

SALIENT FEATURES

INCOME TAX

1. The Financial Monitoring Unit is the central agency in Pakistan responsible for receiving and analyzing Suspicious Transaction Reports and disseminating the same to the relevant authorities for further investigation or regulatory action in respect of cases relating to money laundering and terrorist financing. Section 216 of the Income Tax Ordinance, 2001 accords confidentiality to tax records and proceedings and has overriding effect over all other laws for the time being in force. Requisite amendment has been made in order to enable sharing of information between FBR and FMU in order to facilitate FMU to perform its functions as laid down in the Anti-Money Laundering Act, 2010 and to enable compliance with FATF regulations.
2. The standard rate of minimum tax under section 113 of the Income Tax Ordinance, 2001 is being reduced from 1.5% to 0.5% in the case of traders having turnover upto Rs.100 M for the Tax Year 2020. However, traders having turnover upto Rs.100 Million who have filed their returns for the Tax Year 2018 will be obliged to pay tax equal to or more than the tax paid for the Tax Year 2018 for the Tax Years 2019 and 2020. Moreover, a trader has been defined as an individual engaged in the buying and selling of goods in the same state including a retailer and a wholesaler, however, distributors have been ousted from the scope of this definition.
3. Under section 153 of the Ordinance, individuals having turnover of Rs.50 Million or above in any of the preceding Tax Years are obliged to act as withholding tax agents whilst making payments for supply of goods, rendering of services or for execution of contracts. Henceforth traders, being individuals and having turnover upto Rs.100 Million shall not be required to act as a withholding agent under section 153 of the Ordinance.

4. The existing foreign exchange framework of the country allows non-residents to invest in debt securities and Government securities through Special Convertible Rupee Accounts (SCRA's) maintained with banks in Pakistan. There is no restriction on repatriation of funds from SCRA's which incentivizes investment in the local debt market by non-resident investors. Several amendments for encouraging investment in the local debt market and simplifying the tax regime for non-resident companies have been introduced which are summarized hereunder:-
- (i) Capital gains emanating from the disposal of debt instruments and government securities (including treasury bills and Pakistan Investment Bonds) to non-resident companies (not having a permanent establishment in Pakistan) who have made investments in such debt instruments/securities exclusively through a Special Convertible Rupee Account (SCRA) maintained with a bank in Pakistan shall be subject to withholding tax @ 10% by banks/financial institutions which shall constitute final discharge of tax liability.
 - (ii) Enhanced rate of withholding tax for persons not appearing on the active taxpayers list under the Tenth Schedule to the Ordinance shall not apply to capital gains and profit on debt earned by non-resident companies, not having a permanent establishment in Pakistan, which invest in local debt instruments/securities through SCRA maintained with a bank in Pakistan.
 - (iii) Special Convertible Rupee Accounts (SCRA) being maintained by non-resident companies having no permanent establishment in Pakistan shall be exempt from collection of advance tax on banking transactions otherwise than through cash under section 236P of the Ordinance.
 - (iv) A non-resident company having no permanent establishment in Pakistan investing debt instruments and government securities through SCRA shall not be required to pay advance tax under section 147 of the Income Tax Ordinance, 2001 in respect of capital gains arising to it.
 - (v) Requirement for filing a statement of final taxation under section 115(4) of the Income Tax Ordinance, 2001 and registration under section 181 of the Ordinance shall not apply to a non-resident company having no permanent establishment in Pakistan solely by reason of Capital Gain or Profit on Debt earned from investments in debt securities

and Government securities through Special Convertible Rupee Account maintained with a banking company or financial institution in Pakistan.

5. Section 130 of the Income Tax Ordinance, 2001 provides for the establishment of an Appellate Tribunal Inland Revenue. In order to streamline the affairs of the Tribunal and to impart greater efficiency and transparency in the working of the Tribunal for ensuring maximum disposal of cases the constitution, functioning of benches and procedure of the Appellate Tribunal shall henceforth be regulated by rules which the Prime Minister may prescribe. The scope of qualifications for eligibility as a judicial member has also been enlarged.

6. In terms of clause (66) of Part-IV of the Income Tax Ordinance, 2001 exemption from collection of advance tax under section 235 of the Ordinance on the electricity bills of commercial and industrial consumers was available to the five export oriented sectors who fulfill the twin conditions of falling under the zero rated regime of sales tax and being registered in sales tax as exporters or manufacturers. The zero rating regime for the five export-oriented sectors has now been abolished, therefore, consequent amendment in clause (66) of Part-IV of the Second Schedule has been made to remove the legal anomaly.

7. In order to facilitate manufacturers, a Commissioner, under the auspices of clause (72B) of Part-IV of the Second Schedule to the Ordinance has the mandate to issue exemption certificate in respect of collection of tax under section 148 of the Ordinance at the import stage in respect of raw materials being imported by industrial undertakings subject to various conditions. However, no time limit has been prescribed under the law or rules for disposal of such exemption certificate by the Commissioner. In order to complement efforts being made towards ease of doing business if a Commissioner fails to issue such certificate within the time period prescribed under the Income Tax Rules, 2002 the certificate shall be automatically processed and issued by IRIS and shall be deemed to have been issued by the Commissioner. However, the Commissioner shall have the mandate to modify or cancel the certificate issued automatically by IRIS on the basis of

reasons to be recorded in writing after providing an opportunity of being heard to the taxpayer.

8. Prior to the promulgation of the Tax Laws (Second Amendment) Ordinance, 2019 the rate of withholding income tax on the import of mobile phones was Rs.730 in case of a mobile phones having value exceeding 30 US dollars and upto 100 US Dollars. In order to complement the efforts of the government towards promotion of financial inclusion, e-commerce etc, income tax at the import stage in respect of mobile phones having value exceeding 30 US dollars and up to 100 US dollars has been reduced from Rs.730 to Rs.100 per mobile phone.
9. Under the Second Schedule to the Income Tax Ordinance, 2001 exemption is available to the profits and gains of a company from a Green Field Industrial Undertaking for a period of five years. Likewise, exemption from minimum tax is also available to Greenfield Industrial Undertakings .However, the term “Greenfield Industrial Undertaking” was not defined in the Income Tax Ordinance, 2001. In order to avoid multifarious interpretations of the said term as well as preclude leakage of revenue through incorrect claim of tax exemptions the term “Greenfield Industrial Undertaking” has now been defined under the Income Tax Ordinance, 2001. This definition shall be applicable from 1st July, 2019 onwards.
10. In order to document business activity section 181D of the Ordinance was inserted through the Finance Act, 2019 whereby it was made mandatory for every person engaged in any business, profession or vocation to obtain and display a business license as prescribed by the board. In order to complement efforts towards implementation of this scheme the Commissioner is being empowered to impose a fine of Rs.20, 000/- in the case of a taxpayer deriving income chargeable to tax under the Ordinance and Rs.5, 000/- in all other cases. Moreover, the Commissioner shall also be empowered to cancel a business license after providing an opportunity of being heard if a person fails to notify any change

in particulars within 30 days of such change or if a person is convicted of any offence under any Federal Tax Law.

11. The Director General of International Tax Operations has been empowered to select and conduct transfer pricing audit of cases under section 230E of the Ordinance. Previously, there was no provision which specified the procedure to be adopted for conducting transfer pricing audit of taxpayers. It has now been specified that transfer pricing audit of cases selected by the Director General of International Tax Operations shall be conducted as per procedure laid down in 177 of the Ordinance. Moreover, the right to conduct transfer pricing audit under section 230E of the Ordinance shall not prejudice the right of the Commissioner to determine transfer price at arms length in transactions between associates while conducting audit under section 177 or 214C of the Ordinance or whilst making amendment under section 122 of the Ordinance.
12. The rate of minimum tax under section 113 of the Ordinance for the Tax Year 2020 shall be 0.5% in the case of a trader of yarn, being an individual, irrespective of the date of registration in sales tax. Moreover , rate of deduction of withholding tax in respect of yarn traders making sales/supplies or rendering services to the five export oriented sectors shall henceforth be 0.5%.
13. In order to facilitate expeditious disposal of cases automatically selected for audit under section 214D of the Ordinance the Board has been empowered to prescribe procedure for conclusion of audit of income tax affairs of a person automatically selected for audit under section 214D of the Ordinance .Such procedure may include acceptance of declared income of a taxpayer subject to the condition specified therein.

SALES TAX

1. Many queries have been received seeking clarification of the term “greenfield industry”. A definition of this term in section 2 of the Sales Tax Act, 1990 has now been inserted in clause 12A.
2. In order to ensure that persons who are required to integrate with the FBR or have been integrated, either do not get themselves integrated or do not make proper compliance and tamper with the systems so installed so as to avoid reporting and recording of production and sales, it has been provided to amend section 33 of the Act to declare such act as an offence and punishable with imprisonment and fine both.
3. Sales tax is levied on the basis of retail price on the items specified in the Third Schedule to the Act. Such retail price is required be printed with retail price. In order to ensure compliance in this respect, and to safeguard revenue associated therewith, penalty has been provided and also confiscation of contravening goods by amending section 33 of the Act.
4. In order to safeguard industry in Pakistan and to prevent misuse of exemption, a new section 40D in the Act has been added and amendment in this regard has also been made in section 33 relating to penalties and offences, so as to provide for powers to prescribe documentation in relation to such goods and to examine and check vehicles coming from tax-exempt areas such as AJ&K, Gilgit-Baltistan and Tribal Areas.
5. Section 73 has been amended to provide that a registered manufacturer shall make all taxable supplies to a registered person excluding supplies not exceeding a value of rupees hundred million in a financial year and rupees 10 million in a month.
6. Sales tax on the imported cotton has been enhanced from 5 % to 10 % to remove disparity.
7. PCT heading of bricks had been inadvertently mentioned as “6901.1000”, whereas the correct PCT heading is “6901.0000”. Tenth Schedule has been amended to correct the PCT heading.

8. Manufacturers using plant and machinery for in house installation have now been excluded from the purview of the 12th Schedule, further refund of 3% value addition tax may not be barred if paid on goods used in making of zero-rated supplies.
9. Definition of tier-1 retailer has been amended in section 2(43A), whereby the Federal Board of Revenue is empowered to add any other category of retailers to tier-1. In view of the higher tariff rates of electricity the conditions to qualify for a Tier 1 retailer have been amended so as to increase the threshold of electricity consumption from Rs 600,000 to Rs 1200,000

Customs

The following legal changes are proposed in the Customs Act, 1969:-

1. After section 3CC, the following new section is proposed to be inserted:-

“3CCC. Directorate General of Law and Prosecution. - The Directorate General of Law and Prosecution is being proposed for the reason that in all the Collectorates and Directorates there are a number of cases which are framed for evasion of duty/taxes but owing to excessive work load and lack of expertise on the prosecution side the cases are not properly defended at subsequent legal fora. The Directorate General of Law and Prosecution will be established with specific power to handle legal issue and equipped with staff expert in handling legal issues.

2. The penal clause 47A of section 156(1) provides for fix penalty @ Rs.5000/- for initial five days and thereafter @ Rs.10000/- per day upto a maximum limit of Rs.100000/- in case GD is filed after ten days of the date of arrival of goods into Pakistan. This clause was inserted to realize stuck up Government revenue as importer will suitably discharge their liabilities to avoid their penalties. However, bonafide person need to be excluded from this penal clause. However, the intent of the proposed amendment is to exclude the goods imported or received as gift by individuals without NTN or STRN through courier or air cargo, diplomatic cargo and imports made by government agencies.
3. Changes are being proposed in section 156 to penalize persons carrying foreign currency. Previously, a person carrying foreign currency beyond the permissible amount of \$10000 was being prosecuted. It is now being proposed by means of varying slabs being taken by passengers ,ranging from \$10000- \$200000 and above and accordingly proposing varying degrees of penalties from a mere fine and then imprisonment upto fourteen years depending on the amount of currency apprehended by the authorities. Similarly, slabs for smuggling of Gold, platinum and Silver has been proposed along with their varying degrees of fine and imprisonment depending on the quantum of precious metals.

4. Owing to surge in smuggling activities and knowing that smugglers as well equipped, it is being proposed that section 164 may be suitably amended empowering Customs officials to fire in the Line of Duty.
5. Currently, section 185A specifies the provisions for cognizance of offences by special Judges. It is proposed that a time period of six months may be fixed for the finalization of proceedings in criminal cases because cases keep on lingering without any outcome for years. No time limitation in decision of the case also accords time to the investigating officers to submit final challan without a time limit which aspect weakens the case as the time passed by.
6. Section 194 of the Customs Act, 1969 provides for the constitution of a Customs Appellate Tribunal by the Federal Government which is competent to adjudicate upon appeals filed against orders passed by the Collector (Appeals). The said section specifies various pre-requisites for appointment as a judicial or technical member and empowers the Federal Government to appoint Chairman of the Customs Appellate Tribunal. In order to complement revenue collection efforts by FBR, streamline the affairs of the Tribunal(s), bring about greater transparency in the manner of appointment of judicial and technical members of the Tribunal(s) and to impart greater efficiency in the working of the Tribunal for ensuring maximum disposal of cases it is proposed that in addition to the prerequisite as already mentioned, the qualification of Judicial Members may also be prescribed under rules made by the Prime Minister. Furthermore the constitution and functioning of benches and procedure of the Appellate Tribunal may be regulated by rules approved by the Prime Minister.

