



This update summarizes crucial changes made in Sales Tax Act, 1990 vide Tax Laws (Second Amendment) Ordinance, 2019 [TLAO, 2019], which has been brought into effect on 27 December 2019.

Greenfield industry *Section 2(12A)*

An exemption from sales tax payment on import of certain plant and machinery by the greenfield industrial units was provided vide Serial 150 of 6th Schedule to the Sales Tax Act 1990 (the Act) inserted through Finance Supplementary (Second Amendment) Act, 2019 (assented on 9 March 2019). However, since the term “Greenfield industry” was not defined anywhere under the Act, therefore, it was being interpreted liberally to broaden the scope of exemption entry. To provide the desired clarity, a definition clause with rigorous criteria for an industrial undertaking, to be treated as “greenfield industry” for the purpose of sales tax exemption, has been introduced. Conditions envisaged in such a definition include the following;

- The land on which such industry is set up should not have been previously been used for any commercial, industrial or manufacturing activity.
- The industry has not been built by demolishing, revamping or modifying any existing building structure facility or plant.
- The industry should not be formed by splitting, reconstitution of existing undertaking or by transfer of plant and machinery from undertaking established in Pakistan prior to commencement of new business and should not be part of expansion project.
- The industry must introduce a new technology not previously used in Pakistan, approval of which will be obtained from Engineering Development Board.
- Approved by the Commissioner on submission of application in prescribed manner.

Further the definition has been given retrospective application with effect from 1 July 2019. However, we understand that case(s) where CAPEX has already been incurred on bonafide perception of tax exemption before the promulgation of TLSAO 2019 may land before Court of Law.

Tier-1 Retailer ***Section 2(43A)***

Definition of Tier -1 retailer has been amended whereby;

- ❑ The threshold of electricity expense of consecutive preceding twelve months for classification as Tier-1 retailer has been enhanced from six hundred thousand to twelve hundred thousand.
- ❑ Further, the Board has been empowered to prescribe any class of persons as “Tier-1 Retailer”.

Provisions relating to goods supplied from tax exempt areas ***Section 40D***

In order to enable field formation to monitor and control the misuse of tax exemption meant for erstwhile PATA & FATA region and Azad Kashmir, a new mechanism has been introduced.

It is envisaged in Section 40D of the Act that every conveyance carrying goods supplied from erstwhile PATA & FATA region and Azad Kashmir shall accompany documents prescribed under Rules. Concerned RTO may set up check posts on routes originating from tax exempt areas by deputing Officers Inland Revenue not below the rank of Inspector to stop such vehicles carrying the goods for examination of prescribed documents for ascertaining their validity and conformity to the goods carried. In case of any absence or any discrepancy in the prescribed documents, the officer shall seize the goods as well as vehicle. Show Cause notice will be served to the owner of such vehicle and goods within fifteen days of seizure for imposition of prescribed penalty [*refer Serial 27 of Section 33 below*].

Certain transactions not admissible ***Section 73***

A new subsection has been inserted barring taxable supplies by a manufacturer to single unregistered person exceeding hundred million in a financial year or ten million in a month. In case of violation, proportionate input tax attributable supplies in excess of aforesaid threshold made to such unregistered person shall be disallowed.

It is notable that the language couched in the amendment read in the light of Salient Features released by FBR on TLSAO 2019 may suggest an opposite viewpoint to the extent that the ceiling of hundred million in a financial year or ten million in a month is applicable to entire sales made to all unregistered persons.

Offences and Penalties

Section 33

New categories of offences and penalties thereof have been introduced with respect to recently introduced provisions of electronic monitoring and tracking of goods, online integration of POS by Tier-1 retailers and printing of retail on goods specified under Third Schedule to the Act which are summarized as under:

Serial No.	Offence	Penalties	Section to which offence relates
24	<p>Any action by (FBR integrated) Tier-1 Retailer to avoid monitoring, tracking, reporting or recording of transactions.</p> <p>For issuance of duplicate invoice or without barcode/counterfeit barcode.</p> <p>Any person who abets the commissioning for such offence.</p>	<p>Rupees five hundred thousand or two hundred percent of the amount of tax involved, whichever is higher along with conviction by special judge for imprisonment or an additional fine of two million or both.</p> <p>Imprisonment and fine is also being prescribed for abettor for commissioning of such offence.</p>	Section 3(9A) and Section 40C
25	Non-integration by Tier-1 Retailer with FBR system.	<p>Penalty of Rupees one million.</p> <p>Further, business would be sealed along with embargo on sales premises, if offence continues till 6 months.</p>	Section 3(9A) and Section 40C
26	Importer/manufacturer of Third Schedule items, if failed to print retail price on Third Schedule items.	<p>Penalty of Rupees ten thousand or five percent of amount of tax involved, whichever is higher.</p> <p>Further, those goods would be subject to confiscation and can be redeemed after payment of fine of minimum twenty five percent of the total retail price of those goods.</p>	Section 2(27) and Section 3(2)(a)
27	Any person being the owner of the goods, which are brought to Pakistan in violation of Section 40D.	<p>Penalty of Rupees ten thousand or five percent of amount of tax involved, whichever is higher.</p> <p>Further, those goods would be subject to confiscation and can be redeemed after fine of minimum twenty five percent of the value or retail price (in case of third schedule items)</p>	Section 40D

SALES TAX EXEMPTIONS - SIXTH SCHEDULE, TABLE-1***Imposition of Sales Tax on Local Supply***
Serial No. 24

As a result of Budgetary amendments made at FED Laws w.e.f. 01 July 2019, the Government had rescinded SRO 24 of 2006 dated 07 January 2016 and SRO 696 of 2019 dated 29 June 2019. As a result thereof, commercial importers of edible oil and vegetable ghee including cooking oil were no more liable for payment of fixed FED @ Rs. 1/kg on import of such items.

On the other hand, exemption from sales tax was kept intact at Serial No. 24 to Sixth Schedule to the Act for such importers. The above position had created an anomalous situation for commercial importers who were clueless regarding application of sales tax / FED on local supplies of imported edible oil and vegetable ghee.

By virtue of TLSAO 2019, now commercial importers would be required to charge sales tax on local supplies of edible oil and vegetable ghee including cooking oil. Hence, supplies of aforesaid items will be subject to VAT mode as is applicable for manufacture of ghee and cooking oil including edible oil. It is notable that, such sales made to unregistered persons will also be exposed to further tax.

We understand since the above amendment is of explanatory nature, there are chances of litigation as to whether it would have a prospective or a retrospective effect.

Imposition of Sales Tax on Retail Packing
S. No. 82 & 83

Prior to TLSAO 2019, exemption of sales tax was available on various types of products pertaining to sausages, poultry meat, meat offal and fish whether sold in retail packing or otherwise.

By virtue of amendment made at these entries, no tax exemption will be applicable on such goods if sold in retail packing having brand name / trade mark. In other words, the legislature intends to restrict sales tax exemption on these goods if sold without any brand name / trade mark.

EIGHTH SCHEDULE, TABLE-1***Enhancement of Sales Tax on Raw and Ginned Cotton***
Serial No. 5

Sales tax on imported raw and ginned cotton has been increased from 5 to 10. The said amendment seems to have removed a disparity between local and imported ginned cotton.

***Reduced Sales Tax on Retail Packing
Serial No. 68 & 69***

Prior to TLSAO 2019, exemption of sales tax was available on various types of products pertaining to sausages, poultry meat, meat offal and fish whether sold in retail packing or otherwise as listed at Serial No. 82 and 83 to Sixth Schedule to the Act. On the other hands, these items as listed at Serial No. 68 and 69 to Eight Schedule to the Act were liable to sales tax @ 8% on import and supplies thereof.

The Amendment Ordinance has catered the above anomaly.

By virtue of amendment made at S. No. 68 and 69 to Eight Schedule, sales tax @ 8% will be applicable on above items if sold in retail packing having brand name / trade mark.

NINTH SCHEDULE, TABLE-1
Reduction of Sales Tax on Mobile Sets

Sales tax rate on import or supply of following categories of mobile phones has been reduced as under:

Description	Rate of Sales Tax <i>(Prior to TLSAO 2019)</i>		Rate of Sales Tax <i>(After TLSAO 2019)</i>	
	Sales Tax on Import or local supply	Sales tax chargeable at the time of registration (IMEI number by CMOs)	Sales Tax on Import or local supply	Sales tax chargeable at the time of registration (IMEI number by CMOs)
	<i>(Rupees)</i>	<i>(Rupees)</i>	<i>(Rupees)</i>	<i>(Rupees)</i>
Not exceeding US\$ 30	135	135	130	130
Exceeding US\$ 30 but not exceeding US\$ 100	1,320	1,320	200	200

TENTH SCHEDULE
Section 3(1B)

Fixed sales tax regime was introduced through Finance Act, 2019 for supply of bricks falling in PCT Heading 6901.1000 whereby supplier of such items was required to filing monthly sales tax return.

Through TLSAO 2019, an anomaly has been catered with respect to PCT Heading owing to bricks. The revised PCT Heading is 6901.0000 instead of earlier PCT Heading 6901.1000. Further, the requirement for filing monthly sales tax return has been done away with for manufacturer cum supplier of bricks.

TWELFTH SCHEDULE
Section 7A(2)

Under Clause 2 of Twelfth Schedule, various goods have been excluded from Minimum Value Addition Tax (MVAT) payable at import stage subject to fulfilment of conditions as provided therein. Amendments have been made at this Schedule by including 'plant, machinery and equipment falling in Chapter 84 and 85 of the First Schedule to Customs Act, 1969 as are imported by manufacturers for in-house installation or use'.

Prior to introduction of above amendment, the aforesaid items were subject to compulsorily exposed to MVA; though High Court had stayed imposition of MVAT on plant and machinery. Hence, this amendment has catered significant anomaly by granting exemption from MVAT on imported plant and machinery for in-house consumption.

Further, the registered persons are now entitled for sales tax refund if their sales are zero rated. Prior to such an amendment, commercial importers were not entitled to any sales tax refund in any manner.

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