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FEDERAL BUDGET 2023-24

TAX MEMORANDUM

AS AMENDED BY FINANCE ACT, 2023



PREFACE

The Finance Bill 2023 was presented in National Assembly on 9th June 2023 which has been approved with certain changes and parliament has received the assent of the President on 26th June 2023.

This document contains brief comments on significant deviations, insertions introduced in Income Tax Ordinance, 2001, Sales Tax Act, 1990 and Federal Excise Act, 2005 after presentation of bill in the process of legislation.

All changes made through the Finance Act, 2023 are effective from 01 July 2023 unless specified otherwise.

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

27th June 2023

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Income Tax Ordinance, 2001

Definition of Permanent Establishment Broadened

Section 2(41)

Through the finance bill it was proposed to broaden the definition of P.E. by deleting the word fixed from it. The Bill also had proposed to add the word “entity” after the word “other personnel” in clause (d) in the definition. Now the Finance Act apart from adopting the above two measure, has also covered virtual business presence in Pakistan in the definition of P.E. The virtual business would include any business where transactions are conducted through internet or any other electronic medium, with or without having any physical presence.

We understand that the above amendments would only apply in case of a non-resident residing in a country which does not have a avoidance of double tax treaty with Pakistan.

50% Windfall Gain Tax on Windfall Gains

Section 99D

The Bill proposed to insert a new Section 99D in the Ordinance imposing additional tax up to 50% on unexpected income, profits or gains of any person or class of persons that arose on account of economic factors.

The Finance Act retained the new section with following amendment:

- The applicability of the said tax has now been restricted to only companies.
- The applicability of the said tax will apply on specified sectors.
- The retrospective application of the said tax has been reduced from five (5) years to three (3) years preceding the tax year 2023 and onwards.
- Federal Government notification for determination of windfall income, specified sector, rates of taxation and the economic factors resulting in an income subject to tax under this section is now required to be placed before the Parliament within ninety (90) days of notification or June 30 of the financial year, whichever is earlier.

We understand that element of retrospectivity shall remain a legal challenge for the charge of this tax.

Capital Gain on disposal of shares through Initial Public Offering

Section 37A

Through the Finance (Supplementary) Act, 2023, capital gains arising on disposal of shares of listed company which is made otherwise than through stock exchange and which are not settled through NCCPL, were made subjected to taxed under section 37 of the Ordinance.

Through the Finance Act, disposal of shares through initial public offer during the listing process has also been subjected to tax under section 37 of the Ordinance unless details of such disposal are furnished to NCCPL for the computation of Capital Gains and tax thereon under section 37A of the Ordinance.

Change in tax rates on capital gain of Securities

Division VII of Part I of First Schedule

Currently, capital gains arising on disposal of securities purchased before June 30, 2022 are subject to flat tax rate of 12.5% irrespective of the holding period.

Through Finance Act, capital gains arising on disposal of securities that are purchased after July 01, 2013 but before June 30, 2022 are subject to flat tax rate of 12.5% irrespective of the holding period and capital gains arising on disposal of securities purchased before July 01, 2013 are subject to flat tax rate of 0%.

Super Tax

Section 4C, 100B and Eight Schedule

Through the Finance Act 2022, the Government introduced a new Section 4C in the Ordinance to impose Super Tax on high income earners. Through Finance Act, income arising under Eight Schedule which relates to capital gain arising on disposal of listed securities has been subjected to be part of income for calculating super tax. A corresponding amendment has also been made in section 100B and Eight Schedule of the Ordinance by giving NCCPL

power to collect super tax on the amount of capital gain as well.

1% Tax on Deemed Income

Section 7E, Division VIII C, Part – I of First Schedule

Last year vide Finance Act, 2022, a new concept of taxation of deemed rental income was 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. Such deemed income was effectively taxed at 1%.

However, exclusion from the applicability of such provision was provided to:

1. One capital asset owned by the resident person;
2. Any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon;
3. Capital asset in the first tax year of acquisition where tax under Section 236K has been paid;
4. where the fair market value of the properties in aggregate excluding certain specified provision does not exceed Rs. 25 million.

Through the Finance Act, the benefit of the above exclusion has been limited for only those persons who appear in the active taxpayers' list (ATL) and persons not required to file return who has obtained certificate to that effect as prescribed under rule 2 of Tenth Schedule.

Advance Tax on Sale of Immovable Property *Section 236C, Division X, Part – IV of First Schedule*

Through Finance Act, a new sub-section (2A) has been inserted whereby if the tax liability under Section 7E is not discharged, then the registrar or the person registering, recording, or attesting transfer of any immovable property would not register it unless the evidence of payment of tax under section 7E has been furnished.

No Exemption from Withholding Tax on Purchase of Immovable Property *Section 236K*

Through Finance Bill, the exemption from withholding tax was proposed for Non-Resident Individuals (NRIs) holding a Pakistan Origin Card (POC) or National ID card for Overseas Pakistani (NICOP) or Computerized National ID Card (CNIC) who purchase the Immovable property either through Foreign currency Value Account (FCVA) or a Non-Resident Pakistani Rupee Value Account (NRVA) with authorized banks in Pakistan. The said proposition has not been adopted in the Finance Act.

Extension of Period for Tax Exemptions *Clause 99A of Part I of Second Schedule*

The period for tax exemption on gain on sale of property or share of SPV to any RIET scheme which expired on June 30, 2023 has not been granted.

Reduction in Tax Liability *Clause 21 of Part III of Second Schedule*

Fixed tax regime was introduced for builders through the Finance Act, 2016, which was abolished with effect from Tax Year 2018. Consequently, they are taxable under normal tax regime.

The Bill proposed reduction of tax liability by lower of 10% or Rs.5,000,000/- on profit and gains of a builder registered with Directorate General of Designated Non-Financial Business and Professions from a new building construction project for Tax Years 2024 to 2026. The said proposition has not been adopted in the Finance Act.

Advance Tax on Construction / Disposal of Buildings *Section 147*

An amendment has been made in section 147 through FA, which requires payment of advance tax on project-by-project basis in four equal instalments by persons deriving income from business from the following:

1. construction and disposal of residential, commercial and other buildings
2. development and sale of residential, commercial and other plots

The rates prescribed for advance tax under Part IIB of First Schedule of the Ordinance are aligned with the tax rates applicable on builders and developers who opted to be taxed under section 100D read with Eleventh Schedule. Though the provision of payment of advance tax was available in Eleventh Schedule, the same has now been aligned by incorporating the same in section 147 of the Ordinance.

Increase in withholding tax on sale and purchase of Property
Section 236C & 236K

The Finance Act has increased the rate of withholding tax on sale and purchase of property under section 236C and 236K respectively from 2% to 3% for Filer. Consequently, the rate for non-filer has been increased from 4% to 6% under section 236C and from 7% to 10.5% under section 236K.

Threshold for salary payment through cash
Section 21(m)

Presently, salary payments exceeding Rs 25,000 per month are not allowed as admissible deduction while computing income from business, if it is paid otherwise than through banking channel.

In line with increase in minimum wage, the said limit is now enhanced to Rs 32,000 per month.

Advance Tax at the time of sale by Auction
Section 236A

Any person making sale by auction is required to collect advance tax at the rate of 10% and 5% from the person selling the goods or property respectively.

The Finance Act, has levied advance tax at the rate of 5% on auction of train management services by Pakistan Railways.

Increase in Advance tax on purchase of vehicle
Section 231B

Through the Finance Act, the advance tax collected on registration of motor vehicle by motor registration authority or by the manufacturer on sale of motor vehicle has been increased as under:

Sr.N	Engine Capacity	Existing Tax	Revised Tax
1	Upto 850cc	Rs 10,000	Rs 10,000
2	851 cc to 1000cc	Rs 20,000	Rs 20,000
3	1001cc to 1300cc	Rs 25,000	Rs 25,000
4	1301cc to 1600cc	Rs 50,000	Rs 50,000
5	1601cc to 1800cc	Rs 150,000	Rs 150,000
6	1801cc to 2000cc	Rs 200,000	Rs 200,000
7	2001cc to 2500cc	Rs 300,000	6% of the value
8	2501cc to 3000cc	Rs 400,000	8% of the value
9	Above 3000cc	Rs 500,000	10% of the value

The value of motor vehicle will be as follows:

1. Imported vehicle – value assessed by the customs authorities as increased by the customs duty, federal excise duty and sales tax payable at import stage.
2. Locally manufacture / assembled vehicles – invoice value inclusive of all duties and taxes.
3. Auctioned vehicle – the auction value inclusive of all duties and taxes.

Tax concessionary measures not adopted

Succumbing to IMP pressure and adverse implication under FATF, the following amendments which were proposed in Finance Bill, have not been adopted in Finance Act.

Small and Medium Enterprise [SME]
Section 2(59A), Fourteenth Schedule and Exemption Clause (154) in Part I of the Second Schedule

1. The definition of SME was broadened to include providing or rendering IT services and IT enabled services.
2. Tax holiday for five years for SMEs setup exclusively as Agro based industry in rural area.

- The cap on business turnover to qualify as SME was increased from Rs. 250 million to Rs. 800 million.

Tax Credit for Construction of House

Section 65I

A new tax credit for an individual was introduced upto Tax Years 2026 with regard to construction of a new residential house. The tax credit amount was restricted to the lesser of 10% of tax for tax year or one million rupees.

Increased Limit of Tax – Free Foreign Remittance

Section 111(4)

Monetary limit of exemption for addition on account of an unexplained income or assets for foreign exchange remittance through banking channel was increased from five million rupees to rupees equivalent to one hundred thousand US Dollars in a year.

Reduction in Minimum Tax Rate on Turnover

Section 113(1)

Reduction of minimum tax on turnover from 1.25% to 1% for listed companies.

Reduced Tax Rate for Youth Enterprise

Clause 22 of Part III of Second Schedule

A youth enterprise concept was introduced upto Tax Years 2026. It was suggested that such enterprise would get a concession in income tax with the lower of 50% or Rs.2 million for Individuals / 'AOPs' and with the lower of 50% or Rs.5 million for companies.

Changes in Tax Rates of Salary Income and Business Income [Individual and AOP]

Section 149, Division-I & II, Part-1 of First Schedule

No change was proposed in the Finance Bill in the tax rates of salaried and business Individual/AOP. Through Finance Act, the tax rates for all the classes of persons have been increased.

- Flat increase of 2.5% in tax rate on salaried individual earning more than 2.4 million and

highest slab rate of 35% starting from 6 million.

- Flat increase of 2.5% in tax rate on Business individual and AOPs earning more than 600,000/- and highest slab rate of 35% starting from 4 million.

The Finance Act has also decreased the numbers of Salary Slabs from seven (7) to Six (6). The trend of salary slabs shows that the change will have a negative impact on high net worth salaried Individual.

A Comparison of Salary tax between the existing and the proposed Slab is being tabulated as under for ease of understanding.

INCOME FROM SALARY (S. 12)					
COMPARISON BETWEEN EXISTING & REVISED					
S#	Salary Income	Tax Year 2023	Tax Year 2024	Increase / (Decrease)	Impact
1	600,000	-	-	-	-
2	1,200,000	15,000	15,000	-	
3	2,400,000	165,000	165,000	-	
4	3,600,000	405,000	435,000	30,000	Negative
5	6,000,000	1,005,000	1,095,000	90,000	Negative
6	12,000,000	2,955,000	3,195,000	240,000	Negative

A Comparison of Business tax between the existing and Revised Slab is being tabulated as under for ease of understanding.

INCOME FROM BUSINESS					
COMPARISON BETWEEN EXISTING & REVISED					
S. No	Business Income	Tax Year 2023	Tax Year 2024	Increase / (Decrease)	Impact
1	600,000	-	-	-	-
2	800,000	10,000	15,000	5,000	Negative
3	1,200,000	60,000	75,000	15,000	Negative
4	2,400,000	270,000	315,000	45,000	Negative
5	3,000,000	405,000	465,000	60,000	Negative
6	4,000,000	680,000	765,000	85,000	Negative
7	6,000,000	1,330,000	1,465,000	135,000	Negative

SALES TAX ACT, 1990

Further Tax

Section 3(1A)

Further tax is attracted on supply of taxable goods as are made to a person who has not obtained sales tax registration or he is not at active taxpayer list being maintained by FBR.

By virtue of Finance Act 2023, Section 3(1A) has been amended whereby rate of further tax has been enhanced from 3% to 4% on the value of taxable supplies. The aforesaid enactment is suspected to promote the menace of flying invoices.

Alternative Dispute Resolution

Section 47A

In the last few years, the legislature made amendments from time to time in relevant provisions to alternative dispute resolution [ADR] under income tax, sales tax and excise duty laws. In this regard, the legislature revamped such provisions in totality under all such statutes through Finance Act, 2020. Through Finance Act 2022, further amendments were made at Section 47A of ST Act and Section 38 of Federal Excise Act, 2005 in relation to ADR.

The Finance Act, 2023 has once again amended various provisions of aforesaid Sections. For sake of brevity, such vital amendments along with comparison thereof to existing provisions are tabulated as under:

Existing Position (Upto 30 June 2023)	Current Position (From 01 July 2023)
The Appellant is not entitled to withdraw the proposition made in application for dispute resolution	The restriction for non-withdrawal of proposition by the Applicant is done away
Time period for appointment of committee is within 45 days from the date of receipt of application by the Board	Now, the period for formation of Committee by the Board has been reduced to 15 days from the date of filing of application
No chairperson of	A retired judge of High

Existing Position (Upto 30 June 2023)	Current Position (From 01 July 2023)
the committee	Court shall be Chairperson of the Committee as nominated by FBR from a penal notified by Law and Justice Division.
Person nominated by registered person shall not be auditor or authorized representative of the registered person	Now, nominated person by the registered person may be authorized representative of the registered person as limitation on nomination by registered person is confined to auditor only
After constitution of the Committee, the aggrieved person shall withdraw the appeal pending before any court of law or an Appellate Authority. Proceedings of the Committee shall commence after withdrawal of the appeal	Conditions for prior withdraw of appeal by aggrieved person is withdrawn and Board shall communicate appointment of the Committee to aggrieved person, court of law or appellate authority
Recovery of disputed tax demand shall be deemed to have been stayed upon withdrawal of appeal	Recovery of disputed tax demand shall be deemed to have been stayed upon constitution of the Committee
Decision of the Committee is binding on the Commissioner as well as the aggrieved person	Decision of the Committee is binding on the Commissioner when aggrieved person, being satisfied with the decision, withdrawn the appeal and also communicate such withdrawal to the Commissioner.
If the Committee fails to decide with 120 days, the Board shall dissolve the Committee by an	If the Committee fails to decide with 45 days, which is extendable by another 15 days, the Board

Existing Position (Upto 30 June 2023)	Current Position (From 01 July 2023)
order in writing. The aggrieved person shall communicate the order of dissolution of the Committee to the court of law or Appellate authority	shall dissolve the Committee by an order in writing. The Board shall communicate the order of dissolution of the Committee to the court of law or Appellate authority

FIFTH SCHEDULE

Zero Rate of Sales Tax on Preparation for Infants

Currently, zero rate of sales tax on 'preparations suitable for infants put up for retail sales' is available provided price of such item does not exceed rupees five hundred per two hundred grams. Through the Finance Act, the limit of zero-rating on such items has been enhanced from five hundred rupees to six hundred rupees per two hundred grams. This is relief measure for both businesses and end consumers as well.

SIXTH SCHEDULE (Table-I)

Exemptions

Fertilizer

Withdrawal of Exemption on DAP (Fertilizers)

By virtue of Finance Act, 2022, all types of fertilizers were declared exempt from sales tax through insertion of Entry No. 168 at Sixth Schedule to ST Act.

Through Finance Act, 2023, exemption of sales tax on DAP (category of fertilizers) has been withdrawn through amendment at Entry No. 168. However, other fertilizers would continue to remain exempt from sales tax under ST Act. In addition to aforesaid amendment, the legislature has also imposed federal excise duty at the rate of 5% on all types of fertilizers including DAP by way of amendments at Table-1 of First Schedule to Federal Excise Act, 2005 [FED Act].

The said amendment would lead to an enhancement in price of DAP and other fertilizers which would have an extra burden

on agriculture sector.

Wheat Bran

Sales Tax Exemption for Previous Years

The Finance Act, 2021 had added Entry No. 27 at Sixth Schedule to ST Act whereby wheat bran was exempted from sales tax. Now the Finance Act has extended the benefit of sales tax exemption on wheat bran with retrospective effect, i.e. 01 July 2018 by making appropriate amendment at aforesaid Entry.

As per our understanding, the said amendment will benefit such taxpayers whose tax cases are pending for previous years liability in relation to wheat bran before appellate forums.

Withdrawal of Exemption

Sixth Schedule

The Finance Bill had proposed new exemptions on following commodities through insertion of new Entries at Sixth Schedule to ST Act.

- Contraceptives and accessories
- Bovine Semen
- Saplings
- Agricultural machinery
- Specified IT Equipments

The Finance Act has not included aforesaid goods for the purpose of sales tax exemption at Sixth Schedule. Now, such items would continue to be taxed under ST Act.

EIGHTH SCHEDULE

Reduced Rate Regime

Pharmaceutical Industry

Change in Taxation & Addressing Anomalies

Vide Finance Act 2022, 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 had been withdrawn by omitting Serial No. 19 from Fifth Schedule to the ST Act. Likewise, Serial No. 81 and 82 were also inserted in the Eighth Schedule to the ST Act. Consequently, import and local supply of substances registered as

Drugs under the Drugs Act, 1976 and raw materials for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharma products had become taxable at reduced rate of 1% subject to condition that no input tax adjustment will be available for importer/manufacturer.

1. Vide Finance Act 2023, an expression 'in the supply chain' has been replaced with the narration 'by the manufacturer or importer' at Serial No. 81 and 82 of Eighth Schedule. As per our understanding, the aforesaid amendment would lead to clear understanding on status of input tax disallowance for every person in the supply chain including but not limited to manufacturer and importer.
2. *Through Finance Bill, Serial No. 82 at Sixth Schedule had proposed to tax raw materials for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharmaceutical products at the rate of 1% sales tax on import thereof provided such raw materials shall have sales tax exemption and are liable to customs duty not exceeding 11%.*

By virtue of Finance Act, 2023, the word 'exemption' has been replaced with narration 'reduced rate as specified in column (4) at Serial No. 82. As per our understanding, the aforesaid amendment has removed apparent anomaly at this Entry which now otherwise gives true sense that facility of reduced sales tax would be available to such imports as are liable to customs duty at specified rate on import.

3. In addition to above, the Finance Bill had also proposed application of reduced sales tax at the rate of 1% on import of specified raw materials [supra] from 01 July 2022. However, the Finance Act has not extended said benefit on such materials from 01 July 2022. In other words, such raw materials would be taxed at the rate of 1% from 01 July 2023 without any retrospective effect of reduced rates as enunciated by Finance Bill.

As per our understanding, the aforesaid

amendment through Finance Act would have closed down chances of filing refund claims of differential sales tax in such cases whereby import of such raw materials were made at standard sales tax in previous year, i.e. year 2022-2023.

ISLAMABAD CAPITAL TERRITORY (TAX ON SERVICES) ORDINANCE 2001

Withdrawal of Relief Measures for IT Sector

Section 3(2A) (a)

The Finance Bill had proposed sales tax exemption for freelance exporters exclusively dealing in export of IT and IT enabled services.

Through the Finance Act, such amendment has not been made part under relevant provision of ICT Ordinance. Hence, export of IT and IT enabled services undertaken by freelance exporter would be taxed at applicable rate of sales tax under ICT Ordinance.

Application of Sales Tax Act 1990 on ICT Ordinance

Section 3(2A)

The Finance Bill had proposed application of following provisions of Section 3 of ST Act in relation to services rendered under ICT Ordinance.

- ✓ Higher and lower rate of sales tax- Clause (b) of subsection 2,
- ✓ Manner and payment of sales tax- subsection (5)
- ✓ Sales tax withholding - sub-section (7)

The Finance Act has not catered the aforesaid provisions of ST Act under ICT Ordinance considering the fact such provisions are already existent under ICT Ordinance.

Definition of IT and IT Enabled Services

Table-1

Through the Finance Bill, definition of IT Services and IT Enabled Services was proposed to be inserted at Table-2 of ICT Ordinance. Through the Finance Act, such definition has been transposed to Table-1 from Table-2 of ICT Ordinance. We

understand that insertion of definition at Table-1 is for the purpose of protecting the legality of taxation besides bringing harmony and would streamline taxability of said services.

FEDERAL EXCISE DUTY ACT, 2005

Duties Specified in First Schedule

Section 3(1) (e)

Section 3 specifies various situations for levy of Federal Excise Duty (FED) in relation to specified goods and services. The Finance Bill proposed to insert Clause (e) 'any item specified in the First Schedule' in Section 3 of FED Act.

By virtue of the Finance Act, Clause (e) has been reclassified as 'any item not covered in clause (a) to (d) above and specified in the First Schedule'. As per our understanding, the said insertion have widened scope of FED beyond manufacturing, import and services. In our opinion, distribution activity of businesses may be declared in the ambit of FED through subsequent legislation. We understand that the legislature has now changed said narration in very clear manner which was otherwise missing at Finance Bill.

Furthermore, the word 'specified in the First Schedule' as inserted at Clause (2) clarifies that specified goods and services mentioned at First Schedule would be construed for the purpose of levy of FED under FED Act. As per our opinion, the said amendment has catered an anomaly under charging provision at FED Act.

Alternative Dispute Resolution

Section 38

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

First Schedule: Table-I

Change in Rate of FED

S. No.	Products	Upto 30 June 2022	From 1 st July 2023
8c	Tobacco mixtures	FED @ Rs.5,200 per kg	FED @ Rs.16,500 per kg
59	Sugary Fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners excluding mineral and aerated waters	10% of retail price	20% of Retail Price

First Schedule: Table-I

Insertion of New Goods for FED

The Finance Act has given timelines for levy of FED on Entry No. 60 and 61 below in relation to following goods w.e.f. 01 January 2024 which was otherwise applicable to levy of FED from 01 July 2023 through Finance Bill.

S#	Excisable Goods	FED
60	Energy inefficient fans both locally manufactured and imported which do not comply with MEPS, notified by PSQCA	Rs. 200 per fan
61	Incandescent bulb- locally manufactured or import	20 ad valorem
02	Fertilizer	5% ad valorem

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