

The Tax Laws (Second Amendment) Ordinance, 2021

March 28, 2021

A. F. FERGUSON & CO.

THE TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2021

This memorandum gives a brief overview of significant amendments made by the Tax Laws (Second Amendment) Ordinance, 2021 in the fiscal laws of Pakistan. The Ordinance has been promulgated by the President of Pakistan on March 22, 2021 in exercise of the powers conferred under Article 89(1) of the Constitution of Islamic Republic of Pakistan.

The Ordinance has been promulgated primarily for withdrawal of various income tax exemptions and concessions with immediate effect.

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

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EXECUTIVE SUMMARY

Following are the key changes made through the Amendment Ordinance:

- (1) Exemption for inter corporate dividend for those group structures which are eligible for group relief has been withdrawn. This amendment needs to be reconsidered in view of the overall framework and policy for promoting group / holding company structures.
- (2) Donations eligible for direct deduction from income has been transposed into tax credit regime. As a result of that, overall upper limit for tax break for the donors, in respect of charitable donations, has been reduced.
- (3) Tax credit regime for the NPOs has been further simplified and clarified. Certain religious and welfare organisations and international NGOs are allowed to avail tax credit regime subject to registration under the relevant laws and regulations.
- (4) Tax exemptions of following businesses have been transposed into full / partial tax credit regime, resulting that these businesses can now avail tax breaks subject to certain compliances:
 - (i) coal mining projects of Sindh
 - (ii) startup businesses certified by Pakistan software board
 - (iii) export of software, IT and IT enabled services.
 - (iv) greenfield projects / ship building
 - (v) undertakings engaged in manufacturing of plant and machinery with dedicated use of generation of renewable energy.

Appropriate amendments are required to be made in the relevant provisions and SROs so that those eligible for tax credit regimes are issued exemption certificates and they do not suffer tax Withholdings which are eventually refundable.

- (5) Tax credit for enlistment of a company on stock exchange has been withdrawn.
- (6) Certain penalty provisions have been rationalised.
- (7) Number of tax exemptions and concessions in the Second Schedule have been withdrawn, some of which were either person-specific or were timebound whereas some of the exemptions/ concessions have been transposed into tax credit regime. Major businesses affected by withdrawal of exemptions / concessions include Modarabas, LNG terminal owners & operators, services/contracts rendered/executed outside Pakistan and those IPPs who will enter into agreement or to whom letter of intent will be issued for setting up of power generation project on or after July 1, 2021.

Appropriate amendments and clarifications are required to be made so that the exemptions and concessions withdrawn / modified with immediate effect are either accounted for without any major complications or the amendments are effective from July 1, 2021.

INTER CORPORATE DIVIDENDS IN GROUP

At present, inter corporate dividends are exempt from tax under the following group structure:

- (i) Holding company and 100% owned subsidiaries entitled to group taxation and filing group return ; and
- (ii) Holding company and subsidiary companies eligible for group relief.

Through the Amendment Ordinance, the exemption for inter corporate dividend stated in (ii) above has been withdrawn.

The withdrawal of exemption needs reconsideration as it would effect the groups already formed following the Government's policy of encouraging group / holding structure of which exemption for inter corporate dividend was an essential part..

The framework for facilitating formation of group / holding company structure was introduced in Income Tax Law in 2007. The said framework was introduced after extensive research of international best practices and with consultation / consensus of all the stakeholders. The framework catered to the following three independent aspects for promoting group (holding) company structure:

- Elimination of tax on inter-corporate dividend;
- Availability of right to offset losses, generally termed as 'Group Relief'; and
- Right to tax on group basis, termed as Group Taxation.

It was unanimously settled that promotion of group company structure necessarily requires elimination of multiple tax on dividends flowing within the group.

From 2007 till 2016, there was no change made in the framework. In 2016, the framework was unnecessarily disturbed when exemption for inter corporate dividend was partially withdrawn. Thereafter, certain other amendments were made which significantly destroyed the framework. However, after deliberations, the Government realised the mistake and made appropriate corrections in 2019 and 2020 to restore the framework in its original position to a significant extent.

Now again in 2021, exemption for inter corporate dividend has been withdrawn which reflects that the earlier mistake has been repeated and no consideration has been given to the deliberations made, based on which the earlier withdrawal of exemption was reversed.

We expect that exemption for inter corporate dividend would be restored in due course. The question of vested rights of the groups formed prior to this amendment would be examined if the amendment made is not reconsidered.

TAX CREDIT REGIME FOR DONORS AND NON - PROFIT ORGANISATIONS

Through the Amendment Ordinance, certain changes have been made in the existing framework for the donors and donees being NPOs.

Before explaining the changes, we explain the existing provisions under which the donors and NPOs are allowed tax credits.

Donors

Donations paid to the organisations, specified in Clause (61) Part I of the Second Schedule, are allowed as direct deduction from the total income, whereas donations paid to organisations covered under section 61 are allowed as tax credit by way of reduction in tax liability at average rate of tax. Though the overall effect of tax benefit under both the regimes is by and large same; however, in some cases, tax benefit is higher where direct deduction is allowed, because of its effect on cascading slab rates.

There is an upper limit on the amount of donation eligible for tax benefit, being 30% of taxable income (where donor is an individual or AOP) and 20% (where donor is a company). These percentages are reduced by 50% where donor and donee are associates. At present, these upper limits apply separately for donations eligible for direct deduction and tax credit.

Donee - NPOs

- (i) Organisations listed in Table I & II of Clause (66) are exempt from tax on their entire income; however, those listed in Table II are exempt from tax w.e.f. July 1, 2021 subject to compliance of conditions provided in section 100C of the Ordinance.
- (ii) Organisations other than (i) above, which qualify for the conditions specified in section 100C, are eligible for 100% tax credit on their specified sources of income. However, their “surplus funds”, if any, are subject to tax at the rate of 10%.

Changes made in the above / existing framework through the Amendment Ordinance are explained as under:

Donors

- (i) Clause (61) has been abolished and the organisations / funds stated therein have been placed under the Thirteenth Schedule, for which tax credit will now be allowed under section 61. Certain government established funds, specified in some other clauses of Part I of the Second Schedule (eligible for direct deduction) have also been specified in the Thirteenth Schedule, and subjected to tax credit under section 61.

As a result of abolishment of direct deduction regime, separate upper limits for donations provided in Clause (61) and section 61 are no longer available. Henceforth, there will be a singular upper limit available for tax break on the amount of donation as provided in section 61 (being 30% for individual /AOP and 20% for company, with 50% reduction where donations are paid to associates).

- (ii) Furthermore, donations paid to NPOs approved under section 2(36) are, at present, eligible for tax credit under section 61 whether such NPO complies with section 100C or not. After the amendment, donations paid to any other organisation / person (eligible for tax credit under section 100C), would also be eligible for tax credit under section 61.

Though the amendment is intended to enlarge the scope of donees to whom donations paid are eligible for tax credit; however, there is no real effect of the amendment as one of the conditions for availing tax credit under section 100C is the approval required to be obtained by such organization / person under section 2(36).

Donees- NPOs

Through the Amendment Ordinance, the existing text of section 100C has been redrafted primarily to make it more simpler. However, there are certain changes made in the redrafted provisions.

The type of persons eligible for tax credit and the changes made thereto are as under:

Types of person eligible for tax Credit	Types of income eligible for tax credit	Our comments on changes
(a) persons specified in Table - II of clause (66) of Part I of the Second Schedule to this Ordinance; (b) a trust administered under a scheme approved by the Federal Government and established in Pakistan exclusively for the purposes of carrying out such activities as are for the welfare of ex-employees and serving personnel of the Federal Government or a Provincial Government or armed forces including civilian employees of armed forces and their dependents where the said trust is administered by a committee nominated by the Federal Government or a Provincial Government; (c) a university or education institutions being run by non-profit organization existing solely for educational purposes and not for the purposes of profit;	Any income	No change (the effect of bringing persons specified in Table - II of clause (66) of Part I of the Second Schedule into section 100C is explained in later paragraphs)
(d) a trust; (e) <u>a welfare institution registered with Provincial or Islamabad Capital Territory (ICT) social welfare department;</u> (f) <u>a not for profit company registered with the Securities and Exchange Commission of Pakistan under</u>	(a) Income from donations, voluntary contributions and subscriptions; (b) income from house property; (c) income from investments in the securities of the Federal Government;	The underlining in column 1 represents the changes made in the types of persons eligible for tax credit. The changes reflect the intent of Government to allow tax credit to only those charitable, religious or non- profit organisations which are registered / recognized under the relevant law or regulation.

Types of person eligible for tax Credit	Types of income eligible for tax credit	Our comments on changes
<p><u>section 42 of the Companies Act, 2017:</u></p> <p>(g) <u>a welfare society registered under the provincial or Islamabad Capital Territory (ICT) laws related to registration of co-operative societies:</u></p> <p>(h) <u>a waqf registered under Mussalman Waqf Validating Act, 1913 (VI of 1913) or any other law for the time being in force or in the instrument relating to the trust or the institution;</u></p> <p>(i) <u>a religious or charitable institution for the benefit of public registered under any law for the time being in force; and</u></p> <p>(j) <u>international non-governmental organizations (INGOs) approved by the Federal Government.</u></p>	<p>(d) profit on debt from scheduled banks and microfinance banks;</p> <p>(e) grant received from Federal, Provincial, Local or foreign Government;</p> <p>(f) so much of the income chargeable under the head "income from business" as is expended in Pakistan for the purposes of carrying out welfare activities:</p> <p>Provided that in the case of income under the head "income from business", only so much of such income shall be eligible for tax credit under this section that bears the same proportion as the said amount of business income bears to the aggregate of income from all sources;</p>	

There is no change in the conditions for claiming tax credit under section 100C, except for the following:

- (i) Withholding tax statements are now required to be filed for the relevant tax year for which credit is being claimed; previously such statements were required to be filed for the preceding tax year; and
- (ii) Condition for obtaining approval of NPO under section 2(36), for the organization listed in Table II of Clause (66) would take effect from July 1, 2022 (instead of July 1, 2021) and the requirements of section 2(36) shall not be applicable for years prior to July 1, 2022.

NPOs eligible for 100% tax credit under section 100C are, at present, subject to tax on their surplus funds @10%. There is no change in the mechanism of taxation of surplus fund in the amended provisions except for a clarity brought into the definition of 'surplus fund' whereby funds received in kind would not be considered as surplus funds. Though under the existing provisions, donations received in kind are also not considered as surplus funds by implication and analogy; however, the aforesaid amendment would put to rest any unwarranted interpretation of the existing provisions. There are, however, certain other ambiguities in the definition and calculation of 'surplus funds' which are required to be clarified. Furthermore, the provisions relating to surplus funds provided in Income Tax Rules, 2002 are also required to be withdrawn after the tax incidence of surplus fund is provided for in section 100C.

By virtue of re-drafting of section 100C, organizations listed in Table-II of Clause (66) [which are, at present, exempt from tax on their entire income and are also not subject to tax on surplus funds] may become subject to tax on their surplus funds @10%. FBR is expected to clarify the anomaly arising by virtue of referring these organisations in section 100C, and subjecting them to tax credit regime despite of exemption to their entire income provided under Clause (66).

TRANSPOSITION OF CERTAIN EXEMPT BUSINESSES INTO TAX CREDIT REGIME

The concept of tax credit regime was introduced few years back whereby blanket tax exemptions are codified into a tax credit regime subject to fulfilment of certain conditions. The change in regime in effect means that taxable income and tax liability (which is not computed under the exemption regime) is computed under the tax credit regime, against which full or partial credits are allowed. The tax credit regime provides a more transparent mechanism for allowing tax break. However, certain enabling amendments are required to be made to make tax credit regime more effective (e.g., provisions which allow issuance of exemption certificate do not account for or treat tax credit regime equivalent to tax exemption regime as a result of which those who avail tax credit regimes suffer tax withholdings which is eventually refundable).

Since the Amendment Ordinance has been enforced with immediate effect, businesses which have been transposed from exemption to tax credit regime would have to account for such change during the income year. This would create multiple complications. Such complication would also arise for the other exemptions withdrawn/ amended with immediate effect.

FBR is expected to issue clarification on this matter. It is also expected that when Amendment Ordinance would be made part of forthcoming finance bill, all the amendments proposed through the Amendment Ordinance, with appropriate changes, would be suitably placed and accounted for to make these amendments effective from July 1, 2021.

Through the Amendment Ordinance, following exempt businesses have been transposed into tax credit regime:

A. 100% credit regime

Presently, income / profits and gains of the following persons are exempt from tax under Part I of the Second Schedule to the Ordinance:

- (i) persons engaged in coal mining projects in Sindh supplying coal exclusively to power generation projects - clause (132B);
- (ii) a startup (as defined in section 2(62A) of the Ordinance) for the tax year in which the startup is certified by the Pakistan Software Export Board and the next following two tax years - clause (143); and
- (iii) persons deriving income from exports of computer software or IT services or IT enabled services (as defined) upto the period ending on June 30, 2025; provided that 80% of the export proceeds is brought into Pakistan in foreign exchange remitted from outside Pakistan through normal banking channels- clause (133).

Through the Amendment Ordinance, the above exemptions have been transposed into tax credit regime whereby the aforementioned persons shall be allowed a tax credit equal to 100% of the tax payable including minimum and final taxes for the period upon fulfilment of the following conditions:

- (a) return has been filed;
- (b) tax required to be deducted or collected has been deducted or collected and paid;
- (c) withholding tax statements for the immediately preceding tax year have been filed; and
- (d) sales tax returns for the tax periods corresponding to relevant tax year have been filed.

It has also been provided that the benefit contained in this newly inserted section shall not preclude the aforesaid persons' case from audit selection by the Board or the Commissioner.

Since these taxpayers are now allowed 100% tax credit against tax payable (including minimum tax), tax exemption presently available to them (under Part I of the Second Schedule) has been withdrawn whereas relevant clauses for exemption from turnover tax of section 113(provided under Part IV of the Second Schedule) though not withdrawn have effectively become redundant.

B. Partial tax credit regime for specified industrial undertakings

Through Amendment Ordinance, tax credit against tax payable including minimum and final taxes has been allowed to following industrial undertakings @ 25% of the value of investment made in purchase and installation of new machinery, building, equipment, hardware, software except self-created software and used capital goods. The tax credit not fully adjusted during the year of investment shall be carried forward to the subsequent tax year subject to the condition that it may be carried forward for a period not exceeding two years.

- (a) Green field industrial undertaking - as defined in clause (27A) of section 2- engaged in :
 - (i) the manufacture of goods or materials or the subjection of goods or materials to any process which substantially changes their original condition: or
 - (ii) ship building:

The tax credit would only be available if the person is incorporated between June 30, 2019 and June 30, 2024 and the person is not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is also not part of an expansion project.

Presently, greenfield projects are exempt from tax including turnover tax for a period of five years. After the introduction of tax credit regime, Clause (126O)- providing for tax exemption under Part I of Second Schedule- has been withdrawn whereas clause (11A-xxxiv) in Part IV of the Second Schedule relating to exemption from turnover tax though not withdrawn has effectively become redundant.

- (b) industrial undertaking set-up by June 30, 2023 and engaged in the manufacture of plant, machinery, equipment and items with dedicated use (no multiple uses) for generation of renewable energy from sources like solar and wind, for a period of five years beginning from the date such industrial undertaking is set-up.

As a result of allowing tax credit regime to the above business, Clause (126I) relating to exemption from tax has been withdrawn whereas Clause (11A-xxii) relating to exemption from turnover tax though not withdrawn has effectively become redundant.

OIL AND GAS EXPLORATION COMPANIES

Oil and Gas Exploration and Production companies [E&P] are allowed 100% depreciation in respect of 'below ground installations'. The Amendment Ordinance has omitted the entry of below ground installations from the Third Schedule. This would mean that cost incurred by E&P companies during a year on below ground installations would be eligible for initial and normal depreciation on the respective below ground assets at standard rates. The withdrawal of tax depreciation on below ground installations needs reconsideration as this action represents improper understanding of E&P business and is contrary to the international best practices applicable to the E&P industry globally.

Clause (2) in Part II of the Second Schedule provides that income of a person engaged in oil and gas exploration and production business as is derived by such person from letting out of pipeline to another person engaged in similar business for carriage of petroleum is charged to tax under Part I of the Fifth Schedule. The Amendment Ordinance has withdrawn this clause apparently with an intention that such income should now be taxed under the normal provisions and not under the fifth schedule. However, while omitting clause (2), consideration has not been given to Rule 1 of Part I of the Fifth schedule where it is provided that income from pipeline operations of the person engaged in oil and gas exploitation under an agreement with the Federal government would also be taxed under the provisions of Fifth Schedule.

Under Clause (2) of Part III of the Second Schedule, reduction in tax liability is allowed where tax liability has been increased on account of devaluation or revaluation of rupee during a tax year. Such reduction is, however, allowed where an agreement with the Government provides for such reduction. The Amendment Ordinance has omitted the Clause (2). The effect of such omission would, however, be seen with respect to the provisions of the Fifth schedule and the stipulations made in the agreement with Government in that respect.

REFINING OF MINERAL DEPOSITS

Where an undertaking engaged in the business of exploration and extraction of mineral deposits is also engaged in the business of refining or concentrating the mineral deposits extracted by it in Pakistan, so much of the profits and gains as are derived from the refining and concentrating business and not exceeding 10% of the capital employed in such business are exempt from tax.

This exemption has now been withdrawn.

FIRST YEAR ALLOWANCE

Industrial undertaking set-up in specified rural and underdeveloped areas and owned and managed by a company is allowed a first year allowance at the rate of 90% of the cost of plant, machinery and equipment installed in lieu of initial allowance at the rate of 25%.

Through the Amendment Ordinance, this allowance has been omitted. Consequent amendments have also been made in the provisions relating to carry forward of unabsorbed depreciation allowance.

The omission of first year allowance appears to have no effect as till so far to the best of our knowledge, no rural and underdeveloped areas have been specified whereunder industrial undertakings set up are eligible for the first year allowance.

TAX CREDIT FOR PERSONS EMPLOYING FRESH GRADUATES

Section 64C, which was inserted vide Finance Act, 2019, provides a tax credit to a person employing freshly qualified graduates from a university or institution recognised by the Higher Education Commission. Tax credit was allowed for a tax year in which such graduates are employed (not exceeding 15% of total employees) at average rate of tax on the amount of salary paid to the freshly qualified graduates. Tax credit was capped at 5% of that person's taxable income.

Though the Amendment Ordinance, section 64C has been withdrawn.

TAX CREDIT FOR ENLISTMENT

Presently, a tax credit is allowed to a company that opts for enlistment in any registered stock exchange in Pakistan on or before July 30, 2022. Such tax credit is allowed at 20% of the tax payable for the tax year in which the company is enlisted and for the following three tax years. However, the rate of tax credit for the last two years is 10% of the tax payable.

Through the Amendment Ordinance, this tax credit has been withdrawn.

TAX CREDIT FOR NEWLY ESTABLISHED INDUSTRIAL UNDERTAKINGS

Under section 65D, a new Company formed (on or after July 1,2011) for establishing and operating a new industrial undertaking, including corporate dairy farming by June 30, 2021 (with at least 70% fresh equity) is allowed a tax credit, including on account of minimum tax and final taxes payable, for a period of five years beginning from the date of setting up or commencement of commercial production, whichever is later.

This section has now been omitted. However, it has been expressly provided that companies that are presently availing tax credit under this section shall continue to avail such credit for the period and subject to conditions and limitations as specified in the section despite its repeal with immediate effect. The effective date of omission of section 65D needs to be clarified as omission from effective date of Amendment Ordinance may unintentionally effect the tax benefit of investments to be made from the effective date till June 30, 2021.

Parallel to section 65D, section 65E allows tax credit for five years to a company established before July 1,2011, which sets up an industrial undertaking by June 30, 2021, with 70% fresh equity. In the Amendment Ordinance, there is no proposal for withdrawal of section 65E or for extending its time limit beyond June 30,2021.

PENALTIES – SECTION 182

Following amendments have been made in various penal provisions prescribed under section 182 of the Ordinance:

Clause reference	Existing Penal Provisions	Amendments
1.	<p>The law prescribes penalty for non-filing of return of income within due date as under:</p> <p>a) 0.1 per cent of tax payable for the tax year under consideration for each day of default, subject to minimum penalty of Rs. 40,000 and maximum penalty up to 50 per cent of the tax payable for the tax year under consideration;</p> <p>b) In case, 75 per cent of the income is from salary, and the same is less than Rs. 5 million, minimum penalty is Rs. 5,000</p>	<p>Two new provisos have been added whereby:</p> <p>a) Minimum penalty has been prescribed at Rs. 5,000 if taxable income for the year is up to Rs. 800,000; and</p> <p>b) Amount of penalty is reduced by:</p> <ul style="list-style-type: none"> • 75 per cent if the return of income is filed within one month of the due date; • 50 per cent if the return of income is filed within two months of the due date; • 25 per cent if the return of income is filed within three months of the due date.
1A	<p>Following penalties are prescribed for non-filing of statements under sections 165, 165A or 165B within due date:</p> <p>a) Rs. 5,000 where the person has deposited the tax withheld within due date and the statement is filed within 90 days;</p> <p>b) In all other cases, Rs. 2,500 for each day of default with a minimum penalty of Rs. 10,000.</p>	<p>A new proviso has been inserted whereby minimum penalty has been prescribed at Rs. 10,000 in cases where there is no tax withholding to be deposited in a particular period.</p>
6.	<p>Presently, a penalty at higher of Rs. 30,000 or 3 per cent of the amount of tax, is prescribed where a person repeats erroneous calculation in the return of income for more than one year.</p>	<p>A proviso is inserted clarifying that such penalty will not be imposed as far as the tax shortfall pertains to any reasonably arguable position taken by the taxpayer in applying any provision of the Ordinance.</p>
10.	<p>A penalty is prescribed at higher of Rs. 25,000 or 100 per cent of tax shortfall that may arise due to the following actions on part of any person:</p> <p>a) making a false or misleading statement to an Inland Revenue Authority in any manner;</p> <p>b) furnishing a false or misleading document or statement to an Income Tax Authority; or</p> <p>c) omitting any matter from a statement or information which renders the statement or information as false or misleading.</p>	<p>The penalty has been reduced at higher of Rs. 25,000 or 50 per cent of the tax shortfall whichever is higher. Furthermore, the penalty has been made more specific and will apply to any false statement, furnishing of misleading information or omission in the following:</p> <p>a) Return of income under sections 114 and 118;</p> <p>b) Taxpayer's profile under section 114A;</p> <p>c) Wealth statement under sections 116 and 118;</p> <p>d) Foreign income and assets statement under sections 116A and 118;</p> <p>e) Records prescribed to be maintained under the Ordinance under section 174;</p> <p>f) In response to the notice to obtain information or evidence under section 176; and</p> <p>g) During audit proceedings under section 177.</p>

Clause reference	Existing Penal Provisions	Amendments
11.	Any person who denies or obstructs the access of Commissioner or any officer authorized by the Commissioner to premises or records, is liable to a penalty of Rs. 50,000 or 100 per cent of the amount of tax involved whichever is higher.	The threshold of 100 per cent of the amount of tax involved has been reduced to 50 per cent.
15.	This clause prescribed penalty for persons who fails to collect or deduct tax under any of the Provisions of the Ordinance or fails to pay the tax so collected or deducted.	No change has been made in the prescribed penalty. Rather reference to specific sections to which such penalty relates, has been removed. A reference to Division II or Division III of Part V of Chapter X and Chapter XII has been inserted, which covers all the provisions dealing with tax collection and deduction.
16.	The penalty deals with failure to display NTN at place of business by any person	The clause has been amended to also cover penalty for failure to display business license as prescribed under section 181D of the Ordinance.
19 and 20	These penalty provisions dealt with violations in respect of section 227C whereby certain restrictions were placed on registration / transfer of vehicles and immovable property in case of non-filers.	Since section 227C was omitted vide Finance Act, 2019, penal provisions corresponding to section 227C have also been omitted.

INVESTMENT BY NON-RESIDENT INDIVIDUALS THROUGH ROSHAN DIGITAL ACCOUNTS

Foreign companies and individuals are allowed to invest in Pakistan in debt instruments and Government securities through Special Convertible Rupee Accounts (SCRA) and Roshan Digital Accounts (RDA). Amendments were earlier brought through the Tax Laws (Second Amendment) Ordinance, 2019 and Tax Laws (Amendment) Ordinance, 2021 to provide for blanket 10% rate for:

- (i) Non-resident companies not having PE investing through SCRA
- (ii) Non-resident individuals holding POC, NICOP or CNIC investing through RDA

Banks maintaining SCRA and RDA maintained by abovementioned taxpayers respectively are therefore required to deduct tax at the rate of 10% from capital gains arising on disposal of debt instruments and Government Securities invested through such SCRA and RDA. However, this deduction was considered full and final discharge of tax liability against the income of only non-resident companies arising out of the above capital gains as a corresponding amendment in sub-section (1E) of section 152 was not made for non-resident individuals investing through RDAs.

Therefore, the language of section sub-section (1E) is amended to cover this gap. Accordingly, final tax regime is also applicable on the income from capital gains on the disposal of debt instruments and government securities invested by non-resident individuals through RDA.

INDUSTRIAL UNDERTAKING

The term 'Industrial Undertaking' is defined in Section 2(29C) of the Income Tax Ordinance, 2001. The definition inter alia includes 'any other industrial undertaking which the Board may by notification in the official gazette specify'. Through the Amendment Ordinance, this part of the definition has been deleted.

SECOND SCHEDULE**Part I – Exemptions from Total Income****INDIVIDUAL / BY NAME EXEMPTIONS - WITHDRAWN**

Exemptions from total income available to the following have now been withdrawn:

Reference	Description
Clause(57(1)(iii))	Any income from voluntary contributions, house property and investment in securities of the Federal Government derived by Shiekh Sultan Trust, Karachi
Clause (72A)	Any income derived by Sukuk holder in relation to Sukuk issued by the Second Pakistan International Sukuk Company Limited and the Third Pakistan International Sukuk Company Limited, including any gain on disposal of such sukuk.
Clause (74)	Any Profit on debt derived by Hub Power Company Limited on or after July 1, 1991 on its bank deposits or accounts with financial institutions directly connected with financial transactions relating to the project operations.
Clause (90A)	Any profit on debt derived by any person on bonds issued by Pakistan Mortgage Refinance Company to refinance the residential housing mortgage market, for a period of five years with effect from July 1, 2018.
Clause (104)	Any income derived by the Libyan Arab Foreign Investment Company being dividend of the Pak-Libya Holding Company.
Clause (105)	Any income derived by the Government of Kingdom of Saudi Arabia being dividend of the Saudi-Pak Industrial and Agricultural Investment Company Limited
Clause(105A)	Any income derived by Kuwait Foreign Trading Contracting and Investment Company or Kuwait Investment Authority being dividend of the Pak-Kuwait Investment Company in Pakistan from the year of incorporation of Pak-Kuwait Investment Company
Clause (110C)	Any gain by a person on transfer of a capital asset, being a bond issued by Pakistan Mortgage Refinance Company to refinance the residential housing mortgage market, during the period from July 1, 2018 till June 30, 2023.
Clause (126B)	Profit and gains derived by Khalifa Coastal Refinery for a period of twenty years beginning in the month in which the refinery is setup or commercial production is commenced, whichever is the later.
Clause (126G)	Profit and gains derived for a period of five years from the date of start of commercial production by the following companies from specified projects that have been declared 'Pioneer Industry' by Economic Coordination Committee of the Cabinet. The Companies and projects are: <ul style="list-style-type: none"> a) M/s. Astro Plastics (Pvt.) Ltd. from their Biaxially Oriented Polyethylene, Terephthalate Project; and b) M/s. Novatex Ltd. from their Biaxially Oriented Polyethylene Terephthalate Project

Reference	Description
Clause (132A)	Profit and gains derived by Bosicor Oil Pakistan Limited for a period of 7-1/2 years beginning from the day on which the refinery is set up or commercial production is commenced whichever is later
Clause (135A)	Any income derived by a non-resident from investment in OGDCL exchangeable bonds issued by the Federal Government.
Clause (148)	Any income derived by Islamic Naya Pakistan Certificates Company Limited (INPCCL). INPCCL have also been made part of Table I of Clause (66), which means there is no change in exemption status.

***ALREADY EXPIRED / TIME BOUND EXEMPTIONS
WITHDRAWN WITH VESTED RIGHTS PROTECTED***

The following exemptions from total income which are either already expired or are expiring on June 30, 2021 have been withdrawn provided that the existing beneficiaries will continue to enjoy benefits of the repealed provisions for the period and subject to conditions and limitations specified in these repealed provisions:

Clause (72) – Any profit on debt payable to a non-resident person:

- a) In respect of private loans to be utilized on projects approved by the Federal Government;
- b) On a loan in foreign exchange against export letter of credit which is used exclusively for the export of goods manufactured or processed for exports in Pakistan; and
- c) Being a foreign individual, company or firm or association of persons in respect of a foreign loan as is utilized for industrial investment in Pakistan subject to certain prescribed conditions.

Clause (126C) - Profits and gains derived by a taxpayer from an industrial undertaking set up in Larkano Industrial Estate between July 1, 2008 and June 30, 2013 for a period of ten years.

Clause (126H) - Profits and gains derived by a taxpayer, from a fruit processing or preservation unit set up in Balochistan Province, Malakand Division, Gilgit-Baltistan and FATA between July 1, 2014 to June 30, 2017 engaged in processing of locally grown fruits, for a period of five years.

Clause (126J) - Profits and gains derived from an industrial undertaking set up between July 1, 2015 and June 30, 2016 engaged in operating warehousing or cold chain facilities for storage of agriculture produce for a period of three years.

By virtue of withdrawal of exemption from tax, the clause which provided exemption from Minimum Tax payable under section 113 has also become redundant.

Clause (126K) - Profits and gains derived by a taxpayer, from an industrial undertaking set up between July 1, 2015 and June 30, 2017 for establishing and operating a halal meat production unit, for a period of four years. The exemption under this clause was subject to certain conditions including Halal meat production unit is established and obtains a halal certification within the period between July 1, 2015 and June 30, 2017.

By virtue of withdrawal of exemption from tax, the clause which provided exemption from Minimum Tax payable under section 113 has also become redundant.

Clause (126L) - Profits and gains derived from an industrial undertaking set up in the Provinces of Khyber Pukhtunkhwa and Baluchistan between July 1, 2015 and June 30, 2018 for a period of five years.

By virtue of withdrawal of exemption from tax, the clause which provided exemption from Minimum Tax payable under section 113 has also become redundant.

Clause (126N) - Profits and gains derived from an industrial undertaking, duly certified by the Pakistan Telecommunication Authority, engaged in the manufacturing of cellular mobile phones, for a period of five years.

OTHER EXEMPTIONS - WITHDRAWN

Clause (90) – Any profit on debt payable by an industrial undertaking in Pakistan:

- a) on moneys borrowed under a loan agreement entered into with an approved financial institution in a foreign country; and
- b) on moneys borrowed or debts incurred by it in a foreign country in respect of the purchase outside Pakistan of capital plant and machinery in any case where the loan or debt is approved by the Federal Government, having regard to its terms generally and in particular to the terms of its payment, from so much of the tax payable in respect thereof as exceeds the tax or taxes on income paid on such interest in the foreign country.

Clause (91) – Any income of a text-book board of a Province established under any law for the time being in force, accruing or arising from the date of its establishment.

Clause (98) - Any income derived by any Board (other than Pakistan Cricket Board) or other organization established by Government in Pakistan for the purposes of controlling, regulating, or encouraging major games and sports recognized by Government.

Clause (100) - Any income, not being income from manufacturing or trading activity, of a Modaraba registered under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 subject to certain prescribed conditions. The reduced tax rate of 25% applicable on Modaraba's taxable income has also been withdrawn.

By virtue of withdrawal of exemption from tax, the clause which provided exemption from Minimum Tax payable under section 113 has also become redundant.

Clause (101) - Profits and gains derived between July 1, 2000 and June 30, 2024, by a venture capital company and venture capital fund registered under Venture Capital Companies and Funds Management Rules, 2000 and a Private Equity and Venture Capital Fund.

By virtue of withdrawal of exemption from tax, the clause which provided exemption from Minimum Tax payable under section 113 has also become redundant.

Clause (110B) - Any gain on transfer of a capital asset, being a membership right held by a member of an existing stock exchange, for acquisition of shares and trading or clearing rights acquired by such member in new corporatized stock exchange in the course of corporatization of an existing stock exchange.

Clause (114) - Any income chargeable under the head “capital gains” derived by a person from an industrial undertaking set up in an area declared by the Federal Government to be a “Zone” within the meaning of the Export Processing Zones Authority Ordinance, 1980.

Clause (131) – Subject to certain prescribed conditions, any income:

- a) of company registered under the Companies Ordinance 1984, and having its registered office in Pakistan, as is derived by it by way of royalty, commission or fees from a foreign enterprise in consideration for the use outside Pakistan of any patent, invention, model, design, secret process or formula or similar property right, or information concerning industrial, commercial, or scientific knowledge, experience or skill made available or provided to such enterprise by the company or in the consideration of technical services rendered outside Pakistan to such enterprise by the company under an agreement in this behalf, or
- b) of any other taxpayer as is derived by him, in the income year relevant to assessment year beginning with July 1, 1982 and any assessment year thereafter, by way of fees for technical services rendered outside Pakistan to a foreign enterprise under an agreement entered into in this behalf.

The exemption is available subject to certain conditions including that the income is received in Pakistan.

Clause (136) - Any income of a special purpose vehicle as defined in the Asset Backed Securitization Rules, 1999 made under the Companies Ordinance, 1984, subject to the prescribed condition.

Clause (141) - Profit and gains derived by LNG Terminal Operators and Terminal Owners for a period of five years beginning from the date when commercial operations are commenced. However, the exclusion of LNG Terminal Operators and LNG Terminal Owners from the ambit of minimum tax under section 113 and Alternative Corporate Tax under section 113C is still applicable.

AMENDMENTS IN EXISTING EXEMPTIONS

Clause (75) - Any profit on debt and capital gains derived by any agency of foreign government or any non-resident person approved by the Federal Government from debt and debt instruments approved by the Federal Government is exempt from tax. Previously, the said exemption was limited to income from profit on money borrowed under a loan agreement or foreign currency instrument approved by the Federal Government.

Clause (126B) – Profits and gains derived by a Refinery

Clause 126BA (prior to amendment made through Amendment Ordinance)	Clause 126B (after amendment)
<p>Clause 126BA - Profits and gains derived by a refinery set up between July 1, 2018 and June 30, 2023 with minimum 100,000 barrels per day production capacity for a period of twenty years beginning in the month in which the refinery is set up or commercial production is commenced, whichever is later. Exemption under this clause is also available to existing refineries, if:</p> <ul style="list-style-type: none"> a) existing production capacity is enhanced by at least 100,000 barrels per day; b) the refinery maintains separate accounts for income arising from aforesaid additional production capacity; and c) The refinery is a deep conversion refinery. 	<p>Profit and gains derived by a refinery:</p> <ul style="list-style-type: none"> a) from new deep conversion refinery of at least 100,000 barrels per day for which approval is given by the Federal Government before December 31, 2021; or b) for the purpose of upgradation, modernization or expansion project of any refinery existing on the date of commencement of this Ordinance for which such refinery makes undertaking to the Federal Government in writing before December 31, 2021.

Clause (132) – Electric Power Generation Project

Subject to certain prescribed conditions, profits and gains derived by a taxpayer from an electric power generation project set up in Pakistan on or after July1, 1988 are exempt from tax.

The Amendment Ordinance restricts this exemption for persons entering into agreement or to whom letter of intent is issued by Federal or Provincial Government, for setting up an electric power generation project in Pakistan upto June 30, 2021.

Part II – Reduction in Tax Rates

SERVICES RENDERED AND CONSTRUCTION CONTRACTS EXECUTED OUTSIDE PAKISTAN

Payments to resident persons on provision of services or execution of contracts are subject to tax withholding by a prescribed person at rates ranging from 1.5% to 10% (depending upon the nature of activity).

Subject to the condition that receipts from services and income from contracts are brought into Pakistan in foreign exchange through normal banking channel, a 50% reduction in tax rate is available in respect of income from services rendered outside Pakistan and construction contracts executed outside Pakistan.

The said concession has now been withdrawn, which can have adverse consequences on the foreign exchange reserves.

INCOME OF PAKISTAN CRICKET BOARD

Income of Pakistan Cricket Board derived from sources outside Pakistan was subject to tax at the rate of 4% of the gross receipts from such sources subject to certain conditions. The same will now be taxed at the normal rate of taxation.

SALE OF SHARES OR ASSETS TO PRIVATE EQUITY AND VENTURE CAPITAL FUND

Tax on capital gains derived by a person from the sale of shares or assets by a private limited company to Private Equity and Venture Capital Fund was subject to tax at the rate of 10% of such gains. Through the withdrawal of this concession, the same will now be subject to tax at applicable rate.

SHARI'AH COMPLIANT LISTED COMPANY

A company whose shares are traded on stock exchange and which derives only manufacturing income is subject to corporate rate of tax as reduced by 2% subject to certain conditions including fulfilment of shari'ah compliant criteria approved by SBP and SECP. The said concession has now been withdrawn.

MINIMUM TAX ON DEALERS, WHOLESALERS AND RETAILERS OF SPECIFIED SECTORS

The dealers, wholesalers and retailers of fast moving consumer goods, fertilizers, sugar, cement and edible oil are subject to minimum tax under section 113 at the rate of 0.25% subject to certain conditions. The Amendment Ordinance has also added locally manufactured mobile phones in the list of goods subject to reduced rate of 0.25%.

LAHORE ORANGE LINE METRO TRAIN PROJECT

Payments to M/s CR-NORINCO JV (Chinese Contractor), for installation of electrical and mechanical equipment for construction of the Lahore Orange Line Metro Train Project, are subject to reduced rate of 6% for tax withholding. The clause which provides for such reduced rate of withholding has been withdrawn.

WITHDRAWAL OF CONCESSION ON IMPORT OF HYBRID CARS

Imports of Hybrid cars of engine capacity upto 2500cc are eligible for reduced rate of tax collection at import stage. The said concession has now been withdrawn.

CASH WITHDRAWAL BY EXCHANGE COMPANY

Cash withdrawals by an exchange company not appearing on Active Taxpayers List, are subject to tax withholding at reduced rate of 0.15% (as against standard rate of 0.6%), subject to certain conditions.

The Amendment Ordinance has withdrawn the clause providing for tax collection at concessional rates.

PROJECT SET-UP THROUGH FOREIGN EQUITY

The corporate rate of tax shall be reduced to 20% for a company setting up an industrial undertaking between July 1, 2014 to June 30, 2017, for a period of five years beginning from the month in which the industrial undertaking is set up or commercial production is commenced, whichever is later. The said concession was applicable subject to the condition that 50% of the cost of the project including working capital is through owner equity foreign direct investment.

Through the Amendment Ordinance, the clause which provides for above concession has been withdrawn; however it is provided that the existing beneficiary of this clause shall continue to enjoy its benefit despite of withdrawal of clause.

Part III – Reduction in Tax Liability

LOW COST HOUSING PROJECTS

Presently, the tax payable on profits and gains derived by a person from low cost housing projects having maximum sale price of a single housing unit of Rs 2.5 Million, is reduced by 50% subject to certain conditions. The said relief is now made available only for the projects which commence on or before June 30, 2024.

The tax payable on the income, profits and gains of projects of 'low cost housing' developed or approved by Naya Pakistan Housing and Development Authority or under Ehsaas Programme is reduced by 90%. The said relief is also made available only for the projects which commence on or before June 30, 2024.

FILM MAKERS

The clauses which provide for a reduction of tax liability by 50% for foreign film-makers and 70% for resident companies on income from film-making have been omitted.

Part IV – Exemption from Specific Provisions

PERIOD OF LOSS OF AN INDUSTRIAL UNDERTAKING UNDER EXPORT PROCESSING ZONE (EPZ)

Currently, business loss sustained by an industrial undertaking setup in EPZ can be carried forward for unlimited period (as against standard limitation period of six years). The Amendment Ordinance has withdrawn this concession.

SALES TAX EXEMPTION

By way of insertion in Table I contained in Sixth Schedule to the Sales Tax Act, 1990, sales tax exemption has now been provided till June 30, 2021 for the following:

Description	Heading Nos. of the First Schedule to the Customs Act, 1969
Import of auto disable Syringes: (i) with needles (ii) without needles	9018.3110 9018.3120
Import of following raw materials for the manufactures of auto disable syringes: (i) Tubular metal needles (ii) Rubber Gaskets	9018.3200 4016.9310