

Tax Laws (Amendment) Ordinance, 2021

February 14, 2021

THE TAX LAWS (AMENDMENT) ORDINANCE, 2021

This memorandum gives a brief overview of significant amendments made by the Tax Laws (Amendment) Ordinance, 2021 in the fiscal laws of Pakistan. The Ordinance has been promulgated by the President of Pakistan in exercise of the powers conferred under Article 89(1) of the Constitution of Islamic Republic of Pakistan.

The Ordinance primarily aims to provide for a simplified concessionary tax regime for overseas and local Pakistanis including those holding POC, who are allowed to open and operate Roshan Digital Accounts under the scheme introduced by the State Bank of Pakistan. The Ordinance has also introduced certain other amendments to give effect to the concessions announced by the Government for Special Technology Zones and electric vehicles. Besides that, the Ordinance provides for reduced withholding / minimum tax regime for the traders, wholesalers and retailers of specified sectors in terms of understanding reached between the trade bodies and Government.

The amendments made through the Ordinance are effective from February 11, 2021 unless otherwise stated for specified provisions.

This memorandum can also be accessed on www.pwc.com/pk

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SIMPLIFIED TAX REGIME FOR ROSHAN DIGITAL ACCOUNTS

Through Tax Laws (Amendment) Ordinance, 2021, various amendments have been made in the Income Tax Ordinance, 2001 to provide for simplified tax regime for those local and overseas individuals who are allowed to operate Roshan Digital Accounts (**RDA**) in terms of the scheme introduced by the State Bank of Pakistan. These accounts are a new initiative of the State Bank of Pakistan in collaboration with the commercial banks to attract investment in Pakistan.

INCENTIVES FOR NON-RESIDENT INDIVIDUALS

Non-Resident Individuals¹ (**NRI**), holding NICOP, POC or CNIC and maintaining a Foreign Currency Value Account (**FCVA**), or a Non-Resident Pakistani Rupee Value Account (**NRVA**) with authorized banks in Pakistan are allowed to make investments in the following:

- (i) Government debt securities (both conventional and shariah compliant);
- (ii) Immovable property- both residential and commercial;
- (iii) Listed securities and units of Mutual Funds; and
- (iv) Term deposit and other products of the Bank

Through Tax Laws (Amendment) Ordinance, 2021, taxation regime applicable on income arising from above investments has been further streamlined and simplified. The existing law and the changes made therein are summarized as under (changes emphasized in **Bold Font**).

Investment	Taxation	Rationale / Implications
1. Government Securities (both Shariah Compliant and Conventional):		
- Interest income	10% withholding on interest income or capital gains, as the case may be, by a banking company considered as full and final discharge of tax liability.	Streamlining taxation of capital gains on disposal of government securities with interest income arising from government securities.
- Capital gains on disposal of government securities		
2. Immovable Property:		
- Purchase	1% withholding (made by person responsible for registering property) treated as final tax (hence non-refundable). No tax shall be collected where immovable property is purchased under the scheme introduced by Federal or Provincial Government for expatriate Pakistanis.	Through amendments made under section 236C and 236K of the Income Tax Ordinance, 2001, a special tax regime has been introduced for NRIs investing in immovable property through RDA whereby capital gains on immovable properties accruing to them would be subject to final tax by virtue of tax collection at the time of purchase and sale of property.
- Sale	1% withholding (made by person responsible for registering property) is final tax in lieu of capital gains arising on disposal of property. No tax shall be deducted where property is sold after 4 year.	

¹ Individuals are considered as non-resident, if he is not present in Pakistan:
 (a) for an aggregate period of 183 days or more in a tax year (July to June basis); or
 (b) for an aggregate period of 120 days or more in a tax year, and in aggregate 365 days in 4 years preceding that tax year.

Investment	Taxation	Rationale / Implications
3. Listed Securities and Mutual Funds:		
- Dividend income	Tax deducted at following rates is full and final discharge of tax liability:	Taxation regime in line with the resident persons.
	(a) 7.5% (in case of IPPs where dividend is a pass through item)	
	(b) 15% (Mutual funds and other than (a) & (c))	
	(c) 25% (If dividend is received from a company exempt from tax or where tax is not payable due to losses / tax credit)	
- Capital Gains	Tax deducted by NCCPL at following rates is considered as full and final discharge of tax liability (no tax is to be deducted if holding period is more than 4 years):	Taxation regime in line with the resident persons.
	(a) 15% (Listed securities)	
	(b) 10% Mutual Funds other than (c)	
	(c) 12.5% (stock fund if dividend receipt of fund is less than capital gains)	
4. Interest income from FCVA and NRVA (including term deposit/ allied products of banks)	Exempt from tax including withholding tax with no requirement to obtain exemption certificate	Exemptions available under clause (78) and (79), Part I of the Second Schedule were previously restricted only to certain Foreign Currency Accounts and Pakistan Rupee Accounts of citizens of Pakistan residing abroad. Exemption after the amendment is broadly available to Foreign Currency accounts maintained by non-resident individuals, association of persons, and companies, and Rupee Accounts maintained by non-resident individuals.

ADDITIONAL INCENTIVES / CONCESSIONS FOR NRIs INVESTING THROUGH FCVA / NRVA

- NRIs investing through FCVA / NRVA are now not required to obtain National Tax Number and file tax return in Pakistan if such person has no Pakistan-source income other than those as discussed above. NRIs who are eligible for tax treaty benefits in excess of what is now provided in the simplified tax regime as stated above, may opt to avail the treaty benefits following the normal course laid down in the law. However, we consider that the simplified scheme laid down in the law is more attractive in terms of practicalities involved in applying for the treaty benefits.
- Tenth Schedule would also not apply on NRIs investing through FCVA / NRVA (Under the Tenth Schedule, a person not filing tax return is subject to tax withholding at 100% higher rate than the applicable rate, with other consequential implications).

3. Following withholding taxes would also be not applicable on NRIs operating FCVA/ NRVA, which are otherwise applicable on a person not filing a tax return in Pakistan:

Section 231A	-	Cash withdrawal from bank
Section 231AA	-	Sale of banking instrument or online transfer of money etc.
Section 236P	-	All banking transactions, other than cash

NOTE:

All the concessions stated above were previously available to certain extent, subject to certain restriction and conditions. The Tax Laws (Amendment) Ordinance, 2021 has removed all such restrictions and provide for a complete and clear simplified tax regime as stated above.

Certain practical problems may arise for banking companies operating RDA (e.g. identifying/ verifying tax residential status of an individual, based on number of days spent in Pakistan). Furthermore, in case of purchase and sale of immovable property, transaction values in certain cases may not be aligned with FBR's notified values, on which tax has been collected at the time of purchase and sale of immovable property. FBR is expected to issue appropriate clarification on these matters.

INCENTIVES FOR RESIDENT CITIZEN OF PAKISTAN

SBP's scheme also allows resident citizen of Pakistan to make investments in Naya Pakistan Certificates and other government securities through FVCA, provided the resident person has declared foreign assets to FBR. Interest income of such resident persons from Government debt securities (whether conventional or Shariah compliant) would be subject to tax withholding at the rate of 10%, which shall be considered as full and final discharge of tax liability. Previously, such interest income was taxable at following rates under section 7B of the Ordinance:

S. No.	Profit on Debt	Rate of tax
1	Where profit on debt does not exceed Rs. 5,000,000	15%
2	Where profit on debt exceeds Rs. 5,000,000 but does not exceed Rs. 25,000,000	17.5% - (Note)
3	Where profit on debt exceeds Rs. 25,000,000 but does not exceed Rs. 36,000,000 *	20% - (Note)

* Where profit on debts exceeds Rs. 36,000,000, tax was applicable on the entire amount of profit at the rate of 35%.

Note: The rate of 17.5% was applicable on the entire amount (and not on amount exceeding Rs. 5 million). Likewise, rate of 20% is applicable on entire amount of profit on debt.

INCENTIVES FOR WHOLESALER, DEALER AND RETAILERS OF SPECIFIED SECTORS

REDUCED WITHHOLDING TAX / MINIMUM TAX RATE FOR TRADE CHAIN OF SPECIFIED SECTORS

Dealers and sub-dealers of sugar, cement and edible oils are allowed reduced withholding tax rate (and the consequential minimum tax) of 0.25% under section 153 on their receipts.

Following amendments are made in this regard:

- (i) The above concession has been extended to wholesalers and retailers as well;
- (ii) Sectors / goods covered would include fertilizer and fast-moving consumer goods. The term ‘fast moving consumer goods’ has been defined to mean consumer goods, which are supplied in retail marketing as per daily demand of a consumer excluding durable goods;
- (iii) The above concession would be available only if the dealer and sub-dealer, wholesaler or retailer is already registered under the Sales Tax Act, 1990 or get themselves registered within sixty days of the promulgation of the Amendment Ordinance, 2021 i.e. by April 11, 2021.

Dealers and sub-dealers of sugar, cement and edible oils are also allowed minimum tax rate of 0.25% under section 113 (as against standard rate of 1.5% applicable on their turnover), provided they are active taxpayers in terms of relevant provisions of both the Income Tax Ordinance, 2001 and Sales Tax Act, 1990.

Following amendments are made in this regard:

- (i) The above concession has been extended to wholesalers and retailers as well;
- (ii) Sectors / goods covered would include fertilizer and fast-moving consumer goods; and
- (iii) The above concession would be available only if the dealer and sub-dealer, wholesaler or retailer is already registered under the Sales Tax Act, 1990 or get themselves registered within sixty days of the promulgation of the Amendment Ordinance, 2021 i.e. by April 11, 2021.

It appears that dealer, distributor and wholesaler of certain specified sectors like cement, sugar and fertilizer would be subject to advance tax collection on their purchases (under section 236G) as well as on their sales to withholding agent (under section 153). Tax withholding under section 153 shall be minimum tax.

REDUCTION IN RATE OF ADVANCE TAX FOR DISTRIBUTORS / WHOLESALERS OF FERTILIZERS

Every manufacturer or commercial importer of fertilizers is required to collect advance tax from distributors, dealers and wholesalers under section 236G at the rate of 0.7%.

The said rate has been reduced to 0.25% if the distributor / dealer / wholesaler is already registered under the Sales Tax Act, 1990 or get themselves registered within sixty days of the promulgation of the Amendment Ordinance, 2021 i.e. by April 11, 2021. Those registered after April 11, 2021 will be subject to advance tax at the rate of 0.7%.

Tax collection under section 236G is adjustable for dealer, distributor and wholesaler of the specified sectors.

TAXATION OF DISTRIBUTORS, DEALERS, WHOLESALERS AND RETAILERS OF MOBILE PHONE DEVICES

It is provided that with effect from July 1, 2020, the provisions of withholding tax under section 153(1)(a) shall not apply to distributors, dealers, wholesalers and retailers of locally manufactured mobile phone devices as withholding agent.

As a result of exemption of withholding tax on supplies within the supply chain, all these persons would now be subject to tax on their net income.

CONCESSIONS FOR SPECIAL TECHNOLOGY ZONES

In December 2020, Special Technology Zone Ordinance, 2020 (**STZO**) was promulgated to provide for development of science and technological ecosystem and to accelerate technology development in Pakistan.

Under STZO, a Special Technology Zone Authority (**Authority**) is established. The Authority has been authorized to appoint zone developer through development agreement and issue licenses to zone enterprises for the notified zones. The term 'Zone' has been defined as under, specifying the economic activities allowed for the zone enterprises:

“Zone” shall include any defined geographical area notified by the Authority with any such name including, but not limited to special technology zone, information technology parks, high-tech industrial area, software technology park, hardware technology park, technology export zone, free technology zones, science and technology park, information technology zones, science and technology zone, R&D Zone, opportunity zone, innovation zone, technology development zone, knowledge parks, smart city, knowledge city, technology incubation zone or any sector zone which may require technological intervention such as biotech, chemical technologies, agri-tech, fin tech, robotics, nanotech etc. and other zones with any combination or combinations of the aforesaid fields.

STZO envisage duty and tax incentives for the zone developer and zone enterprises. In addition, the Authority has been empowered to allow additional benefits to zone developers and zone enterprises if found justified on the basis of an economic impact assessment. It is further provided in STZO that the concessions allowed under STZO are independent of the concessions (if any) allowed to the zone developers / zone enterprises under any other applicable legislation and that the provisions of STZO shall not be taken as limiting the authority of any Government to grant any additional benefits. STZO has also provided necessary provisions for the protection of investment. In particular it is also provided that these incentives shall not be withdrawn prematurely and retrospectively and that any change therein could only be advantageous to the investor and not otherwise.

STZO provides for the following incentives:

INCENTIVES FOR ZONE AUTHORITY AND ZONE DEVELOPERS	INCENTIVES FOR ZONE ENTERPRISES
(i) Exemption from all taxes on income accruable in relation to the development and operations of the zones for a period of ten years, starting from the date of signing of the development agreement (<i>for zone developer only</i>)	(i) Exemption from all income taxes (withholding tax, presumptive tax) for a period of ten years from the date of issuance of license by the Authority.
(ii) Exemption from all customs duties and taxes for a period of ten years from the date of signing of the development agreement on capital goods including but not limited to materials, plant, machinery, hardware, equipment and software imported into Pakistan for consumption within zones by the Authority and zone developers; and	(ii) Exemption from all customs duties and taxes for a period of ten years from the date of issuance of license by the Authority on capital goods including but not limited to materials, plant, machinery, hardware, equipment and software imported into Pakistan for consumption within zones by the Authority and zone enterprises.
(iii) Exemption from general sales tax (GST) on goods and services on import of plant, machinery, equipment and raw materials for consumption of these items within zones by the Authority, zone developers as well as zone enterprises.	(iii) Exemption from GST on goods and services on import of plant, machinery, equipment and raw-materials for consumption of these items within zones by the Authority as well as zone enterprises.

INCENTIVES FOR ZONE AUTHORITY AND ZONE DEVELOPERS	INCENTIVES FOR ZONE ENTERPRISES
	(iv) Exemption from property tax for ten years from the date of issuance of license by the Authority.
	(v) Tax exemption on dividend income and long-term capital gains from investments in a venture capital (VC) undertaking for a period of ten years from the date of issuance of license by the Authority.

There is a view that fiscal exemptions / concessions introduced through enactment of a special law like STZO overrides the relevant fiscal laws since the same is equally backed by constitutional dispensation, with a specific objective. Nevertheless, procedural amendments in the corresponding fiscal laws are critical so that the Tax Authorities regulating fiscal laws are aligned to practically allow and give effect to such incentives.

Through the Amendment Ordinance, 2021, customs duty incentives envisaged by STZO for Zone Authority, Developers, and Enterprises referred in (ii) above have been provided in Customs Act, 1969 in the following manner.

“(i) Capital goods including but not limited to materials, plant, machinery, hardware, equipment and software for a period of ten years as prescribed in the Special Technology Zone Authority Ordinance, 2020 (Ordinance No. XIII of 2020), if not manufactured locally, imported from the date of signing of the development agreement for consumption within zones by the Special Technology Zones Authority and zone developers, subject to such conditions, limitations and restrictions as the Federal Board of Revenue may impose from time to time; and

(ii) Capital goods including but not limited to materials, plant, machinery, hardware, equipment and software for a period of ten years as prescribed in the Special Technology Zone Authority Ordinance, 2020 (Ordinance No. XIII of 2020), if not manufactured locally, imported from the date of issuance of license by the Special Technology Zones Authority for consumption within zones by the said Authority and zone enterprises, subject to such conditions, limitations and restrictions as the Federal Board of Revenue may impose from time to time.”

There appears to be little inconsistency between the customs duty incentives allowed under STZO and that introduced in the Customs Act, 1969 as the former has not prescribed any condition / limitation to qualify for the concession.

For the remaining incentives provided under STZO, it is expected that corresponding procedural amendments would be made under the respective fiscal laws in due course.

CONCESSIONS ALLOWED FOR ELECTRIC 4 WHEELERS VEHICLES

In pursuance of Electric Vehicle Policy approval by the Federal Cabinet, the concessional rates (previously allowed to two-wheelers and three-wheelers electric vehicles) have now been extended for 4 wheelers vehicles CBU, CKD and certain specific parts till 30th June, 2026.

CUSTOMS DUTY

- (a) Following are the categories of 4 wheelers electric vehicles imported in CBUs for which concessional rates have been allowed.

Description of Vehicle	PCT Code	Rate of Customs Duty	Conditions
Electric Vehicles 4- wheelers	8703.8090	25%	The concession shall be admissible till 30 th June 2026.
Electric Vehicles 4- Wheelers	8703.8090	12.5%	The concession shall be admissible till 30 th June 2026 on import of electric vehicles 4 wheelers (CBU) per company of the same variant to be assembled or manufactured to the extent of 100 units per company, duly approved / certified by Engineering Development Board (EDB). EDB shall monitor compliance with EV Policy 2020 and intimate FBR immediately in case of violation by any manufacturer to stop further clearance at concessional rates.

- (b) Following are the categories of 4 wheelers electric vehicles imported in CKDs and specific parts for which concessional rates have been allowed:

Description of Vehicle & PCT	Description of Imported goods	Rate of Customs Duty	Conditions
Electric Vehicles 4 wheelers (PCT Code 8703.8090)	(i) EV Specific components for assembly / manufacturer in any kit-form (CKD)	1% (notwithstanding the rate of customs duty on these items as specified in the First Schedule to the Customs Act, 1969).	The concession shall be admissible to manufacturers of electric vehicles 4-wheelers till 30 th June 2026, subject to certification and quota determination by the EDB.
	(ii) Components for assembly / manufacture in any kit-form Non-Localized parts.	10%	The concession shall be admissible till 30 th June 2026 subject to the conditions mentioned in para 2 of the SRO.656(I)/2006 dated June 22, 2006.
	(iii) Components for assembly / manufacture in any kit-form Localized parts.	25%	The concession shall be admissible till 30 th June 2026 subject to the conditions mentioned in para 2 of the SRO.656(I)/2006 dated June 22, 2006.

- (c) In addition to the above, concession on import of CBU chargers with CKD kits for electric vehicles have been extended to 4 wheelers which was previously available for 2 and 3 wheelers.

SALES TAX

- (a) Local manufacturers / assemblers importing and supplying the electric vehicle of prescribed categories have been allowed exemptions and reduce rates of sales tax which have been tabulated below:

Entry reference	Description	Exemption / Concessional rate of Sales Tax	Exemption Stage
S.no. 157 of Table I of 6 th Schedule	Import of CKD kits for the following electric vehicles (4 wheelers) by local manufacturers till the 30 th day of June 2026: (a) Small cars and SUVs with 50 kwh battery or below; and (b) Light Commercial Vehicles (LCVs) with 150 kwh battery or below	Exempt	Import
S.no. 71 of 8 th Schedule	Following locally manufactured or assembled electric vehicles (4 wheelers) till the 30 th day of June 2026: (a) Small cars and SUVs with 50 kwh battery or below; and (b) Light Commercial Vehicles (LCVs) with 150 kwh battery or below	1%	Local Supply

- (b) Import of CKD, SUVs and LCVs have also been incentivized by excluding from the ambit of Minimum Value Addition (**MVAT**) at the time of import. For that purpose, following classes of vehicles have been added in the exclusion section of 12th Schedule to the Sales Tax Act, 1990:
- Electric vehicles (4 wheelers) CKD kits for small cars or SUVs, with 50 kwh battery or below and Light Commercial Vehicles (LCVs) with 150 kwh battery or below till the 30th day of June 2026.
 - Electric vehicles (4 wheelers) small cars or SUVs, with 50 kwh battery or below and Light Commercial Vehicles (LCVs) with 150 kwh battery or below in CBU condition till 30th day of June 2026.
 - Electric vehicles (2-3 wheelers and heavy commercial vehicles) in CBU condition till the 30th say of June 2025.

FEDERAL EXCISE DUTY (FED)

FED is levied on locally manufactured / assembled and imported motor cars, SUVs at the rate of 2.5% *ad Val.* However, there were certain exemptions for rikshaws designed for transportation of persons. Through the Amendment Ordinance, exemption has also been allowed to 4 wheelers electric vehicles (falling under tariff headings 87.03) upto June 30, 2026.

INCOME TAX

The reduced rate of 1% would now be applicable on import of CKD kits of electric vehicles for small cars or SUVs with 50 kwh battery or below and LCVs with 150 kwh battery or below.

OTHER AMENDMENTS

SUPER TAX EXTENDED ON BANKING COMPANIES

The levy of super tax was introduced through Finance Act 2015.

For banking company, the levy was applicable at the rate of 4 percent till tax year 2021. This has now been extended to tax year 2022 and onwards.

For other than banking companies, the levy of super tax was reduced to zero percent for tax year 2020 and onwards. There is no change in super tax for other than banking companies.

INCOME TAX LIABILITY OF COTTON GINNERS

A concessionary regime was provided for cotton ginner under a Circular of 1994. The same has now been given effect into the provisions of the Income Tax Ordinance, 2001 whereby tax liability of cotton ginner on their income shall not be more than 1% of their turnover from cotton lint, cotton seed, cotton seed oil and cotton seed cakes. The tax so payable shall be final tax in respect of their cotton ginning and oil milling activities only.

EXTENSION OF EXEMPTION FOR TRANSMISSION LINE PROJECTS

Profits and gains derived from a transmission line project setup in Pakistan on or after July 1, 2015 are exempt from income tax for a period of 10 years, subject to certain conditions prescribed under clause (126M) of Part I of Second Schedule to the Ordinance. One such condition provided is that such project should be setup by June 30, 2018. The said date has now been extended until June 30, 2022.

ADVANCE TAX ON OWN MONEY – LOCALLY MANUFACTURED VEHICLES

Every motor vehicle registering authority of Excise and Taxation Department has now been required to collect advance tax at following rates from the buyers of locally manufactured motor vehicles who subsequently sell it within 90 days of delivery of such vehicle (whether prior to or after registration):

S. No.	Engine Capacity	Tax (in Rupees)
1	Upto 1000cc	50,000
2	1000cc to 2000cc	100,000
3	2000cc and above	200,000

The advance tax collected would be adjustable in the hands of buyer. The said amendment has been introduced for the period upto June 30, 2021.

The advance tax collection under this new provision is in addition to advance tax collected by the manufacturer (at the time of sale) or by motor vehicle registering authority (if tax is not collected by the manufacturer).

If a person is buying and then selling the motor vehicle within 90 days of delivery after registration, then advance tax will be collected from such person under the new provision as well as under the existing provision. However, precise mechanism for collection of new tax after registration needs to be clarified by the Board.

NON-APPLICABILITY OF WITHHOLDING TAX ON PAYMENT TO NTC

Under Pakistan Telecommunication (Re-organization) Act 1996, National Telecommunication Corporation (NTC) is granted a license by the Pakistan Telecommunication Authority to provide telecommunication services within Pakistan on a non-exclusive basis, only to the armed forces, defense projects, Federal Government, Provincial Governments or such other Governmental agencies or Governmental institutions as the Federal Government may determine.

It is provided that the withholding tax under section 153 will not be applicable on payments received by NTC against provision of such telecommunication services. Accordingly, such receipts would no longer be subject to minimum taxation under section 153.

EXCHANGE / SHARING OF INFORMATION

Through Finance Act, 2015, section 56A was introduced in Sales Tax Act, 1990 through which Federal Government was empowered to enter into bilateral or multilateral agreements with provincial Government or governments of foreign countries for exchange of information including electronic exchange of information relating to sales tax law or any other law of the country. These provisions are similar to the relevant provision for exchange of information provided under the Income Tax Ordinance, 2001.

Through the Amendment Ordinance, FBR has now been empowered for sharing of data or information including real time data videos , images received under the provisions of the Sales Tax Act, 1990 with the Ministries or Divisions of Federal and Provincial governments subject to such limitations and conditions as may be specified by FBR.

TEMPORARY IMPORTS

Customs duty has been reduced to 0% on temporary import of professional and technical apparatus or equipment or instruments imported by foreign nationals, experts and athlete etc. participating in an international event (including but not limited to sports events) or under any international arrangement for use solely during such event or arrangement provided:

- (a) it is endorsed on the passports of importer.
- (b) The goods allowed for temporary admission shall be identified at the time of import and subsequent re-export

The condition of furnishing undertaking or bond by such foreign nationals has been made inapplicable.

Goods temporarily imported into Pakistan by international athletes or sportsmen which would be subsequently taken back by them within 120 days have been allowed exemption from sales tax as well as income tax at import stage.