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TAX MEMORANDUM 2024

PREFACE

The Finance Bill 2024-2025 (the Bill) was presented in National Assembly on 12th June 2024.

This document contains brief comments on the changes proposed through the Bill. All changes proposed through the Bill, subject to approval by National Assembly and Presidential assent, are effective July 1, 2024.

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 at our website: www.mooreshekhamufti.com

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SALIENT FEATURES

Income Tax Ordinance, 2001

- 15% flat tax rate on capital gains from disposal of property and listed shares irrespective of the holding period, for filer.
- Slab rate of tax on capital gains from disposal of property and listed shares irrespective of the holding period with minimum rate of 15% and maximum rate of 45%, for non-filer.
- Advance Tax on purchase of property will be collected based on the value of property with the maximum rate of 4% for filer 8% for late filer and 20% for non-filer on value of Rs 100 million.
- Advance Tax on sale of property will be collected based on the value of property with the maximum rate of 4% for filer, 8% for late filer and 10% for non-filer on value of Rs 100 million.
- Final Tax Regime (FTR) for the exporters has been withdrawn.
- Maximum Tax Burden on Business Individuals & AOP have been enhanced from 35% to 45%.
- Incremental Tax burden at the rate of 2.5% on every slab has been increased on Salaried individuals.
- Advance Tax under Section 236G & 236H has been made applicable to all distributor, wholesaler, dealer and retailer irrespective of their business sector.
- Non-Filers (other than NICOP, minors, students) have been barred from travelling abroad.
- The tax on dividend by Money Market Mutual Fund has been enhanced from 15% to 25%.
- The advance tax on profit on debt from non-Filer has been enhanced from 30% to 35%.
- Facility of availing exemption certificate by manufacturer of goods, exempt entities and by NPO is withdrawn.
- Fixed Tax on registration of motor vehicles have been replaced with slab-based tax on value of motor vehicles with the maximum rate of 12% on motor vehicle of 3000cc.
- AOP with turnover of Rs 300 million is required to get their Accounts audited in order to retain exemption to its partner on the share from AOP.

SALIENT FEATURES

Income Tax Ordinance, 2001

- The rate of default surcharge has been aligned with the current KIBOR plus 3%.
- 25% of total advertisement expense would be disallowed if such associate is claiming royalty expenses payable to non-resident associate.
- Exemption on federal government subsidy has been withdrawn.
- Commissioner has been empowered to reject the lower estimate of advance tax filed by taxpayer.
- Resident Individuals are required to file details of Foreign Assets in their Wealth Statement.
- The due date for transferring cases exceeding the limit of Rs 20 million from Commissioner Appeals to Appellate Tribunal has been extended from 16th June 2024 to 16th September 2024.
- The exemption given to FATA / PATA has been extended till June 30, 2025.

Sales Tax Act, 1990

- The scope of tax fraud is enhanced whereby minor mistakes will be treated as tax fraud.
- The provisions concerning assessment and audit revamped vesting more discretionary powers in revenue officers.
- Sales tax on advance payment against taxable supplies to be reinstated.
- The board vested with authority to establish the minimum price for items listed in the Third Schedule.
- The default surcharge rate will be calculated as KIBOR plus 3% replacing the previous fixed rate of 12%.
- The deadline for transferring cases pending before the Commissioner (Appeals) will be September 16, 2024, surpassing the ten million rupee limit.

SALIENT FEATURES

Sales Tax Act, 1990

- Withdrawal of sales tax exemptions on the following imports & supplies:
 - ✓ Edible vegetables & fruits imported from Afghanistan
 - ✓ Medical Treatment & Diagnostics kits / equipment
 - ✓ Supplies to hospital run by the charitable hospitals
 - ✓ Imports of Goods by non-profit making institutions
- Exemption from sales tax has been introduced for:
 - ✓ Import of goods in case of natural disaster or other catastrophe event
 - ✓ Milk excluding that sold under a brand name
 - ✓ Iron & Steel Scarp
- The zero-rating of petroleum products is transforming to a sales tax exemption.
- Enhancement of sales tax @ 18% on LPG and locally manufactured Hybrid Electric Vehicles.
- Withdrawal of reduced rate i.e. 15% sales tax on supplies made by Tier 1 Retailer having integrated Point of Sale (POS).
- 18% sales tax on medicaments are classified under Chapter 30 of the Customs Act has been reintroduced.
- 10% Reduced Rate of Sales Tax has been imposed by withdrawing Sales Tax Exemption on the following:
 - ✓ Stationery items
 - ✓ Oil cake & other solid residues
 - ✓ Tractor
 - ✓ Vermicillies, Sheer Mal, Bun & Rusk
 - ✓ Poultry Feed, Cattel Feed, Sunflower seed meal, rape seed meal, canola seed meal
 - ✓ Newsprint/ Books
- Reduced rates of 6% and 12% have been implemented until June 30, 2025, and June 30, 2026, respectively introduced for tribal areas replacing existing exemption.
- Mobile phones taxable now at standard rate of 18% and 25%.

SALIENT FEATURES

Sales Tax Act, 1990

- 80% of the Sales Tax Withholding has been imposed on purchases of the following goods made by registered persons:
 - ✓ Lead batteries
 - ✓ Gypsum
 - ✓ Coal
 - ✓ Waste paper & Paper Board
 - ✓ Plastic Waste
 - ✓ Crush stone & Silica

Federal Excise Act, 2005

- Penal provision for sealing of retail outlet where cigarettes packs are sold by the retailer without affixing tax stamps, stickers, labels or barcodes has been introduced.
- Federal Excise Duty of Rs.44,000 per KG has been imposed on Acetate tow (Fiber used primarily in cigarette filters)
- Federal Excise Duty of Rs.1,200 per KG has been imposed on Nicotine pouches.
- Threshold of Retail price for imposing of Federal Excise Duty on Locally produced cigarette has been increased from 9000 per thousand cigarettes to 12500 per thousand
- Federal Excise Duty on Cements has been increased to Rs.3 per KG from Rs.2 per KG.
- Federal Excise Duty on Filter rod for cigarettes has been increased to Rs.80,000 per KG from Rs.1,500 per KG.
- 5% Federal Excise Duty has been imposed on allotment or transfer of residential / commercial property
- Federal Excise Duty of Rs.15/- per KG has been imposed on sugar supplied to a manufacturer.

INCOME TAX ORDINANCE, 2001

CHANGES IN TAXATION OF CAPITAL GAIN ON PROPERTIES

Section 37(1A)

a) Concept of Holding period withdrawn

It is worthwhile to mention that after the introduction of taxation of capital gains on sale of property in 2012, it has always remained a controversial subject and subject to frequent changes and amendments in terms of either its holding period for exemption or the rate of taxation.

If we recall, initially, the holding period for exemption from capital gain tax on property was introduced for two (02) years, which was subsequently enhanced up to five (5) years and later on restricted up to four (04) years. However, the holding period for exemption from capital gain tax on property was subsequently increased up to Six Years in case of Open Plots, Four Years in case of Constructed Properties and Two Years in case of Flats.

Through the above Finance Bill, the exemption based on holding period of Six (06) Years has finally been withdrawn.

b) Introduction of Flat Rate @ 15%

Through the Finance Bill, the taxation of capital gains on sale of property has again been proposed to be changed. This time, the FBR has taken the step to harmonise the taxation of capital gains on sale of property with the capital gain taxation on listed securities at a standard rate of 15%. The rate will be applicable on properties purchased on or after 01 July, 2024.

Before the above proposed amendment, the taxation was based on the slab given as per the classification of property into open plot, constructed property and a flat.

Moreover, through the above Bill, a significant line has also been drawn between the Filers and Non-Filers for the property purchased on or after 01 July, 2024. The following tabulation will be helpful to understand the above classification, which also provides distinct classification of properties into;

Before June 30, 2024
On or after 01 July, 2024

S.NO.	HOLDING PERIOD OF PROPERTY	RATE OF TAX ON PROPERTIES ACQUIRED ON OR BEFORE 30TH DAY OF JUNE, 2024			RATE OF TAX ON PROPERTIES ACQUIRED ON OR AFTER 1ST DAY OF JULY, 2024	
		OPEN PLOTS	CONSTRUCTED PROPERTY	FLATS	FILER	NON FILER
1	Up to one year	15%	15%	15%	15%	i) Slab rate applicable to individuals & AOP which may go up to 45% on gain exceeding 5.6M, subject to minimum 15%
2	More than one year but less than two years	12.5%	10%	7.5%		
3	More than two years but less than three years	10%	7.5%	0%		ii) Flat rate on companies; a) 20% on small companies b) 29% on companies c) 39% on banks Subject to minimum 15%.
4	More than three years but less than four years	7.5%	5%	-		
5	More than four years but less than five years	5%	0%	-		
6	More than five years but less than six years	2.5%	-	-		
7	More than six years	0%	-	-		

Advance Tax on Sale of Properties Section 236C

Chronology

Through the Finance Act 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.

After insertion of this amendment, all the persons and authorities responsible for registration and transfer of property including societies have become liable to collect the above advance tax at the time of transfer.

The advance tax is considered as minimum tax if the Seller acquires and disposes off the Property within the same Tax Year. This tax was declared final discharge of liability in case of sale of property by the non-resident Pakistani nationals subject to channelling of funds through prescribed banking channels.

Current Amendments

Through the Finance Bill, besides the existing two categories of Filer and Non-Filer, another category of Late Filers has been introduced based on the fair market value. The following table will be helpful to understand the amendment:

S.NO.	AMOUNT	RATE OF TAX		
		FILER	LATE FILER	NON-FILER
1	Where the fair market value does not exceed Rs. 50M	3%	6%	10%
2	Where the fair market value is between Rs. 50M and Rs 100M	3.5%	7%	
3	Where the fair market value exceeds Rs. 100M	4%	8%	

After insertion of new category of Late Filer, we understand that it will force the taxpayer to file the tax return within due date to avoid the extra tax burden on property transactions.

Advance Tax on Purchase of Properties Section 236K

The concept to collect the Advance Income Tax from purchaser on purchase of all kind of Properties was introduced through the Finance Act 2014. The initial rate of aforesaid Advance Tax was 1%, which was subsequently increased up to 2% in case of Filer, while 7% in case of Non-Filer.

In order to align with the provision of Section 236C of the Ordinance, similar amendment of a new category of Late Filer has been introduced beside the Filer and Non-flier.

The following table will be helpful to understand the implication;

S.NO.	AMOUNT	RATE OF TAX		
		FILER	LATE FILER	NON-FILER
1	Where the fair market value does not exceed Rs. 50M	3%	6%	12%
2	Where the fair market value is between Rs. 50M and Rs 100M	3.5%	7%	16%
3	Where the fair market value exceeds Rs. 100M	4%	8%	20%

It appears that after introduction of aggressive rate of Advance Tax upto 20% on purchase of property which is 400% more than the rate applicable on filer, a significant decline may be observed at the registration stage by the investors.

CHANGES IN TAXATION OF CAPITAL GAIN ON LISTED SHARES

Section 37A

a) Introduction of Flat Rate @ 15%

The Budgetary steps of FBR towards the investors of Stock Market has constantly been pushing the tax rate higher every year on one hand and increasing the minimum holding period requirement for getting exemption on the other.

Through the Finance Bill, a significant amendment has been introduced that the holding periods for disposal of securities have completely been replaced with the standardized rate of tax @ 15%. Meaning thereby, if a person acquires shares on or after July 01, 2024 and disposes the same irrespective of any holding period, being a Filer, he has to pay capital gain tax @ 15% under Section 37(A) of the Ordinance.

Besides the above amendments, it needs to be appreciated that this time the FBR did not change the taxation of listed shares, which are acquired between the period from 1st day of July 2022 to 30th June 2024, which shall remain continue as per progressive slab rate of tax. The following tabulation will be helpful to understand the tax implication;

The following table will be helpful to understand the implication;

S.NO.	HOLDING PERIOD OF SHARES	RATE OF TAX ON LISTED SECURITIES ACQUIRED BETWEEN 1ST DAY OF JULY 2022 AND 30TH JUNE 2024		RATE OF TAX ON LISTED SECURITIES ACQUIRED AFTER 1ST DAY OF JULY, 2024	
		FILER		FILER	NON-FILER
1	Up to one year	15%		15%	i) Slab rate applicable to individuals & AOP which may go up to 45% on gain exceeding 5.6M, subject to minimum 15% ii) Flat rate on companies; a. 20% on small companies b. 29% on companies c. 39% on banks Subject to minimum 15%.
2	More than one year but less than two years	12.5%			
3	More than two years but less than three years	10%			
4	More than three years but less than four years	7.5%			
5	More than four years but less than five years	5%			
6	More than five years but less than six years	2.5%			
7	More than six years	0%			
8	Future commodity	5%		5%	5%

It needs to be highlighted that a flat rate of 15% will only be applicable, if the person has been declared FILER not only at the time of disposal of shares but also should be FILER at the time of acquiring shares as well. Otherwise, it appears that the tax rate of NON-FILER will be applied accordingly.

b) Concept of Holding period withdrawn

Similar to the taxation of capital gains on sale of property, the taxation of capital gains on listed securities has always remained a subject of frequent changes and amendments throughout the periods.

If we recall, the capital gain on listed securities was brought into tax net through Finance Act, 2011 with the holding period for exemption for one (01) year, which was subsequently enhanced and later on restricted up to six years.

Through the above Finance Bill, the exemption based on holding period of Six Years has finally been withdrawn.

Higher Withholding of Tax on Dividend by Certain Mutual Fund

Section 150

A very unexpected amendment has been proposed that the Mutual Funds deriving 50% or more income from profit on debt, shall deduct income tax @ 25% instead of 15% at the time of disbursement of dividend to its unit holders.

The primary effect of the proposed amendment is an increased tax burden on dividends from debt-heavy Mutual Funds. This higher taxation rate diminishes the attractiveness of these Funds. This shift may invigorate the stock market with increased liquidity and investor participation, potentially driving up stock prices and market indices.

Moreover, the enhanced tax rate on dividends could also lead to a significant outflow of investments from these funds, resulting in a decreased demand for T-Bills and government securities etc. and reduce the attractiveness of debt-based mutual funds and money market instruments.

CHANGES IN WITHHOLDING OF CAPITAL GAIN ON PRIVATE COMPANY SHARES

Section 37(6)

Through the Finance (Supplementary) Act, 2023 dated 23 February 2023, the Federal Board of Revenue introduced adjustable advance tax to be deducted by the person on acquisition of shares of the company, other than securities under Section 37A of the Ordinance, from gross amount of consideration paid at the rate of 10% of the fair market value.

Through Finance Bill, the deduction of advance tax has been proposed to be mandated on earlier of the registration of shares by SECP / SBP or at the time of payment of consideration.

In essence, it appears that the legislature has intended to align the timing of withholding tax with capital gain / loss on disposal of shares recognized on accrual basis. Another rationale behind aforesaid proposed amendment might be to curtail creative taxation whereby shares of private companies are transferred between group companies and relatives without recognition of any gain / loss.

CHANGES IN PERSONAL TAXATION

High Tax on Salaries

Section 149, Clause 2, Division-I, Part-I of the First Schedule

Finance Bill has proposed to enhance tax on salaries. We are reproducing hereunder the slabs of rate of Tax Year 2024 and 2025 in order to facilitate comparisons of the slabs.

TAX YEAR 2024				TAX YEAR 2025		
S.NO.	SALARY INCOME	RATE	FIXED RATE	SALARY INCOME	RATE	FIXED RATE
1	Up to 600,000	Nil	Nil	Up to 600,000	Nil	-
2	600,001 to 1,200,000	2.50%	Nil	600,001 to 1,200,000	5%	-
3	1,200,001 to 2,400,000	12.50%	15,000	1,200,001 to 2,200,000	15%	30,000
4	2,400,001 to 3,600,000	22.50%	165,000	2,200,001 to 3,200,000	25%	180,000
5	3,600,001 to 6,000,000	27.50%	435,000	3,200,001 to 4,100,000	30%	430,000
6	6,000,001 and above	35.00%	1,095,000	4,100,001 & above	35%	700,000

A flat increase of 2.5% can be observed in all the taxable slabs invariably. Moreover, the change in slabs has resulted in higher taxation as well.

Based on the above slabs, 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 & PROPOSED					
S.NO.	SALARY INCOME	TAX YEAR 2024	TAX YEAR 2025	INCREASE / (DECREASE)	IMPACT
1	600,000	-	-	-	-
2	1,200,000	15,000	30,000	15,000	Negative
3	2,200,000	140,000	180,000	40,000	Negative
4	2,400,000	165,000	230,000	65,000	Negative
5	3,200,000	345,000	430,000	85,000	Negative
6	3,600,000	435,000	550,000	115,000	Negative
7	4,100,000	572,500	700,000	127,500	Negative
8	6,000,000	1,095,000	1,365,000	270,000	Negative

High Tax on Business Income (Individual & AOPs)

Clause-1, Division-I, Part-I of the First Schedule

Finance Bill has proposed to enhance tax on Business Individuals and AOPs. We are reproducing hereunder the slabs of rate e.g. Tax Year 2024 and Tax Year 2025 in order to facilitate comparison of the slabs.

TAX YEAR 2024				TAX YEAR 2025		
S.NO.	BUSINESS INCOME	RATE	FIXED RATE	BUSINESS INCOME	RATE	FIXED RATE
1	Up to 600,000	-	-	Up to 600,000	-	--
2	600,001 to 800,000	7.50%	-	-	-	-
3	800,001 to 1,200,000	15%	15,000	600,001 to 1,200,000	15%	-
4	1,200,001 to 2,400,000	20%	75,000	1,200,000 to 1,600,000	20%	90,000
5	2,400,001 to 3,000,000	25%	315,000	1,600,001 to 3,200,000	30%	170,000
6	3,000,001 to 4,000,000	30%	465,000	3,200,001 to 5,600,000	40%	650,000
7	4,000,001 & above	35%	765,000	5,600,001 and above	45%	1,610,000

A flat increase of 5% to 10% can be observed in all the taxable slabs invariably. Moreover, the change in slabs has resulted in higher taxation as well.

Based on the above slabs, a Comparison of 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 & PROPOSED					
S.NO.	TAXABLE INCOME (BUSINESS)	TAX YEAR 2024	TAX YEAR 2025	INCREASE / (DECREASE)	IMPACT
1	600,000	-	-	-	-
2	800,000	15,000	30,000	15,000	Negative
3	1,200,000	75,000	90,000	15,000	Negative
4	1,600,000	155,000	170,000	15,000	Negative
5	2,400,000	315,000	410,000	95,000	Negative
6	3,000,000	465,000	590,000	125,000	Negative
7	3,200,000	525,000	650,000	125,000	Negative
8	4,000,000	765,000	970,000	205,000	Negative
9	5,600,000	1,325,000	1,610,000	285,000	Negative
10	6,000,000	1,465,000	1,790,000	325,000	Negative
11	6,500,000	1,640,000	2,015,000	375,000	Negative

Non-Filers to fall under Exit Control List (ECL) Automatically Clause(d) in Section 114B

A provision under section 114B was introduced in 2021, whereby Federal Board of Revenue was empowered, inter-alia, to carry out certain action through general order in respect of non-filers whose name were not appearing in ATL. Such actions included disabling to block mobile phone SIMS and discontinuation of other utility connections, like electricity & gas.

Currently, in yet another attempt to broaden the tax net and to increase the number of return filers, a new clause (d) under above section has been inserted, where, it has been proposed to restrict these non-filers to travel abroad. Exceptions to minors, students, overseas Pakistanis (NICOP holders) has been given. However, other exceptions can be notified by the Board.

Exorbitant penalties have been proposed on the implementing agencies, which fail to block mobile phone SIMS or disconnect the utility connections or do not comply with restriction on foreign travel from Pakistan.

Penalty has been proposed to be fixed as follows:

Rs. 100 million for first default; and
Rs. 200 million for each subsequent default.

Foreign Assets under USD 100,000 to be declared in Wealth Statement

Section 116

Change under sub-section (1) of Section 116 of the Ordinance has been proposed, whereafter “foreign assets” are to be declared along with the domestic assets by every resident individual filing the wealth statement.

We understand that with this provision, the gap in the declaration of lower value assets, lower than USD 100,000 has now been filled-in and all the assets to be declared invariably in the Wealth Statement under Section 116 of the Ordinance.

This change aims to prevent undeclared foreign assets and shall come into effect for e-filing of Wealth Statement under Section 116 for the Tax Year 2024.

CHANGES IN ASSESSMENTS & APPEALS

Commissioner can assess Income of Person discontinuing their Business

Section 121(1)(ac)

Section 121 of the Ordinance establishes a mechanism for assessing the taxable income of taxpayers, based on the available information to the best of their knowledge, who have not filed their returns.

The Finance Bill proposes an extension of this provision on persons who have discontinued their business. It grants the Commissioner the authority to assess the taxable income of individuals who have failed to file a return of income after receiving a notice under Section 117 of the Ordinance.

The inclusion of this clause aims to ensure the accurate assessment of taxable income for those discontinuing their businesses. It compels such individuals to file a return and in the event of non-compliance, permits the Commissioner to determine the taxable income using their best judgment.

Pecuniary Jurisdiction in Appeals

Section 126A

Section 126A, introduced through the Tax Laws (Amendment) Act, 2024, specified the appropriate appellate authority based on the value of the assessment. For instance, if the assessment value is below Rs. 20 million, the appeal is to be heard by the Commissioner Appeals and where the value exceeds this threshold, the appeal is directed straight to the Appellate Tribunal Inland Revenue.

The Finance Bill has proposed to insert an explanation to define the term value of assessment. The explanation defines the value of the assessment as the net increase in tax liability resulting from the assessment order. In cases of refunds, it defines the value as the net reduction in the refund resulting from the order.

However, ambiguity remains regarding orders that neither result in increase in tax liability nor a reduction in tax refund. One such scenario is reduction of a tax loss claimed by the taxpayer. The current proposal does not address where appeals in such cases should lie, given the absence of abovementioned yardstick governing the value of assessment. This ambiguity needs to be resolved to provide clarity on the appropriate appellate authority in such scenarios.

Furthermore, under the Tax Laws (Amendment) Act, 2024, the Commissioner Appeals was directed to transfer all pending appeals with an assessment value or reduction of refund exceeding Rs. 20 million to the Appellate Tribunal Inland Revenue by June 16, 2024. This deadline has now been extended to September 16, 2024. However, any appeals transferred during this extended period will be deemed to have been transferred effective from June 16, 2024.

Revision by the Commissioner

Section 122A(1)

Section 122A, introduced by the Finance Act, 2003, outlines the discretionary "suo moto" powers granted to the Commissioner. This provision allowed the Commissioner to call for the record of any proceeding where an order has been passed by an Officer of Inland Revenue other than the Commissioner (Appeals), should the Commissioner deem the order in need of revision.

Recent amendments introduced through the Tax Laws (Amendment) Act, 2024, restricted the scope of order passed by Commissioner (Appeals) Inland Revenue upto Rs. 20 million for the value of the assessment. This change was deemed unnecessary, given that the Commissioner already lacks the authority to revise orders passed by the Commissioner (Appeals) Inland Revenue.

In response, the Finance Bill proposes to omit this redundant addition from the amended ordinance. This removal aims to streamline the provisions and eliminate any confusion regarding the scope of the Commissioner's revisionary powers.

Appeal to the Commissioner (Appeals)

Section 127

Section 127, introduced by the Finance Act, 2002, grants taxpayers the right of appeal to the Commissioner (Appeals) Inland Revenue against orders issued by the Commissioner or an Officer of Inland Revenue.

In response to recent changes made by the Tax Laws (Amendment) Act, 2024 regarding the pecuniary limits to determine the jurisdiction of appeals, the Finance Bill proposes to incorporate a condition based on the value of the assessment. Specifically, it stipulates that appeals involving an assessment value or a refund exceeding Rs. 20 million will fall outside the scope of the Commissioner Appeals Inland Revenue.

This inclusion aligns with the recent amendments introduced by the Tax Laws (Amendment) Act, 2024, reinforcing the Rs. 20 million threshold for determining the appropriate appellate authority.

Appeal to the Appellate Tribunal

Section 131

Section 131 grants taxpayers and the Commissioner the right to appeal against orders passed by the Commissioner (Appeals) Inland Revenue. However, recent changes introduced through the Tax Laws (Amendment) Act, 2024, amended this provision to allow any person aggrieved by an order issued by the Officer Inland Revenue, the Commissioner, the Chief Commissioner, the Board, or the Commissioner (Appeals) Inland Revenue to file an appeal before the Appellate Tribunal Inland Revenue.

The Finance Bill proposes to omit the term "Commissioner (Appeals)," effectively eliminating the right to appeal to the Appellate Tribunal Inland Revenue against any orders passed by the Commissioner (Appeals) Inland Revenue.

This amendment aligns with the spirit of recent amendments introduced by the Tax Laws (Amendment) Act, 2024, which eliminated the appellate forum of Appellate Tribunal Inland Revenue against order issued by the Commissioner (Appeals) Inland Revenue as such orders are now appealable directly before the High Court.

Tax Laws (Amendment) Act, 2024 to apply Prospectively

Section 239

Section 239 stipulates that the provisions of the repealed Ordinance of 1979 apply to assessments for the tax year 2002 and earlier. This section ensures that taxpayers are protected from retrospective application of new changes.

In light of the recent amendments introduced by the Tax Laws (Amendment) Act, 2024, which altered the time limitations and conditions for filing appeals before appellate forums, the Finance Bill proposes measures to safeguard taxpayers from these new limitations. The amendments have changed the time frames for filing appeals, but the Bill seeks to ensure that taxpayers are not adversely affected by these revisions.

Specifically, the proposed amendments in the Finance Bill clarify that the previous time limitations will continue to apply with respect to appeals against decisions made by the Commissioner Appeals or Appellate Tribunal Inland Revenue before the commencement of the new Act. Under the previous provisions, taxpayers had sixty days to file an appeal before the Appellate Tribunal and ninety days to file a reference before the High Court. These time frames will remain applicable with respect to appeals against order issued prior to commencement of the new Act.

Though the intent of legislature appears to provide respite to tax appellants in terms of older extended period to file respective appeals, the language of the proposed amendments proposes otherwise. Since the amendments have already taken place under the statute, the respective new shortened time limits have become part of it. Hence, any proposition to continue with the same would not provide the intended relief. An appropriate reference to the older provisions of Section 131 & 133 of the Ordinance only would suffice.

CHANGES RELATED TO WITHHOLDING PROVISIONS

Withholding Exemption Withdrawn on Payment to Non-Residents Section 152(4A)

Earlier in 2015, the provision of withholding exemptions was introduced for Non-residents with permanent establishments in Pakistan by inserting sub-section 152(4A) of the Ordinance. This was done to address the deficiency that Section 152 did not contain any power for granting exemptions to them, as was available to them before Tax Year 2012 under Section 153(4) of the Ordinance.

Now, a paradigm shift has been introduced in the existing withholding tax regime on payments received by Non-Resident and by permanent establishments of Non-Residents. Exemptions have been withdrawn altogether. Henceforth, only a reduced rate certificate would be issued. However, it remains unclear what the reduced rate would be - whether it's at the commissioner's discretionary power or if it would be only for those whose reduced rate has been prescribed under the Ordinance. It is very critical to highlight that the withdrawal of the exemption certificate would ultimately increase the amount of tax refunds. Thereby increasing the cost and administrative burden for obtaining refund.

Withholding Exemption Withdrawn for Manufacturer Section 153(4)

Earlier, the Commissioner had the provision to grant withholding exemptions as they deemed fit, where the tax deductible was not minimum tax, by issuing a certificate to make payments without tax deduction or with a reduced rate of tax. Now, the entire provision has been revamped, omitting the provision of issuance of exemption certificate for non-deduction of tax.

The Commissioner may now issue only a reduced rate certificate, once the advance tax liability has been discharged. Nevertheless, the criteria for determining the reduced rate is ambiguous - whether it lies within the Commissioner's discretionary authority or if it would be only for those whose reduced rate has been prescribed under the Ordinance. It is very critical to highlight that the withdrawal of the exemption certificate after paying the advance tax would ultimately increase the amount of tax refunds.

Increased in the rate of Withholding tax for Toll Manufacturer

Section 153

Division III, Part III, First Schedule

The rate of income tax withholding for toll manufacturer under section 153(1)(a) of the Ordinance has been increased from 5% to 9% for company and from 5.5% to 11% for other than company. We understand that on one hand, toll manufacturers have been considered as manufacturer involved in sale of goods whereas on the other hand they are being discriminated against by charging higher level of withholding tax as compared to manufacturer, on the same lines as that of service provider and that too on the gross amount of payment.

Facility of Obtaining Exemption Certificate Withdrawn

Section 159

The Commissioner is empowered to issue an exemption certificate in cases where the person's income is either exempt from tax or subject to 100% tax credit.

This Finance Bill proposes a significant change to Section 159 of the Ordinance by omitting the entire provision for availing exemptions certificate by exempt entities or by an NPO. This appears to be a stringent measure as it neutralizes the authority of issuing exemption certificates. These changes would impact all mutual funds, non-profit organizations (NPOs), retirement benefits funds, manufacturing units, export processing zones, special economic corridors, and special technology zones by withdrawing the facility of obtaining exemption certificate available to them.

It is very critical to highlight that the withdrawal of the exemption certificate, even for those who have specifically been exempted under Second Schedule of the Ordinance, would ultimately increase the amount of tax refunds of these entities. This would also restrict the cash flow of the respective entities.

We understand that the amendment needs to be revisited and abolished as it goes directly in contradiction to the exemption and tax credits available to the taxpayer under the Ordinance. Any refusal to the exemption on withholding tax tantamount to defeating the other provisions of the Ordinance, which is confiscatory.

Enhancing the Scope of Advance Tax on Sales to Distributors, Dealers and Wholesalers

Section 236G

Earlier, the respective section introduced in 2013 required manufacturers or commercial importers of pharmaceuticals, poultry and animal feed, edible oil and ghee, auto-parts, tyres, varnishes, chemicals, cosmetics, IT equipment, electronics, sugar, cement, iron and steel products, fertilizers, motorcycles, pesticides, cigarettes, glass, textiles, beverages, paint, or foam sector to collect tax from Distributors, Dealers, and Wholesalers at the time of sales at 0.1% (other than fertilizers) and 0.25% for fertilizers if they appeared on both the Active Taxpayers' Lists issued under the provisions of the Sales Tax Act, 1990, and the Income Tax Ordinance, 2001, otherwise at the rate of 0.7%.

Now, the Finance Bill has proposed to omit all the specified business sectors provided under the said section, consequently to which the advance tax shall now be collected on sales made to all distributors, dealers, and wholesalers of all the sectors of industry invariably. The only exception carved out is sale of fertilizer by manufacturers or commercial importers where the rate of 0.25% for filers and 0.5% for non-filers remains the same. The rate for other sectors of 0.1% for filers and 2% for non-filers has been prescribed.

Enhancing the Scope of Advance Tax on Sales to Retailers

Section 236H

Earlier, the respective section introduced in 2013 required manufacturers, distributors, wholesalers, or commercial importers of pharmaceuticals, poultry and animal feed, edible oil and ghee, auto-parts, tires, varnishes, chemicals, cosmetics, IT equipment, electronics, sugar, cement, iron and steel products, motorcycles, pesticides, cigarettes, glass, textiles, beverages, paint or foam sector, to collect tax at the time of sale to retailers at the rate of 0.5% for filer and 1% for non-filer.

Now, the Finance Bill has proposed to omit all the specified business sectors provided under the said section, consequently, such advance tax shall now be collected on sales to retailers of all the sectors of industry invariably by manufacturers, distributors, wholesalers, or commercial importers for which the rate of 0.5% for filers and 2.5% for non-filers has been prescribed.

CHANGES IN PENALTIES AND PROSECUTIONS

Penalties

Section 182

The Finance Bill has proposed exorbitant penalties for offences and non-compliances ranging from failure to comply with Income Tax General Orders [ITGOs], failure to pay tax at the time of payment for shares / registration of shares with the SECP and failure to disclose relevant information in the annual tax return to furnishing blank or incomplete annexures/ statements.

S.NO.	OFFENCES	PENALTIES	SECTION
1B	Failure to file last return on discontinuance of business.	Higher of the following a) 0.1% of the tax payable in respect of that tax year for each day of default; b) or b) Rs. 1,000 per day of default with minimum penalty of Rs.10,000 for individuals and Rs.50,000 in other cases.	117(3)
3A	Failure to get registered or to pay tax under Tajir Dost Scheme.	Shop shall be sealed for 07 days for first default and for 21 days for each subsequent default.	99B
10A	Failure to comply with ITGO issued by Board with 15 days of issuance.	Implementing agency shall pay penalty of Rs.100 million for first default and Rs.200 million for each subsequent default.	114B
12A	Failure to pay tax on payment for purchase of shares or at the time of registration with SECP/SBP.	Penalty equal to 50% of the amount of tax involved.	37(6)
35	Any company or AOP who (a) fails to fully state all the relevant particulars / information in tax return. (b) furnishes any blank/incomplete annexure, statement or document in the tax return. (c) attaches blank or incomplete annexures, statements or documents.	Penalty of Rs.500,000 or 10% of the tax chargeable on the taxable income, whichever is higher.	114(2)

Prosecution for Non-Filing of Return under Section 117 Section 191

The Finance Bill also proposes to prosecute with a fine or imprisonment up to 01 year or both for non-compliance of a notice issued by the concerned Commissioner under Section 117(3) i.e., for filing a return of income by a person who is likely to discontinue his business.

Prosecution for Non-Furnishing of Information with Return

Section 191A

It may be appreciated that a tendency has developed filing of incomplete information/particulars in the return of income or furnishing blank annexures with the return of income.

In order to discourage this practice a new Section 191A is proposed to be inserted prescribing a fine, imprisonment of up to 1 year or both for committing such an offence by a company or an association of persons.

Prosecution for Non-Registration

Section 191B

It may be recalled that the Government vide Finance Supplementary [Second Amendment] Act, 2019 had inserted Section 99B providing for a special procedure for the scope and payment of tax and filing of return and assessment for small traders and shopkeepers [Tajir].

For implementing the same, the Tajir Dost (Special) Procedure was introduced vide SRO 457(I)/2024 dated 30th March 2024 requiring them to register themselves under Section 181 of the Ordinance.

Now, to encourage voluntary compliance with the Tajir Dost (Special) Procedure, a new Section, 191B has been inserted prescribing imprisonment up to 6 months or fine or both for non-registration under the Procedure.

OTHER IMPORTANT CHANGES

Exporters to Pay Normal Tax

Section 154

The bill eliminates the “Final Tax Regime” (FTR) for the exporters receiving payments from the export of goods, transitioning them to “Minimum Taxation” under the Normal Tax Regime (NTR). Consequently, the tax deducted at the time of filing the tax return will become their minimum tax, and they will have to report their net profit for taxation.

Another significant proposed amendment is that exporters will also be subject to a 1% advance tax in addition to the existing 1% tax on export proceeds. A mechanism will be established for generating tax payment challans by the banks: one for the 1% minimum tax and another for the 1% advance tax.

As a result of these significant amendments, exporters are now required to:

- Pay additional taxes if the 1% tax deduction on exports is less than:
 - ✓ 29% Corporate tax (First Schedule)
 - ✓ 1.25% Minimum tax under Section 113
 - ✓ Alternate Corporate Tax under Section 113C
 - ✓ Super tax under Section 4C
- Ensure that no refunds arise from the deduction, as the entire amount withheld by the bank will be adjustable against the normal tax liability of the exporter.
- Fulfill quarterly advance tax liability under Section 147 of the Ordinance.
- Claim admissible deductions under Section 20 of the Ordinance, which were previously unavailable to exporters under Section 169 of the Ordinance.

Needless to mention that the changes in the above provision will entirely be applicable to direct exporters, indirect exporters, exporter under EPZ (Export Processing Zone).

The amendment appears to be aligned with the government's policy of phasing out the final tax regime.

Increased in the Rate of Default Surcharge **Section 205**

The Finance Bill proposes to increase the rate of default surcharge to 'KIBOR plus 3%'. This change appears to be aligned with the increase in the interest rate by the State Bank of Pakistan.

Currently, default surcharge is calculated at the rate of 12% per annum.

It is important to remember that default surcharge should not be used as a revenue tool but rather as a deterrent to encourage taxpayers to avoid late payment of taxes and remain compliant and bona fide.

Disallowance of Advertisement Expense of Associates paying Royalties **Section 108**

The finance Bill proposes to disallow 25% of total expenses related to sales promotion, advertisement, and publicity for the year 2024 and onwards.

This 25% is to be allocated to an associate if any amount of royalty is paid or payable to the associate, directly or indirectly, for the use of any brand name, logo, patent, invention, design or model, secret formula or process, copyright, intellectual property, or other similar property or right, or contractual right, and is claimed as a deduction for the year or any of the two preceding years.

The legislature has the power to disallow bona fide tax expenses through legislation, though such disallowance typically serves specific policy objectives, such as addressing tax avoidance strategies where companies might inflate deductions to reduce taxable income, revenue generation, or economic behavior modification. However, such disallowances must comply with broader legal principles, such as fairness and reasonableness. In some cases, disallowances have been challenged in the courts and adjusted based on judicial rulings.

The followings issues yet to be addressed;

1. Claiming Allocated Expense:

Whether the associate is entitled to claim the 25% allocated expense by this amendment, given that no corresponding amendment has been made under Section 20 of the Ordinance.

2. Nexus Between Expenses:

What is the direct nexus between the royalty expense and the expense disallowed related to sales promotion, advertisement, and publicity.

3. Claiming the 25% Expense by the Associate:

To claim the 25% expense by the associate, despite not being required to file a return of total income under the Ordinance, necessary amendments should have been made available by the legislature under the Ordinance to claim such disallowance for the adjustments.

4. Uncertainty in disallowing 25% expense:

There is a conflict between the expenses paid or payable for the two preceding years and the disallowance of such expenses in the year 2024 or onwards. If the amount was paid or payable in any of the last two years, and the accounts have been audited and assessed by the tax authorities, it is unclear how such expenses can be disallowed in the Tax Year 2024 or onwards.

In order to remove the anomalies, it would be better to be clarified by the legislature to go through the complexities of claiming these expenses and for guidance on claiming the allocated expenses without filing a return. Specific procedures or forms should be prescribed to address this situation to ensure compliance with the Ordinance.

Commissioner has Power to Reject Lower Advance Tax Estimate

Section 147

Presently, taxpayers can file a lower estimation of advance tax according to Section 146(6) of the Income Tax Ordinance, 2001 by submitting the following information to the Commissioner:

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

In 2019, the power was granted to the Commissioner to reject the estimation filed by the taxpayer if it was not accompanied by the above details, which afterwards was omitted by the Finance Act, 2021.

The Finance Bill now proposes yet again to restore the Commissioner's power to reject the estimate if it is not fully accompanied by the required details, after providing the taxpayer with an opportunity to be heard.

This proposal introduces complexity and an exhaustive process, as it would be challenging for taxpayers to submit documentary evidence related to declines in turnover or income.

Moreover, the Commissioner is generally not in a position to accurately assess the taxpayer's estimates, as they do not possess sufficient information to determine the accuracy of the taxpayer's provided details.

There is a concern that this power could be used by the Commissioner to inflict excessive payment of Advance tax on the taxpayer, resulting in the taxpayer entering claim for refund in their return of income.

It is important to note that the Commissioner already has the authority to levy a default surcharge under Sections 205(1A) and (1B) of the Ordinance in the event if the taxpayer fails to pay 90% of his annual tax liability under Section 147 of the Ordinance after which this undue power to reject and refuse the lower estimate is not actually very necessary.

Minimum Valuation of Imported Goods

Section 148

Currently, the value of imported goods for income tax under Section 148 is determined under Section 25 of the Customs Act, 1969.

It appears that in view of the restructuring of the Federal Board of Revenue (FBR) and its segregation into the Inland Revenue and Customs divisions, the FBR has attempted to retain its power to determine the minimum value of imported goods for income tax collection at the import stage which it will notify through Official Gazette.

A) Practical Issues and Implications;

i) Customs Collectorates: The collection of income tax at a different value from the value used for customs duty could create practical issues. This discrepancy will require a mechanism to reconcile the value of imported goods for income tax and customs duty purposes.

ii) Sales Tax Collection: The determination of the import value for collecting sales tax under Section 6(1) of the Sales Tax Act, 1990, is also a concern in this scenario.

B) Consequences of Discrepant Valuations;

i) Adjustment of Taxable Value:

Tax authorities will reassess the taxable value of imported goods, leading to higher duties and taxes.

ii) Legal Consequences and Impact on Business Relationships:

Importers may need to undergo administrative reviews or challenge the valuation in court.

Delays and increased costs can strain relationships with suppliers and customers.

iii) Delay in Clearance:

Discrepancies can delay in clearance of goods, affecting supply chains and incurring additional storage costs.

iv) Financial Impact and Accounting:

Importers will face higher duties, penalties, fines, and legal fees, impacting cash flow and financial stability.

Inventory costs should be adjusted to reflect the higher assessed value, increasing the inventory value on the balance sheet.

v) Disclosure Requirements:

Significant adjustments must be disclosed in the financial statements, detailing the nature, amounts, and reasons for the changes.

Tax Exemption for Residents of Tribal Areas Extended

Clause 145A of Part I, Clause 109A & 110 of Part IV of Second Schedule

Prior to the enactment of the Constitution (Twenty-Fifth Amendment) Act, 2018, all incomes of taxpayers resident in the Tribal Areas were exempt from tax. Following the amendment, which merged the tribal areas into the provinces of Khyber Pakhtunkhwa and Balochistan, this tax exemption was automatically omitted due to the dissolution of the Tribal Areas.

However, the Finance Act, 2019, introduced clause 145A into the First Schedule of Part I of the Income Tax Ordinance, 2001. This clause granted tax exemption to the income of any individual domiciled in, or any company or association of persons resident in, the former Tribal Areas of these provinces, effective from June 1, 2018, to June 30, 2023.

The Finance Bill now proposes to extend this tax exemption until June 30, 2025. This extension follows the Finance Act, 2023, which had previously extended the exemption until June 30, 2024

Full time teacher allowance has been abolished

Clause 2 of Part III of Second Schedule

Full-time teachers and researchers currently enjoy a 25% tax rebate on their salaries.

This credit has been gradually decreased from 75% to 25% through the Finance Acts, 2013 & 2019.

The Bill has now proposed to eliminate this rebate altogether due to reports of misuse by individuals who are not actually full-time teachers or researchers. Their salaries will now be subject to full tax.

Exemption on Subsidy granted by the Federal Government Withdrawn

Clause 102A of Part I of Second Schedule

Currently, any subsidy granted to a person by the federal government for the implementation of its orders is exempt from tax under Clause 102A, Part I, First Schedule of the Income Tax Ordinance, 2001.

The Finance Bill proposes to eliminate this exemption for subsidies received, whether they are of a revenue or capital nature. Such subsidies will be treated as business income and therefore chargeable to tax under the statute.

Federal Government subsidies are typically provided either to benefit the taxpayer for making capital investments or to support business operations. These subsidies are purely gratuitous in nature. While the source of the subsidy is immaterial, the purpose is examined to determine the taxability of such receipts. If the purpose is to help the taxpayer set up or complete a business, the subsidy is considered to be for capital purposes.

Conversely, if the subsidies are given to assist ongoing business operations and are contingent upon production, they are treated as assistance for trade purposes. Subsidies granted annually after the setup and commencement of production of a new industry are treated as assistance for business operations.

The Honorable Sindh High Court, in the case of Cotton Export Corporation of Pakistan vs. Commissioner of Income Tax, Companies-III, Karachi, has held such subsidies to be of a revenue nature and taxable. The judgment established several criteria for determining whether a subsidy is capital or revenue in nature:

1. Nature of Income: The nature of the income determines its taxability. Even if receipts are placed in the appropriation account instead of the profit and loss account, this does not exempt them from being considered revenue receipts. The tax liability depends on the true nature and purpose of the payment.

2. Ownership and Mutuality Doctrine: Arguments that 100% ownership by the Federal Government invokes the doctrine of mutuality were rejected. Mere ownership does not equate the taxpayer to the government.

3. Purpose of Subsidies: Subsidies intended to cover losses are considered trading receipts and are taxable. In a case involving Pakistan International Airlines Corporation (PIAC), the reimbursement of losses through subsidies was treated as taxable revenue. This was upheld by the Tribunal and the Court, stating that the amount reimbursed by the government to PIAC for covering its losses was income receipt liable to tax.

Various court judgments have clarified that the nature of subsidies, whether revenue or capital, should be considered for tax purposes. The Finance Bill proposal to delete the overall exemption for subsidies seems to align with these judicial precedents, indicating the legislature's intent to follow court orders.

SALES TAX ACT, 1990

Associate / Associated Persons Section 2(3)

The Finance Bill 2024 (the Bill) proposes to align the definition of associated persons in line with that existing under the Income Tax Law.

In accordance with sales tax regulations, when the supplier and recipient are considered associates or associated persons and the transaction occurs either without consideration or at a price lower than the open market value, the value of the supply is deemed to be the open market price. Further, akin to transfer pricing regulations in income tax law, similar provisions were introduced in 2021 for determining arm's length pricing in transactions between associates.

In this context, there is a proposal to standardize the definition of associates/associated persons to align with the one outlined in the Income Tax Ordinance. It is suggested that the expression should carry the same meaning as defined in section 85(1) of the Income Tax Ordinance. The current definitions in both statutes share broad similarities, except that under the Ordinance, 'associates' encompasses the concept of 'sufficient influence' and transactions conducted with residents of 'zero taxation regime'.

The proposed amendment aims to synchronize the terminology across tax laws. However, the bill specifies that the expression should adhere solely to the definition in section 85(1) of the Ordinance, thereby excluding certain categories of individuals covered in other subsections that were previously included in the existing definition of 'associates' under the Act.

Time of Supply Section 2(44)

The Bill proposes to restore a glitch whereby advance receipts are again subject to sale tax if such receipts are not backed by actual delivery of goods. We reckon this requirement is a regular feature in the Act which keeps on coming and going in the statute. Last time, this requirement was omitted vide Finance Act, 2021.

During Years 2007 to 2013, sales tax was required to be charged on actual delivery of goods. Yet again from Year 2013 to Year 2021, advance was exposed to sales tax.

We understand that such inclusion, introduced as a revenue tool, would again lead to various reporting and reconciliation hassles, cost of doing business and undue litigation by the taxpayers.

Value of Supply

Section 2(46)(j)

Prices of Third Schedule items are determined by manufacturers and importers of relevant goods. However, the Bill empowers FBR to fix the values of imported Third Schedule items through notifications published in the official gazette.

The proposed amendment appears to further complicate the already distorted mechanism of retail price regime which has already been recognized as a deviation of modern VAT framework.

Tax Fraud Proceedings

Sections 2(37), 25AB & 33

Tax Fraud

The Bill proposes to reconstruct the definition of tax fraud by specifying wide range of offences or acts executed or alleged to have been executed by the taxpayer. The proposed definition focuses on intentionality and includes a broader range of acts like sales suppression, false claim of input / refund claims, non-deposition of due tax, tempering of records, dealing in confiscated goods, etc.

The definition shifts the burden to the accused to prove lack of his ill intention, motive, knowledge, or reason to counter allegation of tax fraud. We understand transfer of onus on the accused instead of tax department is both inconsistent with Articles 117 and 118 of Qanoon-e-Shahadat Order, 1984 and also unjust which may open floodgates of malpractices, harassment and corruption.

Investigative Audit

Section 25AB introduces a framework for conducting investigative audits when tax fraud is suspected. This new provision delineates the procedures and unnecessarily arbitrarily enhances powers of Inland Revenue Officers for tax audit. Investigative audits can now be initiated based on information from a standard audit or other sources if there is a suspicion of tax fraud, which must be based on the balance of probabilities and require prior written approval from the Commissioner.

The conduct of investigative audits is now bound by a ninety-days completion timeframe. Based on completion of investigation, the Officer may take any action including passing an order under Section 11E, issuing a best judgment assessment under Section 11D, blacklisting the registered person under Section 21, and imposing penalties and initiating prosecution as provided in Section 33. Additionally, the new section allows the disallowance of input tax claims if the taxpayer cannot provide adequate receipts, invoices, or other evidence.

Penalties

Currently, penalties for offenses involving 'tax fraud' are imposed at a higher rate of either Rs. 25,000 or 100% of the tax amount involved, along with imprisonment for up to 3 years or a fine up to the tax amount, or both, upon conviction by a Special Judge. The proposed amendment now suggests a threshold for imprisonment upto 10 years besides keeping intact the existing monetary penalties.

We understand that the apparent underlying objective of bringing specific provision for Investigative Audit is to provide protection and cushion to the proceedings usually conducted under the garb of Sections 37, 38, 38B, 40 of the Act. Moreover, initiation of investigative audit on the basis of balance of probabilities itself manifest that the allied proceedings may likely to be vague, one sided and non-transparent.

The proposal is itself self-contradicting and conflicting with Sections 7, 22 and 73 of the Act when it suggests that for claim of input tax, the taxpayer is required to produce information beyond which the scope of the foregoing provisions of the Act. We suggest the proposed amendments may be revisited and rationalized to make it an equitable proposition to the taxpayers. Additionally, Investigative Audits may not be undertaken by the field officers as they are likely to dispute any and every non compliance or suspected non compliance as tax fraud. Accordingly, independent special auditors appointed under Section 32B of the Act may be utilized in case(s) where tax frauds are suspected.

RECONSTRUCTION AND EXPANSION IN SCOPE OF ASSESSMENT PROVISIONS:

The Bill proposes revamping of assessment provision under the Act by aligning it with that under the income tax laws. The key implications of this change include omission of existing Section 11 and transposing its various subsections to separate independent provisions with some expansion scope thereof.

The key changes in above provisions are:

Limitation for issuing Order in certain cases

Section 11B

The bill proposes to streamline the existing provision 11B with Section 124 of the Income Tax Ordinance, 2001 through which the timeline for issuance of Order in certain cases has been specified as:

- Two years from the end of the financial year in case of any finding or direction passed the Appellate fora;
- One year from the end of the financial year in case of order is set aside wholly or partially by the Appellate fora;
- As a result of relief granted by the Appellate fora, the Commissioner is required to pass Appeal effect order within two months from the date of service of such order to the Commissioner.

Best Judgement Assessment

Section 11D

The bill intends to expand the concept of 'Best Judgment Assessment'. The existing scope of best judgment assessment revolves cases where the taxpayer fails to file sales tax return in response to notice under Section 26(2A). Now non-production of records under Section 25 or 38A or failure to provide tax invoice or other related evidences against claim of input tax may be dealt under Section 11D.

We understand that this provision aims to the new avenues of assessment specially against non-production of records / information which are not available in existing assessment provision.

Assessment of Tax and Recovery of Tax not levied or short levied or erroneously refunded, Failure to Withhold Sales Tax and Limitation of Assessment

Sections 11E, 11F & 11G

Prior of such proposition the assessment for not levied or short levied of tax was assessed under Section 11(2) & 11(4) of the Act. Hence such insertion is merely transposition into Section 11E of the Act.

Similarly, the bill intends to transpose existing provisions of 11(4A) and 11(5) into Sections 11F and 11G whereby the taxpayer would be assessed on short deduction of Sales Tax Withholding. Further the Section 11G provides the time limit for issuing Show Cause Notice and issuance of Assessment Order on the pattern of existing timelines.

The above explanations are also summarized as tabulated below for ease of reference:

EXISTING SECTION	PROPOSED SECTION	SECTION DESCRIPTION	NATURE OF PROPOSED AMENDMENT
Section 11B	Section 11B	Limitation for issuing orders in certain cases (Appeal Effect Order)	Substitution
Section 11(1)	Section 11D	Best judgment Assessment	Insertion / Transposition
Section 11(6)			
Section 11(2)	Section 11E	Assessment of Tax & Recovery of Tax not levied or short levied or erroneously refunded	Transposition
Section 11(4A)	Section 11F	Failure to withhold sales tax	Transposition
Section 11(5)	Section 11G	Limitation for Assessment	Transposition

Deregistration, Black listing and Suspension of Registration & Appeals before Appellate Tribunal

Sections 21 & 46

Through the proposed insertion, a review mechanism has been introduced by empowering Chief Commissioner to examine the record of proceedings, conducted by Commissioner IR and blacklisting order issued by him, for necessary modifications, if required.

We understand that usually the entire process of blacklisting is marred by ineffective and incomplete departmental process. This results in taxpayers' getting relief at the appellate stage. Accordingly, as a safety valve, now the Chief Commissioner has been empowered to oversee the blacklisting process and ensure that it is used appropriately, providing a checks and balances mechanism within the tax administration. Accordingly, a corresponding amendment to this effect have also been proposed in Section 46 and right of appeal in such cases has been waived.

E-Invoicing

Section 23

The Bill seeks to substitute the existing provisions of Section 23(3) whereby a registered supplier shall be liable to issue e-invoices to the buyer subject to limitations and conditions as may be specified by FBR.

Previously, e-invoicing was optional in transactions between registered persons. However, now the scope has been extended to both registered and unregistered buyer. We understand this is another step towards digitalization after integration of supply chain with FBR's system was made mandatory

Audit of Sales Tax Affairs

Section 25

Currently, the law requires the Commissioner to call for records from the taxpayers. On the basis of such examination, the Commissioner decides whether the taxpayer is required to be audited. Such framework was also endorsed in the case pronounced by Lahore High Court (2022 PTD 1502).

Apparently, to undo the dictum of the aforesaid ruling, a new change has been brought in whereby the Commissioner can select any case for audit even without calling or examining the ancillary records.

The reasons for such audit will be included in notice to be issued by the Commissioner; however, the taxpayer may not be provided with an opportunity of being heard and the Commissioner can pass any order before issuance of notice.

The proposed changes also allow for more detailed audit, including gathering information from third parties and conducting investigative audits if there's suspicion of tax fraud. After the audit, an order will be passed under Section 11E. However, if taxpayer fails to provide required records, the officer can make a best judgment assessment.

We understand that the proposed amendment has undone a major relief for the taxpayers whereby their audit could have been conducted only once in a financial year. Now, no such barrier exists under the statute and the taxpayer may face multiple years audit being conducted simultaneously.

Returns

Section 26

The Bill proposed insertion of sub-section (2A) under Section 26 of the Act emphasizing upon the requirement for filing tax returns by those who are under statutory obligations to do so. An officer of Inland Revenue can issue a notice to any person who is required to file a return but has not done so, demanding the return within fifteen days, or within a specified alternative period.

Notably, a much longer and somehow impractical timelines have also been fixed for issuing such notices, i.e., in case of tax fraud, the officer may demand tax returns for the last 15 years as compared to 5 years time frame fixed under Section 11G for issuing show cause notice; while in other cases, 5 years tax returns may be demanded.

Penalties

Section 33

[Serial No. 11 and 13]

Presently, any person who commits tax fraud by submission of fake / forged documents or destroys or alters sales tax records or knowingly fraudulently makes false statement or declaration is liable to penalty of Rs. 25,000 or 100% of the tax involved. Further, he shall be liable for imprisonment up to 3 years or with fine which may extent to an amount equal to tax involved or both.

The Bill proposes to restructure tenure of punishment with respect to amount of tax involved thereunder. A person who commits or causes to commit or abets or connives in commission of tax fraud shall be liable to imprisonment up to 5 years if the tax evaded or sought to be evaded is up to 500 million rupees. However, such tenure may further increased up to 10 years in case of tax evaded is 1 billion and above and fine which may extent to an amount equal to tax involved or both.

[Serial No. 23]

Presently, any person who makes violation in respect of goods as specified by the Board under Section 40C(1) with counterfeited tax stamps, bundle roles, barcode etc. Such goods are liable to be outrightly confiscated. The Bill proposes to empower Board to prescribe procedure in respect of such confiscation.

Likewise, business premises of person who commits such violation may also be sealed for a period not exceeding fifteen days. However, Bill has now proposed to empower Board to prescribe procedure for sealing of such business premises by an officer of Inland Revenue.

[Serial No. 25]

Presently, any person who is required but fails to integrate his business premises with Boards computerized system shall be liable to pay penalty as specified thereunder and if continues to commit such office for two months, his business premises shall be sealed in the manner as stipulated under Section 40C.

Likewise above amendments, Bill has now proposed to introduce procedures and manners as may be prescribed by the Board for sealing of business premises. Accordingly, the Officer Inland Revenue is not required to comply stipulated manners specified under Section 40C and the Board may prescribe new rules, procedure or manners for conducting such penal action.

[Serial No. 25A]

Presently, scope of penalties specified under above serial are confined to the extent of certain violation by Tier-1 Integrated Retailers. The Bill has proposed to cover persons required to install track and trace system in terms of Section 40C of the Act. In other words, scope of such penalty has now enhanced to cover Section 40C and any violation of said section would lead to imposition of penalty and sealing of business premises in the manners as specified thereunder.

[Serial No. 25AA]

The Bill proposes to introduce following new Entry under Section 33 requiring imposition of penalty on licensed integrators who is authorized to provide electronic invoicing system for integration of registered person fails to integrate such registered person.

S#	PROPOSED SECTION	SECTION DESCRIPTION	SECTION OF THE ACT TO WHICH OFFENCE HAS REFERENCE
25AA	Any licensed integrator who is authorized to provide electronic invoicing system for integration of registered persons fails to integrate such registered persons in the manner as required under this Act and rules made thereunder.	Such person shall be liable to pay penalty of rupees one million or one percent of the total value of the sales suppressed, whichever is higher.	sub-section (5) of section 40C.

Default Surcharge

Section 34

The Bill proposes to increase the rate of default surcharge to KIBOR + 3% per annum from 12% per annum.

Monitoring or Tracking by Electronic or Other Means

Section 40C

In terms of Section 3(11) of the Act, FBR is empowered to prescribe any person or class of persons who would integrate their electronic invoicing system with FBR's Computerized System for real time reporting of sales. Such provision has been transformed from Section 3 to Section 40C.

Secondly, the Bill proposes that licensed integrator shall integrate electronic invoicing system of registered persons in such mode and manner as may be prescribed. We understand FBR had already issued rules covered under Chapter XIVA, XIVB and XIVBA of Sales Tax Rules 2006. The above amendment seeks to acquire legislative powers for issuance of such rules.

Pecuniary Jurisdiction in Appeals

Section 43A

Through Tax Laws (Amendment) Act, 2024 [Act 2024], pending cases before the Commissioner (Appeals) having the value of assessment of duty or refund of duty exceeding Rs.5 Million was supposed to be transferred from the 16 June 2024 to the Appellate Tribunal Inland Revenue.

The said deadline has been proposed to be extended till 16 September 2024 to avoid hardship faced by the taxpayers regarding tax recovery in the closing month of Financial Year 2024. This amendment may give time to Federal Government to align the resources at Appellate Tribunal Inland Revenue for speedy disposal.

Certain transactions not admissible

Section 73

The Bill proposes that the monetary limit of Rs. 50,000 for any single transaction, for which banking settlement is not mandatory, shall be in aggregate, i.e., inclusive of sales tax.

Transposition from Eight Schedule to Third Schedule

Insertion of Entry No. 51

The Bill proposes to transpose sales tax regime of DAP from ad valorem basis to Retail Price Taxation by insertion of Serial No. 51 under Third Schedule of the Act.

Presently, DAP is listed at Serial No. 83 of Table-I of Eighth Schedule and chargeable to sales tax at reduced rate @ 5% based on sale value. Now, it is proposed to charge sales tax @ 5% on the basis of retail prices.

WITHDRAWAL OF EXEMPTIONS, ZERO RATING AND REDUCED RATE FACILITIES

Bill proposes to charge sales tax at standard rate at the time of supply of certain items falling under zero-rate, exempt or reduce-rate regimes by omitting entries from respective schedules as:

FIFTH Schedule

S. NO.	DESCRIPTIONS	EXISTING RATE	PROPOSED RATE
12	Raw material, packing materials and other input goods used in manufacturing of following items; Preparations suitable for infants, and Color sets, Inks, Erasers, Exercise books, Pencils, Pens , Sharpeners and other Geometrical instruments etc.	0%	18%
16	Milk falling under Chapter 04.01 sold under brand name.	0%	18%
17	Fat filled milk (PCT Heading 1901.9090)	0%	18%
21	Local supplies of commodities, raw materials and other input goods to registered exporters authorized under Export Facilitation Scheme, 2021.	0%	18%

SIXTH Schedule (Table-I)

S. NO.	DESCRIPTIONS	EXISTING RATE	PROPOSED RATE
13	Edible vegetables imported from Afghanistan including roots and tubers	Exempt	18%
15	Fruits imported from Afghanistan	Exempt	18%
112	Disposables and other equipment used in cardiology/cardiac surgery, neurovascular, electrophysiology, endosurgery, endoscopy, oncology, urology and gynecology.	Exempt	18%
120	Diagnostic kits and related equipment	Exempt	18%
165	Import of goods by hospitals run by the non-profit making institutions.	Exempt	18%
166	Goods supplied to hospitals run by the charitable hospitals	Exempt	18%
174	Machinery and equipment as listed at serial number 32 of the Table of Part-I of Fifth Schedule to the Customs Act, 1969	Exempt	18%

EIGHTH Schedule (Table-I)

S. NO.	DESCRIPTIONS	EXISTING RATE	PROPOSED RATE
58	LPG	10%	18%
66	Supplies made from Integrated retail outlets	15%	18%
73	Locally Manufactured Hybrid Electric Vehicles (a) Up to 1800 cc (b) From 1801 cc to 2500 cc	8.5% 12.75%	18% OR 25%
81	Medicaments as are classifiable under Chapter 30 of the First Schedule to the Custom Act, 1969	1%	18%

NINTH Schedule

Bill proposes to substitute Table-II of Ninth Schedule resulting in imposition of Sales tax at standard rate of sales tax on Import of cellular mobile phones in CBU/CKD/SKD including locally manufactured. However, sales tax on imports of mobile phones having value exceeding US\$ 500 remained intact i.e. 25%.

Clauses (iii), (iv) and (v) under Liability, Procedure and Conditions are proposed to be omitted. Meaning thereby the restrictions earlier placed on claim of related input tax stands omitted.

NEW EXEMPTIONS UNDER SIXTH SCHEDULE

The Bill proposes to exempt supply of following items by insertion of new Entries:

Table-I

S. NO.	DESCRIPTIONS	TARIFF HEADING
175	Import of all goods received, in the event of a natural disaster or other catastrophe, as gifts and relief consignments or any goods received as gift or donation from a foreign government or organization by the Federal or Provincial Government or any public sector organization subject to conditions specified thereunder.	9908(i) and 9911. "
176	POL Products: (a) MS (Petrol) (b) High Speed Diesel Oil (c) Kerosene (d) Light Diesel Oil	2710.1210, 2710.1931, 2710.1911 and 2710.1921

Table-II

S. NO.	DESCRIPTIONS	TARIFF HEADING
56	Milk excluding that sold under a brand name	04.01.
56	Iron and steel scrap	7204.4100 7204.3000 7204.4990

GOODS EXPOSED TO REDUCED RATE OF SALES TAX

Bill proposes to withdraw exemption on supply of following items by transposition from Sixth Schedule to Eighth Schedule.

DESCRIPTIONS	EXISTING RATE	PROPOSED RATE
Stationary items including Color sets, Inks, Erasers, Exercise books, Pencils, Pens, Sharpeners and other Geometrical instruments etc.	0%	10%
Supplies and import of plant, machinery, equipment for installation in tribal Areas subject to conditions and restrictions specified thereunder.	Exempt	6% up to 30.06.2025, and 12% from 01.07.2025 till 30.06.2026.
Supply of Electricity to Tribal Areas excluding steel, ghee or cooking oil industries subject to conditions and restrictions specified thereunder.	Exempt	
Oil cake and other solid residue	Exempt	10%
Tractors	Exempt	10%
Local supply of vermicillies, sheer mal, bun and rusk excluding those sold in bakeries, and sweet shops falling in category of Tier-1 retailers	Exempt	10%
Local supply of poultry feed, cattle feed, sunflower seed and meal, rape seed meal and canola seed meal subject to condition that refund of excess input tax (if any) shall not be admissible.	Exempt	10%
Newsprint and books but excluding brochures, leaflets and directories subject to condition that refund of excess input tax (if any) shall not be admissible.	Exempt	10%

ENHANCEMENT IN REDUCED RATE OF SALES TAX

Bill proposes to substitute following Entry No. 77 and to enhance sales tax rate from 5% to 10% as under

EXISTING			PROPOSED		
DESCRIPTIONS	RATE OF SALES TAX	CONDITION	DESCRIPTIONS	RATE OF SALES TAX	CONDITION
Personal computers and Laptop computers, notebooks whether or not incorporating multimedia kit	5%	If imported in CBU condition	Imported personal computers and Laptop computers, notebooks whether or not incorporating multimedia kit	10%	NIL

AMENDMENTS IN WITHHOLDING TAX RATES

Eleventh Schedule

Bill proposes amendment in existing Entry No. 7 and insertion of following new entries under Eleventh schedule requiring withholding of 80% of sales tax applicable on purchase of items tabulated as under:

S. NO.	WITHHOLDING AGENT	SUPPLIER CATEGORY	RATE OR EXTENT OF DEDUCTION
(1)	(2)	(3)	(4)
7	Registered persons manufacturing lead batteries	Persons supplying any kind of lead under chapter 78 (PCT Headings: 7801.1000, 7801.9100, 7801.9900, 7802.0000, 78.03, 7804.1100, 7804.1900, 7804.2000, 78.05, 7806.0010, 7806.0020, 7806.0090) or scrap batteries under chapter 85 (PCT Headings: Respective headings]	80% of the sales tax applicable
9	Registered persons manufacturing cement	Persons supplying any kind of gypsum under chapter 25 (PCT headings 2520.1010, 2520.1020, 2521.0000) or limestone flux under chapter 25 (PCT headings 2520.1010, 2520.1020, 2521.0000)	80% of the sales tax applicable
10	Registered persons	Persons supplying any kind of coal under chapter 27 (PCT headings 2701.1100, 2701.1200, 2701.1900, 2701.2000, 2704.0010, 2704.0020, 2704.0090) or	80% of the sales tax applicable

S. NO.	WITHHOLDING AGENT	SUPPLIER CATEGORY	RATE OR EXTENT OF DEDUCTION
(1)	(2)	(3)	(4)
11	Registered persons	Persons supplying any kind of waste of paper and paper board (Respective headings)	80% of the sales tax applicable
12	Registered persons	Persons supplying any kind of plastic waste (Respective headings)	80% of the sales tax applicable
13	Registered persons	Persons supplying crush stone and silica	80% of the sales tax applicable

Further, Clause (viii) is proposed to be substituted providing exclusion from withholding provisions to supplies made by an Active Taxpayer to another registered person with the exception of supplies referred to in S. Nos. 7, 9, 10, 11, 12 and 13 of above Table including Serial No. 5 which requires withholding of whole of sales tax on procurement of advertisement services.

Meaning thereby, exclusion provided under clause (viii) shall not affect withholding tax rates as specified on procurement of above-mentioned goods/services.

AMENDMENTS IN TWELFTH SCHEDULE

The Bill proposes to insert certain PCT Headings 8517.1419, 8517.1430 and 8517.1390 under sub-clause (vi) of Clause (2) Procedure and Conditions of Twelfth Schedule, leading to imposition of Value addition tax upon import of cellular mobile phones and satellite phones except falling under above-mentioned PCT headings.

FEDERAL EXCISE ACT, 2005

Default Surcharge

Section 8

The Bill proposes to increase the rate of default surcharge to KIBOR + 3% per annum from 12% per annum.

Penalty

Section 19(f)

It is proposed to insert new penalty provision where installation or removal of plant and machinery (exceeding value of Rs.50 Million) or commencement of production is made without the prior approval of the Commissioner.

Penalty of Rs.50,000 or five times of duty involved (whichever is higher) and punishment with imprisonment upto five years will be applicable in case of non-compliance to aforesaid provision.

Section 19(10A)

Penalty, inter alia, is proposed to be imposed by way of sealing retail outlet in case when it is found that retail outlet is engaged in selling cigarettes packs without affixing or affixing counterfeited tax stamps, banderoles, stickers, labels or barcodes.

Appeals to Commissioner Appeals

Section 33(1)

The Bill proposes to make clarificatory amendment to include the word 'tax' after phrase 'assessment' in Section 33(1) which was brought through Tax Laws (Amendment) Act, 2024 [Act 2024].

The said Act 2024 imposed restriction on the Commissioner Appeals' to hear only those cases which involves value of assessment or refund upto five million.

This amendment needs rectification and the word 'tax' may be replaced with 'duty'. Besides above, it is suggest to amend the phrase of 'Value of Assessment of Duty' with 'Disputed Duty Amount' and 'Refund of Duty' with 'Rejected Refund Amount'.

Pecuniary Jurisdiction in Appeals

Section 33A

Through Tax Laws (Amendment) Act, 2024 [Act 2024], pending cases before the Commissioner (Appeals) having the value of assessment of duty or refund of duty exceeding Rs.5 Million was supposed to be transferred from the 16 June 2024 to the Appellate Tribunal Inland Revenue.

The said deadline has been proposed to be extended till 16 September 2024 to avoid hardship faced by the taxpayers regarding tax recovery in the closing month of Financial Year 2024. This amendment may give time to Federal Government to align the resources at Appellate Tribunal Inland Revenue for speedy disposal.

First Schedule

Table I

New Levy of Duty

S. NO.	DESCRIPTION OF GOODS	RATE OF DUTY
7a	Acatate tow	Rs.44,000 per KG
8d	Nicotine pouches	Rs.1,200 per KG
63	Allotment or Transfer of Commercial Property and first allotment or transfer of residential property in such mode and manner and subject to such conditions and restriction as may be prescribed by the Board	5%
64	Sugar supplied by any person to a manufacture	Rs.15 per KG

Regarding the proposal to levy excise duty on allotment or transfer of immovable property, it appears that Federal Government had tactfully added a provision in Section 3(1)(e) through Finance Act, 2023 to make any other class, which is neither goods or services, subject to Federal Excise Duty. Now such clause (e) has come into play to impose such levy.

Notwithstanding the above, we understand the preamble of both FED Act 2005 as well as Entry No. 44 and 50 of the Constitution of Pakistan is likely to be debated and undergo test of judicial review before we may conclude whether the proposed measure will sustain or not.

Increase in Rate of Duty

S. NO.	DESCRIPTION OF GOODS	EXISTING RATE OF DUTY	PROPOSED RATE OF DUTY
7a	Acatate tow	Rs.10,000 per KG	Rs.10,000 per KG or 65% of Retail Price (whichever is higher)
13	Portland Cement, Aluminous Cement, slag cement, super sulphate cement and similar hydraulic cements or in the form of clinkers	Rs.2 per KG	Rs.3 per KG
56	Filter rod for cigarettes	Rs.1,500 per KG	Rs.80,000 per KG

Change in Scope of Dutiable Items

S. NO.	EXISTING DESCRIPTION OF GOODS	PROPOSED DESCRIPTION OF GOODS	RATE OF DUTY
9	Locally produced cigarette if their on-pack printed retail price exceeds Rs.9,000 per thousand cigarettes	Locally produced cigarette if their on-pack printed retail price exceeds Rs.12,500 per thousand cigarettes	Rs. 16,500
10	Locally produced cigarette if their on-pack printed retail price does not exceed Rs.9,000 per thousand cigarettes	Locally produced cigarette if their on-pack printed retail price does not exceed Rs.12,500 per thousand cigarettes	Rs.5,050

Exemption from payment of Duty

Third Schedule

Table I

The Bill reveals that Exemption from payment Federal Excise Duty has been proposed on imports made by diplomats, diplomatic missions, privileged persons and privileged organization has been introduced.

CUSTOMS ACT, 1969

DEFINITION

Section 2

The Bill seeks to add definitions of “Nuclear Material” and “Radioactive Material” included for implementation of National Nuclear Detection Architecture (NNDA) regime.

ESTABLISHMENT OF DIRECTORATES

Section 3CCD AND 3CCE

The Bill proposed to establish the Directorate General of National Targeting Centre [NTC] and Trade Based Money Laundering [TBML].

DELEGATION OF POWERS

Section 5

The Bill has proposed that the Board may delegate any of its functions and powers to the Chairman or empower by name or designation:

- (a) any Member or Director General to exercise the powers of the Board or Chairman;
- (b) any Collector of Customs to exercise any of the powers of a Chief Collector of Customs under this Act

ENTRUSTMENT OF FUNCTIONS OF CUSTOMS OFFICERS TO CERTAIN OTHER OFFICERS

Section 6

The bill proposes to add the 'National Command Authority' and the 'Pakistan Nuclear Regulatory Authority' to the roster of institutions authorized to delegate customs officers' functions under this Act. This delegation would be carried out to officers of the mentioned institutions as per the legal framework notified by the Board.

ASSISTANCE TO THE OFFICERS OF CUSTOMS

Section 7

The bill seeks to include the "Intelligence Bureau" among the institutions permitted to assist the customs officers in fulfilling their duties under this Act. Once assistance is requested, it is obligatory for the Intelligence Bureau to provide it.

PROVISIONAL DETERMINATION OF LIABILITY

Section 81

The Bill proposes to expand the restriction on provisional determination of value to cases where a "Publication Valuation Ruling (PVR)" is also in effect.

The provisional determination of value is currently prohibited when a Valuation Ruling (VR) issued under section 25A is in effect, regardless of whether any review or revision against such VR is pending.

PUNISHMENT FOR OFFENCES

Section 156

Smuggling of nuclear and radioactive material:

To deter the smuggling of nuclear and radioactive materials, proposed penalties are in place. Besides the confiscation of smuggled goods, breaches of national security may incur imprisonment and fines. Generally, imprisonment could range from seven years to life, with fines ranging between 1 to 5 million rupees.

Regarding nuclear material, the severity of punishment hinges on its quantity and form as outlined in the regulations governing the Physical Protection of Nuclear Material and Nuclear Installations – (PAK/925). For radioactive material, punishment would be contingent upon the activity-to-dangerous-value ratio as specified in the regulations concerning the Security of Radioactive Sources - (PAK/926) or any subsequent amendments determined by the PNRA.

Obstruction/hindrance in the discharge of duty or exercise of power:

Currently, individuals who obstruct or hinder the discharge of duties or exercise of powers, which includes falsely accusing, implicating, threatening, molesting, or assaulting a customs official, impeding searches, damaging items liable to confiscation, or preventing detentions, are subject to a fine of Rs.25,000 along with imprisonment for up to two years. The proposed amendment seeks to increase this fine to Rs 100,000 or more.

Illegally removed, exchanged, pilfered or disposed goods:

The proposal entails that:

- If persons found in possession or in charge of smuggled goods, subject to confiscation and seizure, who are discovered unlawfully removing, exchanging, pilfering, or disposing of them in any manner, shall face a penalty not exceeding ten times the value of the goods. Upon conviction, such individuals may be subject to imprisonment for up to six years or a fine not exceeding 10 million rupees, or both.

- Similarly, if person in possession or in charge of goods other than smuggled goods, which are liable for confiscation and seizure, and are found unlawfully removing, exchanging, pilfering, or disposing of them, shall face a penalty not exceeding two times the value of the goods. Upon conviction, such individuals may be subject to imprisonment for up to six months or a fine not exceeding 50 thousand rupees, or both.

REVAMPING OF THE APPELLATE TRIBUNAL AND APPEALS MECHANISM Sections 194, 194A, & 194B

In order to streamline the procedure in appeal mechanism as introduced under the Income Tax Ordinance, 2001, Sales Tax Act 1990 and Federal Excise Act, 2005 through the Tax Laws (Amendment) Act, 2024. The Bill proposes the following the changes as tabulate under:

	DESCRIPTION OF GOODS	DESCRIPTION OF GOODS
Appointment of Members	The Chairman and Member are appointed by the Prime Minister	The Chairman and Members will be appointed by the Federal Government
Holding period of an Office	The Chairman and Members continue to hold the office based on current terms and conditions as applicable and prior to the Commencement of the Finance Act, 2024	The Chairman possessing qualification (as enumerated below) shall hold the office for the period of three years. The Chairman and Members shall hold the office till attaining the age of 62 year or attaining age of superannuation.
Eligibility	(a) Judge of High Court; (b) District Judge; (c) Advocate of High Court with minimum ten-year experience; (d) Officer of the Pakistan Custom Services;	(a) Advocate of High Court with minimum fifteen-year experience and pleading atleast fifty custom cases at various forums; (b) Officer of the Pakistan Custom Services having grade BS 21 or above (c) Officer of the Pakistan Custom Services having grade BS 20 and served three years or more.
Time frame for filing of an Appeal	Within 60 days from the date of the Order or from the date of servicing of an Order	Within 30 days from the date of the Order or from the date of servicing of an Order
Time frame for filing of an Appeal	Within 60 days from the date of the Order or from the date of servicing of an Order	Within 30 days from the date of the Order or from the date of servicing of an Order
Appeal Fee	In all cases Rs.1,000/-	In Company's case Rs.20,000/- Other than Company Rs.5,000/-

	DESCRIPTION OF GOODS	DESCRIPTION OF GOODS
Stay against recovery of demand	Minimum 30 days Maximum 180 days	Minimum 30 days Maximum 90 days
Time Limit for Deciding Appeal	The case will be decided within 60 days; however, such time limit may be extended for 30 days.	The case will be decided within 90 days; however, such time limit may be extended for 60 days.
Appeal adjournment	The Appellate Tribunal can adjourn the case due to non-availability of either one party without any fee.	The Appellate Tribunal can adjourn the case based on the mandatory reason and subject to adjournment fee of Rs.50,000/-
Rectification of clerical or arithmetical error	The Appellate Tribunal can rectify clerical or arithmetical error within one years from the date of the order.	To reduce the time frame from one year to 15 days from the date of communication of the order.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Sections 195C

The Bill proposes the amendment that an aggrieved person may apply to Alternative Dispute Resolution Committee [ADRC] for dispute resolution involving customs duties, refunds, penalties, confiscations, or procedural relaxations, except for cases with criminal proceedings or significant legal interpretations and offer for payment of duties and taxes.

Prior to such proposition, the Federal Board of Revenue is required to constitute a committee within thirty days from the date of receiving an application by the aggrieved person and decided to case within the ninety days from its constitution. Through such insertion, the FBR is required to establish the committee within fifteen days and resolve such dispute by conducting an inquiry or audit if deems fit within forty-five days which may be extended further fifteen days.

The committee is empowered to grant stay in demand from the date of commencement of committee till the disposal of the case. An aggrieved person may withdraw such appeal if satisfied with the decision passed by the ADRC and intimate to the Collector within thirty days of the service of the decision. Earlier the time frame was provided for sixty days.

REFERENCE TO HIGH COURT

Sections 196

An aggrieved person may file a reference before High Court against the Order passed under Section 194B within thirty days from the date of the Order. Earlier, such time limitation for the periods of ninety days. By amending such provision, the fee for filing of reference application has been increased to Rs.50,000/-. It is also proposed to restrain the Collector for recovery of demand within fifteen days from the date of the communication of the Order.

AMENDMENTS PROPOSED IN FIRST SCHEDULE TO THE CUSTOMS ACT

Rationalization of Customs duty

PCT CODE	DESCRIPTION	EXISTING	PROPOSED
2710.1931	High speed diesel oil	10%	0%
2711.1100	Natural gas	5%	0%
7311.0040	Containers for aerosol products	11%	16%
8413.7019	Other parts of Submersible pumps having diameters other than 5 to 10 inches	3%	0%
9004.9090	Other Spectacles, goggles and the like corrective, protective	3%	11%
9018.3989	Other Syringes, needles, catheters, cannulae	0%	20%
9004.9010	Night vision goggles	3%	11%
9018.3981	Blood collection tube of glass	0%	20%
9018.3982	Blood collection tube of PET	0%	20%

WITHDRAWAL OF ZERO RATING

The bill proposed to introduce and withdrawal of zero rating on:

import of ship bunker oil at Gwadar Port including their operating companies, contractors, and sub-contractors

reimportation of duty-paid containers used for transporting export cargo

import of medical herbs (including heing and zeera) from Afghanistan for their subsequent export.

OTHER AMENDMENT

Verification and an undertaking will be required from relevant ministry to confirm authenticity and intended use of the goods for exemption of customs duty, exemptions for gifts and donations to federal, provincial, or public sector organizations

The Chief Collector of Customs is empowered to extend the time limit for re-export of goods imported temporarily in Pakistan with a view to subsequent exportation

AMENDMENTS PROPOSED IN FIFTH SCHEDULE (CONCESSION/EXEMPTION)

The Bill proposed to exempt the custom duty on following import:

- Machinery and equipment including raw materials (parts) for the manufacture of PV modules / solar inverters / lithium ion batteries subject to certain conditions and quota determination / approvals.
- Drug named “Bovine Lipid Extract Surfactant” by Pharma sector.
- Livestock for research purposes.
- Machinery and equipment for fish or shrimp farming and seafood processing.
- Certain machinery and equipment for fish or shrimp farming and seafood processing.
- Live (baby / brood stocks) fish and shrimp/prawns for breeding and production in commercial farms and hatcheries.

Withdrawal of exemption / concession

It is proposed to withdraw the exemption on following goods

- ✓ Concessionary rate of 10% on fresh and dry fruits except apples from Afghanistan;
- ✓ Cane sugar;
- ✓ Wheat;
- ✓ Import of beet sugar;
- ✓ White Crystalline beet sugar;
- ✓ White Crystalline cane sugar;
- ✓ Printed Circuits; and
- ✓ Concessionary rate of 25% on electric vehicles (4 wheelers) with value exceeding USD 50,000.

Increase in Customs Duty

The Bill proposes to withdraw and impose custom duty at concessionary rates on import of the following goods:

PCT CODE	DESCRIPTION	EXISTING	PROPOSED
8534.0000	Bare Metal Clad Printed Circuit Board (MCPCB)	0%	11%
8529.9090	Glass board for manufacturing TV panels (LCD, LED, OLED, HDI etc.)	0%	10%



MOORE ShekhaMufti

Chartered Accountants

FEDERAL BUDGET 2024-25

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