 - Such other documents as may be prescribed by FBR.

7. CHANGE IN OWNERSHIP

- A shareholder or partner in a builder or developer shall not be allowed change in ownership of incomplete project without the prior approval of FBR.
- The FBR will not allow change of ownership where expenditure made is less than 50% of the total estimated cost.
- The FBR may allow succession to legal heirs in case of deceased shareholder or a partner.
- However, the FBR may allow additional partners or shareholders after 31st December 2020. Such additional partners will not be eligible for exemption under Section 111 as described in point B(III) below.

B. OTHER EXEMPTIONS AND CONCESSIONS UNDER THE ORDINANCE

Further concessions have been provided to the persons related to construction industry. These are as follows;

1. EXEMPTION FROM WITHHOLDING TAX UNDER SECTION 150 AND 153 OF ITO:

- A builder or developer shall not be required to withhold tax under the captioned Section on;
 - The purchase of building material **other than steel and cement**.
 - The services of plumbing, electrification, shuttering and other similar and allied services **other than those provided by companies**.
- An eligible company under this ordinance shall not be required to deduct tax under Section 150 of ITO while making payment of dividend to its shareholders.

2. COMPUTATION OF INCOME TO BE INCORPORATED IN THE BOOKS OF ACCOUNTS

- A builder or developer opting for taxation under Section 100D shall not be allowed to incorporate profits and gains accruing from such projects in excess of ten times of the tax paid.

Continuing the example given above, wherein the tax paid by a company in the first year is Rs. 1,250,000, and the company will be allowed to incorporate only Rs. 12,500,000 in its books.

- Dividend income paid to a person by a builder or developer being a company out of the profits and gains derived from a project shall be exempt from tax.

3. EXEMPTION FROM SECTION 111 OF ITO

The following amounts will be exempted from the application of Section 111 of ITO (i.e. inquiry regarding source of unexplained income):

i. Eligible amounts

- Any amounts invested by an individual builder or developer in an eligible project.
- Any amount invested by a shareholder or partner of a builder or developer as capital or land transfer, on or before 31st December 2020. Capital shall not include borrowed funds.
- Any amount invested in first purchase of newly constructed buildings of an eligible project.
- Any amounts invested in purchase of a plot for construction of building thereon.

ii. Exclusions

This exemption shall not be available to:

- Holder of any Public Office as defined in the Voluntary Declaration of Domestic Asset Act 2018, or his benamidar as defined in the Benami Transactions (Prohibition) Act, 2017 (V of 2017), or his spouse or dependents.
- A public listed company, a real estate investment trust or a company whose income is exempt under any provision of the Ordinance.
- Any proceeds derived from the commission of a criminal offence including crime of money laundering & terror financing but excluding offence of tax evasion.

iii. Procedure and conditions

The procedure to be followed to avail exemption under Section 111 will be as follows:

- Where an individual builder or developer is investing cash in the projects, he shall deposit in a designated new bank account through cross banking instrument on or before 31st day of December 2020. Where the aforesaid is investing through 'land', he must have the ownership title of the land at the commencement date of this Ordinance.
- Where the investment is made through a Company or an AOP in cash, it must be done in the same manner as above. Furthermore, if the same opts to invest in the form of land, it must ensure that the ownership title of the land shall be transferred in the name of the Company or the AOP on or before 31st December 2020. It may be noted that in such a situation, the person investing in the form of land must possess the ownership title at the commencement date of this Ordinance.
- All monies that are to be invested for first purchase of these projects shall be deposited in a designated new bank account of the person on or before 30th September 2022. The same will then, have to be subsequently paid to the builder or developer through a crossed bank cheque.
- Any person making the investment shall submit a prescribed form on IRIS web portal.
- If an investment is made through the transfer of land, the transfer will be at 130% of value as defined in Section 68 of ITO, or at the option of investor, the lower of the values as determined by at least two independent valuers from the list of valuers approved by the SBP. Moreover, the transferor should own the land at the time of promulgation of the ordinance.

- The monies or land invested shall be wholly utilized in the eligible projects.
- In case of first purchaser of building or unit, following conditions are required to be fulfilled:
 - full payment is made through a crossed banking instrument to the builder during a period starting from the date of registration of the project with the Board under this section and ending on the 30th day of September, 2022, in case the purchase is from a new project; and
 - full or balance amount of payment is made through a crossed banking instrument to the builder during a period starting from the date of registration of the project with the Board under the ordinance and ending on the 30th day of September, 2022, in case the purchase is from an existing incomplete project.
- In case of purchase of plot for construction thereon, following conditions are required to be fulfilled:
 - the purchase is made on or before the 31st day of December, 2020;
 - the full payment is made on or before the 31st day of December, 2020 through a crossed banking instrument;
 - construction on such plot is commenced on or before the 31st day of December, 2020;
 - such construction is completed on or before the 30th day of September, 2022; and
 - the person registers himself with the Board on the online IRIS web portal.

iv. Certification

- In the case of a builder, the map approving authority, or NESPAK, shall certify that the grey structure, as per the approved map, has been completed by the builder, on or before, 30th September 2022.
- In case of a developer;
 - The map approving authority or NESPAK shall certify that landscaping has been completed on or before 30th September, 2022;
 - A firm of chartered accountants having an ICAP QCR rating of 'satisfactory', notified by the Board for this purpose, shall certify that at least 50% of the plots have been booked for sale and at least 40% of the sale proceeds have been received by 30th September, 2022; and
 - At least 50% of the roads have been laid up to sub-grade level as certified by the approving authority or NESPAK.

4. EXEMPTION FROM CAPITAL GAIN

A new 'Clause (114AA)' has been inserted in Part I of the Second Schedule to the ITO, whereby, any capital gain

derived by a resident individual from the sale of constructed residential property will be exempt, subject to the following conditions:

- The residential property was being used for personal accommodation by the individual, his spouse or dependents and utility bill is issued in name of such individual;
- The land area of the property does not exceed 500 Sq yards in case of a house and 4000 square feet in case of a flat; and
- Exemption under this clause has not previously been availed by the individual, his spouse or dependents.

5. BUILDER INCLUDED IN 'INDUSTRIAL UNDERTAKING'.

Any person directly involved in the construction of buildings, roads, bridges and other such structures or the development of land, to the extent and for the purpose of import of plant and machinery to be utilized in such activity, subject to such conditions as may be notified by FBR, has been included in the definition of industrial undertaking as provided in Section 2(29C) of ITO. This has been done with effect from 1st May 2020

This means that tax on import of raw material, plant, machinery, equipment and parts will be adjustable and not minimum under section 148 of ITO. Reduced rates of duties and sales tax as are applicable to industrial undertakings will also be available to such builders.

6. ADVANCE TAX AT THE TIME OF SALE BY AUCTION

In case of an immovable property sold by an auction, the rate of collection of tax under Section 236A has been reduced to 5% (from 10% previously) of the gross sale price.

7. CESSATION OF CAPITAL VALUATION TAX (HEREAFTER "CVT")

Through this Ordinance, CVT which was levied vide the Finance Act 1989 shall cease to apply from the date of commencement of this Ordinance.

C. POINTS TO PONDER

- ❖ The fixed tax rates specified are much lower as compared to other sectors. These tax rates are even lower than the minimum turnover tax rates of 1.5% applicable on other sectors. For example, constructed commercial property in Karachi is valued at an average of Rs. 25,000 per square feet, whereas, tax rates specified are Rs. 250 per square feet, which is merely 1% of market value (Rs. 25,000/Rs. 250). Moreover, even these taxes will be built into costs by builders and developers. These

rates need to be considered for revision after taking into account their Fair Market Values.

- ❖ Although the completion of a builder project is linked with completion of grey structure, the time period of 2.5 years for each project is still unreasonable. This time period should be extended to at least 3.5 years. Similarly, the expiry date of registration of projects and completion of projects should also be extended, accordingly till 30th June 2021 and 31st December 2023, respectively.
- ❖ Instead of depositing the project investment money in bank accounts to claim exemptions from Section 111 of ITO by builders and developers, such money may be deposited in an escrow account. The said amounts may only be drawn from the escrow account only after certain verifications. The condition of depositing of monies into any normal bank account may be exploited as amounts may be withdrawn in name of expenditures which would not be incurred for the projects or the amounts withdrawn may be exaggerated as compared to actual expenditures. Moreover, Developers and Builders do expenditures on project with moneys of first purchasers of these projects who make bookings by paying advances and subsequent installments.
- ❖ It is mentioned that persons involved in tax evasion will also be allowed exemption from Section 111. However, it is not mentioned that whether cases already pending with the FBR or the respective appellate authorities are covered in the exemption or not.
- ❖ Exemption from application of Section 111 of ITO with respect to investments in construction, may attract negative implications on Pakistan's Progress report for removal from the grey list of the Financial Action Task Force. This incentive may be misused for parking and laundering of black money.
- ❖ Payments to companies by builders and developers for provision of goods and services has not been exempted from deduction of tax under Section 153 of ITO. Such an exclusion from the aforesaid exemption is neither rational nor logical. This is because the corporate sector is an organized sector of the economy which properly files returns and pays its due taxes on time. Excluding the corporate sector from this relief is equivalent to encouraging undocumented economy in the country.
- ❖ It is provided that there shall be no refund of any tax collected or deducted under the Ordinance, whereas, adjustment of taxes paid under Section 236K are allowed. It needs to be clarified whether refund would also not be allowed in cases where taxes paid under Section 236K exceed tax liability of any builder or developer for the year.
- ❖ It is provided that in case of development of plots and construction of buildings on the same plots for low cost housing and all projects developed by NAPHDA, the higher rates shall apply. The rates need clarification as to whether the higher rate per unit of area will be considered or higher total tax amount will be considered. Moreover, it also needs to be clarified whether discount of 90% will also be applicable in above case where development and construction is on same plot in case of low-cost housing.
- ❖ It has been provided that a builder and developer is required to file a wealth statement along with his return of income. However, it may be noted that a company and an AOP do not file wealth statements. Only an individual may file a wealth statement under Section 116 of ITO.
- ❖ Under the newly added Section 100D, the builders and developers are allowed to declare an income in their books, of up to 10 times the 'tax paid'.
- ❖ With respect to the exemption discussed in point B (iv) above, the term 'resident' needs further clarification. This is because the said term may be subject to a dual or inconsistent interpretation. An example of such inconsistency can be that the term is interpreted as being a resident in terms of Section 82 of ITO, or, an individual being a 'resident' in the property. Moreover, it also needs to be clarified whether such exemption is available only in the case of sale of constructed properties of eligible projects under Section 100D or any other residential property. Furthermore, no sunset clause has been provided for this exemption from capital gain, which makes this exemption perpetual.
- ❖ With respect to the exemption from Section 111 of ITO for a purchaser of plot for construction thereon, it needs to be clarified whether such exemption is for amounts invested in only purchase of plots or, does it also include amounts invested for construction thereon.

➤ **ANNEXURE - RATES OF TAX**

Persons	Property Type	Area	(A) Karachi, Lahore and Islamabad	(B) Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	(C) Urban Areas not specified in A and B
Tax on Builders		Area in Sq. Ft.	Rate/ Sq. ft.		
	Commercial Buildings	Any size	Rs.250	Rs.230	Rs.210
	Residential Buildings	up to 3000	Rs.80	Rs.65	Rs.50
		3000 & above	Rs.125	Rs.110	Rs.100
Tax on Developers		Area in Sq. Yds.	Rate/Sq. Yd		
	Other than Industrial Plots	Any size	Rs.150	Rs.130	Rs.100
	Industrial Plots	Any size	Rs.20	Rs.20	Rs.10



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ANNEXURE B

TABLE 1

- i. International Islamic Trade Finance Corporation.
- ii. Islamic Corporation for Development of Private Sector.
- iii. National Memorial Bab-e-Pakistan Trust.
- iv. Pakistan Agricultural Research Council.
- v. The corporatized entities of Pakistan Water and Power Development Authority from the date of their creation upto the date of completion of the process of corporatization i.e. till the tariff is notified.
- vi. The Prime Minister's Special Fund for victims of terrorism.
- vii. Chief Minister's (Punjab) Relief Fund for Internally Displaced Persons (IDPs) of NWFP.
- viii. The Institutions of the Agha Khan Development Network (Pakistan) as contained in Schedule 1 of the Accord and Protocol, dated November 13, 1994, executed between the Government of the Islamic Republic of Pakistan and the Agha Khan Development Network.
- ix. Pakistan Council of Scientific and Industrial Research.
- x. The Pakistan Water and Power Development Authority established under the Pakistan Water and Power Development Authority Act, 1958 (W. P. Act XXXI of 1958).
- xi. WAPDA First Sukuk Company Limited.
- xii. Pension of a former President of Pakistan and his widow.
- xiii. State Bank of Pakistan and State Bank of Pakistan Banking Services Corporation.
- xiv. International Finance Corporation established under the International Finance Corporation Act, 1956 (XXVIII of 1956) and provided in section 9 of Article VI of Articles of Agreement 1955 as amended through April 1993.
- xv. Pakistan Domestic Sukuk Company Ltd.
- xvi. ECO Trade and Development Bank.
- xvii. The Islamic Chamber of Commerce and Industry under the Organization of Islamic Conference (OIC).
- xviii. Commission on Science and Technology for Sustainable Development in the South (COMSATS) formed under International Agreement signed on 5th October, 1994.
- xix. WAPDA on issuance of twenty billion rupees TFC's/SUKUK certificates for consideration of Diamer Bhasha Dam Projects.
- xx. Federal Board of Revenue Foundation.
- xxi. WAPDA Second Sukuk Company Limited.
- xxii. **Pakistan International Sukuk Company Limited.**
- xxiii. Second Pakistan International Sukuk Company Limited.
- xxiv. Third Pakistan International Sukuk Company Limited.
- xxv. Asian Infrastructure Investment Bank and persons as provided in
- xxvi. Article 51 of Chapter IX of the Articles of Agreement signed and ratified by Pakistan and entered into force on the 25th December 2015.
- xxvii. Supreme Court of Pakistan — Diamer Bhasha & Mohmand Dams — Fund.
- xxviii. National Disaster Risk Management Fund.
- xxix. Deposit Protection Corporation established under sub-section (I) of section 3 of Deposit Protection Corporation Act, 2016 (XXXVII of 2016).
- xxx. SAARC Energy Centre.
- xxxi. The Asian Development Bank established under the Asian Development Bank Ordinance, 1971 (IX of 1971).
- xxxii. The Prime Minister's COVID-19 Pandemic Relief Fund-2020.

ANNEXURE B

- xxxiii. Saarc Arbitration Council (SARCO).
xxxiv. International Parliamentarians' Congress.

TABLE 2

- i. Abdul Sattar Edhi Foundation.
- ii. Al-Shifa Trust.
- iii. Bilquis Edhi Foundation.
- iv. Fatmid Foundaton.
- v. Pakistan Engineering Council.
- vi. The Institution of Engineers.
- vii. Liaquat National Hospital Association.
- viii. The Citizens Foundation.
- ix. Sindh Institute of Urology and Transplantation, SIUT Trust and
- x. Society for the Welfare of SIUT.
- xi. Greenstar Social Marketing Pakistan (Guarantee) Limited.
- xii. Indus Hospital, Karachi.
- xiii. Gulab Devi Chest Hospital.
- xiv. Pakistan Poverty Alleviation Fund.
- xv. National Academy of Performing Arts.
- xvi. Pakistan Sweet Homes Angels and Fairies Place.
- xvii. National Rural Support Programme.
- xviii. Pakistan Bar Council.
- xix. Pakistan Centre for Philanthropy.
- xx. Pakistan Mortgage Refinance Company Limited.
- xxi. Aziz Tabba Foundation.
- xxii. Shaukat Khanum Memorial Trust.
- xxiii. Layton Rahmatullah Benevolent Trust (LRBT).
- xxiv. The Kidney Centre Post Graduate Training Institute.
- xxv. Pakistan Disabled Foundation.
- xxvi. Forman Christian College.
- xxvii. Habib University Foundation.
- xxviii. Begum Akhtar Rukhsana Memorial Trust Hospital.
- xxix. Al-Khidmat Foundation.
- xxx. Dawat-e-Islami Trust.
- xxxi. Sardar Trust Eye Hospital, Lahore..
- xxxii. Akhuwat.
- xxxiii. Audit Oversight Board..
- xxxiv. Patient's Aid Foundation.
- xxxv. Al-Shifa Trust Eye Hospital.
- xxxvi. Saylani Welfare International Trust.
- xxxvii. SARMAYA-E-PAKISTAN LIMITED.
- xxxviii. Lahore University of Management Sciences, Lahore.
- xxxix. Dawat-e-Hadiya, Karachi.
- xl. Ghulam Ishaq Khan Institute of Engineering Sciences and Technology.
- xli. Society for the Promotion of Engineering Sciences and Technology in Pakistan (SOPREST).
- xlii. Businessmen Hospital Trust.
- xliii. Baitussalam Welfare Trust.

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