



# Federal Budget 2021-2022

## Tax Memorandum

## **PREFACE**

This Tax Memorandum summarizes crucial changes proposed in the Finance Bill 2021 in Income Tax, Sales Tax, Federal Excise Duty and Customs Duty Laws.

All changes through the Finance Bill 2021 are effective from 01 July 2021.

The tax memorandum contains the comments, which represent our interpretation of the legislation. We, therefore, recommend that while considering their application to any particular case, reference be made to the specific wordings of the relevant statute(s).

The tax memorandum is also available online and can also be accessed at our website [www.mooreShekhamufti.com](http://www.mooreShekhamufti.com)

**12 June 2021**

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## SALIENT FEATURES OF TAX MEASURES

### Income Tax

- Effective date of the withdrawal of exemptions made under Tax Laws (Second Amendment) Ordinance, 2021 has been prescribed to be not earlier than the July 01, 2021.
- Telecommunication companies licensed by the PTA can now enjoy benefits available to an Industrial Undertaking under the law.
- Time limitation of concessional provisions meant for construction sector as part of Prime Minister's package has been further extended.
- Concessional tax regime has been introduced for small and medium enterprises having annual turnover not exceeding Rs. 250 Million.
- Tax credit on investment made in Point Sales Machines has been introduced for the persons who integrate their invoicing system with the Board.
- Special regime for export of services to be taxed @ 1% under final tax regime at par with export of goods.
- Allowance on account of Workers' Welfare Fund and Workers' Profit Participation Fund paid under the respective provincial laws has been incorporated in the law.
- Person availing 100% tax credit under any section of the ordinance can apply for exemption certificate from withholding of tax.
- Elimination of requirement of filing of application of refund for automated issuance of refund.
- Withdrawal of power of Commissioner to reject advance tax estimates of taxpayer.
- Withdrawal of power of tax authorities to conduct inquiry for amending assessment.
- The Board has been given the power to introduced E-hearing rules and recording of e-hearing to be admissible evidence at any forum.
- Time limit of 120 days given to conclude show cause notice has been introduced.
- Exemption certificate on income tax withholding deemed to be granted by the Commissioner to the company within 15 days of the application.

- Strengthening mechanism and enhancing the scope of Alternate Dispute Resolution.
- The following withholding provisions have been abolished on collection of tax on:
  - ✓ Payment of royalty to residents.
  - ✓ Cash withdrawal
  - ✓ Banking instruments
  - ✓ Banking transactions other than through cash
  - ✓ From persons remitting amounts abroad through credit or debit or prepaid cards.
  - ✓ Domestic air travel
  - ✓ International air travel.
  - ✓ Extraction of minerals
  - ✓ From members by a stock exchange registered in Pakistan
  - ✓ Marginal financing by NCCPL
  - ✓ CNG stations.
  - ✓ Certain petroleum products
  - ✓ Motor vehicle from 850cc to 1000cc
- Individual with turnover in excess of 100 million has been included in the list of person required to withhold tax on commission.
- Every person is required to file annual withholding tax statement.
- Every person is required to file a reconciliation of expenses between annual withholding tax statement with audited accounts at the time of filing the return of income.
- Scope of withholding tax collection under section 236G and 236H has been enhanced by including the manufacturers and importers of pharmaceuticals, poultry and animal feeds, edible oil and ghee, battery, tyres, varnishes, chemicals, cosmetics, IT Equipment sectors.
- Tax under section 231B would be levied, if vehicle is disposed without registration.
- Reduced rate of withholding tax of 3% on oilfield services, collateral management services, travel and tour services and telecommunication services.
- Rental Income will now be taxed under the Normal Tax Regime.
- Interest income exceeding Rs. 5 Million will now be taxable in normal tax regime.
- Various allowances previously exempt in the hand of salaried class are now taxable.

- ❑ Gain exceeding Rs. 5 Million on disposal of immovable property is to be taxed under normal tax regime under the head “Capital Gain”
- ❑ Gain on immovable property being used as depreciable asset for deriving income from business previously taxable as “business income” will now be taxable under the head of income “capital gain”.
- ❑ First year allowance meant for industrial undertakings set up in specified rural areas is withdrawn.
- ❑ Turnover tax paid due to taxable loss can also be carried forwarded for five years.
- ❑ Turnover tax rate has been reduced to 1.25%.
- ❑ Turnover tax for Tier- 1 retailers and supplies by Online Market Place has been reduced to 0.25%.
- ❑ Receipts on account of disposal of immovable property as business activity will suffer turnover tax.
- ❑ Rate of tax for capital gain on listed securities has been reduced from 15% to 12.5%.
- ❑ Any gift deed entered as part of tax avoidance scheme may be recharacterized / ignored by the Commissioner IR to tax capital gain.
- ❑ Requirement of updating the tax profile maintained with the FBR has been done away with.
- ❑ The interest income from Recognized Provident Fund will be part of a separate block of income at the rate of 10%, if exceeds Rs. 500,000.
- ❑ Exemption of Medical Allowance, its reimbursement & Special Allowance to perform official duties under an employment, have been done away with.
- ❑ Withdrawal of exemption to Full Time Teachers and Researchers of NPO & research institution.
- ❑ Exemption from tax for bagasse fired power generating units and reduced rate of tax on dividend income from such projects.
- ❑ Zone enterprise & developers of Special Technology Zone Authority will also enjoy the exemption for the period of 10 Years.
- ❑ To promote women enterprises in Pakistan, the corporate tax on income from business will be reduced by 25%.

- ❑ Exemption from withholding of income tax has been given on supplies of Fresh Milk, Fish, Live Chicken/ Animal, unpacked meat and raw hides.
- ❑ Tax withholding & Minimum tax now reduced for the Distributors of FMCG, Fertilizer, Electronics as well.
- ❑ Holding companies are allowed to surrender loss to its subsidiaries as well.

### Sales Tax

- ❑ Sales tax on advance receipts abolished.
- ❑ Sales tax exempted on house-hold items near border areas of Pakistan, Afghanistan & Iran under Border Sustenance Markets
- ❑ Cottage industry earning revenue upto Rs. 10 million per annum not liable for registration. Furniture outlet / showrooms having area below 2000 square feet will not be classified as Tier 1 retailer.
- ❑ Listed public limited companies excluded from the purview of Section 8B.
- ❑ Import of plant, machinery and raw material by IT Special Technology Zone has been exempted from sales tax.
- ❑ Cross adjustments of purchase and sale between same parties facilitated under Section 73.
- ❑ Delayed payment of refund under Section 66 will also entail compensation to the taxpayer.
- ❑ Small cars upto engine capacity of 850cc exempted from VAT besides reducing sales tax rate from 17% to 12.5%.
- ❑ VAT exempted on imported electrical vehicles CKD kits / CBU condition and motor cars of cylinder capacity upto 850 CC
- ❑ Online Market Place now deemed as supplier in respect of sale of 3<sup>rd</sup> party goods sold through its platform.
- ❑ Manufacturers of specified goods to obtain brand license for each separate brand or SKU.
- ❑ Fixed tax on SIM cards has been deleted.
- ❑ Sales Tax on sugar will be assessed on retail price.
- ❑ The scheme of 'cash back' to customers withdrawn. Alternatively, a new concept of prize scheme has been introduced to provide for randomize "mystery shopping".



- ❑ Zero-rating on Petroleum Crude Oil, parts / components of zero-rated plant and machinery, import of plant and machinery by petroleum and gas sector and supply, repair and maintenance of ships withdrawn.
- ❑ Imports made costlier. All imported food items like milk, cheese, yougurt, butter, poultry products, meat, water, fruit juices, desi ghee, iodiodised salt, specified cereals amd products of milling industry, etc. are exposed to sales tax. Besides cycle, enery savers, halal edible ofal will also attract sales tax.
- ❑ Rate of sales tax increased from 10% to 17% on sale of branded food items like milk, cheese, yougurt, butter, poultry products, meat, water, fruit juices, desi ghee, iodiodised salt, specified cereals amd products of milling industry, import of plant and machinery, ginned cotton, harvesting equipment, etc.
- ❑ Sales tax imposed on import and supplies of raw and pickled hides, ship, aviation, floating craft, etc.
- ❑ Rate of sales tax on silver, gold and allied, etc. enhanced from 1% to 17%
- ❑ Sales Tax imposed on edible oil, vegetable ghee and cooking oil while FED on such products have been exempted.
- ❑ Retailer who has acquired POS and accepts payment through debit or credit cards from banking companies / digital payment service provider authorized by SBP will be classified as Tier-1 retailer.
- ❑ Time limit for issuance of show cause notice enhanced.
- ❑ Rules for transfer pricing between associates to be introduced to reflect fair market value in arm's length transactions.

### **Islamabad Service Tax**

Export of IT services have been zero-rated.

### **Federal Excise Duty**

- ❑ FED imposed @ Rs. 1 per call on mobile phone calls exceeding three minutes; Re. 0.1 per SMS; Rs. 5 per GB on internet data usage.
- ❑ Industrial units located in FATA and PATA now exempted from FED.
- ❑ FED on telecommunication reduced from 17% to 16%. We understand this will apply to services rendered in Islamabad Capital Territory.
- ❑ Small cars upto engine capacity of 850 CC exempted from FED.
- ❑ FED exempted on import and zero-rating on local supplies for raw materials, components, parts and plant / machinery under Export Facilitation Scheme, 2021.



- ❑ FED exempted on fruit juices.
- ❑ Sales Tax imposed on edible oil, vegetable ghee and cooking oil while FED on such products have been exempted.
- ❑ Electronically heated tobacco products have been brought into FED net.
- ❑ Payment on account of Merchant Discount Rate (MDR) from FED.

### Customs Duty

- ❑ Reduction/waiver of custom, additional custom and regulatory duty on import of certain items to promote various industries including textile, footwear, steel, printing and graphic arts, food processing and tourism, paint, chemical, artificial leather, electronics manufacturing industries.
- ❑ Relief provided to textile industry through waiver of custom, additional custom and regulatory duty at the time of import of certain products.
- ❑ Tariff rationalization on 328 tariff lines by reduction / exemption of custom and additional custom duty relating to raw materials and intermediary goods and point of sale [POS] machines.
- ❑ Custom and additional custom duties are reduced/waived on raw materials of bobbins and cops manufacturing industry, furniture, coating and boiler manufacturing industry.
- ❑ Waiver of additional custom duty on raw materials for cables/optical fiber manufacturers.
- ❑ To incentivize pharmaceutical sector, certain concessionary rates and waivers from custom / additional custom duties are provided to plant, machinery and equipment, various Active Pharmaceutical Ingredients [APIs], lifesaving drugs and raw material of and finished auto-disable syringes.
- ❑ Reduction/waiver of custom and additional custom duty on inputs of poultry industry and on vaccines for veterinary medicines and feed additives to encourage dairy sector.
- ❑ Relief from custom and additional custom duties are provided on import of raw material for manufacturer of aseptic plastic packaging.
- ❑ Exemption from custom duty is extended on import of items related to COVID-19.
- ❑ Exemption from custom and additional custom duties on inputs of Ready-to-Use supplementary & therapeutic foods, grain storage hermetic bags and cocoons.
- ❑ Additional custom duty is reduced from 7% to 6% of various class of goods pertaining to 20% custom duty.

- ❑ Enhancement in value of unsolicited gifts delivered through post or courier.
- ❑ Tarif structures are rationalized for auto sector and mobile phones.
- ❑ Regulatory duty on non-essential / luxurious items is increased to support local industry.
- ❑ A new uniform export facilitation scheme is being proposed, whereby enrolled persons would avail benefit of exemptions from tax and duties on import and local procurements of goods.
- ❑ Allowing the Collector to extend warehousing period for six months. Reducing the processing time of the requests and promoting ease of doing business.
- ❑ Increasing the period of validity of advance ruling from the current one year to three years in accordance with international benchmarks and facilitating trade thereof.
- ❑ Provision for the classification committee to avoid unnecessary litigation on account of classification disputes and consequently decreasing the cost of doing business.

## INCOME TAX ORDINANCE 2001

### Taxation of Companies

#### Small and Medium Enterprise

Section 2(59A), 2(59AB) and 100E (Fourteen Schedule)

In line with the Government vision to promote small scale manufacturing and to bring this sector in a tax net, the bill proposes concessionary provisions for persons engaged in manufacturing and having turnover less than two hundred and fifty million rupees by introducing a definition of "Small and Medium Enterprise [SME]" under Section 2(59A) of the Ordinance. Prior to this insertion, only companies who fulfil the condition to be a "small company" as prescribed under Section 2(59AB) of the Ordinance was enjoying the reduced tax rates, while this amendment seeks to provide reliefs to individuals, companies, association of persons and any other person mentioned under Section 80 of the Ordinance. The brief of the relief to SME, as compared to larger entities, is summarized as under:

- SME's may opt for taxation under Final Tax Regime [FTR];
- Lower tax rates, if opted for FTR;
- Lower tax rates on their taxable Income;
- Immunity from audit under section 177 of the Ordinance;
- Additional relief from audit under 214C, if opted for FTR;

Apart from above, the proposed rates of tax prescribed for SME are tabularized below:

Annual Turnover Limit	Rate of Tax under Normal Tax Regime	Rate of Tax under Final Tax Regime
Up to Rs.100 Million	7.5% of taxable income	0.25% of gross turnover
More than Rs.100 Million but less than Rs.250 Million	15% of taxable income	0.5% of gross turnover

#### Tax Credit for Point of Sale Machine

Section 64D

The bill proposes to provide a tax credit to persons who are required to be integrated with Board's computerized system for real time reporting of sale or receipts, in respect of amount invested for the purchase of point of sale [POS] machine.

The amount of available tax credit under this section is proposed to be lesser of the actual amount invested or Rs.150, 000/- per machine, which can be availed in a tax year in which such POS machine is installed, integrated and configured with the Board's computerized system.

## **Income of Cooperative Society on Certain Transactions with its Members**

### *Section 18*

An explanation has been proposed to be added to provide that the income derived from sales of goods, immovable property, or provision of services by a cooperative society to its members has always been taxable.

It is imperative to note that such income has historically been contended as exempt on the basis of doctrine of mutuality and such contention has usually been appreciated by the superior courts in favor of the taxpayers.

Since, the explanation is substantive in nature and seeks to bring an income under the tax net, which was construed to be exempt earlier, therefore, to our understanding, such explanation should be applied prospectively.

## **Transposition of Exemptions into Credit Regime Coal Mining & IT Service Sector**

### *Section 65F*

Erstwhile exemptions available to coal mining projects in Sindh, IT Start ups and export of IT services were transposed into a 100% tax credit against tax payable by such businesses during the year by promulgating Tax Laws (Second Amendment) Ordinance, 2021. Said amendment has been made part of the Finance Bill to bring them in the law.

Under the revised regime, the computation of taxable income and tax liability is now required to be made to determine as to whether these taxpayers will be able to avail the 100% tax credit against their income tax liability or not. It remains important to mention that 100% Tax credit shall cover the minimum taxes and final taxes as well. The above tax credits have been conditioned to the fulfillment of the following tax compliances;

- Annual Tax Return has been filed;
- Withholding of Income Tax has duly been made and deposited with Government Treasury;
- Withholding Statements for the Last Tax Year have been filed;
- Sales Tax Returns for whole of the relevant Tax Year have been filed.

It has been further added in the end of the amendment that the availing tax credits does not absolve the above taxpayers from getting their Accounts Audited either by the Board or by the Commissioner.

The above amendment appears to ensure the tax documentation and records over the portal, which as a matter of principle, should not be viewed as deterrence when it comes to giving the exemption or the credit.

## **Greenfield Industrial Undertakings & Renewable Energy Plant Manufacturers**

### *Section 65G*

Exemptions available to green field industrial undertakings and renewable energy sector were also taken back through Tax Laws (Second Amendment) Ordinance, 2021, introducing a restricted investment credit regime for such persons.

Vide this amendment, the tax credit shall be allowed only for up to 25% of investment made in these projects. The so called credit is hooked with the Project Cost in such industrial undertakings.

Moreover, the scope of the credit has been narrowed with the categories of assets where the investment amount has been spent. It has been provided that only such part of total investment shall qualify for credit, which is related to purchase and installation of new machinery or building equipment, hardware and software. Amount spent on self-created/bespoke software and used capital goods has been excluded for the purpose of 25% credit.

It remains important to mention that the investment credit of 25% on the eligible amount of investment is allowable against all tax payable including minimum tax and final taxes and where credit is not fully adjusted during the year of investment, it can be carried forward for next two years as well.

Bill seeks to incorporate such amendments in the law.

## **Group Relief**

### *Section 59B*

Presently under "Group relief scheme" provided as incentive to group of companies, any subsidiary may surrender its assessed loss to its holding, its subsidiary, or another subsidiary of that group subject to certain conditions stated therein.

It has now been proposed to amend the enabling provision in a way that the holding company may also surrender its assessed loss to any of its subsidiary company.

## **Extension in the Date of Amnesty for Builders and Developers**

### *Section 100D*

In the wake of the COVID-19 outbreak, the Prime Minister of Pakistan announced an amnesty for the Construction Sector to increase economic activity and employment opportunities within the Country. In this connection, Section 100D read with Eleventh Schedule of the Ordinance was introduced through Tax Law (Amendment) Ordinance, 2020 providing separate fixed tax regime for Builders & Developers.

The amnesty is twofold; Firstly, the income from sale of property will be taxed under fixed tax regime based on rate per square feet. Second is exemption from the provisions of Section 111 of the Ordinance on the amount invested in the purchase and construction of property. The deadline to avail the amnesty was 31 December 2020. After the deadline many projects remained uncompleted within the said

deadline which led to discomfort among various stakeholder as their amnesty given by the government were on the verge of jeopardy. This led to the hue and cry within the construction sector to increase the deadline of the amnesty.

In the wake to such outcry, the bill seeks to ratify the amendment made in Income Tax (Amendment) Ordinance, 2021 to extend the following deadlines of amnesty which are as follows:

Description	Existing timelines	New timelines
Completion of new and existing projects	September 30, 2022	September 30, 2023
Certification of Project completion by map approving authority or NESPAK	September 30, 2022	September 30, 2023
Certification by Chartered accountant firm in case of developer	September 30, 2022	September 30, 2023
Immunity from inquiry of: (i) Amount deposited in bank account (ii) Land transferred to a new AOP/company	December 31, 2020	June 30, 2021
Immunity from source of fund- Last date of full payment by first purchaser of building	September 30, 2022	March 31, 2023
Immunity from sources of funds- purchase of plot for construction of building	December 31, 2020	June 30, 2021
Immunity from sources of funds- Construction to commence on the plot	December 31, 2020	December 31, 2021
Commencement and Registration of project on IRIS	December 31, 2020	December 31, 2021
Maximum estimated project life-new project	2.5 years	3.5 years
Maximum estimated project life-existing project	3 years	4 years
Date of joining for additional partners/shareholders in a project	December 31, 2020	December 31, 2021

### **Taxation for export of Services at par with Export of Goods**

#### *Section 154(3)*

Prior to amendment proposed by Finance Bill, the taxation of services exported outside Pakistan were subject to taxation under normal tax regime with minimum taxation under clause 3 of Part II of Second Schedule of the Ordinance. Moreover, Royalty, Commission or Fees derived by a resident company in Pakistan from foreign enterprise for use of intangible assets were exempt from tax under clause 131 of Part I of Second schedule of the Ordinance.

The special regime has been proposed to bring the taxation of services rendered outside Pakistan listed below under final tax regime at the flat rate of 1% at par with taxation on export of goods:

- a) Export of Computer Software, IT Services or IT enable Services other than subject to Section 65F.
- b) Technical Services.
- c) Royalty, Commission or Fees derived by resident company in Pakistan from foreign enterprise for use of intangible assets.
- d) Construction Contract.
- e) Any other service notified by Board.

The above chargeability under final tax regime is subject to compliance of certain conditions listed down below:

- a) Annual return has been filed.
- b) Withholding statements are submitted.
- c) Federal/Provincial sales tax returns are submitted.
- d) No credit of foreign tax credit is allowed.

Moreover, taxpayers have been provided an option, which is exercisable every year at the time of filing of return to opt out from final tax regime.

It is pivotal to mention that the proposed amendment has been brought in for streamlining the taxation of exporters of services.

### **Person claiming 100% Tax Credit can claim Exemption Certificate**

#### *Section 159*

Prior to proposed amendments by the Finance Bill, only person availing tax credit under section 100C were able to claim exemption certificate from non-deduction of income tax from various withholding provisions. Other person who were also equally availing 100% tax credit under any other section of the Ordinance, apart from section 100C, were denied this facility.

The bill has proposed to allow the facility of availing exemption certificate against the withholding tax provisions to all persons who are eligible for Hundred Percent (100%) tax credit under the Ordinance.

The following person eligible for 100% tax credit under the ordinance would be able to claim exemption certificate after the proposed amendment:

- a) Income from Exports of Computer Software or IT Services.
- b) Persons engaged in coal mining project in Sindh.
- c) Startup of business which is certified by the Pakistan Software Export Board.
- d) Newly Established Industrial Undertaking (**prior to omission of section 65D**).



## **Power of Commissioner to decline lower estimate**

### *Section 147*

Presently, the taxpayer can file a lower estimation of advance tax under Section 146(6) of the Ordinance by submitting to the Commissioner the following information:

- a) Turnover for completed quarters;
- b) Estimated turnover of the remaining quarters along with reasons for any decline (if any);
- c) Documentary evidence of estimated expenses or deductions which may result in lower payment of advance tax; and
- d) Computation of the estimated taxable income of the relevant tax year.

The Commissioner is empowered to reject the estimation filed by the taxpayer if it is not accompanied by above details.

The bill now proposes to delete the above power of the commissioner to reject the lower estimation of the taxpayer.

This certainly is a very pleasant and beneficial amendment, as it was not always possible for the taxpayer to submit the documentary evidences related to decline. Moreover, the commissioner was never in a position to decline the estimate filed by the taxpayer, as he could not have possess any information to determine the accuracy of the information provided by the taxpayer.

Furthermore, this was used as a tool by the commissioner to levy tax on the taxpayer in excess of the amount the taxpayer would actually be liable to pay, which in the end had to be claimed as refund by the taxpayer in his return of income.

Needless to mention that the commissioner always has the power to levy default surcharge under section 205(1B) of the Ordinance on the taxpayer for failure to pay 90% of the tax liability under section 147 of the Ordinance.

## **WWF & WPPF paid to Provinces**

### *Section 60A and 60B*

Sections 60A & 60B of the Ordinance cater for payments made under Federal Worker Welfare Funds (WWF) and Worker Participation Profit Fund (WPPF) only and not for any payment made under the provincial laws which were enacted in the years 2014 and 2015.

The bill has proposed to amend Section 60A and 60B to allow deductible allowance against the income on account of payment made to Provinces regarding Worker Welfare Funds (WWF) or Worker Participation Profit Fund (WPPF). We understand that these amendments were made to give legal coverage after the Eighteen (18th) Constitutional Amendment and will encourage eligible taxpayer to discharge these obligations to respective provinces and claim the same as deductible allowances.

However, this benefit has not been allowed for payments made by trans-provincial establishment to the provinces. By denying the benefit to trans-provincial entity, FBR has maintained its stance on its power to collect WWF and WPPF from trans-provincial entity which we understand is also endorsed by the Judgement of Supreme Court of Pakistan related to trans-provincial entity in the context of labour law.

### **Tax Credit for Persons Employing Fresh Graduates**

#### *Section 64C*

Section 64C was inserted vide Finance Act, 2019 which provides a tax credit for employing fresh qualified graduates from a university or institution recognised by the Higher Education Commission. Tax credit was allowed for a tax year in which such graduates are employed (not exceeding 15% of total employees) at average rate of tax on the amount of salary paid to the fresh qualified graduates. Tax credit was however capped at 5% of that person's taxable income.

The Finance Bill has proposed to ratify the Tax Law (Second Amendment) Ordinance 2021 by withdrawing the tax credit.

### **First Year Depreciation @ 90%**

#### *Section 23A and 57*

Ninety percent (90%) depreciation was allowed in first year for manufactures who invest in rural and under-developed areas of the country and as well as for manufacturers of Mobile phones.

The Bill seeks to ratify the amendment made in Tax law (Second Amendment) Ordinance 2021 to abolish this ninety percent (90%) depreciation with a simple stroke of pen without any prior warning to the investor who already has made the investment.

The underlying objective of the above amendment cannot be gauged as to what could purportedly be the intent of the legislature.

A consequential change has been brought in respect with the provisions of carrying forward of depreciation losses on account of this 90% depreciation as well.

It remains incumbent to submit that the withdrawal of the accelerated depreciation, which is a significant part of tax panning is not a very thoughtful consideration on part of the legislature.

### **Changes in Minimum Tax Regime on Turnover**

#### *Section 113*

Prior to proposed amendments by the Finance Bill, the minimum tax on turnover under Section 113 of the Ordinance was applicable on Individual and AOP, where turnover exceeds the of Rupees 10 Million per year.

The bill has proposed to enhance the threshold of turnover from Rupees 10 Million to Rupees 100 Million. By virtue of above amendment, the non-corporate businesses with turnover of less than Rupees 100 Million are excluded from the chargeability of minimum tax, which is a welcoming change and provides the much needed respite for small business in reducing their tax cost in the initial years of growth.

### **Sale of Property Subject to Turnover Tax**

Another major change remains that prior to proposed amendment, the definition of turnover excluded the sale of immovable property from the chargeability of turnover tax.

The bill has proposed to include an explanation to clarify that the receipts from sale of immovable property which are subject to tax under the head of business income would be chargeable to turnover tax.

### **Carried Forward Minimum Tax**

#### *Section 113(2)(C)*

Prior to proposed amendments by the Finance Bill, the businesses were allowed to carry forward turnover tax paid in excess of tax paid under normal tax regime for the succeeding five years. This meant that in case of loss, since there was no tax payable under the normal tax regime, turnover tax was not allowed to be carry forward.

The bill has proposed to amend the provision of Section 113(2)(C) in favour of the taxpayer to allow the carry forward of turnover tax even in year of loss when no tax is payable.

It is pivotal to mention that proposed lifting of restriction on account of carry forward of turnover tax in case of loss will have significant impact on the industry which is undergoing the adverse effect due to recent pandemic of Covid-19. This amendment has been proposed to undo the adverse impact on the industry due to the verdict of Honorable High Court of Sindh in case of M/s. Kassim Textile Mills (Pvt) Ltd.

### **Reduction in Minimum Tax Rates**

The rate of minimum turnover tax has been proposed to be revamped, which includes the following changes:

S. No.	Persons	Existing Rate	Proposed Rate
1.	a) Oil marketing companies Sui Southern Gas Company Limited Sui Northern Gas Pipelines Limited (for the cases where annual turnover exceeds rupees one billion.)	0.75%	0.75%
	b) Pakistan International Airlines Corporation; and		

	c) Poultry breeding, broiler production, egg production and poultry feed production;		
2.	a) Oil refineries	0.75%	0.5%
	b) Motorcycle dealers registered under the Sales Tax Act, 1990	0.3%	0.5%
3.	a) Distributors of pharmaceutical products, FMCGs and cigarettes;	0.25%	0.25%
	b) Petroleum agents and distributors registered under the Sales Tax Act, 1990;		
	c) Rice mills and dealers;	1.5	0.25%
	d) Tier-1 retailers of FMCG integrated with Board or its computerized system for real time reporting of sales;		
	e) Person's turnover from supplies through e-commerce including from running an online marketplace as defined in clause (38B) of section 2.		
	f) Persons engaged in the sale and purchase of used vehicles	1.5	0.25%
4.	a) Flour mills	0.25%	1.25%
	b) In all other cases	1.5%	1.25%

### Changes in Taxation of Capital Gain on Property

#### Section 37(1A)

The taxation of capital gains on sale of property has been proposed to subject to major changes once again through the Finance Bill, 2021-22.

Before the Finance Act 2012, the entire capital gain from disposal of property was completely exempted. It was brought into tax net through the Finance Act, 2012. After introducing its taxation, it has always remained controversial and subject to frequent changes and amendments in terms of either its holding period for exemption or the rate of taxation.

It has now been proposed that only the capital gain arising from the sale of immoveable property which remains below the threshold of Rupees. 5(M), shall be chargeable as a separate block of income at a unified rate of 5%, while if it exceeds 5(M), the entire concept of unified rate of taxation on gain on immoveable property would completely be thrashed out and will be taxed though as Capital Gain but under normal tax regime on the applicable slab rates.

It needs to be appreciated that there is no change proposed to restructure the holding period for exemption. The same is being narrated hereunder;

S. No.	Holding Period of Property	FY 2022 Onwards
1	Up to one year	100% Taxable
2	More than one year but less than two years	75% Taxable
3	More than two years but less than three years	50% Taxable
4	More than three years but less than four years	25% Taxable
5	More than four year	0% Taxable

This would imply that capital gain of either more than five (05) million or less than it, will be calculated through the same above table.

### Higher Taxation of Capital Gain

*Section 37(1A)*

A comparison between the existing and proposed tax rates is being tabulated hereunder for quick reference and ease of understanding:

S. No.	Property Gain	FY 2021	FY 2022 Onwards
1	Up to 5(M)	2.5%	5%
2	More than 5(M) but less than 10(M)	5%	As per Slab Rate
3	More than 10(M) but less than 15(M)	7.5%	
4	More than 15(M)	10%	

A purported objective underlying these amendments appears to bring in the higher bands of income to a high slab of taxes based on the theory of progressive taxation. It cannot, however, be ruled that the higher taxation may deter the sale of high end properties in frequent basis.

### Capital Gain on Properties

*Section 37(1A)*

Through the Finance Bill 2021-22, it has been clarified that where any person who is engaged in the transaction of sale & purchase of immovable property on frequent basis or transaction of sale & purchase is in the nature of trade and business, the capital gain on sale of property will be chargeable under the head of Income from Business and will be taxes accordingly.

### Recharacterization of Value of Gifted Property

*Section 37(4A)*

In order to avoid systematic tax avoidance scheme very much available under the Ordinance on the sale of capital asset through gift between relatives, it has been proposed to empower Commissioner – IR that if any capital asset which is acquired

through gift, is disposed off within a span of two(02) years, he can re-characterize the cost of acquisition of capital asset, equal to the cost of asset declared by the donor as per Section 79(3) of the Ordinance in the hands of recipient of the gift rather than equal to the fair market value of the capital asset.

Before the above amendment, the cost of capital asset in case of gift was taken at the fair market value of the asset as determined on the date of its transfer in hands of recipient of the gift by taking the advantage of provision of Section 39(4A) of the Ordinance.

It is important to highlight that the benefit of higher cost of the gift assets will very much be available in cases where the disposal of the gift asset is made after the lapse of two (02) years.

### **Gain on sale of Building used in Business**

#### *Section 22(13)*

Prior to the Finance Bill 2021-22, the consideration received against the sale of immovable property was treated as the cost of property if the consideration exceeds the original cost of the asset.

Through the Finance Bill 2021-22, it has been proposed that where the capital gain on disposal of immovable property exceeds the cost of property, the excess amount shall be taxed as normal tax regime under the head of 'Capital Gain' under Section 37 of the Ordinance.

It would not be out of context to comment that the above proposed amendment has come out completely unexpectedly and is nothing short of disruptive change in taxation of gain on sale of Building and other eligible depreciable immovable assets.

The following illustration will be helpful to understand the impact of amendment proposed through this Finance Bill:

#### **Actual Cost of Property is 8,000,000/-**

##### **Before the Amendment:**

Consideration received on sale of property	10,000,000/-
Cost of the property as per Section 22(13d)	10,000,000/-
Less: Accumulated Depreciation	<u>(2,500,000)</u>
Written down value	<u>7,500,000/-</u>
Gain on sale of property	<b><u>2,500,000/-</u></b>

### After the Amendment:

Consideration received on sale of property	10,000,000/-
Cost of the property	8,000,000/-
Less: Accumulated Depreciation	<u>(2,500,000)</u>
Written down value	<u>5,500,000/-</u>
Gain on sale of property	<b><u>4,500,000/-</u></b>

### Changes in Taxation of Capital Gain on Shares

#### Reduction in Flat Rate of Tax on Capital Gain on Shares

##### Section 37A

Capital gain on shares has constantly been subject to varied and constant changes in its taxation since it was firstly introduced in 2011 both in terms of tax rates and the holding period as well.

Under the Finance Act, 2017, the FBR withdrew various holding periods starting from less than 12 month to 48 months and replaced all with a single rate of 15% invariably to all periods of holding.

If we recall that after introducing the Capital Gain Tax, the FBR has constantly been pushing the tax rate higher every year, however, through this Finance Bill 2021-22, it has been proposed to be reduced to 12.5% in order to encourage further investment in Pakistan Stock Exchange (PSE).

A comparison of CGT rates between Tax Year 2021 and Tax Year 2022 and onwards is being tabulated hereunder;

S. No.	Holding period of Securities	FY 2021	FY 2022 Onwards
1	Where the period less than 12 months	15%	12.5%
2	Where the period more than 12 months but less than 24 months		
3	Where the period more than 24 months but security was acquired after July 01, 2013		
4	Where security was acquired before July 01, 2013	Exempt	Exempt
5	Future commodity contracts	5%	5%

We understand that the reduction in the tax liability on capital gain on securities will not only increase the confidence of local investor in Pakistan but also attract Non-Resident Individual / Institutional Investors to make further investment in PSE.



## Changes in Taxation of Rental Income

### Taxation under Normal Tax slab for AOP & Individuals

Sections 15

The Finance Bill 2021 has proposed changes in taxation of Property Income in the hands of Individuals and Association of Persons (AOPs) from separate block of taxation to taxation under normal slab rates by clubbing with other sources of income.

This implies that there would be allowed expense or expenditure against the rental income and adjustment or tax credit or tax allowance would be acceptable and that the whole of the rental income will be treated as a Normal Income (NTR).

A comparative taxation for AOP and Individual has also been tabulated as under;

INCOME FROM PROPERTY (S. 15)				
Proposed				
		Rental Slab	Business Slab	
Slab	Annual Rental Income	Tax Year 2021 (FTR)	Tax Year 2022 (NTR)	Increase / (Decrease)
1	300,000			
2	400,000	5,000	0	(5,000)
3	600,000	15,000	10,000	(5,000)
4	2,400,000	290,000	250,000	(40,000)
5	3,000,000	410,000	370,000	(40,000)
6	4,000,000	610,000	620,000	10,000
7	6,000,000	1,110,000	1,220,000	110,000
8	8,000,000	1,710,000	1,920,000	210,000
9	8,500,000	1,835,000	2,095,000	260,000

Taxation of rental Income for companies has been proposed to remain same as it was already under NTR.

### Changes in Withholding on Rental Income

Sections 155

A paradigm shift has been made in withholding regime of rental income whereby it has been proposed to withhold tax on rental income of owner of the property and sub-lessee of the property as well and that too irrespective of classification under any Head of Income. Meaning thereby, withholding in respect of rental incomes classified under section 39 will also be made as per provisions of Section 155 of the Ordinance. Exhaustive list of rental payment, which has been proposed is provided hereunder:

- Ground Rent
- Rent from the sub-lease of land or a building
- Income from the lease of any building together with plant or machinery
- Income from provision of amenities, utilities or any other service connected with renting of building

Apart from the above a new slab of rates has been suggested in the Budget whereby the tax incidence has been proposed to be reduced. A concept of filer and non-filer of tax return has also been introduced whereby the withholding of tax is proposed to be withheld from the non-filer @ double than the rate of Filer for both Companies, AOP & Individuals.

Section	Head	Company		INDIVIDUALS / AOP (Double in case of Non-Filers)			
		Filer	Non Filer	Existing		Proposed	
				Gross Amount	Tax Rates	Gross Amount	Tax Rates
Section 15 & 155	'INCOME FROM PROPERTY'	15%	30%	Up to 200,000	Nil	Up to 300,000	Nil
				200,000 to 600,000	5% on exceeding of 200,000	300,000 to 600,000	5% on exceeding of 300,000
				600,000 to 1,000,000	20,000 plus 10% on exceeding of 600,000	600,000 to 2,000,000	15,000 plus 10% on exceeding of 600,000
				1,000,000 to 2,000,000	60,000 plus 15% on exceeding of 1,000,000	Above 2,000,000	155,000 plus 25% on exceeding of 2,000,000
				2,000,000 to 4,000,000	210,000 plus 20% on exceeding of 2,000,000		
				4,000,000 to 6,000,000	610,000 plus 25% on exceeding of 4,000,000		
				6,000,000 to 8,000,000	1,110,000 plus 30% on exceeding of 6,000,000		
				Above 8,000,000	1,710,000 plus 35% on exceeding of 8,000,000		

Number of slabs have been reduced to four (04) tax slabs from eight (08) tax slabs of last year.

A Comparative tax advantage has also been taken away as demonstrated in the following table:-

INCOME FROM PROPERTY (S. 155)						
Comparison Between Existing & Proposed						
Slab	Rental Income	Tax Year 2021	Tax Year 2022		Increase / (Decrease)	
			Filer	Non-Filers	Filers	Non-Filers
1	300,000		-		-	
2	400,000	5,000	5,000	10,000	-	
3	600,000	15,000	15,000	30,000	-	
4	2,400,000	290,000	255,000	510,000	(35,000)	
5	3,000,000	410,000	405,000	810,000	(5,000)	
6	4,000,000	610,000	655,000	1,310,000	45,000	
7	6,000,000	1,110,000	1,155,000	2,310,000	45,000	
8	8,000,000	1,710,000	1,655,000	3,310,000	(55,000)	
9	8,500,000	1,835,000	1,780,000	3,560,000	(55,000)	

### Setting Off Losses against Rental Income

#### Section 56(1)

Currently the rental income is taxed under separate block of income due to which one cannot set off losses available under any other head of income. However, as it now has been proposed to be tax under normal tax regime. The corresponding amendment for adjustment of business losses against the rental has accordingly been made.

Needless to mention that right to set off current year losses with the rental income can be exercised by companies as well.

### Changes in Taxation of Interest Income

#### Sections 7B

#### Change in Slab Rates

Currently interest income of individuals and AOPs is being taxed as per slab rates. For instance, if any individual or AOP is earning interest income upto Rs.5 Million then they have to give tax @ 15% which may well be enhanced up to @ 20% if annual interest income is between Rs.15 Million to 36 Million.

It has now been proposed that annual Interest income exceeding Rs.5 Million will be made part of the total income and will accordingly be taxed at normal slabs rates. It remains important to mention here that rationale behind proposed amendment is to discourage the separate block taxation and to replace it with Normal Taxation after a certain limit. A comparison between existing provision and the proposed amendment is being tabulated as under;

Section	Head	Individuals / AOP			
		Tax Rates			
		Existing		Proposed	
Section 7B	Interest on Income	Up to 5,000,000	15%	Up to 5,000,000	15%
		5,000,000 to 25,000,000	17.5%		
		25,000,000 to 36,000,000	20%	Exceeding 5,000,000	Normal Rates as Per Slab

### Changes in Withholding of Interest Income

#### Sections 151

Previously concessionary rate of 10% was available for taxpayers earning profit of Rs. 500,000/- in a year, which has now been abolished. Hence, after omission the rate of deduction of tax on interest income is 15% irrespective of interest income. The comparison between existing provisions and the proposed amendment in withholding amount of interest income is being tabulated as under;

Section	Head	Individuals / AOP			
		Tax Rates			
		Existing		Proposed	
Section 151	Withholding of Interest Income	Up to 500,000	10%	15% of Interest Income	
		Exceeding 500,000	15%		

### Personal Taxation

#### Gift from Relatives

##### Section 39(1)

Currently where a person receives a gift, whether monetary or non-monetary, is taxable under the head of "income from other sources except for those which were received from grandparents, parents, spouse, real brother, real sister, son or daughter. Contrary to this listing of relatives, a definition of relatives instead has been provided for under Section 85 of the Ordinance, which covers a wider group of relatives rather than any given list. A disparity therefore has been a moot point which has finally now been addressed with the harmonization of both the provisions.

Accordingly, this anomaly has now been catered and the definition of relative which is already available in sub-section 4 of Section 85 of the Ordinance which includes an ancestor, a descendant of any of the grandparents, or an adopted child of an individual and spouse as well has been made to be the point of reference in the future.

## **Non Recognition Rule for Non-Residents**

### *Section 79*

Prior to amendments, gain or loss on disposal of assets in the hands of a non-resident in any of the condition given in the said Section was not covered under Non-recognition rules in case of Nonresidents.

It has now been proposed that Non- recognition rules may apply in the following conditions

- a) Any consideration received from disposal of assets acquired compulsorily is reinvested within 1 year of disposal
- b) Any consideration received by the Shareholders on liquidation of the Company
- c) Any Consideration received by the Partners on dissolution of AOP.

After the amendment is taken place, it would imply that Non- recognition rules may not apply in the aforesaid situation nit will very be applicable in case of following situation and will accordingly not be subject to tax in Pakistan;

- ✓ Between Spouses
- ✓ Inheritance
- ✓ Gift to relatives

## **Salary Income; Duty Allowance**

### *Section 12*

Currently, any allowance solely expended in performance of the employee's duty is not included in taxable salary.

It has now been proposed that an allowance cannot be said to be covered under the above category if;

- (a) a fixed allowance is paid on monthly basis
- (b) an allowance is not exclusively spent on behalf of the Employer

## **Profit on Debt from Provident Fund / Pension Fund**

### *Clause 22, 23 & 23C of Part I, 2<sup>nd</sup> Sch.*

It has been proposed that interest portion of Provident fund and Pension Fund upto five hundred thousand (500,000/-) shall be chargeable to tax @ 10% under a separate block of income.

## **Withdrawal of Exemption from Special Allowance**

### *Clause 39*

Currently, any special allowance which is given for office purposes is exempt from tax. Now, it has been proposed to withdrawn the exemption and to include the same in taxable salary

### **Withdrawal of exemption against Medical Allowance**

*Clause 139*

Ten (10) percent Medical allowance, its reimbursement which is fully exempt as per Clause 139 of Part I of 2nd schedule of Income Tax Ordinance, 2001, correctly.

It has been proposed to be withdrawn.

### **Withdrawal of Exemption from Perquisite with Nonmarginal Cost**

*Clause 53(a)*

Provision of subsidized food, subsidized education, subsidized medical treatment was free from taxation on the part of employee on the ground that employee did not have to incur any marginal cost on the provision of the above the same.

It has now been proposed to be withdrawn from exemption and it will be included in the taxable salary.

### **Changes in Taxation of Non-Profit Organization (NPO)**

Through the Tax Laws (Second Amendment) Ordinance, 2021 [the Second Amendment Ordinance], significant amendments were made for the entire sector of NPO. Through the Finance Bill 2021-22, the introduced amendments have now been made part of the bill, which are being narrated here as under;

#### **Benefit of Direct Deductions withdrawn**

*Clause (61), (64a), (64b), (64c) And (65) & Thirteenth Schedule*

Donations to Institutions mentioned under the above clauses of Part I of 2<sup>nd</sup> Schedule to the Ordinance were allowed to take straight deduction from income of the Donor, rather to calculate tax rebate at average rate of tax under Section 61 of the Ordinance.

The concept for straight deduction from income has been done away with whereafter, the donations, voluntary contributions and subscription given by the donor to these institutions, will take a rebate at average rate of tax under Section 61 of the Ordinance.

#### **Tax Rebate Allowed on Voluntary Contribution or Subscription**

*Section 61*

Before the Second Amendment Ordinance, a person was entitled to avail tax credit against any monies/property given as Donation to the following;

- any board of education or any university established by, or under, a Federal or a Provincial law;
- any educational institution, hospital or relief fund established or run by FG, PG or LG
- any Non-Profit Organization

Through the Finance Bill 2021, the restricted scope to the extent of donation has been broadened and included the voluntary contribution or subscription as well. It implies that Donors will now be entitled to take tax credit on the payment of voluntary contribution or subscription as well like in cases of professional Associations and Clubs, etc. This, however, needs to be clarified on the part of the FBR.

## **NPO Sector again Restructured**

### *Section 100C*

Through the Finance Bill 2021, the structure of NPO has once again been restructured, which is being narrated hereunder;

#### Who will be Eligible to Claim Tax Credit

The following person will be eligible to claim tax credit @ 100% against their tax payable;

- ✓ NPOs covered under Clause 66 (Table-II) of Part I, 2<sup>nd</sup> Schedule to the Ordinance
- ✓ Trust approved by FG for welfare of ex and serving employees of FG and PG and Armed forces
- ✓ A Trust
- ✓ A Welfare Institution registered with Provincial or ICT Social Welfare Department
- ✓ A NPO company registered with SECP under Section 42 of the Companies Act, 2017
- ✓ A Welfare Society registered under provincial or ICT co-operative societies
- ✓ International Non-Governmental Organizations (INGOs) approved by the FG
- ✓ A Waqf
- ✓ A University or Education Institutions being run by NPO
- ✓ A religious or charitable institution registered under any law

#### Which income will be eligible for Tax Credit

The following income will be eligible for tax credit;

- ✓ Donations, Voluntary Contributions, and Subscription
- ✓ House property
- ✓ Investments in securities of FG
- ✓ Interest Income from Banks and Microfinance Banks
- ✓ Grant received from FG, PG, LG or a Foreign Govt.
- ✓ So much of Business income as is expended in Pakistan on proportionate basis.

#### On which condition, income will be eligible for Tax Credit

The following conditions as defined under Section 100C will be applicable to claim the tax credit;

- ✓ Annual Tax Return has been filed
- ✓ Withholding of Income Tax has duly been made and deposited



- ✓ Withholding Statements for the relevant Tax Year have been filed
- ✓ Administrative expenses do not cross over the threshold of 15% of receipt in case the total receipts are over 100M
- ✓ Valid Approval of CIR.
- ✓ No asset of trust is used for private benefit to the donors/author or their families.

A notable change remains that the withholding statements are now required to be filed for the relevant Tax Year for which credit is being claimed. Before the Second Amendment Ordinance, these statements were required to be filed for the preceding Tax Year.

Lastly, it has been clarified regarding the condition for obtaining approval of NPO under Section 2(36) of the Ordinance, for those Organization enlisted under Clause 66 (Table-II) of Part-I of 2<sup>nd</sup> Schedule of the Ordinance that it would take effect from July 1, 2022 and not from July 1, 2021.

### **Insertion of New Organization**

Through the Finance Bill 2021, the following Organizations have been transposed from Table II to Table I under clause (66) of Part I of the Second Schedule to the Ordinance.

- ✓ Abdul Sattar Edhi Foundation
- ✓ Patient's Aid Foundation
- ✓ Indus Hospital and Health Network
- ✓ Dawat-e-Hadiya, Karachi
- ✓ The Citizens Foundation
- ✓ Audit Oversight Board

The above NPOs have been exonerated from the compliance requirement of obtaining the NPO certificate every year for the purpose of tax credit under section 100C of the Ordinance, meaning thereby, income of such organizations are now exempt from tax without putting the efforts for obtaining approval under section 2(36).

### **Changes in Audit & Assessment**

#### *Section 122*

Prior to 2013, the powers of the Commissioner was restricted for amending the assessment with twin conditions to be met i.e. assessment is erroneous and is prejudicial to interest of Revenue. Though, the Finance Act, 2012, the scope of section 122(5A) was extended for amending the assessment order after making or causing to be made, inquiries as is deemed fit.

It is worth noting that the commissioner has habitually invoked provisions of section 122(5A) of the Ordinance. Furthermore, the commissioner could trigger roving and fishing inquiries by interpreting that there is no restriction imposed by legislature in section 122(5A), hence, carries the powers to conduct any sort of inquiry as is deemed necessary and appropriate. On the other hand, if the legislature would intend to give unlimited powers to the commissioner than there would not lie any difference between section 177 and section 122(5A) of the Ordinance. It goes without saying

that there should be apparent legal infirmity in the return alongwith apparent loss to Revenue.

Ultimately, such matter landed in the superior courts wherein it has been categorically held that roving inquiries and fishing expeditions have always been disapproved by the courts as being in violation to the due process of law.

The power of the Commissioner has, therefore been restricted by the finance bill to have made an assessment of taxable income for a tax year only if the two conditions are duly met which are that the assessment is wrong and erroneous coupled with fact the erroneous assessment has inflicted loss of revenue. This should be evident in some form in the order under section 120 or 122 of the Ordinance.

The current proposed amendment, therefore is nothing short of a welcoming amendment by restoring the original position of law as was before unwarranted change took place in June 2012.

### **Time Limitation for Conclusion of Assessment Proceedings**

#### *Section 122(9)*

The Finance Bill-2021-22 proposes that the commissioner is given a time from to amend an assessment order within one hundred and twenty days with an additional time of ninety days of issuance of show cause notice under section 122(9) of the Ordinance. Exception are given in calculating the above periods that if the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution or agreed assessment under section 122D or the taxpayer sought for an extension but not exceeding periods of sixty days which will be excluded.

This concept has been borrowed from the Sales Tax Laws whereby time limit is given for Show Cause Notice under section 11(5) of the Sales Tax Act, 1990 (the Act).

### **Revision by the Commissioner**

#### *Section 122A*

A new sub-section (5) of section 122A has been proposed by the Finance bill 2021-22 wherein the lower authority of the commissioner shall have to give effect to order passed by the commissioner for modification, alteration, implementation of directions or de novo proceedings within 120 days.

### **Due Date for Payment of Tax**

#### *Section 137*

Any tax due under an assessment order, is required to be paid within thirty days as per section 137(2) of the Ordinance.

The Bill has, now proposed to insert a new proviso wherein the taxpayer would have now be required to pay the due tax payable immediately as a result of an order to give appeal effect under section 124 of the Ordinance.

This would cause hardship on part of the taxpayer & would take away his legitimate right to get relief from any appellate forum.

### Penalties

#### Section 182

The Finance Bill 2021-22 has proposed the following amendments in section 182 of the Ordinance:

S. No.	Offences	Penalties prior to Finance Bill	Amendments proposed by Finance Bill	Section
1	Failure to submit Annual Tax Return within time.	0.1% of Annual Tax per day of non-filing, subject to minimum of Rs. 40k and maximum of 50% of the Annual Tax.  Where 75% of the total income is Salary and is lower than 5 million, the minimum penalty of 40k is reduced to 5k.	Two new provisos have been inserted whereby:  1) Minimum penalty will be reduced to Rs. 5k if the taxable income is upto 800k, only.  2) Penalty will be reduced by 75%, 50% and 25% if the return is filed within one, two or three months, respectively even after the due date or extended time.	114 and 118
1A	Failure to file Withholding Statement within time.	Penalty of Rs. 5k if the tax withheld was timely deposited and the statement was filed within 90 days of its due date.  In other cases, penalty of higher of Rs. 2.5k per day of non-filing or Rs. 10k.	New proviso has been inserted whereby minimum penalty of Rs.10k has been prescribed, in cases where no tax was required to be collected or deducted in that particular tax period.	165, 165A and 165B
4B	Failure to make compulsory registration of electricity & natural gas.	Penalty of Rs. 10k for each connection provided to an unregistered person.	Penalty of Rs. 100k for each connection provided to an unregistered person.	181AA

S. No.	Offences	Penalties prior to Finance Bill	Amendments proposed by Finance Bill	Section
6	Repetition of erroneous calculation in the return for more than one year whereby tax liability is lesser of actual tax payable.	Higher of Rs. 30k or 3% of the tax amount involved.	New proviso has been inserted which provides exemption from penalty where the taxpayer reasonably argues on his position.	137
10	a) Making a false or a misleading statement  b) Furnishing a false or misleading document  c) Omission, which renders the statement or Info. as false or misleading.	Higher of Rs. 25k or 100% of the amount of tax involved.	Penalty has been reduced to the higher of Rs.25k or 50% of the tax shortfall.	114, 116, 174, 176, 177, 114A, 118
11	Denial or obstruction to officer from access to premises, accounts, documents, computers or stocks.	Higher of Rs.50k or 100% of the tax amount involved.	Penalty has been reduced at the higher of Rs.100k or 50% of the tax involved.	175 and 177
15	Failure to deposit the tax deducted to the commissioner.	Higher of Rs. 40k or 10% of tax amount involved.	Penalty remains unchanged.  However, all the section numbers have been summed up with reference to the relevant Div. II and III of Part V of Chapter X and Chapter XII.	148, 149, 150, 151, 152, 153, 153A, 154, 155, 156, 156A, 156B, 158, 160, 231A, 231B, 233,

S. No.	Offences	Penalties prior to Finance Bill	Amendments proposed by Finance Bill	Section
				233A, 234, 234A, 235, 236, 236A,
16	Failure to display NTN at place of business.	Penalty of 5k rupees.	Penalty remains the same.  However, failure to display "business license" would be also an offence.	181C and 181D

The Finance Bill 2021-22 has proposed to take away the penalties at Serial No. 4A deals in section 114A and penalty at Serial Nos. 19 and 20 regarding Section 227C of the Ordinance.

It is worthwhile to mention here that the above proposed amendments were earlier introduced/ substituted vide Tax Laws (Second Amendment) Ordinance, 2021 dated 22nd March 2021. However, to streamline the same with penal provisions, Finance bill proposed to make all changes part of Section 182 of the Ordinance.

In addition to the above, non-declaration of Business Bank Account has been made a serious non-compliance subject to penalties;

S. No.	Offences	Penalties	Section
29	Where any person fails to declare business bank account(s), in his registration application or fails to amend his registration profile to declare existing business bank account(s).	Penalty of Rs. 10k for each day of default since the date of submission of application for registration or date of opening of undeclared business bank account whichever is later.  Provided that if penalty worked out as aforesaid is less than Rs. 100k for each undeclared bank account, such person shall pay a penalty of Rs. 100k for each undeclared business bank account:  Provided further that this provision shall be applicable from the first day of October 2021 during which period the taxpayer may update their registration forms	181

An explanation has proposed to insert after the proviso in sub-section 2;

*Explanation – For the removal of doubt, it is clarified that mens rea is not necessary for the levying of penalty under this section.*

This would give the officer unbridled power to charge the penalty to any person whether the default is willful or not, though, varied superior courts have decided the cases in favor of the taxpayer on this score.

## Changes in Withholding Tax Provisions

### Furnishing of annual statement and reconciliation

#### Section 165

Currently withholding statements are being filed by the withholding agents on quarterly basis on specified due dates.

In the current finance bill, it has now been proposed that withholding agents will also be required to file annual withholding statement. Such annual withholding statement is required to be filed in addition to annual statement under section 149 of the Ordinance. Apart from the annual statements, a reconciliation statement has now been required to be filed alongwith the filing of Annual tax return. The due dates for submission of annual withholding statement and reconciliation have been proposed as under:

S. No.	Financial Year	Due Date of filing of Annual WHT	Due Date of filing of Reconciliation
1	July 1 <sup>st</sup> to 30 <sup>th</sup> June 2022	July 30 <sup>th</sup> , 2022	December 31 <sup>st</sup> 2022
2	Jan 1 <sup>st</sup> to 31 <sup>st</sup> Dec 2021	January 30 <sup>th</sup> , 2022	September 30 <sup>th</sup> 2022

It seems relevant to mention here that proposed amendment has been made to streamline mechanism of monitoring of withholding of taxes.

### Distributors of FMCG

#### Clause 24 C & 24 D of Part II, 2<sup>nd</sup> Schedule

Currently withholding in respect of payments to distributors of Fast Moving Consumer Goods (FMCG) is made @ 2% in case of company and 2.5% in case of individual and AOPs. The deduction is considered as minimum tax liability. Withholding of tax @ 2% and 2.5 % as minimum tax liability was completely unrealistic in view of their thin margin on sales. This anomalous taxation gave rise to a serious concerns from all who were inflicted in the catena of supply chain. The same resulted in granting relief to Dealers, Sub-dealers, wholesalers and the Retailers of FMCG vide Finance Act 2019 and somehow the distributors which sits on the head of this supply chain was missed out, which has now been removed by including distributors as well.

The Finance Bill 2021 has finally proposed derived change by reducing the withholding rate from 2% and 2.5% to 0.25% in case of distributors. This is a certainly much awaited

amendment so as to any discriminatory taxation of distributors as compared to Dealers, Sub-dealers, wholesalers and the Retailers of FMCG. In addition to the distributor of FMCG, distributors of fertilizers, electronics excluding mobile phone, sugar, cement and edible oil have also been covered. Such concessionary rate is available to person whose names are appearing in Active Tax Payer List of both Income Tax and Sales Tax Act, 1990.

Apart from this, minimum tax rate of 0.25% applicable to the turnover of dealers and sub-dealers of sugar, cement and edible oils under section 113 has also been extended to wholesalers and retailers FMCG, fertilizers, electronics excluding imported mobile phone, sugar, cement and edible oil. The concessional rate of 0.25% is however conditional and is available only to persons whose names are appearing in Active Tax Payer List of both Income Tax and Sales Tax Act, 1990.

### **Collection of Tax on Sales to Distributors, Dealers and Wholesalers 236G & 236 H**

Through Finance Bill 2021 it has now been proposed to widen the scope of withholding tax collection under section 236 G and 236 H for specified industries. Following Ten (10) industries have been added to the list of already twelve (12) industries for the purpose;

1. Pharmaceuticals,
2. Poultry
3. Animal feed
4. Edible oil and ghee,
5. Battery,
6. Tyers,
7. Varnishes,
8. Chemicals,
9. Cosmetics,
10. IT equipment.

#### **Tax Rate for Non Filer**

##### *Section 236G*

In case of Section 236G rates will remain unchanged. However, it has been proposed to restrict the Non-Filers of fertilizers industry from availing concessionary rate, meaning thereby, the person whose name is not appearing in the ATL (Non-Filer) of Income tax and sales tax will be liable to withholding of tax @ 0.7%.

#### **Tax Rate for Retailers**

##### *Section 236H*

Currently, the advance tax collection at the time of sale to retailers of electronics and other specified sectors under section 236H has been prescribed at the rate of 1% and 0.5% respectively. The Bill now proposes a uniform rate of 0.5% for retailers of all sectors specified under section 236H of the Ordinance. The comparison between existing and proposed amendment in withholding of interest income is being tabulated as under;



Section	Head	Individuals / AOP		
		Tax Rates		
Section 236H	Advance tax on Sale to Retailers	Existing		Proposed
		Electronics	1%	
		Other	0.5%	

### Withdrawal of Withholding Tax Provisions

There have been proposed certain amendments in the current Finance Bill, which aim at reducing the administrative hassle of the withholding compliance for the taxpayers.

It has been proposed to delete the following withholding tax provisions;

S. No.	WHT /Advance Taxes	Nature of Payment
1	153B	Payment of royalty to resident persons
2	231A	Tax on cash withdrawal from bank
3	231AA	Tax on banking transactions
4	236P	Tax on banking transactions other than bank
5	236Y	Tax on persons remitting amounts abroad
6	236B	Collection of tax on purchase of air tickets (Domestic Air Travel)
7	236L	Tax on purchase of international tickets
8	236V	Tax on extraction of minerals
9	233A	Collection of Tax by Pakistan Stock Exchange
10	233AA	Tax by NCCPL on trading of shares
11	234A	Advance tax on gas bill of CNG station
12	236HA	Advance tax on sale of certain petroleum products

### Other Important Changes

#### Concealment of income

Section 2(13AA) and 111

The Bill proposes to insert a new clause defining the term "Concealment of income", which envisage that in addition to actions covered in the main Section 111, supersession of any item of receipt chargeable to tax or failure to disclose any income

and claiming any expenditure not actually incurred is to be treated as concealment warranting action under the aforesaid provision.

Further an explanation is also proposed to be added in the definition providing the much desired clarity that mere declaration of wrong particulars or disallowance of a deduction claim cannot be presumed as "concealment", rather guilt and deliberate action on part of the taxpayer is to be proved first.

It is worth noting that the taxation officers have habitually invoked provisions of Section 111 in cases of bonafide mistakes in declaration/statements by the taxpayers in the past which ultimately landed in the superior courts whereby it has been categorically held that the act of "concealment of income" is essentially criminal in nature and accordingly like any criminal proceedings the onus lies with the department to prove the allegation beyond any shadow of doubt. Proposed explanation is in line with the judgments passed by superior forums on the issue and is clarificatory in nature, therefore, should be applied retrospectively.

### **Recovery of Foreign Tax Liability**

#### *Section 146C*

Recognizing that governments lose substantial corporate tax revenue because of aggressive international tax planning that has the effect of artificially shifting profits to locations where they are subject to non-taxation or reduced taxation, the BEPS project of OECD introduced a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") in order to tackle the said abuse. Pakistan became a signatory to the MLI on June 07, 2017 and submitted a list of reservation and notification and ratified the MLI by depositing an instrument of ratification on December 18, 2020. Thereafter, S.R.O 405 of 2021 was issued on April 01, 2021 to enforce the provisions of the MLI.

The bill now proposes to introduce a new section to assist in the recovery and collection of tax of an amount assessed of a person in a foreign jurisdiction from the assets available in Pakistan on request from a foreign jurisdiction under the provisions of MLI.

The underlying objective of this amendment is to recover the amount of tax assessed in one jurisdiction from the assets available in another jurisdiction.

We understand that this amendment would have serious consequences specially for non-resident person as any amount of tax assessed in Pakistan of a non-resident person could be recovered from his assets available in his home country provided that reciprocal arrangement is available with the home country by virtue of signatory to MLI.

### **Separate Notice Under Section 111**

Furthermore, the bill also proposes to insert explanation with regards to requirement for issuance of separate notice under Section 111 clarifying that no separate notice is required to be issued if an explanation regarding nature and sources of amount

credited or the investment of money, valuable article, or the funds from which expenditure was made has already been confronted through a separate notice under Section 122 (9) of the Ordinance. This issue has also been the subject of litigation in number of cases before the superior forums whereby conflicting judgments has been passed by different courts. Now, the controversy is being put to rest by introducing this amendment.

### **Return of Income**

#### *Section 114*

Through this proposal the Bill seeks to empower Commissioner IR for enforcing filing of return of income in cases where the taxpayer has foreign income or asset without any time limit on the basis of reasons to be recorded in writing.

It is note worthy that under normal circumstances Commissioner IR can issue notice for filing of return of income in respect of one or more of the last ten completed tax years to any person who has not filed return of income for any tax year in preceding five years.

### **Taxpayer's Profile**

#### *Section 114A*

This section was introduced vide Finance Act, 2020 which required the taxpayers to update taxpayers' profiles by December 31, 2020 which was later extended to June 30, 2021. The section created additional burden on the taxpayers as the information being required was already available with the FBR through a prescribed form (Form – 181), whereas the non-compliance of which would lead to removal of taxpayers from Active Taxpayers' List and imposition of default surcharge. Keeping in view the hardships faced by the taxpayers, the Government seeks to abolish the section with effect from July 1, 2021.

However, we understand that as the section remains applicable till June 30, 2021, the Board will issue a notification nullifying the section's effect since the date of the said notification.

### **Alternative Dispute Resolution**

#### *Section 134A*

Vide this amendment, the bill seeks to further strengthen the dispute resolution mechanism by extending the scope of mechanism to cases where criminal proceedings have already been initiated as well as cases involving mixed question of law as well as facts.

For practical effectiveness and resolution of dispute through ADRC proposed changes include an insertion of a provision obligating the applicant to file an initial proposition for resolution of dispute and not to retract from it. Further, bill also seeks to reduce various timelines to ensure disposal of the issue in minimum time.

It has also been proposed that no recovery proceedings can be initiated if a case is sub-judice before ADRC, till the decision or dissolution of said committee, whichever is earlier and in case, if the committee would not be able to decide the case within prescribed time frame, it is also proposed that a new committee will be formed by Board by an order in writing.

### **Electronic Issuance of Refunds by the Board**

#### *Section 170A*

A new Section is proposed to be inserted empowering the Board to electronically process and issue refunds on the basis of returns filed without any physical interaction with the taxpayer. The amount of refund sanctioned under the proposed Section will be directly transferred in the notified bank account of the taxpayer.

The proposal is aimed at facilitating the complaint taxpayers and curbing the malpractices in issuing refunds by the tax authorities.

### **Issuance of Withholding Exemption Certificate to Companies**

#### *Section 153 and 159*

Through Finance Act, 2020 a facility was provided to listed companies by adding a proviso where under, the Commissioner IR was obligated to compulsorily dispose of the application filed for issuance of certificate for exemption from withholding of tax under Section 153 within 15 days.

Now, it has been proposed that such facilitation be extended to all corporate taxpayers.

## SALES TAX ACT 1990

### **Commissioner (Appeals)**

#### *Section 2(4AA)*

The Finance Bill proposes to insert a new definition of “Commissioner (Appeals)” by introducing new clause 4AA at Section 2 of the Sales Tax Act 1990 [ST Act].

Earlier, the definition of Chief Commissioner was inserted through Finance Act 2010 by inserting clause 4A in Section 2 of the ST Act. However, the definition of “Commissioner (Appeals)” was still missing. Through this Bill the insertion of clause 4AA of Section 2 of the ST Act has been proposed to cover the legal hitches and also to harmonize with Income Tax Ordinance 2001.

### **Cottage Industry**

#### *Section 2(5AB)*

The Bill proposes to enhance turnover limit for cottage industry from 3 million to 10 million by substituting sub-clause (d) of clause (5AB) of Section 2 of ST Act.

It is pertinent to mention that the proposed limit of turnover @ 10 million was in the statute before substitution of aforementioned clause 5AB vide Finance Act 2019. In this way, after a gap of around 3 years, the earlier threshold has been restored.

### **Online Market Place**

#### *Section 2(18A) & 3(3)(c)*

The Bill proposes to bring the largely untaxed online retailing of goods under the ambit of sales tax by deeming the “online market place” as supplier in respect of third-party sales through such platform.

The term “online market place” has been defined to include e-commerce platform, portal or similar means which facilitate for sales of goods in the following manner;

- ✓ by controlling the terms and conditions of the sale;
- ✓ authorizing the charge to the customers in respect of the payment for the supply;  
or
- ✓ ordering or delivering the goods.”

A new Clause © has been proposed at Section 3(3) of the ST Act whereby liability to pay sales tax has been placed on online market place with respect to supply of goods through it whether owned by itself or third party.

We understand this amendment is being introduced in line with international practices and observing considerable growth in this sector. The proposed amendment is significant as it would address tax issues of a large number of growing startups engaged in e-commerce. However, we are the view that corresponding amendment in Sections 2(33), 2(41) and 3 of ST Act are also required before online market place may be treated as deemed supplier. Besides the accounting treatment of subject

transactions especially in the back drop of a tax deeming provision will have to be taken into consideration by such platforms.

In addition to above, we expect that provincial revenue authorities may also move ahead to propose identical changes in their respective laws for services rendered via online market places.

### **Tax Fraud**

#### *Section 2(37)*

The Finance Bills propose to make addition word 'of' at definition enabling to have better understanding of such phrase. Such rectification, being clarificatory in nature, has no revenue impact.

### **Tier -1 Retailer**

#### *Section 2(43A)*

The Bill proposes a relief to the retailers of furniture by enhancing area limit of shop / showroom /outlet from 1000 to 2000 sq feet. Such retailers are proposed to categorized as "Tier-1 retailer" under Section 2(43A)I of the ST Act.

Further, two new sub-clauses (f) and (g) have been inserted in clause 43A whereby online market place and a retailer who accepts debit or credit card from banking companies or any other digital payment service provider authorized by State Bank of Pakistan will also be categorized as "Tier-1 retailer".

### **Time of Supply**

#### *Section 2(44)*

The Bill proposed to exclude advance payments from the purview of the sales tax. Hence, Section 2(44) of the ST Act has been proposed to be amended by omitting the phrase "*or the time when any payment is received by the supplier in respect of that supply, whichever is earlier*".

It is pertinent to mention that the aforesaid clause has witnessed many ups and downs in last few years. The said clause was in field prior to promulgation of Finance Act, 2007. It was omitted thereafter only to be restored again through Finance Act 2013.

We understand omission of said clause is a positive change and would lead to removal of various reporting and reconciliation hassles for taxpayers besides undoing undue litigation.

### **Adjustable Input Tax**

#### *Section 8B(1)*

By virtue of Finance Act 2008, the legislature enacted Section 8B with an objective to crave / collect certain tax amount from taxpayers every month, which would ultimately be available to registered person by way of tax adjustment in subsequent tax period(s).

Earlier, automobile manufacturing companies which were listed on Pakistan Stock Exchange till December, 2020 along with other sectors were included in Table-2 of SRO. 1190(I)/2019 dated 02<sup>nd</sup> October 2019 whereby they are allowed to adjust 95% of output tax against their adjustable input tax. Now, the Finance Bill proposes exclusion of “Public Limited Companies as listed with Pakistan Stock Exchange” from the ambit of Section 8B which means such companies will also be eligible to adjust 100% of their output tax against their adjustable input tax.

We understand that proposed amendment is encouraging and would alleviate fiscal space of listed companies.

### **Assessment of Tax and Recovery of Tax not Levied or Short-Levied**

#### **Section 11(5)**

Under sales tax, the time limit for issuance of show cause notice is five years which is reckoned from the relevant date which is due date for payment of tax. Since in sales tax law, every month is a tax period, therefore Section 11(5) used to operate on monthly basis. On the other hand, income tax assessment is framed and finalized on a financial year basis. Thus, to harmonize sales tax laws with that of income tax, the time limitation for assessment of sales tax has also been brought in harmony with that of income tax. Consequently, an amendment has been proposed through Finance Bill whereby time period for issuance of show cause notice has been enhanced till the end of the financial year in which the relevant date falls.

We understand with the proposed amendment in place, the time to issue show cause notice may, in majority of cases, would extend beyond five years. A debate may also surface to discuss whether such an amendment will have retrospective effect or otherwise. It is pertinent to point out that identical controversy in income tax law was decided by apex court holding that any amendment extending the time limitation for assessment of tax is to be applied prospectively.

### **Common Identifier Number**

#### **Section 21B**

The Bill has introduced new Section 21B whereby, from July 2021 and onward, CNIC of the individual & AOP will be Common Identifier Number [CIN] in addition to Sales Tax Registration Number [STRN].

We understand that this section has been introduced to bring the maximum number of the persons / businesses in the tax net.

### **Sales Tax Records**

#### **Section 22**

The Bill proposes to make addition of word “cash book” in list of records which need to be maintained by the registered person. Further, the Bill also seeks to require registered person to maintain electronic version of all records mentioned in Section 22(1). We understand this insertion is being made to facilitate FBR officials to easily

scrutinize the taxpayer's data for the purpose of e-audit in line with Section 25 of ST Act.

### **Transaction Between Associates**

#### *Section 25AA*

The concept of transfer pricing is not vibrant under ST Act and allied rules. Section 2(46)(a)(ii) read with Section 25AA speaks about price determination for associate person based on fair-market value.

By virtue of proposed insertion of sub-section (2) at Section 25AA, it seems that the legislature, in line with relevant provisions of Income Tax Ordinance 2001, aims to check / monitor transaction between related parties to unearth suppression element of tax evasion or avoidance.

In this regard, FBR will have power to prescribe rules for exercising abovesaid powers of the Commissioners Inland Revenue through notification in official gazette.

### **Extension in Time for Furnishing Returns**

#### *Section 26AB*

At present, Section 74 read with SRO 374(I)/2009 dated 21 May 2009 empowers the Commissioner to condone / extend the time limit specified in any provision of the ST Act and rules made thereunder including time period for filing of sales tax return as prescribed in Rule 18(9) of Sales Tax Rules, 2006 read with Section 26 of ST Act.

By virtue of proposed insertion of Section 26AB, an exclusive provision has been proposed to allow registered persons seeking extension in time for filing of sales tax return by providing reasons in writing to concerned Commissioner IR for a period not exceeding fifteen days upon his satisfaction which may further be extended after justification of exceptional circumstances.

In case such an extension, as desired by registered person, is not granted by concerned Commissioner, the Chief Commissioner is also empowered to grant extension or further extension for a period not exceeding fifteen days except in case of exceptional circumstances.

It is pertinent to mention that such grant of extension in time for filing of sales tax return will not absolve the registered person from liability to pay due sales tax liability as payable on monthly basis. We understand this is a beneficial amendment and has been aligned with income tax laws which carry identical provision under the Income Tax Ordinance 2001.

### **Provision Relating to Goods Supplied from Tax Exempt Areas**

#### *Section 40D*

Section 40D defines the tax-exempt areas such as Azad Jamu & Kashmir, Gilgit-Baltistan and Tribal Areas as defined in Article 246 of Constitution of Pakistan. By virtue



of amendment at Section 40D, the legislature has proposed to include Border Sustenance Markets in the category of such exempt areas.

It is envisaged that specified food and other consumable goods when supplied within the limits of the Border Sustenance Markets, established in cooperation with Iran and Afghanistan, will completely be exempted from sales tax. However, such goods when brought outside the limits of such markets will entail payment of sales tax on the value assessed on the goods declaration @ import stage or the fair market value.

Moreover, in case of import, such items will be allowed clearance by the Customs authorities subject to furnishing of bank guarantee equal to the amount of sales tax involved and the same will be released after presentation of the consumption certificate issued by the Commissioner Inland Revenue concerned.

According to the budget proposal, the exemption will only be available to a person upon furnishing proof of having a functional business premises located within the limits of the Border Sustenance Markets.

### **Licensing of Brand Name**

*Section 40E*

The Bill has introducing the concept of licensing for each brand or stock keeping unit [SKU] by the manufacturers of specified goods in such manner as may be prescribed by the Board.

Such specified goods, if found sold without obtaining a license, would be construed as forged goods and would be liable to be completely incinerated in the prescribed manner. In addition to aforesaid punitive steps, the Board may also pursue other penal action as prescribed under the ST Act.

We anticipate that the expected notification will be issued by the Board which will clarify in respect of such specified goods and prescribe procedure for licensing of brands.

### **Recovery of Arrears of Tax**

*Section 48(3)*

The Finance Bill seeks to insert new sub-section (3) at Section 48 of ST Act. The proposed amendment suggests providing assistance to foreign jurisdiction for collection and recovery of taxes by Board against a person whose taxes remain unpaid and any tax demand would be established in their jurisdiction. Such proposed facilitation for payment of aforesaid unpaid tax would be subject to tax treaty, bilateral or a multilateral convention and inter government agreements or similar agreement. Similar provision has also been proposed by inserting new sub-section (1A) at Section 56 of ST Act.

Through insertion of new section, the tax payable by any person, whose assets / property are located in Pakistan but who has an tax obligation towards any foreign

destination, can be recovered from such by tax machinery as per bilateral or multilateral convention.

### **Power to Make Rules**

#### *Section 50*

The Bill seeks to streamline and modernize the procedure for publishing the rules made under the ST Act by placing at the official website of FBR.

At present, the Board is responsible to collect, arrange and publish rules made under the ST Act and to make available to the public at reasonable price.

### **Agreement for Exchange of Information or Assistance in Recovery of Taxes**

#### *Section 56A*

The Finance Bill proposes to change description of aforesaid section by inclusion of words 'assistance in recovery of taxes'. Further, the Bill proposes to insert sub-section (1A) in Section 56A of the ST Act that empowers the Board to share data, information including real time videos and images with the ministries or divisions of Federal or Provincial Government subject to certain limitations and conditions as may be prescribed by the Board.

Said provision has already been introduced in the statute through Tax Laws (Amendment) Ordinance, 2021 and is now being proposed to be part of Finance Bill.

We understand that aforesaid amendment will lead to legitimacy in exchange of information viz a viz provincial and federal tax authorities for the purpose of broadening of tax net or otherwise which are being undertaken as routine measure.

Moreover, the bill also seeks to insert sub-section 3 in section 56A of the ST Act which empowers the Board to enter into bilateral or multilateral convention or agreements and to provide assistance in recovery of taxes on request from foreign countries on reciprocal basis.

### **Mystery Shopping**

#### *Section 3(9A) & 56C*

The scheme of 'cash back' to customers withdrawn. Alternatively, a new concept of prize scheme has been introduced to provide for randomize "mystery shopping".

By virtue of law, FBR can offer prize schemes to encourage general public to make purchase from registered suppliers in order to promote tax culture. In order to secure above schemes from being misused, the Finance Bill seeks to introduce concept of "mystery shopping". Globally, concept of mystery shopping is much old and is considered as unique tool to monitor implementation of prescribed procedure or mechanism.

In this respect, the bill seeks to insert sub-section 2 in Section 56C that authorizes the Board to prescribe procedure for mystery shopping to evaluate and monitor invoices issued by Tier-1 retailers integrated with FBR.

### **Delayed Refund**

#### *Section 67*

Through this insertion, the Bill seeks to compensate the claimants whose refunds are to be sanctioned / ordered under Section 66 of the ST Act with an additional amount equivalent to KIBOR per annum, if such refund is not received to the taxpayer within 45 days of date of such an order. Prior to the proposed amendment, the compensation was only offered on refund claims filed under Section 10 of the ST Act.

### **Certain Transaction Not Admissible**

#### *Section 73*

This insertion seeks to facilitate the taxpayer from making compliance of Section 73 of the ST Act in case of adjustments of contra payments. It has been proposed that both parties (buyer and seller) can offset their payments subject to condition that sales tax has duly been charged and paid by both parties and approval of the Commissioner has been sought prior to making such adjustment(s).

### **Taxation of Sugar**

#### *Third Schedule*

Sugar has been made liable to tax under the 3<sup>rd</sup> Schedule mechanism. However, sugar supplied as an industrial raw material to pharmaceutical, beverage and confectionery industries will remain under the normal tax regime.

For past few decades, the Federal Government had made various efforts to bring players / suppliers of sugar in supply chain into the tax net. Sale of sugar has been subject to both sales tax and federal excise duty under respective laws.

Vide Finance Bill, the legislature proposes to levy sales tax on the manufacturers of sugar on retail price irrespective of grade and various types of description pertaining to sugar. It needs to mention that the above proposition will lead to collection of sales tax at upfront stage on retail price at the time of supply by manufacturer or importer. However, challenge will mount up for fixation of retail price plus sales tax and printing / embossing thereof on each article, package, etc. which is compulsorily required under the law. Although such measure seems to generate revenue impact, yet the door of tax litigation will be opened consequent to implementation of such proposal.

### **Fifth Schedule**

#### *Addition of Zero Rating*

Local supplies of raw materials, components, parts and plant and machinery to registered exporters authorized under Export Facilitation Scheme, 2021 notified by the Board is proposed to be zero rated.

### Fifth Schedule

#### Withdrawal of Zero Rating

- Supply, repair or maintenance of any ship / aircraft and spare parts thereof
- Supply of equipment and machinery for pilot age, salvage or towage services.
- Supply of equipment and machinery for air navigation services.
- Supply of equipment and machinery for other services provided for ships or aircraft
- Supplies of such locally manufactured plant and machinery to petroleum and gas sector, Exploration and Production companies, their contractors and sub-contractors
- Raw materials, components, sub-components and parts, if imported or purchased locally for use in the manufacturing of such plants and machinery as is chargeable to sales tax at the rate of 0%
- Petroleum Crude Oil

### Sixth Schedule

#### Withdrawal of Sales Tax Exemption

The bill proposed to withdraw exemption on certain items and seeks to bring such goods under normal sales tax regime.

Table 1 - Imports or Supplies	Table 2 – Local Supplies
Edible oils and vegetable ghee, including cooking oil	Raw and pickled hides and skins
Ice and waters	Bricks
Table salt including iodized salt	LED or SMD lights and bulbs
Glass bangles	Cottonseed oil
Energy saver lamps	
Bicycles	
Raw and pickled hides and skins, wet blue hides / skins, finished leather, etc.	
Import and supply of ships, which was earlier granted till June 2030.	
Import of Halal edible offal of bovine animals	
Components or sub-components of energy saver lamps	
Plant and machinery, imported for setting up fruit processing in Gilgit Baltistan, malakand division and Baluchistan.	
Aircraft	
Maintenance kits, spare parts, aviation simulators for use in aircrafts, etc.	
Steel billets, ingots, ship plates, bars, etc.	

### **Sixth Schedule (Table-1)**

*Addition of New Exemption - Imports or Supplies*

- Import of CKD of specified electric vehicles
- Goods temporarily imported by International Athletes
- Import of auto disable Syringes and certain raw material thereof
- Import of plant, machinery and raw material by IT Special Technology Zone, zone developers and zone enterprises
- Import of raw materials, components, parts and plant and machinery by registered persons under Export Facilitation Scheme, 2021

### **Sixth Schedule (Table-2)**

*Withdrawal of exemption from import*

Following items are proposed to be transposed from Table-1 to Table-2 of Sixth Schedule to the ST Act. Meaning thereby, the tax on such goods would be applicable at standard rate at the time of import, while proposed to be exempt if supplied locally.

- Eggs
- Cereals and products of milling industry
- Sugar beet
- Fruit juices\*
- Milk and cream\*
- Flavored milk\*
- Yogurt\*
- Whey\*
- Butter\*
- Desi ghee\*
- Cheese\*
- Processed cheese not grated or powdered\*
- Sausages and similar products of poultry meat or meat offal\*
- Preparations suitable for Infants
- Fat Filled Milk\*
- Cream\*

*\* Such products are proposed to be taxable, if sold in retail packing under a brand name*

## Sixth Schedule

### Addition of Exemptions

The bill proposed to provide exemption on following items under Table 2 and Table 4 of the Sixth Schedule to the ST Act.

Serial No.	Description	Table to Sixth Schedule
26	Supply of locally produced silos till 30.06.2026	Table 2
1 to 114	Supply of specified goods within the limits of the Border Sustenance Markets, established in cooperation with Iran and Afghanistan, subject to certain conditions.	Table 4

## Eight Schedule

### Omission from Table-1

The bill proposed to omit certain goods from table 1 of the Eight Schedule to the ST Act, which brought such goods in the ambit of standard rate of sales tax under Section 3(1)(a) of the ST Act, listed as under:

- Soyabean meal and seed
- Raw cotton and ginned cotton
- Plant and machinery not manufactured locally
- Ingredients of poultry and cattle feed
- Waste paper
- Plant, machinery and equipment used in production of bio-diesel
- Harvesting, threshing and storage equipment
- Machinery for Poultry sector
- LNG/RLNG
- Silver and Gold, in unworked condition
- Articles of jewelry, or parts thereof

Apart from above, it is also proposed to omit following goods from Table 1 to Eight Schedule to the ST Act, if sold in retail packing under brand name.

- Fat filled milk
- Flavored milk
- Yogurt
- Cheese
- Butter
- Cream
- Milk and cream

## Eight Schedule

### Addition in Table 1

In order to promote the electric vehicle industry in Pakistan, it is proposed to introduce a reduce rate of sales tax on electric and hybrid vehicles by addition of Serial No. 71

to 73 in Table 1 of the Eight Schedule to the ST Act, subject to the conditions and restriction provided therein:

- Locally manufactured or assembled electric vehicles are proposed to tax at 1% till June 2026
- Locally manufactured or assembled motorcars of cylinder capacity up to 850cc are proposed to be tax at 12.5%
- Import and local supply of Hybrid Electric Vehicles are proposed to be tax at 8.5% and 12.75%.

### **Ninth Schedule**

#### *Exemption from Sales Tax*

The bill proposed to withdraw the applicability of sales tax levied on SIM cards under Ninth Schedule to the ST Act. We understand that this exemption is provided in order to avoid the future litigation and in the light of judgment passed by Lahore High Court, in case of “Pak Telecom Mobile Limited Versus Federation of Pakistan”, wherein it was held that the provision of SIM cards to the customer do not construe as “supply” under the provisions of ST Act.

### **Eleventh Schedule**

#### *Sales Tax Withholding in case of reclaimed lead or used lead batteries*

It has been proposed that registered person manufacturing lead batteries is required to withhold whole amount of applicable sales tax in case of supply of reclaimed lead or used lead batteries.

### **Twelfth Schedule**

#### *Exemption from the levy of Value Addition Tax*

Similar to the concessionary measure provided to electric and hybrid vehicles, the bill proposed to exempt the levy of value addition tax on import of following items/goods subject to certain conditions.

- Electric vehicles (4 wheelers), either in CKD kits and in CBU condition, till June 2026
- Electric vehicles (2-3 wheelers and heavy commercial vehicles), CBU condition, till June 2025
- Motor cars of cylinder capacity up to 850cc

## **FEDERAL EXCISE ACT 2005**

### **Filing of Return & Payment of Duty**

#### *Section 4(4)*

The Finance Bill proposes to insert proviso to sub-section (4) of Section 4 at Federal Excise Act, 2005 [FE Act] which allows revision of return without approval from Commissioner provided such revised return is made within 60 days of filing of the original return by registered person. No approval is also desired from Commissioner in case either enhanced payment of federal excise duty in national treasury or lesser amount of sales tax refund is filed through such revision of return.

The aforesaid amendment has been prescribed in line with identical provisions as already exist under ST Act and Income Tax Ordinance.

### **Recovery of Unpaid Duty or Erroneously Refunded Duty, etc.**

#### *Section 14(4)*

Through Finance Bill, identical provision is also introduced under ST Act. For sake of convenience, the desired comments may be consulted therefrom.

### **Licensing of Brand Name**

#### *Section 45AA*

Through Finance Bill, identical provision is also introduced under ST Act. For sake of convenience, the desired comments may be consulted therefrom.

### **Agreement for Exchange of Information or Assistance in Recovery of Duties**

#### *Section 47A*

Amendments identical to those made in Section 56A of ST Act 1990 have been replicated in Federal Excise Act, 2005.

### **First Schedule – Table I**

#### *Withdrawal of Federal Excise Duty*

- ✓ Edible oils excluding deoxidized soybean
- ✓ Vegetable ghee and cooking oil
- ✓ Fruit juices, syrups and squashes, etc.

*Exemption of sales tax on edible oil, vegetable ghee and cooking oil has been proposed to do away with through amendment in Sixth Schedule to ST Act. Likewise, the aforesaid goods would not be exposed to federal excise duty w.e.f. 01 July 2021. Instead, sales tax @17% will be attracted on such items.*



**First Schedule - Table I**
*Imposition of Federal Excise Duty*

Serial No.	Proposed Entry	Tariff Heading	Rate of Duty
8c	Tobacco mixture in an electrically heated tobacco product by whatever name called, intended for consumption by using a tobacco heating system without combustion	2403.9990	Rs. 5,200

**First Schedule – Table I**
*Exemption of Federal Excise Duty upto 30 June 2026*

- Import and local manufacturing of electric vehicles (4 wheelers) having different cylinder capacity
- Local manufacturing of electric vehicles having cylinder capacity upto 850cc

**First Schedule – Table II**
*Change in Rate of FED*

Serial No.	Description	Existing Rate	Proposed Rate
6	Telecommunication services	17%	16%

**First Schedule - Table II**
*Change in Service Description*

Serial No.	Existing Description of Service	Proposed Description of Service	Remarks
8	Services provided or rendered by banking companies	Services provided or rendered by banking companies excluding Merchant Discount Rate for accepting digital payment.	No FED will be attracted on fee pertaining to processing debit / credit card fee

**First Schedule – Table II**
*Change in Rate of FED*

Serial No.	Description	Rate of Duty
6A	Telecommunication services: (a) Mobile phone call, if call duration exceeds three minutes;	One rupee per call in addition to the rates of duty specified under Serial No. 6
	(b) Internet services;	Five rupees per GB in addition to the rates of duty specified under Serial No. 6
	(c) SMS services	Ten paise per sms in addition to the rates of duty specified under Serial No. 6

**Second Schedule**
*Deletion of Goods from Schedule*

- Edible oil excluding epoxidized soyabean oil falling under heading 15.18
- Vegetable ghee and cooking oil
- Steel Billets, ingots, ship plates, bars and other long re-rolled products

Since no FED will be attracted on aforesaid goods, it was necessary to delete aforesaid goods from said Schedule.

**Third Schedule – Table I**
*Exemption of FED on Goods*

Serial No.	Description of Goods
24	The following goods Border Sustenance Markets, established in cooperation with Iran and Afghanistan:
	(i) Animal Fats and Oil and their fractions
	(ii) Vegetable Fats and their fractions
	(iii) Vegetable Oils and their fractions
25	Import and supply of raw materials, components, parts and plant and machinery by registered persons authorized under Export Facilitation Scheme, 2021 notified by the Board with such conditions, limitations and restrictions.

## CUSTOMS ACT, 1969

### Boosting of Local Manufacturing Industries

The focal of the changes in budget have been proposed to incentivize the local manufacturers on import of their industrial inputs by granting exemption or reduction in Custom Duties [CD], Additional Custom Duties [ACD] and Regulatory Duties [RD]. This will increase the local consumption, boost the economy, circulation of money locally and growth in trade and investment. Moreover, reduced duties will boost the product quality standards by investing more in better manufacturing as earlier hefty duties had already burdened the consumers.

Now following sectors are being incentivized on import of raw materials:

- ✓ Pharmaceutical sector
- ✓ Electronics Manufacturers
- ✓ Textile Industry
- ✓ Chemical and Artificial Leather Industry
- ✓ Point of sale machines sellers
- ✓ Poultry industry
- ✓ Tourism industry
- ✓ Footwear Industry
- ✓ Dairy Sector
- ✓ Furniture, coating, boiler manufacturing industry, bobbins and cops manufacturing industry
- ✓ Cables / optical fiber manufacturers
- ✓ Paint Industry
- ✓ Manufacturer of aseptic plastic packaging
- ✓ Food processing industry
- ✓ Printing and graphics art industry
- ✓ Flat rolled products of HRC and stainless steel

### Relief Measures for Exporters

A uniform export promotion scheme is being introduced by the Federal Board of Revenue [FBR]. Through this scheme, FBR is intending to withdraw following facilities currently available for the eligible persons on conditional basis:

- ✓ Duty and Tax Remission for exports
- ✓ Manufacturing bonds
- ✓ Export Oriented Unit and Small and Medium Enterprises Rules, 2008
- ✓ Temporary Importation under SRO 492(1)/2009

Under aforesaid unified scheme, a registered manufacturer-cum-exporter, indirect exporter, commercial exporter would be entitled to import goods without payment of customs duty, sales tax, federal excise duty and withholding tax as per prescribed

manners. Further, privileged persons will also be eligible for local procurement of input goods without payment of applicable tax and duties. It is worthy to highlight that exporters who are currently enrolled in aforementioned existing scheme shall be phased out gradually in next two years.

### **Legislative Changes**

The bill proposes to seek following changes in respective provisions of the Act which includes introduction of new concepts, empowerment to custom officers, and enforcement and relief measures for taxpayers:

- ✓ Establishment of Border Sustenance Markets to mitigate the problems faced by the people residing in border areas due to fencing and counter-smuggling measures.
- ✓ Introduction of a concept of Common bonded warehousing to encourage Small and Medium Enterprises.
- ✓ Inclusion of master bill of lading and certificate of origin in the existing definition of document to discourage origin fraud.
- ✓ Inclusion of the retailing in definition of smuggling to discourage retailers from selling smuggled goods.
- ✓ Making shipping lines responsible for re-export of banned items imported in commercial quantities.
- ✓ Discouraging smuggling by denying release of vehicles used repeatedly for smuggling against redemption fine.
- ✓ Addition of other law enforcement agencies for the purpose of reward and increasing their motivation.
- ✓ Empowering Collector of customs to determine customs value in order to facilitating trade.
- ✓ Empowering Director General Valuation to take appropriate decision on appeal and capping the time limit for such proceedings and facilitation of trade by avoiding time consuming in unnecessary litigations.
- ✓ Allowing the Collector to extend warehousing period for six months.
- ✓ Enable customs authorities to issue correction / corrigendum certificate in case of genuine / obvious error and facilitate trade.
- ✓ Amendment in reducing the time limit allowed for decision of the cases wherein the impugned goods are lying at sea ports, airports or dry-ports and thus decreasing the cost of doing business.
- ✓ Provision for the classification committee to avoid unnecessary litigation on account of classification disputes and consequently decreasing the cost of doing business.
- ✓ Affording opportunity of being heard to the registered users of WeBOC in accordance with the canons of natural justice.
- ✓ Removal of fine in case of delay in filing of goods declaration and thereby providing ease of doing business.

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