April 18, 2020

Note on Tax Laws (Amendment) Ordinance, 2020

A·F·FERGUSON&Co.
Chartered Accountants
a member firm of the PwC network

NOTE ON TAX LAWS (AMENDMENT) ORDINANCE, 2020

INTRODUCTION

The Prime Minister of Pakistan, Imran Khan, announced an incentive package on April 3, 2020 for the Construction Sector aimed to increase employment opportunities in the country in the wake of the Coronavirus (COVID-19) outbreak.

To give effect to the incentive package, as the Senate and National Assembly are not in session, the President of Pakistan has promulgated the Tax Laws (Amendment) Ordinance, 2020 (**'Amendment Ordinance'**) on April 17, 2020. As the Presidential Ordinances have an effect for a period of 120 days, it is expected that the amendments made through the Amendment Ordinance will be incorporated through the forthcoming Finance Bill, 2020. The Amendment Ordinance inter alia provides for a scheduler based fixed tax regime for Builders and Developers for new and existing incomplete projects, besides providing certain conditional tax immunities for investments by the investors as well as purchasers. Prior to this Amendment Ordinance, Builders and Developers were required to pay income tax on net-income basis.

The incentive package is envisaged to generate employment for the under-privileged segment of the society in these challenging times besides stimulating the economic activity in other allied industries of the Construction Sector.

This note has been prepared on the basis of text of the Amendment Ordinance, which is publicly available, copy of which is enclosed with this note for ease of reference.

This note can also be accessed on the link https://www.pwc.com.pk/en/tax-memorandum.html

SPECIAL FIXED TAX REGIME FOR BUILDERS AND DEVELOPERS

A new provision **section 100D** has been introduced in the Income Tax Ordinance, 2001 (the **'Ordinance'**), prescribing a scheduler based fixed tax regime for Builders and Developers on the basis of project area in respect of their income from sale of building or sale of plots, for tax year 2020 and onwards.

Necessary Rules to that effect have been enacted by way of insertion of **Eleventh Schedule** to the Ordinance. Similar to other scheduler based taxation provisions, all other provisions of the Ordinance (including recovery of tax not paid and matters connected therewith) not specifically covered under section 100D and Eleventh Schedule will remain applicable on Builders and Developers.

A similar fixed tax regime for builders and developers whereby tax was payable on the basis of area was also introduced though Finance Act, 2016 by way of sections 7C and 7D of the Ordinance, which was subsequently restricted through Finance Act, 2017 to only such Projects, which were initiated and approved during tax year 2017. As such, builders and developers not covered by sections 7C and 7D were required to pay tax on net income basis.

APPLICABILITY

The provisions of section 100D read with Eleventh Schedule to the Ordinance are applicable to all Builders and Developers, who opts for such taxation and are registered with the Federal Board of Revenue (FBR) on a Project-by-Project basis (hereinafter referred to as 'eligible project/project' as the context so requires).

For the eligible projects, the builder or developer will pay tax on the income from the sale of buildings or sale of plots, as the case may be, in respect of:

(a) a **new project** to be completed by September 30, 2022; or

(b) an **incomplete existing project** to be completed by September 30, 2022. However, income, profits and gains earned up to tax year 2019 from incomplete existing projects will remain subject to the provisions of the Ordinance before the commencement of the Amendment Ordinance.

Any income of the builder or developer other than income subject to special tax regime of the Eleventh Schedule shall be subject to tax as per normal provisions of the Ordinance.

FINAL TAXATION OF INCOME

Computation of income and annual tax payable thereon at the fixed rates under the regime is to be made on a Project-by-Project basis as **Final Tax**. Such income, being subject to final tax regime, shall not be chargeable to tax under any head of income in computing the taxable income. No deduction for any expenditure, deductible allowance or set-off of any loss will be allowed. Tax credits are also not allowed against tax payable except for tax collected from the builder or developer under section 236K of the Ordinance after the commencement of the Amendment Ordinance on purchase of immovable property utilized in eligible projects. No refund of any taxes suffered is allowed.

EXCLUSION FROM MINIMUM TAX AND ALTERNATIVE CORPORATE TAX

The provisions of section 113 (minimum tax on annual turnover) and section 113C (Alternative Corporate Tax applicable on accounting profits) will not apply on the builders or developers on their turnover, income, profits and gains from eligible projects.

MANNER OF COMPUTATION OF INCOME TAX

The annual tax liability for a project is to be computed by dividing the total liability of the project under the regime by the estimated life of the project in years (which shall not exceed 2.5 years). For existing incomplete projects, estimated life of such projects is considered as 3 years from tax year 2020 through tax year 2022.

Tax payable in respect of existing incomplete projects will be reduced by the percentage of completion up to the last day of the accounting period pertaining to tax year 2019 as declared in the registration form to be filed with FBR.

Tax liability under this regime is to be computed as per the rates provided under Rule 11 of the Eleventh Schedule to the Ordinance separately for builders and developers, which are based on the area of the Project and location (**Annexure A**).

In case of mixed use of buildings having both commercial and residential areas, respective rates will apply. In case of development of plots and constructing buildings on the same plots as one project, both the specified rates shall apply.

REDUCED RATE OF TAX FOR NAYA PAKISTAN LOW COST HOUSING SCHEME

Clause (9B) has been inserted in Part III of the Second Schedule to the Ordinance, which provides for a reduction of 90% of 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 (NAPHDA) or under the Ehsaas Programme. In case of development of plots and constructing buildings on the same plots as one project, in case of 'low cost housing' and all projects developed by NAPHDA, the higher rates shall apply.

PAYMENT OF TAX FOR TAX YEAR 2020

Tax liability for tax year 2020 is required to be discharged with the tax return.

ADVANCE TAX

Advance tax provisions of section 147 of the Ordinance are also applicable with the requirement to pay advance tax equal to one fourth of the annual tax liability in four equal installments. As the tax liability for tax year 2020 is required to be discharged with the tax return and three quarters have already elapsed, it appears that the advance tax provisions will be applicable from tax year 2021.

EXEMPTION FROM WITHHOLDING AS A PAYER

Builders and Developers covered by the special tax regime are absolved from the obligation as a payer to withhold tax under section 153 of the Ordinance on following payments:-

a) purchase of materials (except steel and cement); and
b) services (plumbing, electrification, shuttering and other similar and allied services) which are provided by non-corporate service providers.

EXEMPTION FOR DIVIDEND

Dividend income paid out of the profits and gains derived from an eligible project by the builder or developer being a company will be exempt from tax and a specific exemption from withholding tax provisions of section 150 have also been provided therefor.

TAX IMMUNITY FOR CAPITAL INVESTMENTS IN NEW PROJECT

Section 111 of the Ordinance empowers the tax authorities to require any person to explain the sources of his investments or assets, etc. In case of unexplained investments or where the source of an investment represents escaped / concealed income, the fair market value of such investment or asset is taxed as income in the hands of such person which can also attract penalties and prosecution provisions.

The provisions of section 111 have been made inapplicable in respect of capital investments to be made by a person in eligible **new projects** which has to be an investment as equity sources and should not include borrowed funds. This means that an investor who fulfills the conditions below will not be expected to explain the sources of his investments to the tax authorities.

The person claiming the above immunity will be required to submit a prescribed form on IRIS web portal besides fulfilling the following conditions:-

(a) Sole Proprietor

Capital investment (to be wholly utilized) made by a builder or developer being an individual / sole proprietor in a new project in the form of:

(i) Money - a new bank account is required to be opened wherein such sum is to be deposited by December 31, 2020.

(ii) Land - the individual must possess title to the ownership of land at the time of commencement of the Amendment Ordinance.

(b) Company or Association of Persons (AOP)

If capital investment (to be wholly utilized) is made by a person as a shareholder or member through a Company or AOP, as the case may be in respect of a new project, then such Company or AOP is required to be a single object (builder or developer). These entities should be registered under the Companies Act, 2017 or the Partnership Act, 1932, as the case may be, after the date of commencement of the Amendment Ordinance and before December 31, 2020. In other words, investments in companies and AOPs, which are already registered before the commencement of Amendment Ordinance will not be eligible for such immunity.

If the capital investment by the shareholder or member is in the form of:

(i) Money - such sum is required to be deposited in the bank account of the Company or AOP through crossed banking instrument by December 31, 2020.

(ii) Land - such land for which the shareholder or member possesses title to the ownership at the time of commencement of the Amendment Ordinance is required to be transferred to the Company or AOP by December 31, 2020.

Certification requirements for Project completion

In respect of capital investments, the following requirements are laid down for certification of project completion:

Builder:

The map approving authority or NESPAK shall certify that grey structure as per the approved map has been completed by the builder by September 30, 2022.

Developer:

(a) The map approving authority or NESPAK shall certify that landscaping has been completed by September 30, 2022;

(b) A firm of chartered accountants having an ICAP QCR rating of 'satisfactory', notified by the FBR for this purpose, shall certify that at least 50% of the plots have been booked for sale and at least 40% of the sale proceeds have been received by September 30, 2022; and

(c) At least 50% of the roads have been laid up to sub-grade level as certified by the approving authority or NESPAK.

TAX IMMUNITY FOR PURCHAERS

No proceedings under section 111 shall also be initiated against the following purchasers with regard to sources of their investments in a new or existing incomplete project:-

(a) First purchaser of a Building or a Unit

The purchase price in respect of a building or a unit of the building by a person who purchases a building or a unit, as the case may be, directly from the builder and does not include a subsequent or a substituted purchaser (referred as the First Purchaser) in respect of following:-

(i) New Project

Full payment is to be made through a crossed banking instrument during the period starting from the date of registration of the project upto September 30, 2022.

(ii) Existing Incomplete Project

Full or balance amount of payment is made through a crossed banking instrument during the period starting from the date of registration of the project upto September 30, 2022.

(b) Purchaser of a Plot

If a plot is purchased by a person with the intention of constructing a building thereon, such purchase has to be made by December 31, 2020 with full payment to be made by the said date through crossed banking instrument. Construction is required to be started by December 31, 2020, however, the same can be completed by September 30, 2022. In order to avail this immunity, the purchaser of plot is also required to register himself with the FBR on the online IRIS web portal.

Valuation of building or plot

The value or price of land or building in the case of (a) and (b) above shall be taken as the higher of:-

a) 130% of the fair market value as notified by the FBR for the respective cities; or
b) at the option of the investor, the lower of the values determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan.

This means that the investors who are desirous of claiming an immunity from sources of their eligible investments (as discussed above) shall be allowed to incorporate their investments in the books of account or wealth statement, as the case may be, on the basis of the above valuation method.

Ineligible investments

Following investments will not be covered by the immunity and consequently, the tax authorities will be empowered under section 111 to ask for an explanation of sources of such investments:-

(a) investment by a holder of any Public Office [as defined in the Voluntary Declaration of Domestic Asset Act 2018 or his *benamidar* as defined in the Benami Transactions (Prohibition) Act, 2017] or his spouse or dependents;

(b) investment by a public listed company, a real estate investment trust or a company whose income is exempt under any provision of the Ordinance; or

(c) investment made from any proceeds derived from the commission of a criminal offence including the crimes of money laundering, extortion or terror financing but excluding the offences under the Ordinance.

RESTRICTIONS ON CHANGE IN OWNERSHIP PATTERN OF A BUILDER OR DEVELOPER

In case where immunity from section 111 is claimed in respect of capital investment made by an individual or a person through a Company or AOP, change in pattern of ownership of a builder or developer before project completion will be subject to the following restrictions: -

(a) a shareholder or a partner of a builder or developer shall not be allowed a change in ownership of an incomplete project except where at least fifty percent of the total project cost has been incurred up to the date of change of ownership which is to be certified by a firm of chartered accountants (having an ICAP QCR rating of 'satisfactory') notified by the FBR for this purpose.

(b) succession to legal heirs in case of deceased shareholder or a partner will be allowed.

(c) additional partners or shareholders can be admitted only after December 31, 2020, however, they will not be eligible for immunity from section 111.

INCORPORATION OF PROFITS AND GAINS

Builders and Developers will not be allowed to incorporate their profits and gains in books of accounts (including wealth statements as the case may be) exceeding ten times of the amount of tax paid under this regime.

REDUCED RATE OF TAX COLLECTION ON IMMOVABLE PROPERTY SOLD BY AUCTION

The rate of tax collection under section 236A of the Ordinance has been reduced from the standard rate of 10% to 5% in case of immovable property which is sold by auction. However, the tax collection is to be made at the gross sale price of such property sold by auction.

EXEMPTION FOR CAPITAL GAINS ON SALE OF RESIDENTIAL PROPERTY

A new clause (114AA) has been inserted in Part I of the Second Schedule to the Ordinance, whereby exemption from tax on capital gains has been provided to a resident individual on sale of constructed residential property (a house having land area upto 500 square yards and a flat having an area upto 4000 square feet) used only for personal accommodation by the said individual, his spouse or dependents and for which any of the utility bills are issued in the name of such individual. The exemption shall not apply if it has been previously availed by such persons.

No amendment has been, however, made in section 236C of the Ordinance, which implies that sale of the above properties will remain subject to collection of advance tax at 1% of sale consideration, unless the seller obtains an exemption certificate from the Commissioner.

As per current provisions, capital gains on disposal of constructed property whose holding period exceeds four years is zero rated. Furthermore, in case such property is sold within one year of holding period, the amount of advance tax collected under section 236C at 1% of sale consideration is treated as minimum tax. It, therefore, appears that the purpose of this amendment is to provide an exemption from tax on capital gains on disposal of such constructed properties, which are held for less than four years.

BUILDER OR DEVELOPER AS INDUSTRIAL UNDERTAKING

Through the Amendment Ordinance, the definition of Industrial Undertaking has been expanded to also include **persons directly involved in the construction of buildings**, roads, bridges and other such structures **or the development of land**, to the extent and for the purpose of import of plant and machinery to be utilized in such activity. This is effective from May 1, 2020 and necessary conditions relating to this change will be notified by the FBR. In case of imports by such persons being industrial undertakings, tax paid on import of plant, machinery, equipment and parts for own use will be treated as adjustable tax in terms of section 148(7) of the Ordinance. It appears that since the builder and developers are assessable under this regime which is subject to final tax, therefore, they will be eligible to apply for exemption certificate for tax to be paid at import stage, subject to the procedure to be prescribed by the FBR. Furthermore, similar concession will be available to persons directly engaged in construction business.

REGISTRATION & FILING REQUIREMENTS

Registration & filing of an irrevocable option

The builders and developers are required to get the projects registered electronically with the FBR by December 31, 2020. Such registration is to be made on the IRIS portal by submitting the prescribed registration form (by providing the details of a member or shareholder of a builder or developer) along with an irrevocable option for the project to be assessed under this regime. Two separate registration forms are required to be filed in case the developer is also the builder for the project.

Persons availing immunity from Section 111 of the Ordinance are also required to be registered under this regime with the FBR.

Certification

A certificate is required to be provided to the FBR by every builder and developer, which is to be obtained from approving authority, map approving authority or National Engineering Services Pakistan (NESPAK) certifying the total land area (in sq.yds.), covered area (in sq.ft.), saleable area (in sq.ft.) and the type (commercial, residential or industrial) of the project.

Tax Return and Wealth Statement

Builders and Developers under the special tax regime are also required to electronically file annual tax returns (including wealth statements, wherever applicable) to be accompanied by evidence of tax payment. Such a tax return will be considered as an assessment order issued under section 120 of the Ordinance. Tax liability for tax year 2020 is required to be discharged with the tax return.

MISREPRESENTATION OR SUPPRESSION OF FACTS

A tax return or declaration of a builder or developer is considered void if it is based on misrepresentation or on suppression of facts and all the provisions of the Ordinance will apply unless such misrepresentation is due to a bona fide mistake. No action is to be taken without providing an opportunity of being heard and without prior approval of FBR.

TAX RATES, EXAMPLES AND DEFINITIONS

Taxation rates for Builders and Developers under this regime are reproduced in **Annexure A**. For illustration purposes, we have covered examples relating to taxation under this regime in **Annexure B**. Relevant definitions in section 100D and Eleventh Schedule to the Ordinance are reproduced as **Annexure C** to this memo.

PROPOSED INCENTIVES FOR CONSTRUCTION INDUSTRY

Other incentives proposed by the Prime Minister in the incentive package announced on April 3, 2020 are also covered in **Annexure D**, however, these incentives do not currently form part of the Amendment Ordinance. It appears that these incentives will be further legislated separately.

FEDERAL CAPITAL VALUE TAX CEASED TO TAKE EFFECT

The provisions relating to collection of Federal capital value tax will cease to take effect from the date of promulgation of the Amendment Ordinance.

ANNEXURE A

TAX RATES

(a) Builders

Sr. No.	Location	Commercial Buildings (Area - any size)	Residential Buildings	
			Area up to 3000 Sq.ft.	Area 3000 and above Sq.ft.
		----- Rate per Square Feet (in Rs.) -----		
1	Karachi, Lahore and Islamabad	250	80	125
2	Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	230	65	110
3	Urban Areas not specified in (1) and (2) above	210	50	100

(b) Developers

Sr. No.	Location	Entire Project (any size)	Development of Industrial Area (any size)
		--------- Rate per Square Yard (in Rs.) ---------	
1	Karachi, Lahore and Islamabad	150	20
2	Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	130	20
3	Urban Areas not specified in (1) and (2) above	100	10

ANNEXURE B

EXAMPLE 1 - TAX ON BUILDERS (CORPORATE) FOR NEW PROJECTS				
Type		Commercial Building		Residential Building
Location		Lahore		Karachi
		(---------------Amounts in Rs---------------)		
Capital Investment:				
(i) Cash transferred by the shareholder	I	5,000,000		3,000,000
(ii) Land measuring 300 Sq. Yds is transferred by the shareholder. Transfer to be recorded at the higher of: (a) 130% of FBR notified value [assuming Rs. 5,000,000 for Lahore and Rs. 3,000,000 for Karachi]; or (b) Lower of the values determined by two approved valuers [assuming Rs. 3,800,000 for Lahore and Rs. 1,800,000 for Karachi]	II	5,000,000		3,000,000
Total Capital Investment	A = I + II	10,000,000		6,000,000
Sales Proceeds from the Project	B	14,000,000		9,000,000
Project life	C	2 years		2 years
Area in Sq. ft.	D	3,000		3,000
Rate per Sq. ft.	E	250		80
Tax Liability of the Project (under Rule 2)	F = D x E	750,000		240,000
Annual Tax Liability	G = F / C	375,000		120,000
Quarterly installment amount (under Rule 5)	H = G / 4	93,750		30,000
Limit on Profits / Gains for books of accounts	I = F x 10	7,500,000		2,400,000
Actual Profits / Gains of Project	J = B - A	4,000,000		3,000,000
Incorporation of Profits / Gains in books of accounts	K = Lower of I or J	4,000,000		2,400,000
Non-applicability of section 111 on Capital investment of Shareholder	L = A	10,000,000		6,000,000
Dividend taxation if profits / gains distributed as dividend		Exempt		Exempt
Non-applicability of section 111 for First Purchaser of building or unit thereof		Yes		Yes

EXAMPLE 2 - TAX ON DEVELOPERS (CORPORATE) FOR NEW PROJECTS				
Type		Other than Industrial Plot		Industrial Plot
Location		Karachi		Faisalabad
		(---------------Amounts in Rs---------------)		
Capital Investment:				
(i) Cash transferred by the shareholder	I	1,000,000		600,000
(ii) Land measuring 1000 Sq. Yds is transferred by the shareholder. Transfer to be recorded at the higher of: (a) 130% of FBR notified value [assuming Rs. 9,000,000 for Karachi and Rs. 5,400,000 for Faisalabad]; or (b) Lower of the values determined by two approved valuers [assuming Rs. 7,800,000 for Karachi and Rs. 3,800,000 for Faisalabad]	II	9,000,000		5,400,000
Total Capital Investment	A = I + II	10,000,000		6,000,000
Sales Proceeds from the Project	B	14,000,000		7,500,000
Area in Sq. yd.	C	1,000		1,000
Rate per Sq. yd.	D	150		20
Tax Liability of the Project (under Rule 2)	E = C x D	150,000		20,000
Quarterly installment amount (under Rule 5)	F = E / 4	37,500		5,000
Limit on Profits / Gains for books of accounts	G = E x 10	1,500,000		200,000
Actual Profits / Gains of Project	H = B - A	4,000,000		1,500,000
Incorporation of Profits / Gains in books of accounts	I = Lower of G or H	1,500,000		200,000
Non-applicability of section 111 on Capital investment of Shareholder	J = A	10,000,000		6,000,000
Dividend taxation if profits / gains distributed as dividend		Exempt		Exempt
Non-applicability of section 111 for Purchaser of plot for constructing building		Yes		Yes

EXAMPLE 3 - TAX ON BUILDERS (CORPORATE) FOR EXISTING INCOMPLETE PROJECTS				
Type		Commercial Building		Residential Building
Location		Lahore		Karachi
		(---------------Amounts in Rs---------------)		
Capital Investment:				
(i) Cash transferred by the shareholder	I	5,000,000		3,000,000
(ii) Land measuring 300 Sq. Yds is transferred by the shareholder. Transfer to be recorded at the higher of: (a) 130% of FBR notified value [assuming Rs. 5,000,000 for Lahore and Rs. 3,000,000 for Karachi]; or (b) Lower of the values determined by two approved valuers [assuming Rs. 3,800,000 for Lahore and Rs. 1,800,000 for Karachi]	II	5,000,000		3,000,000
Total Capital Investment	A = I + II	10,000,000		6,000,000
Sales Proceeds from the Project	B	14,000,000		9,000,000
Project life	C	3 years		3 years
Area in Sq. ft.	D	3,000		3,000
Rate per Sq. ft.	E	250		80
Percentage of Completion up to Tax Year 2019*	F	10%		10%
Tax Liability of the Project (under Rule 2)	G = D x E	750,000		240,000
Tax Liability* (as reduced by percentage of completion up to Tax year 2019)	H = G x (1 - F)	675,000		216,000
Annual Tax Liability	I = H / C	225,000		72,000
Quarterly installment amount (under Rule 5)	J = I / 4	56,250		18,000
Limit on Profits / Gains for books of accounts	K = H x 10	6,750,000		2,160,000
Actual Profits / Gains of Project	L = B - A	4,000,000		3,000,000
Incorporation of Profits / Gains in books of accounts	M = lower of K or L	4,000,000		2,160,000
Exempt from applicability of section 111 on Capital investment of Shareholder		No		No
Dividend taxation if profits / gains distributed as dividend		Exempt		Exempt
Non-applicability of section 111 for First Purchaser of building or unit thereof		Yes		Yes

**Income, profits and gains earned up to tax year 2019 will be subject to the provisions of law as applicable prior to commencement of the Amendment Ordinance.*

EXAMPLE 4 - TAX ON DEVELOPERS (CORPORATE) FOR EXISTING INCOMPLETE PROJECTS				
Type		Other than Industrial Plot		Industrial Plot
Location		Karachi		Faisalabad
		(---------------Amounts in Rs---------------)		
Capital Investment:				
(i) Cash transferred by the shareholder	I	1,000,000		600,000
(ii) Land measuring 1000 Sq. Yds is transferred by the shareholder. Transfer to be recorded at the higher of: (a) 130% of FBR notified value [assuming Rs. 9,000,000 for Karachi and Rs. 5,400,000 for Faisalabad]; or (b) Lower of the values determined by two approved valuers [assuming Rs. 7,800,000 for Karachi and Rs. 3,800,000 for Faisalabad]	II	9,000,000		5,400,000
Total Capital Investment	A = I + II	10,000,000		6,000,000
Sales Proceeds from the Project	B	14,000,000		7,500,000
Project Life	C	3 years		3 years
Area in Sq. yd.	D	1,000		1,000
Rate per Sq. yd.	E	150		20
Percentage of Completion up to Tax Year 2019*	F	10%		10%
Tax Liability of the Project (under Rule 2)	G = D x E	150,000		20,000
Tax Liability* (as reduced by percentage of completion up to Tax year 2019)	H = G x (1 - F)	135,000		18,000
Annual Tax Liability	I = H / C	45,000		6,000
Quarterly installment amount (under Rule 5)	J = I / 4	11,250		1,500
Limit on Profits / Gains for books of accounts	K = H x 10	1,350,000		180,000
Actual Profits / Gains of Project	L = B - A	4,000,000		1,500,000
Incorporation of Profits / Gains in books of accounts	M = lower of K or L	1,350,000		180,000
Exempt from applicability of section 111 on Capital investment of Shareholder		No		No
Dividend taxation if profits / gains distributed as dividend		Exempt		Exempt
Non-applicability of section 111 for Purchaser of plot for constructing building		Yes		Yes

**Income, profits and gains earned up to tax year 2019 will be subject to the provisions of law as applicable prior to commencement of Amendment Ordinance.*

ANNEXURE C

DEFINITIONS:

SUB-SECTION 9 OF SECTION 100D

(a) "builder" means a person who is registered as a builder with the Board and is engaged in the construction and disposal of residential or commercial buildings;

(b) "capital investment" means investment as equity resources and does not include borrowed funds;

(c) "developer" means a person who is registered as a developer with the Board and is engaged in the development of land in the form of plots of any kind either for itself or otherwise;

(d) "existing project" means a construction or development project, which –

 (i) has commenced before the date of commencement of the Tax Laws (Amendment) Ordinance, 2020;

 (ii) is incomplete;

 (iii) is completed on or before the 30th day of September, 2022; and

 (iv) a declaration is provided in the registration form under Eleventh Schedule to the effect of percentage of the project completed up to the last day of the accounting period pertaining to tax year 2019;

(d) "first purchaser" means a person who purchases a building or a unit, as the case may be, directly from the builder and does not include a subsequent or a substituted purchaser;

(e) "new project" means a construction or development project, which –

 (i) is commenced during the period starting from the date of commencement of the Tax Laws (Amendment) Ordinance, 2020 and ending on the 31st day of December, 2020; and

 (ii) is completed on or before the 30th day of September, 2022;

(f) "project" means a project for construction of a building with the object of disposal, or a project for development of land into plots with the object of disposal or otherwise;

(g) "registered with the Board" means registered after submission of form on project-by-project basis on the online IRIS web portal;

RULE 9 OF THE ELEVENTH SCHEDULE

(a) "area" means

 (i) in case of a builder, –

  (a) in case of a commercial or a residential building excluding a house, the saleable area of the building; and

  (b) in case of a house, the covered area of house;

 (ii) in case of a developer, the total land area of the project;

(b) "building" means a residential or commercial building or unit thereof;

(c) "commercial building" includes any building or part thereof which is to be used for commercial purposes in accordance with the relevant laws;

(d) "commencement of project" means,–

 (i) in case of a construction project, when layout plan is approved by the concerned authority; and

(ii) in case of a development project, when the development plan is approved by the concerned authority:

Provided that where the builder or developer has taken all actions and done all things which are required and necessary to procure any approvals but any such approval is delayed beyond a period of 30 days from date of relevant application and the cutoff date of 31st day of December, 2020 is not adhered to by the builder or developer, the Board may provisionally accept commencement of such project on a case to case basis;

(e) "completion of project" means. -

(i) in the case of a builder, the date on which the grey structure is completed:

Provided that such grey structure shall only be considered as completed when the roof of the top floor has been laid as per the approved plan;

(ii) in the case of a developer, the date on which –

(A) at least 50% of the total plots have been booked in name of buyers;

(B) at least 40% of the sale proceeds have been received;

(C) landscaping has been completed; and

(D) at least 50% of the roads have been laid up to subgrade level as certified by the approving authority or NESPAK;

(f) 'low cost housing' means a housing scheme as developed or approved by NAPHDA or under the 'Ehsaas Programme';

(g) "NAPHDA" means Naya Pakistan Housing and Development Authority;

(h) "NESPAK" means National Engineering Services Pakistan (Private) Limited;

(i) "residential building" means a building which is not a commercial building but does not include buildings used for industrial purposes;

(j) "saleable area" in case of buildings, means saleable area as determined by the approving authority or map approving authority or NESPAK under the relevant laws;

(k) "unit" means a self-contained or independent building or part thereof including houses, apartments, shops, offices, etc.

ANNEXURE D

PROPOSED INCENTIVES FOR CONSTRUCTION INDUSTRY

1. *Other Tax Incentives including Rationalization of Capital Gains Tax (CGT)*

(a) Construction, purchase/sale of first house be exempt from all taxes.

(b) Fresh valuation of urban real estate properties. Reduction in CGT rate in accordance with the increase in FBR's valuation rates for immovable properties.

(c) Holding period for constructed property for CGT purposes under the Ordinance be reduced from 4 to 3 years. No CGT to be levied where such property is sold in the 4th year and onwards. Holding period for real estate/open plots to remain at 8 years with significant reduction in tax rate from fourth year and onwards.

(d) Reduction in sales tax and customs duty on construction materials (for instance cement, wood etc.). Notification to be issued by FBR.

(e) Speedy establishment of already approved automated circles for the Construction Industry for easy and transparent collection of taxes.

2. *Tax Incentives by Provincial Revenue Authorities*

(a) Sales tax to be levied by all Provinces and Islamabad Capital Territory on sale of property by Builders and Developers, at fixed tax rates of Rs. 50 per square foot for builders and Rs. 100 per square yard for developers (like the existing fixed sales tax regime by Sindh and Khyber Pakhtunkhwa); and

(b) Exemption from sales tax on construction services provided that Builders and Developers are chargeable to fixed tax at the time of sale of property. Punjab Revenue Authority has given a tax relief package for COVID-19 various affected sectors including construction services through its notification of April 2, 2020, which is effective till June 30, 2020. Khyber Pakhtunkhwa Revenue Authority vide its notification dated April 7, 2020 has also provided exemption to all construction and allied services (subject to conditions) till June 30, 2020 to encourage construction activities and works amidst the pandemic crisis. It is also learnt that sales tax on construction services in the Federal Capital Territory has been brought to zero similar to Punjab and Khyber Pakhtunkhwa.

(c) Exemption from Provincial sales tax by all Provincial Revenue Authorities on low cost housing by NAPHDA/Provincial Housing Authorities.

(d) All Provincial and Municipal duties and taxes on transfer/registration of urban properties be taken as one levy at the rate of 2% of valuation.

(e) E-stamping system be introduced in all Provinces like that in place by Punjab.

3. *House Financing*

Lower interest rate of 6% (as opposed to 7% for Greenfield Projects) for housing mortgage of one hundred thousand low cost housing units.

4. *Measures for Ease of Doing Business by Provinces*

(a) Speed up process for fresh master planning/updating of existing master plans and zones already initiated.

(b) Reduction in project approval time (preferably 45 days) and introduction of fresh zoning bye-laws for replacement of existing NOC regime.

(c) Introduction of fully one window portals for processing approvals and all other client services / facilitation.

(d) Policy for high rise construction needs to be approved for all Provinces.

5. *Legal Issues*

(a) Civil procedures ordinance for ICT after approval to be rolled out across all Provinces.

(b) Constitution of special benches for hearing civil disputes/cases concerning the real estate / construction sector.