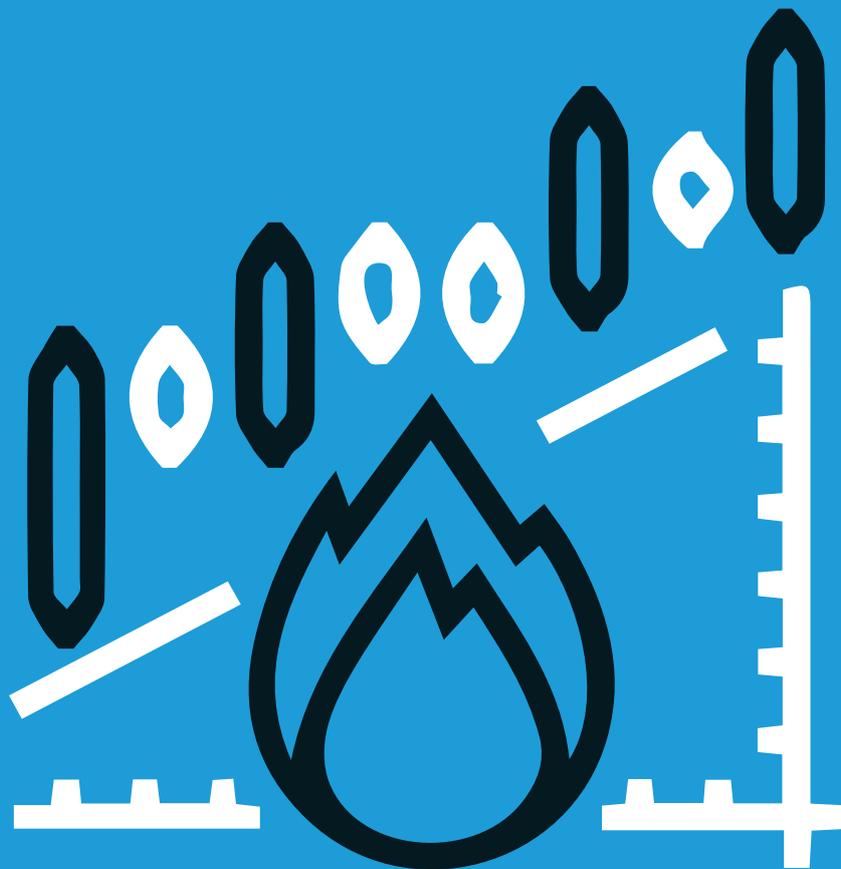


# Federal Budget

2022 - 2023

## TAX MEMORANDUM *(AMENDMENTS IN FINANCE ACT)*



**MOORE** Shekha Mufti

Moore Shekha Mufti is an independent member firm of Moore Global International, members in principal cities throughout the world.



## 01 | Preface

The Finance Bill was presented in National Assembly on 10 June 2022. The firm issued Tax Memorandum summarizing significant proposals for changes in tax laws made through such Bill. However, during the process of legislation significant alteration /modifications have been made in Bill. This document contains brief comments on all such changes through the Finance Act, 2022.

All changes through the Finance Act 2022 are effective from 01 July 2022.

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)



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# Income Tax Ordinance, 2001

## Super Tax on big earners (Section 4C)

The Finance Bill proposed to impose a 2% tax for poverty alleviation on every high earner, whether Individual, AOP or a Company, whose income exceeds Rs.300 million in tax year 2022 and onwards. Through Finance Act, the Government has changed the nomenclature of the Section from 'Tax for Poverty alleviation' to 'Super Tax' with progressive rate of taxation based on slabs starting from Rs.150 million and above as tabulated below.

Sr.	Income under Section 4C	Rate of Tax
1	Where income does not exceed Rs.150 million	0% of the Income
2	Where income exceeds Rs.150 million but does not exceed Rs.200 million	1% of the Income
3	Where income exceeds Rs.200 million but does not exceed Rs.250 million	2% of the Income
4	Where income exceeds Rs.250 million but does not exceed Rs.300 million	3% of the income
5	Where income exceeds Rs.300 million	4% of the income

It has further been provided in the Finance Act 2022, that the above 4% will increase to 10% in case of the following fifteen (15) industries:

1. Airlines
2. Automobile
3. Beverages
4. Cement
5. Chemicals

6. Cigarette and Tobacco
7. Fertilizer
8. Iron and Steel
9. LNG Terminal
10. Oil Marketing
11. Oil Refining
12. Petroleum & Gas Exploration and Production
13. Pharmaceuticals
14. Sugar
15. Textiles

We understand that the wisdom behind the change of nomenclature of the Section from 'Tax for Poverty alleviation' to simple 'Super Tax on High Earners' remains to avoid any potential litigation as has earlier been suffered when the old super tax was imposed with the nomenclature "Rehabilitation of Displaced Person".

Needless to mention that no matter what the nomenclature the legislature prefers to utilize, the maths of this 4% or 10% stacks up for any company. We understand that the true spirit of imposition of this super tax on high earner would be achieved if it was imposed on high earner individuals only. As it is only these individuals earner who do not have to pay out dividend to any shareholder and their high earnings, therefore, in true sense remains their high earnings and constitute their absolute disposable income.

Lastly, keeping in view that the old super tax under section 4B is already payable by banks for the current Tax Year 2022, the new super tax under newly inserted Section 4C has been made applicable on Banks from Tax Year 2023 and onwards at the same rate of 10% where the income of a Bank exceeds Rs.300 million.

### Tax on Deemed Income (Section 7E)

Vide Finance Bill, 2022, a new concept of taxation of deemed rental income was proposed to be introduced whereby every resident individual, AOP or a Company would be deemed to have earned rental income on his idle property regardless of the fact whether any rent is actually received or not. The amount of deemed rental income would be calculated as 5% of Fair Market value of the Property. Such deemed rental income was proposed to be taxed at a flat rate of 20% under final tax regime from tax year 2022 and onwards

Right from the proposed introduction of this new deeming provision, opinion of experts surfaced at various professional forums that this taxation measure is factually a “tax on immovable property” in pith and substance and, therefore, can be challenged on the ground that power to levy such tax is vested with the provincial government under the constitution of Pakistan, not with the Federal Government.

It appears that in order to mitigate such potential risk of litigation the proposed provision has been modified in the Finance

Act, 2022, whereby term of “deemed income” and “capital asset” have been used instead of “deemed rent” and “immovable property” while keeping the earlier essence of the provision intact i.e. the deemed income will be calculated at 5% of the fair market value of Capital assets rather than immovable property.

The above deemed income will be subject to tax at a flat rate of 20% under final tax regime from tax year 2022 and onwards.

The definition of Capital Asset has also been introduced in this section which covers property of any kind held by a person whether or not connected with business but it will not include any (i) stock-in-trade, (ii) raw materials for the purpose of business, (iii) share, (iv) stock or securities, (v) any property against which depreciation/ amortization deduction is allowed under Sections 22 and 24 of the Ordinance or (vi) any movable assets. This clearly implies that the only major capital asset covered under the section remains the same “immovable property”.

Almost every kind and category of immovable property is intended to be covered whether residential, commercial or industrial or held for investment purpose or capital appreciation. This may include Hotel/Guest house, Farmhouse, Factory premises, Land, House, Shop, Warehouse, Office, Empty or vacant shops of malls, empty shops at food court etc.

The definition of Farmhouse is also added which means a house constructed on a total minimum area of 2000 square yards

with a minimum covered area of 5000 square feet used as a single dwelling unit or without an annex. Where there are more than one dwelling units in a compound and the average area of the compound is more than 2000 square yards for a dwelling unit, each unit shall be treated as a separate farmhouse.

Following properties have been excluded from the ambit of this section:

1. One capital asset owned by resident person
2. Self-owned business premises from where the business is carried out by the person appearing in Active Taxpayer List
3. Self-owned agriculture land other than Farmhouse
4. Fair market value of capital assets in aggregate is less than Rupees 25 million
5. Land development and construction project of builders and developers registered with DG of Designated Non-Financial Businesses and Professions of Board [DNFB&PB].
6. Any property being subject to tax under the Ordinance
7. Capital assets in the first year of acquisition subject to the condition that advance tax under Section 236K on purchase/ transfer of property has been paid.
8. Capital assets allotted to shaheed or dependents, war wounded person, ex-serviceman of Pakistan armed forces

Besides, Provincial government, Local Government, Local Authority or Development authority have also been

excluded from the ambit of this section.

### Changes in tax rates of salary income

(Section 149, Clause-2, Division-I, Part-1 of First Schedule)

The Finance Bill proposed to exempt tax on salaried individuals earning annual salary of Rs 1,200,000/-. Succumbing to IMF pressure, the Federal Government has retracted the proposal and has increased the tax in the Finance Act apparently, prompted to generate more revenue from Salary.

The rate of tax on salary income for TY 2022 and TY 2023 is reproduced on the next page:

Tax on Salary; TY 2022				
S. No.	Salary Income	Slab	Rate on Exceeding Amount	Fixed Tax
1	600,000	Up to 600,000	Nil	Nil
2	1,200,000	600,001 to 1,200,000	5%	Nil
3	1,800,000	1,200,001 to 1,800,000	10%	30,000
4	2,500,000	1,800,001 to 2,500,000	15%	90,000
5	3,500,000	2,500,001 to 3,500,000	17.5%	195,000
6	5,000,000	3,500,001 to 5,000,000	20%	370,000
7	8,000,000	5,000,001 to 8,000,000	22.5%	670,000
8	12,000,000	8,000,001 to 12,000,000	25%	1,345,000
9	30,000,000	12,000,001 to 30,000,000	27.5%	2,345,000
10	50,000,000	30,000,001 to 50,000,000	30%	7,295,000
11	75,000,000	50,000,001 to 75,000,000	32.5%	13,295,000
12	75,000,000 and above		35%	21,420,000

Tax on Salary; TY 2023				
S. No.	Salary Income	Slab	Rate on Exceeding Amount	Fixed Tax
1	600,000	Up to 600,000	Nil	Nil
2	1,200,000	600,001 to 1,200,000	2.5%	Nil
3	2,400,000	1,200,001 to 2,400,000	12.5%	15,000
4	3,600,000	2,400,001 to 3,600,000	20%	165,000
5	6,000,000	3,600,001 to 6,000,000	25%	405,000
6	12,000,000	6,000,001 to 12,000,000	32.5%	1,005,000
7	12,000,001 and above		35%	2,955,000

A comparison of tax between the existing and the new slab is being tabulated as under for ease of understanding:

INCOME FROM SALARY (S. 12)					
COMPARISON WORKING					
Slabs		Existing	Proposed in Finance Bill	Finance Act	Increase / (Decrease)
S. No	Salary Income	Tax Year 2022	Tax Year 2023	Tax Year 2023	A - C
		A	B	C	
1	600,000	-	-	-	
2	650,000	2,500	100	1,250	(1,250)
3	1,200,000	30,000	100	15,000	(15,000)
4	1,800,000	90,000	42,000	90,000	-
5	2,400,000	180,000	84,000	165,000	(15,000)
6	2,500,000	195,000	96,500	185,000	(10,000)
7	3,000,000	282,500	159,000	285,000	2,500
8	3,600,000	390,000	234,000	405,000	15,000
9	4,000,000	470,000	304,000	505,000	35,000
10	5,000,000	670,000	479,000	755,000	85,000
11	6,000,000	895,000	654,000	1,005,000	110,000
12	8,000,000	1,345,000	1,104,000	1,655,000	310,000
13	12,000,000	2,345,000	2,004,000	2,955,000	610,000
14	30,000,000	7,295,000	7,854,000	9,255,000	1,960,000
15	50,000,000	13,295,000	14,354,000	16,255,000	2,960,000
16	75,000,000	21,420,000	22,479,000	25,005,000	3,585,000

### Commercial importer back to minimum tax regime (Section 148)

The Finance Bill 2022 proposed a major departure from the normal tax regime as it classified commercial importer yet again under Final Tax Regime. The rate of income tax withholding on their import was revised upward to 4%.

In the Finance Act, however, the above proposal has been rejected and the taxation of commercial importer has been re-categorized under normal tax regime. Needless to mention that rejection was prompted after serious reservation were submitted towards the deteriorating documentation efforts of the government. The rate of income tax withholding on their import has also been revised downward to 3.5% from the proposed 4%.

### Minimum tax (Section 113(1))

An amendment has been made under the Act envisaging that tax paid under Section 4C i.e. Super Tax on high earning persons would not be considered as “tax payable or paid” for the purpose of levying minimum tax (turnover tax).

### Carry forward of minimum tax (Section 113(2)(c))

The Finance Bill proposed the deletion of whole of the provision of Section 113(2) (c) of the Ordinance, which provides the carry

forward adjustment to the taxpayer in case where the turnover tax paid under Section 113 is higher than its normal tax liability.

Whereas vide this Act, the omission of this provision has been dropped and the original provision for adjustment has been restored, however, the carry forward period for adjustment of minimum tax payment is now reduced from five to three tax years.

### Indenting commission (Section 154 & 154A)

The indenting commission was subject to tax deduction under Section 154(2) of the Ordinance at the rate of 5%. Vide, this Act, the provision related to tax deduction on the proceeds from indenting commission is transposed to Section 154A and accordingly, the rate of tax thereon is now reduced from 5% to 1%. The amendment is in line with the concept that indenting agents, whether they are import indenting agents or export indenting agents are fundamentally providing services to their clients outside Pakistan and hence their services should also be included in the list of Export of Services and should be accorded the same tax treatment.

### Withdrawal of 100% tax credit to exporter of IT services (Sections 65F and 154A)

Prior to amendment proposed by Bill, the income from IT exports, IT services and IT enabled services were allowed 100% tax credit up to June 30, 2025 under section 65F of the Ordinance.

Through Finance Bill 2022, the said tax credit was proposed to be withdrawn. The withdrawal of tax credit was proposed to be substituted with turnover tax payment at a concessional rate of 0.25% instead of 1% on proceeds from IT exports, IT services and IT enabled services under final tax regime.

Proposed amendment has been adopted in the Act with little modification that registration of such IT service exporter with Pakistan Software Export Board is mandatory.

### Relaxation in filing of withholding statement

(Section 154A)

Prior to this amendment, the tax deductible on export of services is a final tax in terms of Section 154A of the Ordinance, subject to certain conditions, which also includes that such person files withholding tax statements for the relevant tax year.

Vide this Act, condition of filing withholding statement as pre-requisite to avail this concessional regime has been relaxed for person who are not otherwise prescribed as “withholding agent”.

### Change in rate on disposal of securities

(Division-VII, Part-I, First Schedule)

The Finance Bill had proposed the tax rates on capital gain on disposal of securities as under:

S.No.	Holding Period	Proposed Rate
1	Less than 1 year	15 %
2	From 1 year to 2 years	12.5%
3	From 2 years to 3 years	10%
4	From 3 years to 4 years	7.5%
5	From 4 years to 5 years	5%
6	From 5 years to 6 years	2.5%
7	More than 6 years	0%
8	Future commodity contract entered into by members of Pakistan Mercantile exchange	5%

The Finance Act has inserted new proviso that above table would be applicable on those securities acquired on or after 01 July 2022. A flat rate of 12.5% would be applicable on securities acquired on or before 30 June 2022 irrespective of holding period.

### Change in definition of resident individual

(Section 82)

Currently, a resident individual is one, who is present in Pakistan for a total of one hundred and eighty-three (183) days or more in a tax year or is otherwise, an employee of the Federal Government or a Provincial Government.

Vide Finance bill, 2022, it was proposed to include every single citizen of Pakistan in the definition of resident individual who is not a tax resident in any other country. However, in order to relax such restriction especially for those citizens who live abroad in a taxfree jurisdiction and potentially could not be classified as a tax resident of that country due to absence of tax regime in

that country, a further amendment has been made under the above Section whereafter an individual who stays in other country for more than 182 days may not be classified as resident individual for tax purposes in Pakistan.

Now, the citizens of Pakistan residing overseas will have to provide proof of their tax residency or proof of their stay of more than 182 days in a foreign country so that they may not be categorized as a resident individual here for tax purposes. In the event of failure to do so, he/she will be taken as a “tax resident” of Pakistan.

### Requirement to issue audit report (Section 177(6) & (6A))

Procedure for conducting audit envisaged a provision requiring issuance of audit report by the assessing officer containing observations and findings to taxpayer before proceeding with amendment of assessment under Section 122 of the Ordinance. Superior Courts have held such requirement to be mandatory, non-compliance of which could render the entire proceedings as illegal.

The Finance Bill initially proposed omission of such provision from the law perhaps to avoid complications and litigation. However, realizing that such omission would undermine the “due process of law” and right of “fair trial” guaranteed to taxpayers under Article 10A of the Constitution of Islamic Republic of Pakistan, said proposed amendment has not been adopted in the Act.

### Tax on registration of sale of property (Section 236C)

Through the Federal Budget 2012-2013, the Federal Board of Revenue introduced the collection of Advance Tax by the person responsible for registering, recording or attesting the immovable property at the time of Sales / transfer of Property from the seller. This Advance Tax is adjustable for the Seller at the time of filing of Tax Return. This advance tax is collected from those sellers, who sell their properties with less than four years of holding period.

The Finance Bill 2022 proposed to enhance the holding period from four years to ten years. The Finance Act, however, has altogether deleted the exemption from collection of advance tax based on holding period. Consequently, now onwards advance tax under section 236C would be collected from every seller of property irrespective of the holding period.

### Only digital payments allowed to companies; Payments by crossed cheques not allowed to companies anymore (Section 21(La))

In order to compel payment through Banking Channels, the FBR has always taken numerous steps to demonstrate its priority towards the discouragement of cash payment mechanism. One such step is placing a restriction on allowability of business expense where payment has been made in cash and in excess of Rupees

250,000/- in a year under one Head of Account.

Later on, the Tax Laws (Third Amendment) Ordinance, 2021 [Third Amendment Ordinance], barred the companies from making payment even in crossed cheques and asked to make payments singularly through Digital Means if they have to qualify for tax expense. The above measures somehow could not be implemented till date due to practical issues. It was also specified that company can incur cash expense within a limit of Rs.250,000 in a year under one Head of Account to claim it as a tax expense.

Through the current Finance Bill 2022, aforesaid provision was proposed to be made part of the bill and the above cap was also proposed to be increased to Rupees one million, which was being considered positive move by the business community keeping in view the recent inflationary trends.

Vide Finance Act, 2022, the proposed increased limit is not approved and the existing limit of Rs.250,000 has been restored which implies that the companies are restricted to incur cash expense to the extent of Rupees 250,000 under one Head of Account to claim it as a tax expense. However, the effective date of implementation of the said provisions have yet to be prescribed by the board.

Apart from above amendment, now the expenditure incurred within a limit of Rupees 25,000/- can be paid by way of cash and the taxpayer may not be barred

from deduction of such expense. However, to our understanding cumulative amount of such expenditures may not exceed from 250,000/-.

### Advance tax on motor vehicles (Section 231B)

Advance tax is required to be collected by excise & taxation department at the time of registration of vehicle. However, such tax is only collected from vehicle used for private purposes. The Finance Act has made relevant amendment under the section to enhance the scope of advance tax on vehicles used for commercial purposes as well.

Further, the definition of motor vehicle has been substituted as follows:

Motor vehicle includes car, caravan automobiles, jeep, limousine, pickup, sports utility vehicle, trucks, vans, wagon, and any other automobile excluding;

1. a motor vehicle used for public transportation, carriage of goods and agriculture machinery;
2. a rickshaw or a motorcycle rickshaw and
3. any other motor vehicle having engine capacity up to 200cc”

### Income tax through electricity bills from retailers other than tier-1 retailers

(Sections 99A and 235)

The Finance Bill proposed to charge and collect income tax from retailers other than Tier-I retailers, as defined in Sales Tax Act,

1990 and other specified service providers on their commercial electricity connections. The term “Specified Services Providers” was not defined for the purpose of Sections 99A and 235.

The Finance Act not only replaced the term “specified service provider” with “service provider” but has increased its rate of taxation from Rs 50,000/- to Rs 200,000/-.

The comparison of tax rate is provided here under:

Gross amount of monthly bill	Tax proposed in Finance Bill	Tax levied in Finance Act
Where the amount does not exceed Rs 30,000	3,000	3,000
Where the amount exceed Rs 30,000 but does not exceed Rs 50,000	5,000	5,000
Where the amount exceed Rs 50,000 but does not exceed Rs 100,000	10,000	10,000
Retailer and service provider as notified by the Board in income tax general order	50,000	200,000

Moreover, it was provided in section 99A of the Ordinance that the vires of above section was not applicable on retailers who pay sales tax under Section 3(9) of the Sales Tax Act, 1990 being retailer other than Tier-1 retailer. The Finance act has aligned such exemption by adding similar provisions of exemption under section 235 of the Ordinance.

We understand that devolving tax imposition powers upon FBR is contrary to

the Constitutional provisions and judicial pronouncements and therefore, one may anticipate litigation on exercise of such powers by the FBR.

**Tax credits on contribution to an approved pension fund (Section 63)**

Tax credit against the contribution to an approved pension fund is available at the average tax rate on taxable income for the year. The amount on which tax credit is available is the actual amount contributed by the taxpayer during a year subject to two conditions.

- The maximum contribution can be upto Rs. 500,000/- in tax year;
- The contribution should not exceed 20% of taxable income of the taxpayer.

The entire section had been proposed to be omitted by the Finance bill. The Act has deleted the said proposition after which the tax credit on contribution to an approved pension fund against the tax liability has been restored.

**Expenditure disallowance on non-integrated with FBR system (Section 21(r))**

The Finance Bill proposed to disallow expenditure attributable to sales claimed by any person who is required to be integrated with FBR system but could not fulfil such obligation of integration. However, the aforesaid disallowance of expenses was proposed to be limited to 10%

of allowable deduction. Through Finance Act, such limit of disallowance has been reduced to 8% of allowable deduction.

### Cost of passenger transport vehicle for depreciation

(Section 22(13)(a))

The Finance Bill proposed to enhance the limit pertaining to cost of depreciable assets being passenger transport vehicle from Rs.2.5 million to Rs.5 million. Through Finance Act, the limit has further been escalated to Rs.7.5 million.

### Beneficial owner

(Section 2(7A))

A new definition was proposed through Finance Bill which encompassed a natural person as beneficial owner of the company or association of person, who owns or control the company or the association with minimum 10% shares or voting right. The aforesaid minimum limit of shareholding or voting right to define as beneficial owner of the company or association of person has been enhanced through Finance Act from ten (10) percent to twenty-five (25) percent.

### Unexplained income or assets

(Section 111)

The Finance Act has inserted new sub-section 4A under section 111 to the Ordinance, which will not allow a person to claim benefit in excess of the amount worked out to the extent of imputable income in case of any source of income

subject to Final Tax while explaining the unexplained income or assets. The only exception where the benefit in excess of the worked-out amount can be taken is where it can reasonably be established to have a connection with the business activities related to final tax and is essentially supported by Financial Statements duly audited by a Chartered Accountant.

### Change of corporate tax rate

(Division-II, Part-I, First Schedule)

The Finance Bill had proposed to enhance the rate of corporate tax for Banks to 45%.

The Finance Act has revised the rate of corporate tax on Banks to 39%.

### Change in turnover tax rate

(Division-IX, Part-I, First Schedule)

The Finance Act has reduced the rate of Turnover Tax from 0.75% to 0.5% for Oil Marketing Companies.

### Not for profit organization (NPO)

(Section 100C)

The Finance Bill had proposed to extend grace time period by two years. Therefore, those Institutions, Foundations, Societies, Boards, Trust and Funds specified in Table-II of Clause 66, Part I, Second Schedule to the Ordinance can continue to avail 100% tax credit under Section 100C of the Ordinance without the Commissioner-IR NPO Certificate till June 30, 2024.

The Finance Act has reduced grace time period from two to one year. Now, they can enjoy 100% tax credit under Section 100C of the Ordinance without the Commissioner-IR NPO Certificate till June 30, 2023 only, after which they will have to apply for being an NPO.

### Changes in Second Schedule

- The Finance Bill proposed that accumulated balance received from voluntary pension scheme would be exempt from tax without any 50% limit. The above proposal has been dropped in the Finance Act and clause 23A of part 1 of the second schedule to the Ordinance has been restored in its original form whereafter the accumulated balance only up to 50% of the voluntary pension scheme would be exempt from tax.
- The Finance Act has omitted clause 5 of Part 1 of the second schedule to the Ordinance which provided tax exemption on payment of allowance and perquisite by the government of Pakistan to a citizen of Pakistan for rendering services outside Pakistan.
- The Finance Bill proposed to tax the subsidy received by a person from the government of Pakistan. The Finance Act has not adopted the proposal. Accordingly, subsidy received from the federal government would remain exempt from tax as earlier.
- The Finance Act has exempted the income of the following entities, subject

to compliance of section 100C, by adding them in clause 66 of Part 1 of Second Schedule to the Ordinance:

1. Burhani Qardan Hasnan Trust
2. Saifee Hospital Karachi
3. Saifiyah Girls Taalim Trust

- The Finance Act has provided exemption on profit and gains of venture capital company and venture capital fund registered under venture capital company and fund management rules issued by SECP from July 01, 2022 till June 30, 2025.
- The Finance Act has provided exemption on profit and gains of resident producer and resident production house, derived from production of feature film for five (05) years starting from July 01, 2022 till June 30, 2027. It is important to point out that exemption is provided to only resident person. Hence, income derived by non-resident producer or non-resident production house from production of film will remain taxable.
- Payment made by exhibitor or distributor of feature film to a distributor, producer or importer of feature film would be exempt from income tax withholding on services under section 153(1)(b) of the Ordinance.
- Reduced rate of withholding tax of 1% has been provided on sale of gold and silver and articles made thereof under section 153(1)(a) of the Ordinance by every person. Moreover, the deduction of 1% shall be adjustable income tax.

- The Finance Bill proposed to delete the capital gain tax exemption available up to 50%, which is enhanced to 75% if holding period of the property is more than 3 years, on first sale of immovable property acquired by ex-servicemen and servicemen of armed forces, federal or provincial employees. The Finance Act has now dropped the above proposal whereafter the exemption from capital gain tax has been restored.
- The rate of income tax withholding under section 236C and 236K for a non-filer would not be doubled in case of non-resident individual holding POC or NICOP.

## Sales Tax Act, 1990

### Tier-1 Retailer

#### Section 2(43A)(ga)

The Finance Bill had broadened the scope of Tier-1 Retailer by adding another category of retailer, i.e. persons engaged in supply of 'article of jewellery or parts thereof or precious metal or of metal clad' irrespective of the size of shop from where they were operating such businesses.

By virtue of Finance Act, jewelers doing business on shop having area upto 300 sq feet will be excluded from the purview of Tier-1 Retailers. This amendment is beneficial for small shops of such articles.

### Value of Supply

#### Section 2(46)(i)

Through Finance Act, an 'Explanation' has been added at clause (i) of sub-section (46) of Section 2 of Sales Tax Act, 1990 [ST Act]. The said amendment excludes amount of subsidy provided by federal and provincial governments to the electricity consumers in the value of supply and no sales tax will be charged thereto.

The aforesaid enactment being clarificatory in nature would lead to resolution of long-driven disputes between electricity distribution companies and tax department on value of supply in relation to electricity. Furthermore, such amendment would also curb existent and future litigations.

### Sales Tax Withholding

#### Section 3(7)

By virtue of Finance Act, an expression "other than services liable to tax under provincial enactment" has been inserted under Section 3(7) of ST Act. The inclusion of said narration confirms that taxable services subject to sales tax under provincial enactments as acquired by registered persons would not be subject to sales tax withholding under Eleventh Schedule to ST Act.

However, taxable services acquired by registered person classified under Islamabad Capital Territory (Tax on Services) Ordinance, 2001 would be subject to sales tax withholding in term of Eleventh Schedule to ST Act.

As per our understanding, the aforementioned amendment has clarified issue of sales tax withholding liable to sales tax under provincial sales tax statutes.

### Tax Liability of Small Retailers

#### Section 3(9)

Through Finance Bill, the legislature proposed to increase fixed sales tax on electricity bills for 'other than Tier-1 retailers' as per followings.

Bill Electricity per Month	ST Rate
Upto Rs.30,000/-	3,000 per month
More than Rs.30,000/- but less than Rs.50,000/-	5,000 per month
More than Rs.50,000/-	10,000 per month

The aforementioned rates of sales tax per month on electricity bills have been included / confirmed through Finance Act.

Through Finance Bill, a proviso was also added at Section 3(9) empowering the Board to levy fixed sales tax @ Rs.50,000 per month on electricity bills from any persons or class of persons. However, the aforementioned proviso has been further modified in the Finance Act.

Through such amendment, the legislature has levied enhanced 100% sales tax on aforesaid categories of retailers provided their name do not appear in the 'Active Taxpayers List' issued by FBR under Section 181(A) of the Income Tax Ordinance.

Further, Finance Act enhanced the upper limit of FBR discretionary power to impose fixed tax upto Rs.200,000/- on any person.

We understand that delegation of such tax imposition powers on administration authorities are contrary to the constitutional provisions and judgments pronounced by superior courts.

### Declaration of CNIC / NTN Condition

#### Section 8(1)(m) and 23(1)(b)

Through Finance Bill, it was proposed to withdraw condition of CNIC/NTN declaration as prerequisite for admissibility of input tax by amending section 8(1)(m).

However, in the Finance Act, aforesaid provisions have been kept intact to the

extent of unregistered distributors. Meaning thereby, now only manufacturers and importers who have appointed proper distributor, are required to mention CNIC/NTN on their invoices.

We understand that such initiatives would discourage steps taken to broaden the tax net and document the economy.

### Penalties

#### Section 33

The Finance Act has added S. No. 25AB of Section 33 which deals in imposition of penalty against person who either fails to integrate his business with FBR's Computerized System or fails to obtain sales tax registration under the law.

### Proceedings against Persons

#### Section 33A

The above provision was inserted through Finance Act, 2019 which empowered the Board to prescribe rules to initiate criminal proceedings against any authority or officer subordinate to the Board, who willfully and deliberately commits or omits an act which results in undue advantage to the authority or to the officer or to any other person.

Through Finance Act, Section 33A has now been omitted.

**Alternative Dispute Resolution**  
Section 47A

In the last few years, the legislature has made amendments from time to time in relevant provisions to alternative dispute resolution [ADR] under income tax, sales tax and excise duty laws. Now, the legislature revamped such provisions in totality under all such statutes through Finance Act.

Through Finance Act, further amendments have been made at Section 47 of ST Act and Section 38 of Federal Excise Act, 2005 in relation to ADR. For sake of brevity, such vital amendments along with comparison thereof to existing provisions are tabulated as under:

Existing Position (Upto 30 June 2022)	Current Position (From 01 July 2022)
Application for ADR may be filed irrespective of ST / FED liability	Application for ADR where ST / FED liability @ Rs.100 million and above
Non constitution of ADR involving issue of interpretation of question of law	Constitution of ADR allowed interpretation of question of law
Nil	Application for ADR should contain proposition to settle the dispute along with agreed amount of FED to be paid by taxpayer
Nomination of ADR Members by FBR	Nomination of ADR by aggrieved person
No requirement for withdrawal of appeal before competent forums by taxpayer	Withdrawal of appeal from appellate forums both by taxpayer and tax department, as the case for constitution of ADR Committee
Grant of stay against recovery by ADR	Automatic stay to taxpayer upon constitution of ADR & withdrawal of appeal from appellate forums
Decision of ADRC binding on tax department only	Decision of ADR binding on both tax department and taxpayer

**Condonation of Time Limit**  
Section 74

Through Finance Act, an expression “at any time before or after the expiry of such time or period” has been added at this Section. The said insertion has now extended Board’s powers to condone time limit for doing an act even prior or after the expiry of time as prescribed under the law.

Earlier, the Board was empowered to condone any time limit prescribed at ST Act and rules made thereunder after lapse of prescribed time.

It appears that aforesaid amendment has been introduced to undo the judgments passed by the superior courts on the point of condonation of time limit by the Board.

**Fertilizer Exemption**

Prior to enactment of Finance Act, fertilizers were listed in Third Schedule and Eighth Schedule to ST Act, simultaneously and were subject to sales tax @ 2% on retail price. Through Finance Bill, Sales Tax on fertilizer was proposed @ 10%.

By virtue of Finance Act, entries relating to fertilizers have been omitted from aforesaid Schedules. Rather supply of fertilizer has been granted exemption by transposing such entries to Sixth Schedule to ST Act.

### Fat Filled Milk

#### Fifth & Eighth Schedule

Prior to Tax Laws Third Amendment Ordinance, 2021, sales tax zero rating was available on 'fat filled milk' if sold without any retail packing under a brand name. On the other hand, such item if sold in retail packing was liable to sales tax @ 10%.

By virtue of Amendment Ordinance, 2021, zero rating of sales tax was extended to fat filled milk whether sold in retail packing or otherwise. Corresponding amendments had also been made at Fifth & Eighth Schedule to the ST Act.

Tax laws third Amendment Ordinance, has been repealed therefore, above amendments are re-inserted through Finance Act in order to keep the previous position intact.

### Supply to Registered Exporters under Export Facilitation Scheme, 2021

#### Fifth Schedule

Serial No. 21 has been inserted by Finance Act, 2022 which ratify zero rating of local supply of raw materials, components, part and plant and machinery to registered exporters authorized under Export Facilitation Scheme, 2021(EFS, 2021) notified by the Board with such conditions, limitations and restrictions as prescribed therein.

This insertion has been incorporated only to facilitate the vendors who supply goods to

registered exporters authorized under EFS, 2021 for reporting their sales in monthly

#### Sixth Schedule (Table-1)

### Oil Cake and Other Solid Residues New Exemption

Through Finance Act, exemption on oil cakes and other solid residues, has been restored by inserting Serial No. 169 under Sixth Schedule which was withdrawn earlier through Finance (Supplementary) Act, 2022.

### Goods Produced or Manufactured in and Exported From Pakistan New Exemption

Exemption on goods, produced or manufactured in and exported from Pakistan which are subsequently imported within one year of their exportation, subject to specified conditions, had been withdrawn earlier through Finance (Supplementary) Act, 2022. Now, such exemption has been restored through the Finance Act, by inserting Serial No. 173 under Sixth Schedule to the ST Act.

#### Sixth Schedule (Table-2)

### Raw Hides and Skins New Exemption

The Finance Act, has provided exemption of sales tax on 'raw hides and skins'. which was earlier subject to tax @ 17%

## Exemption on Bread, Naan & Chappati

### Reclassification

Prior enactment of the Finance Act, breads, naan and chappati were taxable if sold in bakeries, restaurants, foods chains and sweet shops falling in the category of Tier-1 retailer as per Serial No. 7 of Sixth Schedule to the ST Act.

Now the same items have been omitted from the expression of serial No.7 and separately inserted in the Sixth Schedule with new serial no. 54, whereby all types of breads, naan and chappati have been exempted from sales tax irrespective of supplier's status.

### Eighth Schedule

#### Locally Produced Coal

##### Serial No. 47

Finance Bill initially proposed to withdraw fixed tax on supplies of locally manufactured coal altogether exposing it to standard sales tax rate 17% advalorem basis.

By virtue of Finance Act, fixed tax has been kept intact by amending relevant entry at Eighth Schedule by enhancing Rs.425/- to Rs.700/- per metric ton. Meaning thereby, sales tax on such supplies would now be higher of Rs.700/- per metric ton or 17% of value.

Keeping in view the prevailing prices of coal, fixed tax provision will remain redundant.

Following new entries have been added in the Eighth Schedule for levy of sales tax on reduced rate:

S. No	Description	Heading	Rate	Condition
78	Supply of locally manufactured articles or jewellery or parts thereof, of precious metal or of metal clad with precious metal	71.13	3%	no input tax shall be adjusted
79	Electric vehicle in CBU condition of 50 kwh battery or below	8703.809	12.50%	
80	EV transport buses of 25 seats or more in CBU condition	Respective Heading	1%	

## Pharmaceutical Industry

### Eighth Schedule - Reduced Rate Regime

Vide Finance Act, Zero rating on pharmaceutical goods registered as Drugs under Drugs Act, 1976 and medicaments as classified under chapter 30 of the First Schedule to the Customs Act, 1969 has been withdrawn by omitting serial no. 19 from Fifth Schedule to the ST Act.

Through the Finance Act, serial no. 81 has been inserted in the Eighth Schedule to the ST Act. Consequently, import and local supply of substances registered as Drugs under the Drugs Act, 1976 has become taxable at reduced rate of 1% subject to condition that no input tax adjustment will be available for importer/manufacturer.

However, alternative medicines & health products and medicaments as classified under chapter 30 of the First Schedule to the Customs Act, 1969 which were not required to be registered as drugs under the Drugs Act, have now been exposed for levy of sales tax at standard rate i.e. 17%.

Further, another entry, serial no. 82 has been added in the Eighth Schedule to the ST Act whereby raw material for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharmaceutical products are now taxable at reduced rate of 1% on import and local supply without right of input tax adjustment to the importer and manufacturer.

Such supplies were earlier subject to sales tax at standard rate i.e. 17%, pursuant to Finance (Supplementary) Act, 2022 effective from 15 th January 2022.

Such sales tax paid at reduced rate by importer or manufacturer of pharmaceutical products would be construed as full and final sales tax liability of entire supply chain.

Eleventh Schedule

Vide Finance Act, companies exporting surgical instruments have been excluded from category of withholding agent by amending serial no. 4 of Eleventh Schedule to the ST Act.

Further, rate of sales tax withholding in case of online sales through online market place has been reduced from 2% to 1%.

Existing entries and the amended ones are compared as under:

S. No.	Prior Enactment of Act, 2022			After Enactment of Act, 2022		
	Withholding Agent	Supplier category	Rate or extent of deduction	Withholding Agent	Supplier category	Rate or extent of deduction
4	Companies as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)	persons other than Active Tax-payers	5% of gross value of supplies	Companies as defined in the Income Tax Ordinance, 2001 excluding companies exporting surgical instruments	persons other than Active Tax-payers	5% of gross value of supplies
8	Online market place	Persons other than active tax-payers	2% of gross value of supplies: Provided that the provisions of this entry shall be effective from the date as notified by the Board.	Online market place	Persons other than active tax-payers	1% of gross value of supplies: Provided that the provisions of this entry shall be effective from the date as notified by the Board.

# Islamabad Capital Territory (Tax On Services) Ordinance 2001

Through Finance Bill, it was proposed to reduce sales tax rate from 16% to 15% on services provided by software or IT based system development consultants. However, through Finance Act, such rate is further reduced to 5%.

Prior Enactment of Act, 2001		After Enactment of Act, 2022		
S. No	Description	Rate	Description	Rate
11	Services provided by software or IT based system development consultants	16%	Services provided by software or IT based system development consultants	5%

# Federal Excise Act, 2005

## Proceedings against Authority and Persons

### Section 19A

Identical provisions are also introduced through Finance Act under ST Act. We have given our commentary on this issue at relevant part on sales tax law. For sake of reference, the same be consulted as provided above.

## Alternative Dispute Resolution

### Section 38

Identical provisions are also introduced through Finance Act under ST Act. We have given our commentary on this issue at relevant part on sales tax law. For sake of reference, the same be consulted as provided above.

## Condonation of Time Limit

### Section 43

Identical provisions are also introduced through Finance Act under ST Act. We have given our commentary on this issue at relevant part on sales tax law. For sake of reference, the same be consulted as provided above.

S No.	Products	Applicable upto 30 June 2022	Proposed through Finance Bill	Incorporated through Finance Act
8c	Tobacco mixtures	FED having PCT Heading 2403.9990	N/A	FED on all sorts of tobacco mixtures
9	Locally produced cigarettes	FED @ Rs.5,200 per thousand cigarettes	FED @ Rs.5,600 per thousand cigarettes	FED @ Rs.5,900 per thousand cigarettes
9	Locally produced cigarettes	On-pack threshold exceeds retail price @ Rs.5,960 per thousand cigarettes	N/A	On-pack threshold exceeds retail price @ Rs.6,660 per thousand cigarettes
10	Locally produced cigarettes	On-pack threshold does not exceed retail price @ Rs.5,960 per thousand cigarettes	N/A	On-pack threshold does not exceed retail price @ Rs.6,660 per thousand cigarettes
35	Other liquified petroleum gases and gaseous hydrocarbons	FED @ Rs.17.18 per hundred cubic meters	N/A	FED @ Rs.60 per hundred metric tonne
56	Filter rod for cigarettes	FED having PCT 5502.9090	FED on all sorts of filter rods	Not included
56	Filter rod for cigarettes	FED @ Rs.1 per filter rod	FED @ Rs.1,500 per kg	Not included

# Customs Act, 1969

## Bordering and Coastal Areas Section 2(bbc)

Through Finance Bill, the legislature proposed definition of 'bordering and coastal areas' means all districts located along international borders including coastal areas of Pakistan, notified by Provincial Governments.

Through Finance Act, the definition has been amended to include only those areas as are located near international borders to be notified by the Board.

The amendment through Finance Act has described definite boundaries of such areas for the purpose of implementation of relevant provisions of Customs Act.

## Provisional Determination of Liability Section 81

Section 81 empowers Customs official to provisionally determine duties, taxes and other charges wherever correctness in assessment of goods is necessitated in case of imports as assessed and cleared under Section 79 or 131 of Customs Act.

The Finance Act has added proviso at sub-section (1) of Section 81 whereby it is enunciated that no provisional determination of valuation will be allowed against such imports as made under Valuation Ruling issued by Customs. Further, the legislature has also given

retrospective effect to aforesaid proviso to have always been part of this Section.

As per our understanding, the said amendment being beneficial in nature will close the doors of dual valuation of importers' consignments.

through Finance Act under ST Act. We have given our commentary on this issue at relevant part on sales tax law. For sake of reference, the same be consulted as provided above.

## Punishment for Offences Section 156

Through Finance Bill, various penalties were introduced at Section 156 for committing any offence in relation to provisions owing to Pakistan Single Window System [PSWS]. At Finance Act, the nature of offences and proposed penalties in relation to PSWS has further been enhanced for persons who commit any such offences.

## Reference to High Court Section 196

Currently, the power to file reference application at High Court is vested to Collector or Director of Intelligence and Investigation against decision passed by Appellate Tribunal. Through Finance Act, this power is delegated to an officer of Customs. Hence, exercise of this power is no more confined to any specific designation of officer rank.

# CAPITAL VALUE TAX (CVT)

## Introduction

CVT was introduced in the Finance Act, 1989 which was collected at the time of registering or attesting the transfer of Immovable Properties, Modaraba Certificates, Listed Shares and Motor Vehicles. Subsequently, CVT was abolished with effect from April 19, 2020.

Now, the Finance Act has re-introduced CVT for the Tax Year 2022 and onwards except for Motor Vehicle held in Pakistan which shall be charged from 01 July 2022 i.e. TY 2023.

## Taxable Assets

1. Motor Vehicle held in Pakistan
  - If engine Capacity exceeds 1300cc or
  - If battery power capacity exceeds 50KWH in case of EV.
2. Foreign Assets of a Resident Individual, whether movable or immovable, including real estate, mortgaged asset, stock and shares, bank account, bullion, cash, jewels, jewellery, painting, accounts and loan receivable, assets held in dependent name, beneficial ownership or beneficial interest in offshore entities and trust, if the aggregate value of such assets exceeds Rupees Hundred (100) million.
3. Such assets or class of assets as may be specified by the Federal Government.

## Rate of CVT

1. Motor vehicle held in Pakistan: 1%.
2. Foreign Asset: 1%.
3. Assets to be notified by the federal government: maximum rate of 5%.

## Valuation of Assets

Motor Vehicle held in Pakistan:

- where the vehicle is imported in Pakistan, the import value assessed by the Customs;
- where the vehicle is locally manufactured, the sale value by the local manufacturer;
- where the vehicle is auctioned, the auction price;
- The above value shall be reduced by 10% each year for the next five (5) years after which no CVT will be charged.

Foreign Assets:

The value shall be:

- The total cost of foreign assets declared on the last day of the tax year converted into Pak Rupees as per SBP rate that day; or
- In case the value cannot be determine, the fair market value on the last day of the tax year.

Other Case:

- The value as may be specified by the federal government.

## Responsibility to collect CVT

Motor Vehicle held in Pakistan:

- Collector of Customs on import.
- Local manufacturer at the time of sale and where sale is on installment, the CVT shall be collected on first instalment. The CVT would be collected on invoice.
- Any person making sale by public auction or auction by tender and where sale is on installment, the CVT shall be collected on first installment).
- Motor vehicle registering authority at the time of collecting motor vehicle tax except when such person has already paid CVT at time of import, purchase from local manufacturer or auction.

Foreign Assets:

- The person holding foreign assets shall be liable to pay CVT at the time of filing of income tax return for the tax year.

Other Case:

- Local manufacturer at the time of sale and where sale is on installment, the CVT shall be collected on first instalment. The CVT would be collected on invoice.

## Procedural Matters

- Where a person fails to collect CVT or after collection, fails to pay to the Federal Government, the Officer Inland Revenue may pass an order to recover

the CVT under provisions of the Income Tax Ordinance, 2001 and the Income Tax Rules, 2002 as if the CVT were an arrear of income tax. Such person will also be liable to pay Default Surcharge at the rate of twelve per cent (12%) per annum on the tax unpaid.

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