

*February 16, 2023*

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***Memorandum on  
the Finance (Supplementary) Bill, 2023***

## **A. F. FERGUSON & CO.**

### **FINANCE (SUPPLEMENTARY) BILL, 2023**

For the revival of IMF programme, the Federal Government initiated the process of taxation measures through issuance of two SROs on February 14, 2023 and thereafter presenting Finance (Supplementary) Bill, 2023 in both the Houses on February 15, 2023.

Salient features of the taxation measures are as under:

1. Enhancing the general sales rate from 17% to 18% on goods imported or locally sold, other than those subject to sales tax at retail price (Third Schedule items). The relevant SRO seems to be applicable from February 14, 2023.
2. FED on cigarettes has also been increased through an SRO, applicable from February 14, 2023.
3. The Finance (Supplementary) Bill, 2023 besides ratification of the above, has inter alia also proposed to:
  - (i) Increase the general sales tax rate from 17% to 18% for Third Schedule items.
  - (ii) Increase sales tax on locally produced coal and imported mobile phones (of certain categories).
  - (iii) Increase / impose FED on:
    - aerated waters from 13% to 20%
    - cement from Rs 1.5 / kg to Rs 2/ kg
    - sugary drinks at 10%
4. Imposing adjustable withholding income tax on sale / purchase of shares of unlisted companies at the rate of 10% of FMV of such shares.
5. Reintroducing advance income tax on functions and gatherings.

Taxation measures proposed through Finance (Supplementary) Bill, 2023, shall come into force on the next day of assent given to the Act by the President of Islamic Republic of Pakistan.

This memorandum can also be accessed on our website <https://www.pwc.com/pk>

February 16, 2023

## INCOME TAX

### ***CAPITAL GAIN ON DISPOSAL OF SECURITIES OTHER THAN THROUGH STOCK EXCHANGE / NCCPL***

Capital gains arising on disposal of 'securities', which inter alia include shares of a listed company, vouchers of PTC, instruments of redeemable capital, units of mutual funds, modaraba certificates, debt securities and derivatives, are taxed as per the applicable slab rates, depending upon nature of instrument, acquisition date and holding period. Collection of tax on transactions settled through NCCPL is generally undertaken by NCCPL through a specified mechanism.

It is proposed that capital gains arising on disposal of 'securities' which is executed otherwise through stock exchange and are not settled through NCCPL, shall be taxed under section 37 of the Ordinance at applicable slab rates for non-corporate shareholders and corporate tax rate for corporate shareholders, as the case maybe.

Bare reading of the proposed amendments suggests that the taxation under section 37A would apply where the securities are either (a) executed through stock exchange; OR (b) settled through NCCPL. In case both the conditions specified in (a) and (b) do not apply, then capital gains would be taxable under section 37 of the Ordinance.

It appears that the intention of the proposed amendment is to merely exclude off-market transactions not settled through NCCPL from the scope of section 37A, which shall be subjected to withholding provisions being introduced under section 37 of the Ordinance as discussed below. However, if the Bill is passed in the manner proposed, capital gains arising on disposal of open-ended mutual funds and unlisted REITs would also be taxed under section 37 as their units are neither traded through stock exchange nor the transaction is settled through NCCPL. We expect that appropriate amendments would be made to bring the proposed amendments in line with the intended objective.

### ***ADVANCE TAX ON PURCHASE OF SHARES IN A COMPANY***

Consideration paid for acquisition of shares in a company, other than securities taxable under section 37A, is presently not subject to any withholding income tax except in certain cases of non-resident sellers where general withholding tax provisions of section 152(2) are applicable.

It is now proposed that the buyer should withhold and deposit adjustable advance tax at the rate of 10% of the fair market value (FMV) of shares being acquired. Value of such shares is proposed to be the FMV as prescribed for indirect transfer of Pakistan assets provided for under section 101A of the Ordinance, without reduction of liabilities. For the purpose of determination of FMV under section 101A, a specific Rule 19H is prescribed in Income Tax Rules 2002 which is expected to be followed for the purpose of this newly introduced withholding tax provision.

The proposed enabling provisions in this respect are:

- Reporting of the disposal by the seller to the Commissioner Inland Revenue, within 30 days of the disposal.
- Exemption / reduced rate order by the CIR on an application from the seller.
- Application of the provisions relating to recovery, prosecution, penalty and default surcharge in case of non-compliance.

We suggest that certain threshold may be provided for application of the above withholding provisions.

***COLLECTION OF ADVANCE TAX ON FUNCTIONS AND GATHERINGS***

Advance tax on function and gatherings has been re-introduced, which was earlier omitted through Finance Act, 2020. The re-introduced provision provides for collection of adjustable advance tax at the rate of 10% of total amount of bill, including bill for food, services or any other facility whether arranged by the withholding agent or not.

The owner, lease-holder, operator / manager of marriage hall, marquee, hotel, restaurant, commercial lawn, club, community place etc. are proposed as withholding agent for the purpose of this provision.

The tax collection will be made from the person arranging the functions and gatherings related to wedding, seminar, workshop, session, exhibition, concert, show, party or any other gathering for such purpose.

## SALES TAX

### **INCREASE IN TAX RATE FROM 17% TO 18%**

The standard rate of sales tax has been increased from 17% to 18% through SRO 179(I)/2023 dated February 14, 2023. The amendment through SRO 179 is not applicable on goods subject to sales tax at retail price as specified in the Third Schedule to the Sales Tax Act, 1990. The SRO is dated February 14, 2023, in view of which it seems that enhanced rate is applicable from February 14, 2023. However, in view of the fact that the SRO was made public on February 15, 2023, keeping in view the principles laid down by the Hon'ble Supreme Court of Pakistan in its judgement reported as 2022 PTD 232, the applicability of SRO from February 14, 2023 can be questioned. Furthermore, the legitimacy of increase of rate through SRO can also be questioned in view of various judgments which have ruled that power to levy tax remains with the Parliament.

The Finance (Supplementary) Bill, 2023 besides incorporating the effect of SRO 179, has also proposed to increase sales tax rate from 17% to 18% for the goods specified under the Third Schedule which will be effective from the date on which the Act takes into effect.

It has further been proposed that Federal Government may by notification in the Official Gazette, charge sales tax, on goods specified in Third Schedule, on such higher rates as may be specified. It is expected that a separate notification in this respect will be issued later for certain goods specified in Third Schedule.

### **AMENDMENT IN EIGHTH SCHEDULE (GOODS TAXABLE AT REDUCED RATE)**

Through Finance (Supplementary) Bill, 2023, reduced sales tax rates specified for the following are also proposed to be increased as under:

Description	Existing	Proposed
Locally produced coal (Sr. No. 47)	Rs 700 per metric tonne or 17% ad valorem, whichever is higher	Rs 700 per metric tonne or <b>18%</b> ad valorem, whichever is higher
Potassium Chlorate (KCLO <sub>3</sub> ) (Sr. No. 56)	17% along with Rs 60 per KG	<b>18%</b> along with Rs 60 per KG

### **AMENDMENT IN NINTH SCHEDULE**

Through Finance (Supplementary) Bill, 2023, sales tax applicable on import of cellular mobile phones in CBU form is proposed to be increased as under:

Value	Rate %	
	Existing	Proposed
(i) Exceeding US\$ 200 but not exceeding US\$ 350	17	18
(ii) Exceeding US\$ 350 but not exceeding US\$ 500	17	18
(iii) Exceeding US\$ 500	17	25

## FEDERAL EXCISE DUTY

### FIRST SCHEDULE

#### AERATED WATERS

The Bill proposes to increase the rate of FED as applicable on different categories of aerated waters as under:

S.No.	Description of Goods	Tarif Heading	Rate of Federal Excise Duty	
			Existing	Proposed
4	Aerated waters	2201.1020	Thirteen per cent of retail price	Twenty per cent of retail price
5	Aerated waters, containing added sugar or other sweetening matter or flavored	2201.1010	Thirteen per cent of retail price	Twenty per cent of retail price
6	Aerated waters if manufactured wholly from juices or pulp of vegetables, food grains or fruits and which do not contain any other ingredient, indigenous or imported, other than sugar, coloring materials, preservatives or additives in quantities prescribed under the West Pakistan Pure Food Rules, 1965.	Respective headings	Thirteen per cent of retail price	Twenty per cent of retail price

#### LOCALLY MANUFACTURED CIGARETTES

The Bill proposes to increase the rate of FED on locally produced cigarettes as under:

S.No.	Description of Goods	Tarif Heading	Rate of Federal Excise Duty		
			Existing	Proposed	
9	Locally produced cigarettes where on-pack printed retail price exceeds:	24.02	Rupees 6,500 per thousand cigarettes	Rupees 16,500 per thousand cigarettes	
	<b>Existing threshold</b>				<b>Proposed threshold</b>
	Rs 6,660 per thousand cigarettes				Rs 9,000 per thousand cigarettes
10	Locally produced cigarettes where on-pack printed retail price does not exceed:	24.02	Rupees 2,050 per thousand cigarettes	Rupees 5,050 per thousand cigarettes	
	<b>Existing threshold</b>				<b>Proposed threshold</b>
	Rs 6,660 per thousand cigarettes				Rs 9,000 per thousand cigarettes

It is appropriate to mention here that the above increase in FED rates was earlier notified vide SRO 178(I)/2023 dated February 14, 2023. SRO is generally applicable from the date of SRO unless otherwise specified. This notification does not mention any effective date and was posted on FBR's website on February 15, 2023. It is worth mentioning that the Supreme Court of Pakistan in a judgement cited as 2022 PTD 232 has directed FBR to publish all notifications in the official gazette and also post on their website. In view of the directions of SC, a clarification will be required from FBR as to the effective date of this notification.

Currently there is a restriction of minimum retail price of 45 per cent of the above referred existing threshold. It is now proposed to increase the minimum retail price restriction to 60 per cent of the proposed threshold.

### ***SUGARY FRUIT JUICES***

Through the Bill, the Government has imposed FED on following:

<b>S.No.</b>	<b>Description of Goods</b>	<b>Tarif Heading</b>	<b>Proposed duty</b>
59	Sugary Fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners excluding mineral and aerated waters	Respective headings	Ten percent of the retail price

### ***INCREASE IN FED ON EXCISABLE GOODS AND SERVICES***

The Bill proposes to increase FED on the following excisable goods / services:

<b>Description of Goods</b>	<b>Tarif Heading</b>	<b>Rate of Federal Excise Duty</b>	
		<b>Existing</b>	<b>Proposed</b>
Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not colored or in the form of clinkers	25.23	Rs 1.50 per kilogram	Rs 2 per kilogram
Services provided or rendered in respect of travel by air of passengers embarking on international journey from Pakistan in Club, business and first class.	98.03	Rs 50,000	20 per cent of the gross amount of ticket or Rs 50,000 per ticket, whichever is higher, on air tickets issued on or after the date of commencement of the Finance (Supplementary) Bill, 2023