

# *Federal Budget 2020*



**FEDERAL BUDGET 2020**

This memorandum gives a brief overview of Pakistan economy and significant amendments proposed by the Finance Bill 2020. All changes proposed through the Finance Bill 2020, subject to approval by National Assembly and Presidential assent, are effective July 1, 2020.

Certain amendments will be effective on the next day of assent given by the President to these provisions.

This memorandum can also be accessed on <https://www.pwc.com.pk/en/tax-memorandum.html>

June 13, 2020

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## ECONOMIC OVERVIEW

The Federal Budget 2020-21 has been proposed in extraordinary, unusual and unpredictable economic circumstances due to prevalent COVID 19 pandemic. It is the first time in the recent history that major economic activities throughout the world are effectively closed since February / March, 2020. At this stage, there cannot be any certainty for the resumption of economic activities in the financial year 2020-21. Various assumptions and projections will require reconsideration after the end of the first quarter.

The pandemic has resulted in serious economic consequences for the world especially the developing countries like Pakistan where a reasonable portion of the industrial output is exported and there is heavy reliance on remittances of expatriate Pakistanis. The downturn in the western economies, being the importer of Pakistani products and reduction in earning capacity of expatriate Pakistanis will place pressure on Pakistan's current account balance. This would require re-strategizing the economic priorities by promoting manufacture and consumption of locally produced goods and employment in other sectors such as construction, etc. Pakistan requires a critical review of its import bill to align the ultimate objective of import substitution and industrialization. This has become all the more necessary on account of saturation of exports and home remittances on account of pandemic. The policy as described above needs to be clearly demonstrated in order to curtail speculative activities in relation to value of Pakistani currency against USD.

On an international level, a cohesive approach by all developing countries would have to be adopted to reschedule and restructure foreign debts. At present, Pakistan's liability ranges around USD 90 to 100 Billion. A concerted and cohesive international effort require remodelling of the debts on international level as was undertaken after the end of Second World War by way of Bretton Woods System.

In these unusual circumstances, some 'out of the box' solutions are to be explored for reducing the incidence of financing cost of country on account of domestic debts, which represent a major component of total expenditure of the Government.

Tax collections for the fiscal year 2020-21 will be directly related with the timing of resumption of economic activities. In these circumstances, a positive approach of not levying any new tax without substantially reducing the development expenditure is correct. This growth oriented strategy appears to be the only solution in these circumstances. The effect of this policy will be an increase in the budget deficit, which may escalate inflationary pressure. It is, therefore, proposed that targeted subsidies and supports be provided to common man.

There has been a positive feature in the budget in relation to non-tax revenue. The projected amount is substantially higher as compared with previous years. There has to be concerted effort that the projected amount is actually collected.

In these unusual circumstances, the country cannot bear the burden of bleeding resources on account of losses in State owned enterprises and deemed subsidy in energy sector which is generally termed as financing the circular debt by the Government of Pakistan.

It is expected that the consequences and effect of the pandemic will subside in the following months and Pakistan will be again on the trajectory of growth of 3% to 5% of GDP. We are fortunate that our country is self-sufficient in basic food requirements and there is a substantial reduction in the international oil prices in the recent past, which is a major component of our import bill. Pakistan requires speedy industrialization and local production in order to balance the current account and increase the employment opportunities. The solution lies in implementing the project - **"Make in Pakistan"**.

## KEY ECONOMIC INDICATORS

	<i>FY 19 – 20</i>	<i>FY 18 – 19</i>
<b>GDP growth rate</b>	-0.4%	1.9%
<b>Per capita income - US\$</b>	1,355	1,455
<b>FDI (July – April) US\$ million</b>	2,100	900
<b>Inflation (July – April)</b>	11.2%	6.5%
<b>Public debt (PKR billion)</b>		
- Domestic	22,478	20,732
- Foreign	12,729	11,976
	35,207	32,708
<b>Budget deficit - %age of GDP</b>	7.5%	9.1%

*Source: Economic Survey of Pakistan 2019-2020*

## BUDGET AT GLANCE

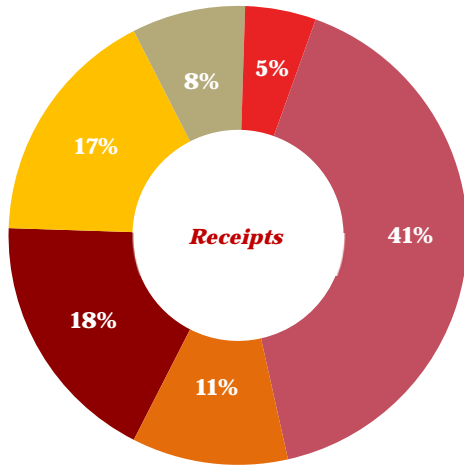
### Budget Financials

The following table sets out the Key Budget Financials:

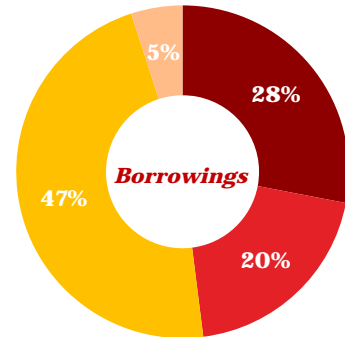
	2020-2021		2019-2020 (Revised)	
	<i>Rs in Billion</i>	<i>%</i>	<i>Rs in Billion</i>	<i>%</i>
Tax revenue	5,464		4,208	
Non-tax revenue	1,109		1,296	
Gross revenue receipts	6,573		5,504	
Public account receipt – net	216		421	
Total receipts	6,789	100	5,925	100
Less: Provincial share in Federal taxes	(2,874)	(42)	(2,402)	(41)
Net revenue receipts	3,915	58	3,523	59
Expenditure				
- Current expenditure	7,836	115	7,586	128
- Development expenditure	949	14	759	13
	8,785	129	8,345	141
<b>Deficit</b>	<b>(4,870)</b>	<b>(71)</b>	<b>(4,822)</b>	<b>(82)</b>
- Domestic debts non-bank	1,326		756	
- Domestic debts banks	979		1,724	
- Foreign debts / grants	2,223		2,273	
- Privatization proceeds	100		150	
- Surplus from provinces	242		(81)	
	<b>4,870</b>		<b>4,822</b>	

## WHERE FROM THE RUPEE COMES IN AND WHERE IT GOES OUT

### IN

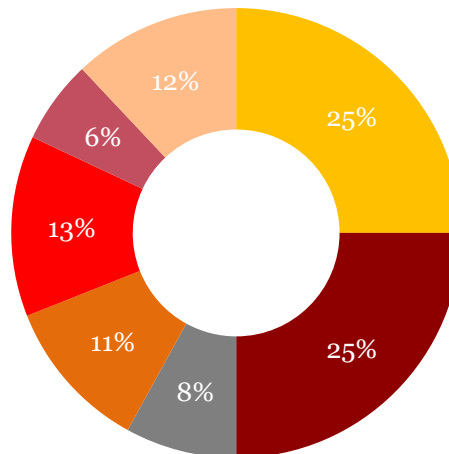


- Income Tax (18%)
- Sales Tax (17%)
- Customs Duty (5%) and FED (3%)
- Petroleum levy, Gas Infrastructure Cess & Others (5%)
- Borrowings (41%)
- Non-tax revenue (11%)



- Domestic debts non-bank (28%)
- Domestic debts banks (20%)
- Foreign debts / Grants (47%)
- Surplus from provinces (5%)

### OUT



- Provincial share in Federal taxes (25%)
- Debt servicing (25%)
- Development expenditure (8%)
- Defence Affairs and Services (11%)
- Federal Government expenses including pensions (13%)
- Grants and transfers (6%)
- Foreign Loan repayments (12%)

## BREAK-UP OF TAX REVENUE

*There is a slight downward change in the ratio of direct and indirect taxes.*

*A substantial and incremental shift is required to decrease disparity in income and reduce the burden of indirect taxes on common man.*

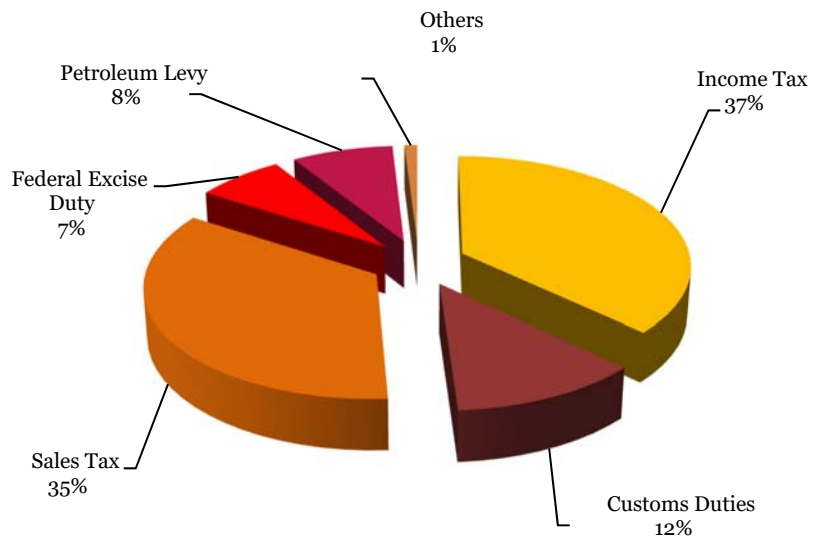
### Direct Taxes:

- Income Tax
- Workers' Welfare Fund

### Indirect Taxes:

- Customs Duty
- Sales Tax
- Federal Excise Duty
- Petroleum Levy
- Gas Infrastructure Cess
- Natural Gas Development Surcharge
- Others

<b>FY 20 –21</b>	<b>FY 19 –20 (Revised)</b>
<b>Rs in Billion</b>	<b>Rs in Billion</b>
2,037	1,618
3	3
2,040	1,621
640	546
1,919	1,427
361	312
450	260
15	11
10	10
29	21
3,424	2,587
<b>5,464</b>	<b>4,208</b>



## INCOME TAX

### ***AUTOMATED INITIAL SCRUTINY PROCESS FOR DEEMED ASSESSMENTS***

The Income Tax Ordinance, 2001 by way of section 120 prescribes Universal Self Assessment Scheme on the basis of disclosures made by the taxpayers in their returns. The return filed is deemed to be an assessment order for that year for all purposes under the Ordinance.

A specific process has been laid down for the deemed assessment under section 120 of the Ordinance. It appears that even after the proposed amendment all returns filed will constitute deemed assessments under section 120 unless they are amended in the manner prescribed for automated process of initial scrutiny within six months of filing.

The initial scrutiny process which shall always be automated without any human intervention will envisage identification and incorporation of the following adjustments:-

- a) Arithmetical errors in the return, which includes any wrong or incorrect calculation of tax payable including any minimum or final taxes;
- b) An incorrect claim as apparent from any information in the return;
- c) Disallowance of any loss, deductible allowances or tax credit; or
- d) Disallowance of carry forward of loss.

The term 'incorrect claim as apparent from any information in the return' is defined as:

- (i) a claim on the basis of entry in the return of an item inconsistent with another entry of the same or some other item in the return,
- (ii) any tax payment which is not verified from the collection system, or
- (iii) in respect of a deduction where such deduction exceeds specified statutory limit.

This amendment appears to be a prescription for the remedy of errors, omissions and aggressive positions adopted by the taxpayer in relation to self assessment scheme. In certain other jurisdictions, the return includes a statement furnished by the taxpayer. The present amendment does not fulfil the objective which is supposed to be achieved from the statement of aggressive positions. Moreover, the definition of 'incorrect claim' needs to be re-examined for practical purposes.

For making the above adjustments, issuance of an automated notice and provision of opportunity to the taxpayer to explain his position is mandatory. In case of failure to respond within 30 days of issuance of notice, adjustments shall be made.

Where no such adjustments are made within six months of the filing of return, the amounts specified in the return will be deemed to have been accepted from the date of filing of return and the same shall be electronically intimated.

A taxpayer aggrieved by the adjustments made in the above manner has a right to contest the same by way of an appeal before the Commissioner – Appeals.

### ***REDUCTION IN RATE OF TAX COLLECTION AT IMPORT STAGE***

A major change has been introduced with respect to rate of tax to be collected at import stage. In the past, all imports were subject to a standard rate of 5.5% except certain industries subjected to reduced rates. Accordingly, there has always been a need to obtain certificates of exemption in case of import of items such as capital goods, raw materials, etc.

A major incentive has been provided in the Budget by prescribing reduced rates for certain imports. It appears that such reduced rates will be applicable for import of capital goods and raw materials. Nevertheless, this classification is not apparent from the amendment made in the law whereby reduction in rate to 1% and 2% have been related to items imported irrespective of their eventual use.



For the purpose of collection of tax at import stage, all imports have been categorised as Part I, Part II and Part III of the Twelfth Schedule as under:

Reference from Twelfth Schedule	Rate of tax withholding
Part I	1%
Part II	2%
Part III	5.5%

The advance tax collected under section 148 in following cases is now also proposed to be minimum tax on income of the importer in all cases:

- Motor vehicles in CBU condition by manufacturers of motor vehicles;
- Large import houses;
- Foreign produced film imported for the purposes of screening and viewing.

The advance tax collected under section 148 for import of capital goods and raw material by an industrial undertaking for its own use will not be treated as minimum tax.

The classification of capital goods and raw material relates to the activity to be undertaken by the taxpayer. As stated above, this incidence may not commensurate with the incidence at the import stage where goods are classified in a different manner under the HS code.

Special incentive for following industrial sectors has been retained:-

Category	Rate of tax withholding
Import by manufacturers covered under rescinded SRO 1125	1 per cent
Import of finished pharmaceutical products that are not manufactured otherwise in Pakistan, as certified by the Drug Regulatory Authority of Pakistan	4 per cent

Category	Rate of tax withholding	
Import of mobile phones of value:	<u>In CBU condition</u>	<u>In CKD/SKD condition</u>
- Upto USD. 30 except smart phone	Rs. 70	Nil
- More than USD. 30 upto USD. 100	Rs. 100	Nil
- More than USD. 100 upto USD. 200	Rs. 930	Nil
- More than USD. 200 upto USD. 350	Rs. 970	Nil
- More than USD. 350 upto USD. 500	Rs. 3,000	Rs. 5,000
- More than USD. 500	Rs. 5,200	Rs. 11,500

A consequential amendment is proposed in other provisions whereby exemption certificate can now only be issued for import of plant & machinery.

Limiting the exemption certificate for import of plant & machinery only is not practically possible in all cases if 2% withholding on imports is mandatorily required on import of items in Part II of the Twelfth Schedule.

### **INTEGRATED ENTERPRISE**

A new concept of 'integrated enterprise' is being introduced to mean a person integrated with the FBR through approved fiscal electronic device and software and who fulfils prescribed obligations and requirements for integration.

Earlier, the FBR issued draft amendments in Income Tax Rules in April 2020 whereby obligations and requirements for integrated enterprises was proposed for certain businesses.

The proposed definition therefore appears to provide an enabling provision for introduction of such requirements.

### **TAX ON SHIPPING INCOME OF RESIDENT PERSONS**

The present presumptive tax regime for resident shipping businesses on tonnage basis is proposed to be extended upto June 30, 2023.

A new category is proposed for a Pakistani resident ship owning company registered with SECP after November 15, 2019 and having its own sea worthy vessel registered under Pakistan flag will pay tonnage tax of an amount equivalent to 0.75 US Dollar per ton of gross registered tonnage per annum.

This amendment is the implementation of the amendments in shipping policy titled as 'Pakistan Merchant Marine Policy 2001' and the companies formed under the new policy shall be entitled to a reduced rate of USD 0.75 as against USD 1 on tonnage basis for the existing companies.

### **TAXATION OF RENTAL INCOME**

Prior to amendments made through Finance Act, 2019, rental income of non-corporate persons was taxed on a presumptive basis not allowing any deductions and allowances.

The Finance Act, 2019 introduced an option for non-corporate persons deriving rental income exceeding Rs 4 Million for taxation on net income basis at the applicable rate.

The ceiling of Rs. 4 Million for entitling this regime is now proposed to be done away.

As a result, all non-corporate persons with rental income can now opt to be taxed at par with corporate persons.

In case rental income is computed on net income basis, certain specific deductions are allowed, such as repair allowance, financial charges, insurance premium, local taxes, etc. In addition to these specific deductions, all other expenditure wholly and exclusive incurred for the purpose of rental income including administration and collection charges, etc. is allowed subject to a threshold of 6% of gross rentals.

The threshold of 6% is now proposed to be reduced to 2%.

### **INADMISSIBLE BUSINESS DEDUCTIONS**

#### **Non-banking transactions**

Presently, expenses incurred in excess of Rs. 50,000 under a single account head are not allowed as business deduction with certain exceptions such as expenditure not exceeding Rs. 10,000, if the payment for such expense is not made through prescribed banking channel.

The limit of Rs. 50,000 is proposed to be enhanced to Rs. 250,000 whereas the exception with regard to a single expenditure has been increased from Rs. 10,000 to Rs. 25,000.

Similarly, under the present law, salary expense in excess of Rs. 15,000 is also not allowed if paid through non-banking channel. The threshold of Rs. 15,000 has been increased to Rs. 25,000.

#### **Expenditure on Utility Bills**

An enabling provision is proposed to be introduced to prescribe limits and conditions to restrict admissible expenditure on account of utility bills.

In the 'Salient Features', it has been indicated that electricity expense will be disallowed subject to non-disclosure of name of actual user from January 1, 2021.

#### **Expenditure attributable to sales made to unregistered persons**

An industrial undertaking will not be allowed to claim any expenditure attributable to sales made to such persons who are required to be registered but not registered under the Sales Tax Act, 1990 in the following manner:-

$$(A/B) \times C$$

- A is the total amount of business deductions;
- B is the turnover for the tax year; and
- C is the total amount of sales exclusive of sales tax and federal excise duty to persons required to be registered but not registered under the Sales Tax Act, 1990 where sales is Rs. 100 million or above per person.

The expenditure to be disallowed under this provision will not exceed 20% of total deductions claimed by the industrial undertaking. The limitation in this manner indirectly allows admissibility of expenditure attributable for sales to unregistered persons beyond the said threshold.

A provision of a similar nature has also been introduced in Sales Tax Act, 1990, which aims to disallow claim of input tax attributable to sales made to the above-referred unregistered persons. A collective reading of sales tax provision and this provision reveals that sales to the above-referred unregistered persons would result in significantly higher tax incidence for the registered sellers and hence, creates an indirect pressure on registered persons to ensure that their relevant customers are registered under the Sales Tax Act.

FBR has been empowered to exempt persons or classes of persons from the application of this provision in hardship cases.

This section requires reconsideration with respect to:

- a) The extent of expenditure that can be considered attributable to a particular sale for example, financial charges, etc.
- b) The process of identifying a person who is required to be registered but not registered at the time of sale by the said industrial undertaking.

### **NORMAL TAX DEPRECIATION**

Normal depreciation is admissible at the rates prescribed in the Third Schedule at the full rate irrespective of date of addition for such assets in the tax year. An amendment is proposed to restrict depreciation in the first year to 50% of the rate prescribed in the Third Schedule.

Furthermore, in the year in which a depreciable asset is disposed, 50% of normal depreciation for the respective tax year will be allowed to the taxpayer.

This appears to be a generic prescription of restricting depreciation in the first year and the year of disposal in relation to use throughout the year or otherwise.

The above provisions will be applicable on such depreciable assets, which are used for the first time in a tax year commencing on or after July 1, 2020.

This amendment will adversely affect the financial status of capital-intensive projects. For example, in case of E&P Companies, 100% depreciation is allowed in the first year for below ground installations being the cost of drilling wells.

### **LEASE RENTALS ON VEHICLES**

It is proposed that lease rentals incurred by a lessee in respect of cost of passenger transport vehicles not plying for hire to the extent of principal amount shall not exceed Rs. 2.5 million. Similar limitation applies for claiming tax depreciation on such vehicles owned by a taxpayer.

### **TAX CREDIT FOR ENLISTMENT**

The tax credit allowed to companies opting for enlistment is proposed to be restricted to such companies, which are listed upto June 30, 2022. The rate of such tax credit is 20% of tax payable for the tax year in which such company is listed and the following year whereas in next two tax years, the rate of tax credit is 10%.

### **FOREIGN CONTROLLED RESIDENT COMPANIES' COST OF FOREIGN DEBTS**

Cost of foreign debts of any foreign controlled resident company in Pakistan (other than banking and insurance sector) has been restricted to 15% of taxable income (before amortization and depreciation) of such tax year with a carry forward mechanism subject to the same overall limits each year.

The above restriction is in addition to thin capitalisation rules as laid down in section 106, which is proposed to apply on accrued interest from July 1, 2020 even on foreign debts contracted before such date. The cumulative effect of this provision and thin capitalisation rules of section 106 needs to be clarified in view of the ambiguity in sub-section 4 of proposed provision.

This provision effectively prescribes an arbitrary debt equity ratio for foreign controlled resident companies whilst determining their tax incidence.

The above provision needs to be evaluated with reference to the non-discrimination articles of the respective double tax treaties.

### ***CLASSIFICATION OF CERTAIN CONCEALED INCOMES AS BUSINESS INCOME***

Section 111 allows the Commissioner to make certain additions to the income of a person including the concealed income and suppressed amount of production or sales, etc. under the head 'income from other sources'. It is now proposed that such amounts will be added to the person's income under the head business'. This amendment seems to be a corrective amendment as the nature of such items is related to business income and also as a consequence of this, the person will be allowed to claim adjustment of any brought forward business losses against such items.

### ***MINIMUM TAX ON NON-RESIDENT'S PERMANENT ESTABLISHMENTS***

Minimum tax provisions on turnover basis have always been applicable on resident companies since inception. It is now proposed to include Permanent Establishments of non-residents within its ambit.

This amendment will have to be tested in view of the applicable double tax treaty provisions whereby such non-residents are generally subject to tax on the basis of their profits and not on the basis of turnover or gross receipts.

Furthermore, non-resident persons such as E&P companies may consider this amendment to be in conflict with their concession agreements signed by the President of Pakistan.

### ***RETURNS OF PERSONS SUBJECT TO FINAL TAXATION***

Persons subject to final tax regime are not required to file return of income as prescribed under section 114 of the Ordinance. In such cases, a statement has been prescribed in the law in lieu of return of income. Such statements only required a disclosure of gross receipts and related withholding tax.

The concept of statement in lieu of return is proposed to be omitted.

The FBR has been empowered to prescribe returns for different classes of income or persons including those covered by final tax regime.

This is procedurally a very significant and important amendment that exhibits the intention of the Government to enforce documentation even for final tax regime.

### ***REVISION OF RETURN FOR BONA FIDE OMISSION OR WRONG STATEMENT***

Currently, filing of a revised return requires prior approval of the Commissioner, which has certain limitations and conditions.

The Commissioner is now also empowered to grant approval for revision of return for bona fide omission or wrong statement without any condition or limitations. For example, where an assessment is already made for a taxpayer's return, the taxpayer will now be allowed to revise his return for a bona fide omission or wrong statement even if the revised return declares amounts lower than that assessed in an amended order.

## **TAXPAYER'S PROFILE**

When a taxpayer files a registration application, as part of the application, he is required to share certain information which is part of his profile, such as bank details, properties, assets, etc. The taxpayers who are registered before introduction of web portal have insufficient information available with FBR and there is no mandatory provision to update his information. Similarly, new registered taxpayers also are not mandatorily required to update their profile.

Certain provisions are being introduced to define the concept of 'tax profile' and to prescribe penalties and other negative consequences for taxpayers who fail to file or update their tax profiles within the prescribed timelines.

The tax profile will be as prescribed in the Income Tax Rules and shall be accompanied by such annexures statements or documents as may be prescribed. It appears that such profile would generally include information on bank accounts, utility connections, business premises, etc.

All existing registered taxpayers as well as those who will obtain registration by September 30, 2020 will be required to file and update their tax profile by December 31, 2020 whereas other taxpayers will be required to file and update their profiles within 90 days of registration. Furthermore, with regard to any changes in such profile, the updating is required to be made within 90 days of such change.

Failure to file and update tax profiles in the above manner and within the prescribed dates could result in a taxpayer's exclusion from active taxpayers list. However, such persons can be included back in active taxpayers list by filing the requisite information and paying the prescribed amount of surcharges.

## **REVISION OF WEALTH STATEMENT**

Filing of a revised wealth statement has been made subject to prior approval of the Commissioner, which is expected to be granted in case of bona fide omission or a wrong statement. It has also been clarified that wealth statement cannot be revised after 5 years from filing of such wealth statement.

## **AMENDMENT OF ASSESSMENT ON AUDIT**

Under section 122(5), a return can inter alia be amended on the basis of definite information from 'audit' or otherwise.

There is a view that amendment under section 122(5) after an audit can only be made where a definite information is identified in the audit process and not otherwise.

An amendment is proposed to provide that an assessment can be amended under section 122(5) on any matter identified in the audit whether or not the same represents a definite information as defined in the said provision.

## **AGREED ASSESSMENT**

The concept of an 'agreed assessment' is proposed to be introduced in the Ordinance.

Though not defined in the Ordinance, an agreed assessment represents a status agreed upon by the taxpayer and the department. The effect of such an assessment is that either party has no right to contest the matter in any manner and no penal action lies against the taxpayer. The concept of agreed assessment is generally applied in situations where both parties do not have definite basis or calculation of an amount proposed to be added to the declared income, for example, in transfer pricing cases.

The amendment also prescribes that an agreed assessment can only be made after the receipt of notice under section 122(9) of the Ordinance. This effectively means that taxpayer may agree upon certain disallowances or additions proposed in such notice without a right of appeal.

In the past, there were instances of agreed assessment where the conditions as laid down above were exchanged by the taxpayer and department through respective undertakings. Now this procedure is proposed to be incorporated in law.



A taxpayer intending to settle a case may file offer of settlement in the prescribed form before the 'assessment oversight committee', in addition to filing a reply to the notice. This option is, however, not available in cases involving concealment of income or where the interpretation of question of law involved having effect on other cases.

The said Committee will comprise of the Chief Commissioner, Commissioner and the Additional Commissioner having jurisdiction over the case.

After examination of the aforesaid, the Committee may call for the record of the case and after affording reasonable opportunity of being heard to the taxpayer may accept, modify or decline the offer of the taxpayer through consensus and communicate the decision to the taxpayer. In case the taxpayer agrees with such decision, he shall deposit the amount determined by the Committee and on such basis, the assessment will be amended with no right of appeal and no further proceedings will be taken on such issues.

If the Committee is not able to arrive at a consensus or the taxpayer does not agree with the decision of the Committee the case shall be referred back to the Commissioner for decision on the basis of taxpayer's response to notice under section 122(9).

The FBR is empowered to make rules regulating the procedure in relation to the agreed assessment.

The proposed amendment needs to be examined with reference to the implication of an agreed status in a particular year for any prior or subsequent assessment.

### ***FILING OF APPEAL BEFORE APPELLATE TRIBUNAL - DETERMINATION OF TAX DEMAND UPHELD IN FIRST APPEAL***

Under the present regime, an appeal lies before the Appellate Tribunal irrespective of payment of demand confirmed by the Commissioner- Appeals. This inherent right of appeal is proposed to be subject to a mandatory payment of 10% of the tax demand upheld by the Commissioner - Appeals.

This matter needs to be re-examined with reference to the right of the Appellate Tribunal to entertain an appeal by the taxpayer without such payment of tax.

In order to facilitate the determination of said amount, it is proposed that the Commissioner – Appeals shall also specify in the appellate order the amount of tax upheld in appeal.

### ***ALTERNATIVE DISPUTE RESOLUTION COMMITTEE***

Prior to Finance Act, 2018, the procedure of settlement of dispute through Alternative Dispute Resolution mechanism was essentially optional in nature. The Federal Board of Revenue was not mandatorily required to accept the recommendation of the ADRC. Consequently, the appellant was not necessarily required to withdraw the appeal filed before an appellate forum for seeking remedy under the ADRC.

However, through the Finance Act, 2018, the whole mechanism of ADRC was revamped, in the sense that the option of seeking remedy in ARDC was to be only available if the applicant withdraws the appeal pending before any court of law or an appellate authority after the appointment of the ARDC by FBR. Consequent upon such withdrawal of appeal, the recommendations of ADRC were made binding on both the parties.

These amendments were generally criticized by businesses as well as professional forums and it was emphasized that the alternate mechanism under ADR before the amendments introduced by Finance Act, 2018 may be restored. The matter was time and again brought to the attention of the policy makers and it seems that the government has now agreed and therefore proposed to enact the following significant amendments through Finance Bill, 2020:

- The requirement for the aggrieved party to withdraw the appeal pending before any court of law or an Appellate Authority after the appointment of ADRC by FBR has been proposed to be done away with.

- It has now been proposed that FBR shall be required to communicate the order of the appointment of ADRC to the court of law or the appellate authority where the dispute is pending and the relevant Commissioner. Presently, there is no such condition for FBR to oblige.
- Presently, there is an automatic stay against recovery of demand where the matter is pending before the ADRC up to the date of decision. However, instead of an automatic stay of recovery of demand, the bill now proposes to empower the ADRC to grant stay against recovery of demand, in case of hardship, for a period of 120 days in aggregate or the decision of the ADRC or its dissolution, whichever is earlier.
- An ADRC is presently required to decide the dispute by simple majority. However, the amendment now proposed provides for the decision on dispute on the basis of consensus among the ADRC members.
- Under the present ADRC mechanism, the decision of ADRC is binding on the Commissioner and the aggrieved party without any further condition. Under the proposed amendments, the decision shall be binding on the Commissioner only when the aggrieved party, after being satisfied with the decision of ADRC, withdraws the appeal pending before the court of law or any appellate authority, and the order of such withdrawal has been communicated to the Commissioner within 60 days of the service of the decision of ADRC upon the aggrieved party.
- Presently in case of dissolution of ADRC, the court of law or appellate authority where the dispute is pending is required to decide appeal within six months of the communication of dissolution order. The time period to decide case within six months is proposed to be done away with.

There are certain other procedural changes that include:

- (i) Chief Commissioner Inland Revenue having jurisdiction over the case has to be on ADRC. Previously, any Commissioner was required to be included on ADRC.

- (ii) A person from the panel notified by FBR consisting of Chartered Accountants, Cost and Management Accountants and advocates were previously required to be nominated by the taxpayer and reputable businessmen were to be nominated by Chamber of Commerce and Industry. All such nominations on the ADRC now rests with FBR.
- (iii) The requirement to include a retired Judge of the High Court on the ADRC has been done away with.

Parallel amendments are also proposed to be made in the Sales Tax Act, 1990 and the Federal Excise Act, 2005.

### **ADVANCE TAX ON TURNOVER BASIS**

Quarterly advance tax payments are based on the amount of turnover as determined by taxpayer for which there is no prescribed mechanism of intimation or filing with the tax authorities.

FBR is now empowered to prescribe a procedure for filing and calculation of turnover for the quarter through an automated system.

### **WITHHOLDING TAX FROM NON-RESIDENT MEDIA PERSONS**

Withholding tax applicable on payments for advertisement services of non-resident media persons relaying from outside Pakistan at the rate of 10% of such payments has been made 'minimum tax'.

### **WITHHOLDING TAX ON PERMANENT ESTABLISHMENTS OF NON-RESIDENTS**

Withholding tax applicable on payments to PEs of non-residents for sale of goods and execution of contract has also been made 'minimum tax' except where the sale of goods is made by a manufacturer. Payments for services rendered by non-residents' PEs were already subject to minimum tax.

The purpose of the above amendment seems to align the taxation of PEs of non-residents with that of resident persons who are also subject to minimum tax on similar payments under section 153.

Minimum tax provisions appear to be in conflict with double tax treaties whereby such non-residents are required to be taxed on the basis of income and on gross turnover basis.

### ***Payment to non-residents for services***

Through Finance Act 2019, a reduced rate of 3% was introduced for certain specified services rendered by the resident service providers. In order to provide level playing field for non-resident service providers, the bill proposes consequential amendments for non-resident service providers. The proposed sectors are identical to those prescribed for resident service providers, however, there seems to be an anomaly whereby services provided by Pakistan Stock Exchange Limited and Pakistan Mercantile Exchange Limited have also been included in the non-resident service providers, which cannot be the case. Furthermore, the list does not include Engineering Services.

The proposed sectors are as under:

- transport services,
- freight forwarding services,
- air cargo services,
- courier services,
- manpower outsourcing services,
- hotel services,
- security guard services,
- software development services,
- IT services and IT enabled services as defined in clause (133) of Part I of Second Schedule,
- tracking services,
- advertising services (other than by print or electronic media),
- share registrar services,
- car rental services,
- building maintenance services,
- services rendered by Pakistan Stock Exchange Limited and Pakistan Mercantile Exchange Limited,
- inspection, certification, testing and training services.

The case of non-resident providing services under a contract particularly in E&P sector needs to be reconsidered for inclusion in the above list as the same were subject to reduced rate basis prior to Finance Act, 2019.

### ***COHESIVE BUSINESS ARRANGEMENTS***

Through Finance Act, 2019, the Commissioner was empowered to require payment of withholding tax at the effective rate of 2.1% (being 30% of 7%) on payments from a non-resident on account of offshore portion of the contract under cohesive business arrangements subject to certain conditions.

It is now proposed to reduce the rate of withholding tax from 30% to 20% of the applicable rate, which would effectively translate into 1.4% (being 20% of 7%) on such payments.

### ***WITHHOLDING TAX RATE REDUCTION ON FEES FOR TOLL MANUFACTURERS***

Under the present law, there is no specific rate of withholding tax on fees related to toll manufacturers. It is proposed that such fees of toll manufacturers will be subject to withholding tax at 4% / 4.5% being minimum tax.

This amendment effectively resolves the dispute relating to classification of such fees as 'services' or 'contract'.

### ***VALUATION OF GOODS FOR COLLECTION OF TAX ON IMPORTS***

For the purpose of tax collection on imports, the definition of the term "value of goods" is proposed to be substituted to mean:

- a. Retail price in case of goods chargeable to sales tax at retail price under the Sales Tax Act, 1990; and
- b. in case of all other goods; the value of the goods as determined under the Custom Act, 1969, increased by the custom-duty, federal excise duty and sales tax, if any, payable in respect of the import of the goods.

This proposal in respect of retail price items needs to be re-examined with reference to valuation of other than 'same state goods' which represent imports subject to value addition and processing.



### **EXEMPTION FROM APPLICABILITY OF SECTION 148 TO CERTAIN PERSONS**

The Bill proposes to incorporate that the provisions of section 148 will not apply to the following:

- the Federal Government;
- a Provincial Government;
- a Local Government;
- a foreign company and its associations whose majority share capital is held by a foreign government;
- a person who imports plant and machinery for execution of a contract with the Federal Government or a provincial government or a local government and produces a certificate from that government;
- companies importing high speed diesel oil, light diesel oil, high octane blending component or kerosene oil, crude oil for refining and chemical used in refining thereof in respect of such imports; and
- Petroleum (E&P) companies covered under the Customs and Sales Tax Notification No. S.R.O.678 (I)/2004, dated the 7th August, 2004, except motor vehicles imported by such companies.

The above exemptions were earlier provided in SRO 947(I)/2008.

Through SRO 236(I)/2020 dated March 20, 2020, exemption has been provided from income tax withholding on import of identified medical and testing equipment regarding outbreak of COVID-19. Such exemption was initially provided till June 20, 2020 which has now been proposed to be extended till September 30, 2020.

The Bill proposes to exempt the applicability of provision of section 148 to persons importing pulses between April 7, 2020 and September 30, 2020.

### **EXEMPTION CERTIFICATE FOR LISTED COMPANIES**

The Commissioner is required to issue an exemption certificate under section 153 for supply of goods by a listed company within 15 days if the company pays its advance tax. In case no such certificate is issued within 15 days, the exemption certificate will be deemed to have been issued automatically on web portal. The Commissioner may, however, subsequently cancel or modify such deemed exemption after recording reasons and providing an opportunity.

### **PRESCRIBED PERSONS FOR WITHHOLDING TAX**

The threshold of annual turnover for an individual and an association of persons to be a prescribed person for withholding tax under section 153 has been enhanced from Rs 50 million to Rs 100 Million. Furthermore, a person registered under Sales Tax Act, 1990 will only qualify as prescribed person if his annual turnover exceeds Rs 100 million in any of the preceding years.

### **FILING OF STATEMENTS**

The Finance Act, 2019 amended the requirement to file withholding statements from monthly to bi-annual basis. It is now proposed to replace the bi-annual statements with quarterly statement filing requirement. Such quarterly statements will be filed on 20<sup>th</sup> of month following the end of each quarter.

FBR has also been empowered to prescribe a quarterly statement for persons engaged in economic transactions. It is expected that such rules will also define the term 'economic transaction' for the purpose of this new requirement.

### **FURNISHING OF INFORMATION BY BANKS**

The requirement for Banks to make arrangements to provide to the FBR information in respect of a list of persons receiving profit on debt exceeding Rs 500,000 and tax deductions thereon during preceding financial year is proposed to be amended in a manner that the limit of Rs 500,000 will be omitted.

### **REAL TIME ELECTRONIC ACCESS BY GOVERNMENT AGENCIES AND UTILITY COMPANIES**

At present, the information and databases of various agencies and organisations are not accessible to / integrated with FBR, as the case may be. For example, the data of industrial electricity consumers held by the utility companies does not commensurate with the registered taxpayers of FBR.

The proposed amendment in all three taxing statutes empowers FBR to access / integrate their systems with certain agencies and organisations. It has been proposed that this right of FBR will override any restrictive provisions in the respective laws and regulations of such agencies or organisations.

In the recent past FBR had been facing challenges, including legislative impediments, to obtain information from different government agencies and utility companies.

As per the proposed provisions, following government agencies / corporations and utility sector will be required to grant real time electronic access to information and databases maintained by them to FBR;

- (i) NADRA
- (ii) FIA and Bureau of Emigration and Overseas Employment
- (iii) the Islamabad Capital Territory and provincial and local land record and development authorities
- (iv) the Islamabad Capital Territory and provincial Excise and Taxation Departments
- (v) All electricity suppliers and gas transmission and distribution companies; and
- (vi) any other agency, authority, institution or organization notified by FBR.

It is proposed that above agencies / entities shall provide required information and data to FBR on periodic basis (frequency and form to be prescribed by FBR) until FBR makes arrangement for laying down infrastructure for the access and its alignment with its own database. Specifically, for electricity supplier and

gas transmission and distribution companies, it is proposed to allow time until January 2021 to consumers to update the ratio of sharing of a connection or the particulars of users.

These amendments are proposed notwithstanding anything to the contrary contained in the NADRA Ordinance, 2000 or Emigration Ordinance, 1979.

Information received by FBR under this mechanism is proposed to be kept confidential and used only for tax purposes.

### **REAL TIME ELECTRONIC ACCESS TO RECORDS**

Presently, the Commissioner is authorized full and free access to taxpayers' premises, place, accounts, documents or computer, if required, in pursuance of any audit or survey proceedings initiated under the Ordinance.

It is now proposed to allow the Commissioner real time electronic access to such records of the taxpayer. Rules in this regard explaining modalities are to be prescribed by FBR.

### **AUDIT THOROUGH VIDEO LINK**

Enabling provisions are being introduced to allow the Commissioner to conduct audit proceedings electronically through video links or any other prescribed facility.

It is desired that similar provisions should be made for all proceedings under the Ordinance including but not limited to appeals as well as amendment and withholding tax monitoring proceedings, etc.

### **INCOME DETERMINATION ON THE BASIS OF GENERIC SECTORAL BENCHMARKS**

A provision has been introduced in section 177 (Audit) whereby the taxation officer can apply generic 'sectoral benchmarks' for determination of income disregarding the results furnished by a taxpayer.

This provision will only apply where a case is selected for tax audit and the taxpayer fails to provide the information required during such audit.

The prescription of sectoral information represents a positive approach as the same is expected to avoid adhoc and arbitrary basis adopted by taxation authorities. This system was in practice before 2001 Ordinance.

### **DEFAULT SURCHARGE DETERMINATION**

Default surcharge provisions require the computation of surcharge on the basis of period of default for which a terminal date is prescribed as the date of payment of principal demand. There is a view that unless the demand is paid / recovered, the default surcharge cannot be determined by the Commissioner and hence, not recoverable.

An amendment is therefore proposed to allow the Commissioner to compute or determine the demand for default surcharge amount irrespective of whether the principal amount has been paid as yet.

### **EXEMPTION FROM WITHHOLDING TAX ON ELECTRICITY**

Currently, the Commissioner is only empowered to issue an exemption certificate with regard to withholding tax from electricity where the person's exempt from income tax. An enabling provision has been proposed to allow the Commissioners to issue an exemption even in those cases where the taxpayer has otherwise discharged his advance tax liability for the tax year.

### **TAX ON PAYMENTS FOR USE OF EQUIPMENTS**

Withholding tax on payments to residents for the use or right to use industrial, commercial or scientific equipment is proposed to be amended from 'final' to 'minimum' tax.

### **WITHDRAWAL OF CERTAIN WITHHOLDING TAX PROVISIONS**

As part of reforms for ease of doing business, the government has proposed to withdraw following withholding tax provisions, which in government's view were not generating enough revenues:

Section Reference	Description
148A - Tax on local purchase of cooking oil or vegetable ghee by certain persons	2 percent tax was chargeable on the purchase of locally produced edible oil by the manufacturers of cooking oil or vegetable ghee.
156B - Withdrawal of balance under Pension Fund	A pension fund manager making payment from individual pension accounts, maintained under any approved Pension Fund, was required to deduct tax at the average rate of tax as calculated in section 12, from the amount so withdrawn by the pensioner before or after his retirement.
235B - Tax on steel melters and composite units	Tax under this section was required to be collected from every steel melter, and composite steel units, registered for the purpose of Chapter XI of Sales Tax Special Procedure Rules, 2007 at the rate of one rupee per unit of electricity consumed for the production of steel billets, ingots and mild steel (MS products) excluding stainless steel.
235D - Advance tax on functions and gatherings	Advance tax under this section was required to be collected by the prescribed person on the total amount of the bill from a person arranging or holding a function in a marriage hall, marquee, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purpose including the food, service or any other facility is provided by any other person, from the person arranging or holding the function.
235F - Advance tax on cable operators and other electronic media	Under this section, Pakistan Electronic Media Regulatory Authority was required to collect advance tax, at the time of issuance of licence for distribution services or renewal of the licence to a licensee.

Section Reference	Description
236J - Advance tax on dealers, commission agents and arhatis etc	Advance tax under this section was required to be collected by every market committee from dealers, commission agents or arhatis, etc. at the time of issuance or renewal of licences
236R - Collection of advance tax on education related expenses remitted abroad	Advance tax was required to be collected by Banks, financial institutions, foreign exchange companies or any other person responsible for remitting foreign currency abroad for the purpose of education related expenses remitted abroad from the payer of education related expenses.
236U - Advance tax on insurance premium	Advance tax was required to be collected under this section, by the insurance company at the time of collection of insurance premium from the person in respect of general insurance premium and life insurance premium.
236X- Advance tax on tobacco	Pakistan Tobacco Board or its contractors, at the time of collecting cess on tobacco, directly or indirectly, shall collect advance tax at the rate of five percent of the purchase value of tobacco from every person purchasing tobacco including manufacturers of cigarettes.

### CHARITABLE DONATIONS

Section 61 entitles a person to a tax credit in respect of donations to any non-profit organization and certain specified institutions and funds established by the Federal, Provincial or Local Governments. The amount of such tax credit for a tax year is computed at an average rate of tax on the lesser of:

- (a) the total amount of the person's donations, including the fair market value of any property given; or
- (b) where the person is:
  - (i) an individual or AOP, 30 per cent of the taxable income for the year; or
  - (ii) a company, 20 per cent of the taxable income for the year.

The abovementioned tax credit on charitable donations, if being availed on donation by an **associate** of the donor is proposed to be restricted to the lesser of the total amount of person's donations and 15% of the taxable income of the donor, in case of an individual or AOP and 10% in case of a Company.

Furthermore, a straight deduction from income is allowed to the donors for amounts paid to institutions, foundations, societies, boards, etc specified in clause 61 of Part I of the Second Schedule. Under the said clause 61, a restriction is also proposed to be included whereby, the amount so donated by an associate shall not exceed:

- (i) 15% of taxable income in case of an individual or AOP; and
- (ii) 10% of taxable income in case of a Company.

In addition to the above, another proviso is proposed whereby the straight deduction from income under clause 61 is available only if the said donation is paid via a crossed cheque.

Following institutions are proposed to be added to the existing list specified in clause (61):

- (i) The Prime Minister's COVID-19 Pandemic Relief Fund-2020;
- (ii) Ghulam Ishaq Khan Institute of Engineering Sciences and Technology ;
- (iii) Lahore University of Management Sciences;
- (iv) Dawat-e-Hadiya, Karachi;
- (v) Baitussalam Welfare Trust;
- (vi) Patients' Aid Foundation;
- (vii) Alkhidmat Foundation;

### NON PROFIT ORGANISATIONS (NPOs)

For an institution to qualify as NPO, its existence should be for religious, educational, charitable, welfare or development purposes or for the promotion of amateur sports. The proposed amendment in the definition seeks to omit 'development purposes' which appeared to have a wider connotation and susceptible of being construed to defeat the underlying objective behind having a concept of NPOs for tax purposes.

Furthermore, an amendment is made to over-emphasise that only those organisations fall under the ambit of NPOs, which are for the benefit of general public.

To further reinforce compliance by NPOs and other institutions, following amendments have been proposed in section 100C and clause 66 of Second Schedule:

- (i) The existing requirement to file a statement of voluntary contributions and donations received in the immediately preceding tax year. Under Rule 217, same information is already required to be submitted by NPO to retain its approval for amounts exceeding Rs 5,000.
- (ii) income derived by institutions / organisations listed in clause 66 of Part I of the Second Schedule to the Ordinance, is presently exempt from tax. Through the Finance Bill, however, the said clause is being replaced and the organizations earlier listed have been bifurcated into two categories whereby:
  - a. Any income of organisations listed in Table 1 to the said clause is exempt;
  - b. Exemption on of the organisations listed in Table 2 of the said clause has been made subject to the fulfilment of conditions mentioned in section 100C of the Ordinance with effect from July 1, 2021.

The Finance Act, 2019 introduced a requirement of having a status of NPO for trusts and welfare institutions to qualify for tax credit with effect from July 1, 2020. Consequently, once the obtain NPO approval they are required to pay tax on unspent funds (termed as 'Surplus Funds') at the rate of 10%. The scope of such tax has now been extended to include trusts and welfare institutions into its ambit.

Moreover, one of the exclusions from the abovementioned tax is when the donor has placed certain restrictions / obligations on spending of such funds. An amendment has been proposed that this exclusion does not apply in cases where the donor is an associate of the NPO, trust or welfare institution.

This restriction does not appear appropriate for the reason that in most of the cases, donations to NPOs are made by persons who represent an associate of the NPO. This amendment will effectively curtail donations for endowments for specific welfare purposes made to NPOs.

Moreover, the above amendment when made in the context of NPO was also criticized as being inappropriate as under the strict tax principles, Donations and voluntary contributions cannot be considered as 'income' if they remain unspent as any money not spent by NPO / trusts / welfare institutions during the year will ultimately be spent for the purposes such organisations are established; hence taxing such voluntary contributions and donations is not an appropriate step.

### **CONSTRUCTION INDUSTRY**

The President of Pakistan promulgated the Tax Laws (Amendment) Ordinance, 2020 ('Amendment Ordinance') on April 17, 2020 for the Construction Industry to give effect to the incentive package earlier announced by the Premier on April 3, 2020.

In order to validate and give legislative effect to the Amendment Ordinance (being a Presidential Ordinance) which would have otherwise expired after 120 days from the date of promulgation, the amendments made through the same have now been incorporated through the Finance Bill, 2020.

### **Salient Features of the Amendment Ordinance**

- (a) Constructors of buildings, roads, bridges and other such structures or the development of land have been assigned the status of 'Industrial Undertaking', to the extent and for the purpose of import of plant and machinery to be utilized for such purposes.
- (b) The provisions of section 100D read with Eleventh Schedule apply to all Builders and Developers opting to be taxed as such by registering themselves with the FBR on a Project-by-Project basis ('eligible projects').



The key features are as under:

- i. A scheduler based fixed tax regime for builders and developers, which can be opted for eligible projects being either new or existing incomplete projects.
  - ii. Immunity from application of section 111 with regards to capital investments in new projects by investors and to the first purchasers of building including units therein in new and existing incomplete projects and for plot purchasers.
  - iii. Facility for builders and developers to incorporate their profits and gains in books of accounts (including wealth statements) up to ten times the amount of fixed tax paid under the regime on eligible projects.
  - iv. Exemption from tax on Dividend distributed by Corporate builder or developer out of the profits and gains of eligible projects, with specific exemption from tax withholding on such distribution.
  - v. Builders and developers absolved from withholding tax under section 153 of the Ordinance on purchase of materials (except steel and cement) and services (plumbing, electrification, shuttering and other similar and allied services) provided by non-corporate service providers.
- (c) Exemption from tax on capital gains to a resident individual on sale of constructed residential property (house of 500 square yards and a flat of 4,000 square feet) used only for personal accommodation.
  - (d) 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.

A note on Amendment Ordinance was published by our firm, which can be accessed on the link <https://www.pwc.com.pk/en/tax-memorandum.html> for further details.

### **TAX REGIME FOR DISPOSAL OF IMMOVABLE PROPERTIES**

Short term capital gains on disposal of immovable properties were not taxable in the Ordinance in the past. Such gains were made taxable through Finance Act, 2012.

Determination of short term gains depends on holding period of property. The holding period was initially prescribed as two years for this purpose, which was subsequently enhanced to 4 and 8 years for constructed and open plots respectively by the Finance Act, 2019.

The Finance Bill proposes a reduction in holding period to 4 years in all cases. This means that any capital gains on sale of immovable property will be treated as long term capital gain exempt from tax if the property is held for more than 4 years.

There is a need for examination of tax exemption on cases where properties were held for more than 4 years and disposed during the intervening period when 8 years holding period law was applicable.

We understand that the right of Federal Government to tax capital gains on immovable properties is subjudice before the courts in view of relevant entry of the Federal legislative list.

In the incentive package announced on April 3, 2020, it was proposed that the holding period for constructed property for capital gains tax purposes under the Ordinance was proposed to be reduced from 4 to 3 years and that no CGT was to be levied where such property is sold in the fourth year and onwards. It was also proposed that the holding period for real estate/open plots was to remain at 8 years with significant reduction in tax rates from fourth year and onwards. However, these incentives were not made part of the Amendment Ordinance.

Finance Bill, 2020 now proposes the uniform basis of taxation of capital gains for all types of immovable properties without any distinction between open plots and constructed properties similar to the position before the revamping done through Finance Act, 2019.

Capital gains on disposal of immovable presently taxable subject to holding periods and that proposed to be taxable vide Finance Bill, 2020 on uniform basis are tabulated hereunder:

**Existing - Taxability of Capital Gains on Disposal of 'Open Plot'**

Sr. No.	Holding Period	Taxability of Gain
1	Within 1 year	100%
2	1 year - 8 years	75%
3	Over 8 years	0%

**Existing - Taxability of Capital Gains on Disposal of 'Constructed Property'**

Sr. No.	Holding Period	Taxability of Gain
1	Within 1 year	100%
2	1 year - 4 years	75%
3	Over 4 years	0%

**Proposed (Uniform Basis) - Taxability of Capital Gains on Disposal of Immovable Property**

Sr. No.	Holding Period	Taxability of Gain
1	Within 1 year	100%
2	1 year - 2 years	75%
3	2 years - 3 years	50%
4	3 years - 4 years	25%
5	Over 4 years	0%

Finance Bill, 2020 proposes to reduce by half, the existing tax rates chargeable on capital gains arising on disposal of immovable properties as under:

Sr. No.	Capital Gain	Tax Rate	
		Existing	Proposed
1	Within Rs. 5 million	5%	2.5%
2	Rs. 5 million - Rs. 10 million	10%	5%
3	Rs. 10 million - Rs. 15 million	15%	7.5%
4	Over Rs. 15 million	20%	10%

**Advance Tax on Sale of Immovable Property**

Presently, adjustable advance tax applicable at the time of sale of immovable property is collectable from the seller or the transferor at the rate of 1% of the gross amount of the consideration received only where the holding period of immovable property disposed of is not more than 5 years.

Finance Bill, 2020 proposes to reduce the period from 5 years to 4 years so as to streamline the collection of advance tax on capital gains, which are proposed to be taxed up to the holding period of 4 years.

**FIRST SCHEDULE – PART I**

**Capital gains on disposal of securities**

The rates of tax for tax year 2020 onwards on capital gains on disposal of shares and other specified securities are proposed to be kept at par with those applicable for tax years 2018, 2019 and 2020.

**FIRST SCHEDULE – Part III**

**Withholding tax on dividend of companies with no tax payable**

Through Finance Act, 2019 the rate of tax was increased to 25% in the case of a person receiving dividend from a company where no tax is payable by such company due to exemption of income or carry forward of business losses or claim of tax credits. However, the tax withholding was prescribed at 15 % in such cases. The Bill proposes to enhance the rate of tax withholding to 25 % in such cases to address this inconsistency.

Whilst providing for withholding tax at 25%, the case of distribution by mutual funds should have been expressly excluded as their standard rate of tax is otherwise 15%.

**Requirement to furnish certificate for reduced rate of tax withholding**

Presently, a reduced rate of tax withholding at 10 per cent is prescribed in case of Profit on debt upto Rs. 500,000. The Bill proposes that the recipient of Profit on Debt should furnish a certificate to the payer in order to avail the benefit of reduced rate of tax withholding.

**Tax withholding on corporate Sukuk holders**

Rate of tax withholding in case of corporate Sukuk holders has been proposed to be enhanced from 15% to 25%.

### ***Tax withholding on 'engineering services'***

The Bill proposes to omit 'engineering services' from the list of service sectors subject to reduced rate of tax withholding at 3 per cent for resident persons.

### ***FIRST SCHEDULE - Part IV***

#### ***Tax withholding on extraction of minerals***

Category of Persons	Rate of tax	
	Existing	Proposed
Whose names are appearing on ATL	Nil	5%
Whose names are not appearing on ATL	5%	10%

### ***SECOND SCHEDULE – Part I***

#### ***Withdrawal from Voluntary Pension Scheme (VPS)***

Presently, exemption is available for receipt of accumulated balance up to 50 per cent from VPS inter alia at the time of retirement. Any receipt in excess of 50 per cent on or after retirement age is taxable at the applicable rate of tax.

The Bill proposes to tax 100 per cent of the receipt from VPS before retirement age and receipt in excess of 50 per cent of the accumulated balance on or after retirement age at the average rate of tax for preceding three tax years as prescribed in sub-section (6) of section 12 of the Ordinance.

Withdrawal in excess of 50 per cent in case of death or disability will continue to be taxed at the applicable rate of tax.

Whilst the provisions of withholding tax under section 156B have been omitted, the liability to withhold tax on withdrawals from VPS has been incorporated in Second Schedule.

#### ***Sale of immovable property to Development REIT Scheme***

Exemption for profits and gains on sale of immovable property to a Developmental REIT Scheme with the object of development and construction of residential buildings has been proposed to be extended to June 30, 2021.

### ***Exemptions for Gwadar Free Zone***

- (a) Exemption for income derived by the following entities and their contractors and sub-contractors has been extended to income from operations in Gwadar Free Zone with effect from June 1, 2020:
  - China Overseas Ports Holding Company Limited,
  - China Overseas Ports Holding Company Pakistan (Private) Limited,
  - Gawadar International Terminal Limited,
  - Gawadar Marine Services Limited and
  - Gawadar Free Zone Company Limited.
- (b) Profit on debt derived by any foreign lender or any local bank having more than 75 per cent shareholding of the Government or the State Bank of Pakistan under a Financing Agreement with the following entities has been proposed to be exempted with effect from June 1, 2020:
  - China Overseas Port Holding Company Pakistan (Private) Limited,
  - Gwadar International Terminals Limited,
  - Gwadar Marine Services Limited, and
  - Gwadar Free Zone Company Limited.

### ***Exemption to Co-Developer of Special Economic Zone***

Currently exemption is available to the following:

- (a) the income derived by a zone enterprise as defined in the SEZ Act, 2012 for a period of ten years starting from the date the developer certifies that the zone enterprise has commenced commercial production; and
- (b) for a period of ten years to a developer of a zone starting from the date of signing of the development agreement in the SEZ as announced by the Federal Government.

The bill proposes to extend the exemption to the co-developer as defined in SEZ Rules, 2013 subject to the condition that the developer certifies and the Special Economic Zone Authority validates that the developer has not claimed exemption and has relinquished his claim in favour of the co-developer.



### ***Income of Federal Government Employees Housing Authority***

The bill proposes exemption for the income derived by the Federal Government Employees Housing Authority for Tax year 2020 and following four tax years.

### ***SECOND SCHEDULE – Part II***

#### ***Tax withholding on Profit on debt to non-resident individuals***

The bill proposes a withholding tax rate of 10% on payment of profit on debt to non-resident individuals on debt instruments issued by the Federal Government under the Public Debt Act, 1944. Such debt instruments must be purchased from bank account maintained abroad, a Non-Resident Rupee Account Repatriable (NRAR) or a foreign currency account maintained with a banking company in Pakistan. The tax deducted is final tax.

Furthermore, the Bill also proposes exemption from applicability of section 236P on cash withdrawal from such NRAR and foreign currency account maintained with a banking company in Pakistan for the purpose of making investment in debt instruments above.

Exemption has also been proposed from registration and filing of income tax return if the non-resident is only deriving Profit on Debt on the afore-mentioned debt instruments.

Also, the provisions of Tenth Schedule are proposed to be inapplicable on withholding tax rate applicable to such profit on debt.

#### ***Reduced rate of withholding tax on supplies of goods to utility stores***

The bill proposes a reduced withholding tax rate of 1.5 per cent on payment against supply of following goods to Utility Stores Corporation of Pakistan by persons other than company:

- |            |               |
|------------|---------------|
| • tea      | • sugar       |
| • spices   | • pulses      |
| • salt     | • wheat flour |
| • dry milk | • ghee        |

Such reduced rate of tax withholding is proposed to be applicable on payments made between April 7, 2020 and September 30, 2020.

The proposed rate of tax withholding is not applicable to payment against supply of tea, spices, salt and dry milk which are sold under a brand name and is also not applicable if rate of

tax withholding already prescribed is lower than 1.5 per cent.

### ***SECOND SCHEDULE – Part IV***

#### ***Withdrawal of various exemptions***

#### ***Tax withholding on purchase of scrap by steel melters and composite steel units***

The bill proposes withdrawal of exemption from provisions of section 153(1)(a) available on payments for purchase of scrap by steel melters, steel re-rollers, composite steel units.

#### ***Exclusion from applicability of minimum tax under section 113***

Presently, exemption from applicability of minimum tax under section 113 is available to all Modarabas registered under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

The Bill proposes to restrict such exemption to Modarabas qualifying for exemption under clause (100) of Part I of the Second Schedule. This means that Modarabas not qualifying for said exemption will remain liable to pay minimum tax.

In addition, the Bill proposes exemption from applicability of minimum tax under section 113 the Federal Government Employees Housing Authority for the tax year 2020 and the following four tax years.

### ***Exemption on medical and testing equipment regarding outbreak of COVID-19***

Through SRO 236(I)/2020 dated March 20, 2020, exemption has been provided from income tax withholding on import of identified medical and testing equipment regarding outbreak of COVID-19. Such exemption was initially provided till June 20, 2020 which has now been proposed to be validated through Finance Bill with an extension till September 30, 2020.

### ***Exemption from income tax withholding on import of pulses***

The Bill proposes to exempt the applicability of provision of section 148 to persons importing pulses between April 7, 2020 and September 30, 2020.

### ***Exemption from applicability of section 153 to certain persons***

The Bill proposes to incorporate the provisions of SRO 586(I)/91 with regard to exemption of section 153 to the following recipients of payments:

- Provincial Government
- a local authority;
- residents of Azad Kashmir executing contracts in Azad Kashmir only and produce a certificate to this effect from the concerned income tax authority;
- persons receiving payments from a company or an association of persons having turnover of fifty million
- rupees or more or from an individual having turnover of fifty million rupees or more exclusively for the supply of agriculture produce including fresh milk, fish and poultry products;
- companies receiving payments for the supply of electricity and gas;
- companies receiving payments for the supply of crude oil;
- hotels and restaurants receiving payments in cash for providing accommodation or food or both; and
- shipping companies and air carriers receiving payments for the supply of passenger tickets and for the cargo charges of goods transported.

### ***Exemption from tax withholding to non-resident Hajj group operators***

The Bill proposes to provide exemption from tax withholding on payment to non-resident Hajj group operators in respect of Hajj operations.

### ***Exemption from tax withholding on banking transactions***

Under the provisions of sections 231A, 231AA and 236P, tax withholding is prescribed on certain banking transactions executed by the persons not appearing on the Active Taxpayers List.

The Bill proposes to render such withholding inapplicable to Pak Rupee Account to the extent of foreign remittance credited in such account.

### ***Exemption from tax withholding on commission***

Through SRO 315(I)/2020, exemption was provided for tax withholding on commission received by a retail branchless banking agent on any amount disbursed by the Ehsaas Emergency Cash Transfer Programme for the period between April 16, 2020 and June 30, 2020. The Bill proposed to extend such exemption till September 30, 2020.

### ***Exemptions provided to the Prime Minister's COVID-19 Pandemic Relief Fund-2020***

The Bill proposes following exemptions for the Prime Minister's COVID-19 Pandemic Relief Fund-2020:

- a. Exemption from total income under clause (66) of Part I of the Second Schedule;
- b. Exemption from applicability of minimum tax under section 113;
- c. Exemption from applicability of tax withholding under section 151 on profit on debt; and
- d. Exemption from applicability of tax withholding under sections 231A, 231AA and 236P on banking transactions.

### ***Seventh Schedule – Banking Companies***

The Bill proposes to provide the applicability of super tax on banking companies for tax year 2021.

### ***Tenth Schedule***

Through Finance Act, 2019, Tenth Schedule was introduced whereby the rate of withholding tax for certain provisions was enhanced by 100% for persons not appearing on ATL. The Bill proposes certain additions and omissions from the Tenth Schedule which are summarized below:

#### ***Exclusions from the applicability of Tenth Schedule:***

<b>Section Reference</b>	<b>Nature of Payment</b>
5	Dividend to non-residents
152(1)	Royalty and Fee for Technical Services to non-residents
152(1AA)	Insurance and re-insurance premium to non-resident persons
152(2)	Certain payments to non-residents not specifically covered

The above amendments are necessitated due to the applicable tax treaty provisions whereby the cap on tax rates for such non-residents result in inapplicability of enhanced withholding tax under the Tenth Schedule.

#### ***Additions to Tenth Schedule:***

<b>Section Reference</b>	<b>Nature of Payment</b>
236B	Purchase of air tickets
236V	Extraction of minerals

## SALES TAX

### **CNIC ON TAX INVOICES**

Through Finance Act 2019, input tax attributable to sales made to unregistered persons without having CNIC particulars was made non-adjustable for a transaction exceeding Rs 50,000. The said threshold is proposed to be enhanced to Rs 100,000.

### **INPUT TAX RESTRICTION ON SUPPLIES TO UNREGISTERED PERSONS**

A manufacturer or producer making supplies to unregistered persons where value of such supplies is in excess of Rs 10 million in a month and Rs 100 million in a financial year are not allowed to claim input tax proportionate to such excess amount of supplies. This provision is now proposed to be extended to all registered persons.

### **PRESCRIPTION OF GENERIC WASTAGE QUANTUM / PERCENTAGE FOR INPUT TAX**

The input tax is allowable in full if the taxpayer substantiates that the same has been incurred in respect of taxable supplies. There is no prescription of any quantum for determination of wastage in that process.

A restrictive covenant has been proposed in the section whereby FBR can prescribe the quantum of wastage in that particular process for allowing the input tax. It is expected that the wastage percentages will be prescribed for different industries, such as Electricity transmission and distribution companies, OMCs, Gas supply companies and any other sector where quantum of wastage can be reasonably ascertained, etc.

Similar amendment has also been made in Federal Excise Act

### **ACTIVE TAXPAYER**

Under the present law, any taxpayer whose account has been 'blocked' by FBR is not considered as Active taxpayer. There was no prescription of determination of process where a taxpayer's account can be treated as blocked. The proposed amendment aims to omit this basis for determination of active taxpayer status.

### **VALUE OF SUPPLY**

Through Finance Act, 2019, Value of Supply in case of supply of electricity by an independent power producer was inserted as the amount received on account of energy purchase price only; and the amount received on account of capacity purchase price, energy purchase price premium, excess bonus, supplemental charges etc. shall not be included in the value of supply. It has now been proposed to extend the said value of supply of electricity to WAPDA with effect from July 1, 2019, bringing it at par with Independent Power Producers.

Further, value of supply in case of registered persons engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing has been restricted to difference between sale and purchase price of the vehicles.

### **VALUE ADDITION TAX ON IMPORT BY MANUFACTURERS**

Under the present regime, a value addition sales tax at the rate of 3% is collected on certain imports. By way of a positive amendment in the law, it is proposed that such tax will not apply on import of raw material and intermediary goods by a manufacturer for in-house consumption.

The practical aspect of this provision need to be prescribed for enabling the Customs authorities to identify the goods constituting raw material and intermediary goods, as the case may be.

### **WITHHOLDING SALES TAX ON SERVICES**

The scope of withholding of sales tax under section 3 has been extended to purchase of services by withholding agents specified under Eleventh Schedule.

Editorial changes are proposed to Eleventh Schedule for clarity and restricting lower withholding of sales tax rates to Active taxpayers instead of registered persons.

### **CNIC REQUIREMENT EXTENDED TO SALES TAX ON SERVICES**

Pro-rata disallowance of input tax credit attributable to supply made to unregistered persons, for which sales invoices do not bear the CNIC number of the buyer is now proposed to be extended to rendering of services also.

As the sales tax on services by the Federal government is restricted to Islamabad Capital Territory therefore this proposal will only apply to that extent. However, it is expected that the Provincial Governments may make similar amendments in their respective laws.

### **POWER OF TAX AUTHORITIES TO MODIFY ORDERS**

A new section has been proposed to empower the Commissioner in any assessment pending before them to follow a question of law decided by a High Court or the Appellate Tribunal in the case of a particular registered person on or after July 1, 1990 regardless of the fact that the Commissioner may have filed an appeal or reference against the order of the High Court or Tribunal as the case may be, he would follow the said decision.

In the event the decision of the High Court or Tribunal is reversed or modified, the Commissioner may notwithstanding the expiry of the limitation period prescribed for making any assessment or order, within a period of one year from receipt of the decision modify the assessment or order. Parallel amendment is also proposed in FE Act, 2005.

The above provisions are already part of the Income tax law.

### **PENALTIES**

In respect of failure to integrate business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with FBR or its computerized systems, it is proposed to:

- reduce the grace period of six months before sealing of premises to two months; and
- keep the premises sealed till such time as the business is integrated.

Certain penalties are proposed for not providing real time access to information and data bases by certain agencies and utility companies.

### **ELECTRONIC SERVICE OF ORDERS, DECISIONS ETC.**

It is proposed to allow electronic service of orders, decisions etc to all Registered persons. Similar amendment has been proposed in Federal Excise Act, 2005.

### **REDUCTION IN SALES TAX RATE FOR INTEGRATED RETAIL OUTLETS**

Sales tax on supplies made by integrated retail outlets is proposed to be reduced from 14% to 12%.

### **SCHEDULES**

The amendments made through Tax Laws (Amendment) Ordinance, 2019 in Fifth and Sixth Schedules and which have lapsed on six months are again proposed to be inserted with effect from June 1, 2020.

Exemption under Serial 103 of Table 1 of Sixth Schedule to import and supply of certain ships and floating crafts is proposed to be extended till 2023.

Exemption is proposed to import and supplies dietetic foods intended for consumption by children suffering from inherent metabolic disorder subject to certain conditions.

Exemption for certain Parts and components for manufacturing LED lights is proposed to be harmonized with corresponding Customs laws.

Sales tax on import and supply of Potassium Chlorate is proposed to be enhanced from Rs 70 per Kg to Rs 80 per Kg.

Sales tax on certain smart phone categories is proposed to be enhanced under the Ninth Schedule.

## FEDERAL EXCISE DUTY

### **SEIZURE OF NON-DUTY PAID GOODS**

The scope of seizure of non-duty paid goods is extended to all products subject to FED besides cigarettes and beverages.

### **SELECTION FOR AUDIT**

Section 46(10), introduced through Finance Act, 2019, is proposed to be omitted, removing restrictions on one audit in three years of registered persons.

### **TOBACCO AND TOBACCO SUBSTITUTES**

At present, FED is levied on cigars, cheroots, cigarillos and imported cigarettes at 65% of 'retail price'.

The term "retail price" has been defined in section 12(4) of the FE Act as a price (inclusive of excise duty, charges and taxes other than sales tax) fixed by the manufacturer of goods subject to excise duty on retail price, or by the importer in case of imported cigarettes, at which any particular brand or variety of such goods should be sold to the general body of consumers.

The practical application of the above basis is that if the retail price is Rs 100 then FED on such product will be Rs 65 whereas balance Rs 35 will be the consideration of registered person. This effectively translates into 185% of price (exclusive of FED).

It is proposed to increase the rate of FED from 65% to 100% of retail price. If the retail price has to be taken as inclusive of FED as envisaged in section 12(4) above, it would mean that the entire amount will have to be paid to the Government as FED with no consideration for the seller. It, therefore, appears that the Government intended to apply such rate on price (exclusive of FED) and therefore, the desired increase in duty can be achieved if the rate is fixed at 76% of retail price as against the current rate of 65%.

This matter, therefore, needs reconsideration by the federal government before the bill is finalized.

### **INTRODUCTION OF NEW DUTIABLE GOODS**

Through the Finance Bill, the Government has introduced new dutiable goods subject to FED as tabulated below:

<b>Description</b>	<b>HS Code</b>	<b>Proposed duty</b>
6a. Caffeinated energy drinks	2202.1010 2202.9900	25% of Retail Price
8a. E-liquids by whatsoever name called, for electric cigarette kits	Respective heading	Rs 10 per ML
55c. Imported double cabin (4x4) pick-up vehicles	8704.2190 8704.3190	25% ad valorem
55d. Locally manufactured double cabin (4x4) pick-up vehicles	8704.2190 8704.3190	7.5% ad valorem

### **REDUCTION OF DUTY ON CEMENT**

Duty on cement is proposed to be reduced by 12.5% from Rs 2 to Rs 1.75 per kilogram implying a decrease of Rs 12.5 per standard bag of 50 kilogram.

### **INCREASE IN FED FOR FILTER ROD FOR CIGARATTES**

The rate of excise duty is proposed to be increased from Rs 0.75 per filter rod to Rs 1 per filter rod.



## CUSTOMS ACT

### **ADVANCE RULING**

The concept of advance ruling presently there in the Customs Act, is proposed to be revamped. Presently, the mechanism is relevant only in respect of classification for assessment of duties on goods intended to be imported/ exported.

It is proposed to enhance the meaning and scope of advance ruling to include the determination of classification, origin, the applicability of particular relief/ exemption on goods and any other matter as FBR may specify.

Further, an application is proposed to be prescribed and that ruling shall be binding on the applicant and custom collectorates for such period as may be prescribed in the Rules unless there is a change in law or facts or relevant circumstances in which the advance ruling was pronounced.

### **DEFINITION OF SMUGGLE**

It has been proposed to broaden the definition of 'smuggle' to include aiders and abettors i.e. persons who are concerned in carrying, transporting, removing, depositing, harbouring, keeping and concealing of smuggled goods.

The status of person being final consumer for such goods needs to be examined as such persons may be keeping the same as a genuine buyer.

### **ASSISTANCE TO CUSTOM OFFICERS**

In addition to other security forces/ provincial and federal authorities, it has been proposed to empower and bound 'Border Military Police', a new security agency, to assist the custom officers in exercise of their function under the Customs Act.

### **CONFISCATION OF GOODS**

The custom officer, not below the rank of an Assistant Collector, is empowered to confiscate goods which are being imported or exported in violation of section 15 or 16 of the Customs Act.

It has been proposed to limit the period of detention up to fifteen days extendable to another fifteen days when so authorised by Chief Collector or Director General.

### **VALIDATION OF NOTIFICATIONS**

The validity of exemption notifications issued on or after July 1, 2016 are proposed to be extended to next fiscal year i.e. upto June 2021.

### **MINIMAL DUTIES**

The provisions of section 19C provide that in case aggregate amount of duties and taxes on goods declaration does not exceed one hundred rupees, the same shall not be demanded.

Such threshold is now proposed to be laid out in terms of value of goods (at Rs 5,000) instead of duties and taxes.

### **REPAYMENT OF DUTY**

FBR is empowered to repay 'custom duties' on certain goods meant for exportation or for supplies against international tenders by a special order passed under section 21 of the Customs Act. It has been proposed to include in scope of 'repayment' all duties leviable under sections 18 and 18A of the Customs Act.

### **MUTILATION OR SCRAPPING OF GOODS**

Certain goods as notified by FBR may be mutilated or scrapped in the prescribed manner and the same become chargeable to duty at such rates as is applicable as these had been imported in such mutilated/ scrapped form.

It is now proposed that the goods imported in new condition shall not be allowed to be scrapped or mutilated and thus will remain chargeable to duties and taxes as new goods. The proposed amendment seeks to counter evasion of applicable duties.

## **FISCAL FRAUD**

It has been proposed to broaden the scope of provisions relating to 'fiscal fraud' by providing that a person shall also be guilty of 'offence' in case he declares value of goods which is significantly higher or lower than value actually paid or payable or any person who aids, abets or connives in such act.

Furthermore, it has also been proposed that a person who is guilty of offence under this section shall still be served with notice within stipulated time period for penal action even if no Revenue is involved. Presently, proceedings under this section can only be initiated in case actions of a person have resulted into Revenue loss.

## **INSPECTION OF GOODS DECLARATION**

An officer of Customs is empowered to reassess duty, taxes or other charges leviable on goods on its own motion in case it is found that goods declaration contains incorrect statement or information. However, it is now proposed that notice for reassessment shall be served to the importer through Customs Computerized Systems and, if he desires so, opportunity of being heard shall be provided to him.

## **FALSE DECLARATION BY PASSENGER OR CREW OF BAGGAGE**

Presently, in case a passenger or crew of baggage makes false declaration with respect to contents of baggage, the items recovered are treated as smuggled goods and penalized accordingly.

It is now proposed to narrow down the scope of such deemed smuggled goods to the extent of currency, gold, precious metals or stones, with other mis-declared goods liable to penalties for misdeclaration.

## **OFFENCES AND PENALTIES**

Penalties provided for person who smuggles goods, currency, gold, silver, platinum or precious stones in any form has been proposed to be restructured in the following manner:

<b>Goods (other than currency and precious metals) smuggled into or out of Pakistan</b>		
<b>Value</b>	<b>Penalty not exceeding</b>	<b>Imprisonment upon conviction</b>
PKR 150,001 to 3,000,000	Value of goods	Upto two years
PKR 3,000,001 to 5,000,000	Two times the value of goods	Two to three years
PKR 5,000,001 to 7,500,000	Three times the value of goods	Two and half to five years
USD 7,500,001 to 10,000,000	Four times the value of goods	Three to ten years
Exceeding 10,000,000*	Five times the value of goods	Five to fourteen years

\* In addition to prescribed penalty, the whole or any part of moveable or immovable assets of the person shall also be liable to forfeiture in accordance with section 187 of the Customs Act.

<b>Smuggling of currency, gold, silver, platinum or precious stones</b>		
<b>Value</b>	<b>Penalty not exceeding</b>	<b>Imprisonment upon conviction</b>
Upto USD 10,000 or equivalent in value	Value of goods	Upto two years
USD 10,001 to 20,000 or equivalent in value	Two times the value of goods	Two to three years
USD 20,001 to 50,000 or equivalent in value	Three times the value of goods	Two and half to five years
USD 50,001 to 100,000 or equivalent in value	Four times the value of goods	Three to ten years
Exceeding USD 100,000 or equivalent in value	Five times the value of goods	Five to fourteen years

\* In addition to prescribed penalty, the whole or any part of moveable or immovable assets of the person shall also be liable to forfeiture in accordance with section 187 of the Customs Act.

## **TIME LIMITATION FOR PROCEEDINGS RELATING TO SMUGGLING**

In general, the law requires all the proceedings to be concluded within 90 days of issuance of show cause notice or within such period extended by the Collector (not exceeding sixty days), the proceeding relating to smuggling are proposed to be decided within the period of thirty days.



### **BURDEN OF PROOF IN RESPECT OF SOURCE OF FINANCING OF PROPERTY**

Section 187 of the Customs Act prescribes the burden of proof on a person alleged to have committed an offence under the Customs Act with respect to authority/ permit/license for possession of goods.

An apparently unrelated subject has been addressed by proposing a proviso in section 187. Under this proviso, it is proposed that a person shall also bear the burden of proof that any property owned by him (in his name or someone else name) was not acquired from the proceeds of crime.

The apparent objective of the aforesaid amendment is to bring in the ambit of Customs law the use of proceeds of smuggling under the Customs Act for acquisition of any property.

It will therefore have to be examined as to whether or not burden of proof in relation to property owned can be prescribed under the Customs Act which is restricted to levy of duty on import and export of goods.

### **APPELLATE PROCEEDINGS RELATING TO SMUGGLING**

Presently, Appellate Tribunal ('Tribunal') is required to decide the appeals filed under the Customs Act within sixty days of filing of the appeal or within such period as determined by the Tribunal (for reasons to be recorded).

It is now proposed that appeals relating to offence of smuggling are decided within the period of thirty days of filing of the appeal. There is a likelihood that appellate authorities may consider this time limitation as directory and not mandatory.

### **SHARE OF OWNER/ IMPORTER IN PROCEEDS FROM SALE OF GOODS**

At present, the proceeds from sale of goods (other than confiscated goods) under any of the provisions of the Customs Act are to be applied for related expenditures and taxes/ duties in the prescribed manner and the balance, if any, is to be paid to the owner of goods.

It is proposed that where goods declaration has been filed, the share of importer/owner in sale proceeds shall not exceed the declared value of goods.

### **GRANT AND BENEFITS TO THE AUTHORIZED ECONOMIC OPERATORS**

Through Finance Act 2018, the authorized economic operator program was introduced to provide facilitation relating to secure supply chains of imported and exported goods through simplified procedures with regard to applicable regulatory controls.

It has been proposed that FBR may grant benefits to the authorized economic operators in a manner to be prescribed in Rules including:

- (a) laying down any procedure or mode for collection of custom duties, fee, surcharge penalty or any other levy under this act or any other law;
- (b) deferring collection of custom duties, fee, surcharge penalty or any other levy either in whole or in part; and
- (c) condoning or substituting whole or part of bank guarantee or pay order of scheduled bank required under this Act with any other financial instrument as deemed appropriate.

### **FIRST SCHEDULE TO THE CUSTOMS ACT/CUSTOMS TARIFF**

- Customs duty on specified imports made for construction, development and operation of 'Gwadar port and Free Zone Area' is presently leviable @ 0%, subject to certain conditions / limitations. Following amendments are proposed with respect thereto (with applicability from June 1<sup>st</sup> 2020):
  - Import of equipment/ materials by concession holders, its operator companies and their contractors/sub- contractors to now specifically include following operating entities & their contractors / subcontractors within the scope thereof:
    - M/s Gawadar International Terminals Limited; and
    - M/s Gawadar Marine Services Limited;

- Presently, ship bunker oils imported by concession holders for supply of fuel/lubricants to ships used in the Port only, enjoy the subject concession. Now the same is proposed to cover all visiting ships including all local/ foreign/ fishing vessels;
- All the imports made for port related businesses upto a specified period, presently enjoy this concession, now it is proposed to be made applicable (w.e.f July 1, 2016) to only certain specified categories of businesses.
- Customs duty rates for 40 raw materials used as industrial inputs have been reduced in order to promote the related sectors.
- In terms of the National Tariff policy 2019, customs duty on 90 Tariff lines have been rationalized with rates reduced from 11% to 3% & 0%.
- Customs duty on import of the following items has been exempted:
  - diagnostic kits for HIV, Hepatitis, Cancer and COVID-19 patients;
  - dietetic foods for children with metabolic disorders, subject to certain conditions; and
  - goods imported by the foreign airlines under Air Services Agreements signed by Government of Pakistan with other countries on the basis of reciprocity and duly concurred by FBR.

### **FIFTH SCHEDULE TO THE CUSTOMS ACT**

#### ***Capital Goods***

Scope of 'capital goods' defined in the Fifth Schedule is proposed to be enhanced to also include plant machinery, equipment, spares and accessories required for use in IT sector, storage, communication and infrastructure development of Special Economic Zones by Zone Developer.

### ***Reduction/Concession in Customs Duty***

Customs duty leviable on the import of following categories of items is proposed to be made subject to 0%, subject to certain conditions:

- Air-craft engines for use in aircraft and trainer aircrafts;
- Skimmed milk powder, Chickpeas, Soyabean oil, Palm Olein, Hydrogenated vegetable fats, Malto Dextrins, Premixes of vitamins and minerals, Emulsifier and Antioxidant, if imported by manufacturers of Ready to Use Supplementary Foods (RUSF), duly authorized by United Nations World Food Program and subject to annual quota Determination by Input Output Co-efficient Organization (IOCO).
- Specified machinery, equipment and other project related items for setting up of Submarine Cable Landing stations, if imported by Internet Service providers registered under the Sales Tax Act 1990, duly certified by the Ministry of IT & Telecommunication and PTA, and subject to annual quota determination by the IOCO.
- Meglumine antimonite – a life-saving drug for treatment of leishmaniasis;

Rates of customs duty in case of the following have also been reduced:

<b>Items</b>	<b>Rate %</b>	
	<b>Old</b>	<b>New</b>
Coils of Aluminum alloys and Aluminum lids.	5	0
Glass board for manufacturing TV panels.	10	0

- Following new concessions have been proposed on import of raw materials by various manufacturers registered under the Sales Tax Act, 1990, on the condition of approval of related quota by IOCO:

<b>Description</b>	<b>Proposed Rate</b>
Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers – imported by manufacturers of Butyl Acetate.	5%

<b>Description</b>	<b>Proposed Rate</b>
Semi-finished products of Iron or non- alloy steel – imported by manufacturers of Wire Rods.	5%
Plasticised (Poly Vinyl Chloride) – imported by manufacturers of disposable syringes and saline infusion sets.	0%
Other unsaturated Polyesters – imported by manufacturers of buttons.	0%
Other saturated Polyesters – imported by manufacturers of interlining/buckram.	5%
Other Electric Conductors exceeding 32000 Volts – if imported by manufacturers of transformers.	11%

### **ENHANCEMENT IN SCOPE / AVAILABILITY OF CONCESSION / EXEMPTION**

The Scope of exemptions/concession available on certain items (subject to certain conditions) is proposed to be enhanced as follows:

- Parts, Components and inputs for manufacturing of LED lights (subject to customs duty @ 0%) to also include:
  - Pickling preparations for metal surfaces; soldering brazing or welding powders and pastes consisting of metal and other materials; and
  - Poly Butylene Terephthalate.
- Craft paper (subject to 15% customs duty) – to also include paper classifiable under PCT Heading 4804.36900.
- Rate of 0% customs duty on import of Paper (presently available to Government/ approved Nashiran-e-Quran) also to apply to those by Nashiran-e-Quran who do not have any in-house printing facility, subject fulfilment of various conditions.
- Date of exemption from customs duty on import, granted in respect of the following, proposed to be extended:
  - Plant machinery and equipment imported for setting up industries in erstwhile Federally Administered Tribal Areas, presently available upto June 30, 2020 – up till June 30, 2023.

- Ships and other floating crafts including tugs, survey vessels and other specialized crafts purchased or bare boat chartered by Pakistani entity and flying Pakistani flag presently available upto year 2020 – up till 2030.

### **REGULATORY DUTY**

Regulatory duty is proposed to be rationalized/exempted on Import of:

- Hot Rolled Coils of Iron & Steel (classifiable under PCT Headings 7208, 7225 & 7226);
- Machinery, equipment and other project related items for setting up of submarine cable landing stations;
- Raw materials by manufacturers of Wire Rod;
- Imported items which are locally manufactured; and
- Certain items prone to smuggling.

### **ADDITIONAL CUSTOMS DUTY**

Additional Customs Duty is proposed to be exempted on import of various items e.g.:

- items on those tariff lines which are now subject to customs duty @ 0%.
- raw materials by food packaging industry.

Rate of the subject duty is also proposed to be reduced on import of Palm Stearin used in Soap manufacturing industry.

## OTHER LAWS

### ANTI-DUMPING DUTIES ACT

#### *Provisional release of goods*

Through the Finance Bill, it has been proposed that in case the determination of anti-dumping duty, preliminary or final, is stayed by competent Court, the goods may provisionally be released subject to provision of security by importer in the form of 'bank guarantee' or 'pay order' along with indemnity bond equivalent to amount of duty involved, which may be encashed by the Custom Authorities in case levy is upheld by Court and the duty is not settled by importer.

### PUBLIC FINANCE MANAGEMENT ACT, 2019

The Public Finance Management Act, 2019 (the Act) was enacted through finance Act, 2019. The Act was promulgated to strengthen management of public finances with the view to improving definition and implementation of fiscal policy for better macroeconomic management, to clarify institutional responsibilities related to financial management, and to strengthen budgetary management.

In addition to consolidating other rules and practices relating to budgetary processes, the Act also introduced new requirements in respect of financial management e.g.:

- Approval by the Federal Government of a strategy paper containing quantified macroeconomic and fiscal projections for the medium-term and its publication on the web-site,
- Inclusion, with the annual budget statement, of:
  - o comparative analysis of amounts in respect of each demand for grant for the ensuing year, latest estimate for the outgoing year and actual expenditure for the previous year,
  - o a statement of contingent liabilities of the Federal Government,
  - o a statement of fiscal risks,
  - o estimated tax expenditure i.e. the revenue which Government foregoes through the provisions of tax laws that allows deductions, exclusions or exceptions from the taxpayer's taxable expenditure income or investment, deferral of a tax liability or preferential tax rates, and
  - o a medium-term performance-based budget, including policy and goals, past and future expenditure, outputs and outcomes and related performance indicators and targets,
- In respect of Public Sector Development Projects (PSDPs), their classification between core projects, to be designated by the Planning Commission, and other sectoral projects undertaken by specific sectors, Ministries and Divisions, and making of related rules,
- Separate budgetary provisions in respect of maintenance of public assets and using all public assets for earning maximum return,
- Provisions for making policies and rules for government's cash management and single treasury account,
- Placing mid-year budget development review report before the National Assembly (NA),
- Starting from financial year 2020-21, placing before the NA (i) budget and expenditure by outputs and (ii) planned and delivered key performance targets, and

- Classification of public entities between
  - (i) Government's Business Enterprises and
  - (ii) other autonomous entities, with Finance Division to notify policy framework and guidelines for their financial management.

Through the Finance Bill, following major amendments are proposed:

- 1- A new definition 'non-tax revenue' to be introduced, which is to mean revenues received by the Government in terms of clause (1) of Article 78 of the Constitution (i.e. those credited to Federal Consolidated Fund) and the recurring income of the Government from investments and provision of services, other than those mentioned in clause (3) of Article 160 (i.e. other than taxes raised under the authority of Parliament).
- 2- Non-tax revenue is to be levied and charged in accordance with the provisions of relevant laws. In case of public entities (i.e. an entity being a board, commission, company, corporation, trust or other fund or account established by or under any law which is fully or substantially funded either from the Federal Consolidated Fund or by way of taxes, levies, duties or other public monies, and which has been declared by the Federal Government as a 'public entity' for the purposes of the Act), non-tax revenue comprising of the following to be paid as first charge on gross revenues or profits:
  - i- mark up on loans lent by the Government, as per the amortization schedule attached with the financing agreement,
  - ii- dividend against Government's equity investments as declared by the respective board of directors out of accrued profits of the entity,
  - iii- surplus profits as per provisions of relevant laws, and
  - iv- any other amount owed to the Government as accrued.

- 3- Through overriding provisions, late payment surcharge, being an amount equal to monthly weighted financing cost of Government's domestic borrowings, is to be levied on unpaid non-tax revenue during the period of default, with Finance Division to prescribe procedure for levy and collection of such surcharge.
- 4- In case the amount of non-tax revenue and late payment surcharge levied is not paid within ninety days of having been due, Finance Division, in consultation with the concerned Division, to refer the case to the Commissioner (Inland Revenue) concerned as if it were an arrear of income tax, for recovery under the Income Tax Ordinance, 2001 and deposit into the Federal Consolidated Fund.
- 5- For overall policy making, setting scope and standards, approving internal audit manuals and charter of internal audit and monitoring the overall effectiveness of internal audit function for the Government institutions, an internal audit policy board comprising of the following to be made:
  - a- Secretary, Finance Division (Chairman)
  - b- Controller General of Accounts (Member)
  - c- Deputy Auditor General (Member)
  - d- Additional Secretary, Finance Division (Member and Secretary)
  - e- One representative from a professional organization of Pakistan (Member)



## PETROLEUM PRODUCTS SURCHARGE ORDINANCE, 1961

In accordance with section 3A of the said Ordinance, petroleum levy is collected on imported petroleum products and locally produced petroleum products, in the same manner as duty / excise is payable under the Customs Act, 1969 and Federal Excise Act, 2005 respectively.

Petroleum levy on locally produced petroleum is proposed to be collected in the same manner as the collection of general sales tax payable under the Sales Tax Act, 1990 in addition to the manner of collection of federal excise duty under the Federal Excise Act, 2005.

It is also proposed that the provisions of Sales Tax Act, 1990 in addition to the provisions of Customs Act, 1969 and Federal Excise Act, 2005 shall, so far as may be, apply to the levy, collection and refund of the petroleum levy.

The aforesaid proposed amendment will result in charge and payment of the levy in line with the incidence of Sales Tax. Accordingly, the manner of charge and payment of levy as prescribed in the respective regulations have been made inapplicable.

## LUXURY TAX ON RESIDENTIAL AND FARM HOUSES FOR ISLAMABAD

A luxury tax has been proposed on residential houses and farmhouses within the Islamabad Capital Territory as per tables below:

Self-occupied property of widows is exempt from levy of this tax.

**Table 1**

Sr. No. (1)	Category of residential house (2)	Rate of tax in rupees (3)
1.	two kanal to four kanal with covered area of more than 6000 Square feet.	100,000 per kanal
2.	Five kanal or above with covered area of more than eight thousand square feet.	200,000 per kanal

**Table 2**

S. No. (1)	Category of Farm house (2)	Rate of tax in rupees (3)
1.	Four Kanal including area under farming	
	(i) A farm house with covered area between 5000 to 7000 square feet	25 per square foot of the covered area per annum
	(ii) A farm house with covered area between 7001 to 10,000 square feet	40 per square foot of the covered area per annum
	(iii) A farm house with covered area of more than 10,000 square feet	50 per square foot of the covered area per annum
2.	More than Four Kanal including area under farming	
	(i) A farm house with covered area between 5000 to 7000 square feet	60 per square foot of the covered area per annum
	(ii) A farm house with covered area between 7001 to 10,000 square feet	70 per square foot of the covered area per annum
	(iii) A farm house with covered area of more than 10,000 square feet	80 per square foot of the covered area per annum