

Significant amendments in the Finance Bill, 2023

June 27, 2023



AMENDMENTS ENACTED BY FINANCE ACT, 2023 VIS-À-VIS THOSE PROPOSED IN FINANCE BILL, 2023

The Federal Government presented Finance Bill, 2023 ('FB') in the National Assembly on June 9, 2023. After the debate in the Senate and National Assembly, the Government has passed Finance Act, 2023 ('FA') with certain modifications / amendments made in the FB. The amendments made in the fiscal laws by the FA are made effective from July 1, 2023 unless otherwise specified.

This Memorandum summarises major amendments made in the FB whilst passing the FA.

INCOME TAX

ADDITIONAL TAX ON WINDFALL INCOME

Through the FB, a new provision was proposed to empower the Federal Government to impose additional tax on persons or classes of persons who have any income, profits or gains arisen due to any economic factors that resulted in windfall income, profits or gains.

The proposal has been retained by FA with following amendments:

- i) The applicability of the said tax has now been restricted to companies only operating in specified sectors;
- ii) The retrospective application of the said tax has been reduced from five (5) years to three (3) years preceding the tax year from tax year 2023 and onwards; and
- iii) Federal Government notification for determination of windfall income and the economic factors resulting in an income subject to tax under this section is now required to be placed before the Parliament within ninety (90) days of notification or June 30 of the financial year, whichever is earlier.

The legal challenges to the implementation of these provisions are still not addressed which may arise on certain constitutional grounds and principles laid down by the Superior Courts particularly with regard to past and closed transactions.

TAX ON DEEMED INCOME UNDER SECTION 7E

Through the Finance Act, 2022, a resident individual owning immovable properties in Pakistan is subjected to tax on deemed income from such properties for tax year 2022 and onwards. Such deemed income is effectively taxed at 1% of the FBR values of immovable properties. The said tax is not applicable on certain immovable properties which *inter alia* include the following:

- a) one immovable property owned by the resident person;
- b) any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon;
- c) immovable property in the first tax year of acquisition where tax under section 236K has been paid;
- d) where the fair market value of the properties in aggregate excluding certain specified properties does not exceed Rupees twenty-five million

By way of an amendment through the FA, the abovementioned assets will only be excluded from the purview of tax on deemed income if the name of the person holding such properties is appearing on the Active Taxpayers' List (ATL). However, if any person is not required to file a return of income and obtain certificate to that effect as provided under the Tenth Schedule then such person would not be liable to pay tax on deemed income under section 7E despite not appearing on the ATL.

If the tax liability under section 7E is not discharged, then the registrar or the person registering the transfer is required not to register the transfer of the subject property.

ADVANCE TAX ON PURCHASE / SALE / TRANSFER OF IMMOVABLE PROPERTY

The rate of advance tax to be collected from buyer or seller on purchase / sale / transfer of property has also been increased from 2% to 3%. As a result, rate of tax on those not appearing on the ATL will also be increased as under:

- (i) On purchase of property - from 7% to 10.5%
- (ii) On sale of property - from 4% to 6%

CAPITAL MARKET

a) Public Offering

Through the Finance (Supplementary) Act, 2023, capital gains arising on disposal of shares of listed company which is made otherwise than through stock exchange and which are not settled through NCCPL, is taxed under section 37 of the Ordinance. The said amendment had resulted in unwarranted tax implications on public offerings of listed securities.

Through an amendment made by the FA, disposal of shares through initial public offer during the listing process will remain subject to tax under section 37A of the Ordinance provided the details of such disposal are furnished to NCCPL for the computation of Capital Gains and tax thereon.

b) Securities acquired prior to July 1, 2013

At present, capital gains arising on disposal of securities that are acquired before July 1, 2013 are subject to tax at the rate of 12.5%.

Through FA, capital gains arising on disposal of such securities will be subject to tax at 0%. The said amendment has resolved the unwarranted anomaly arisen due to an amendment made through the Finance Act, 2022.

PERMANENT ESTABLISHMENT (PE)

The FB proposed certain changes in the definition of PE which has been further amended by the FA to include virtual business presence in Pakistan including any business where transactions are conducted through internet or any other electronic medium, with or without having any physical presence.

Non-residents covered by Double Tax Treaties (DTT) will not be affected by the changes made through FA and consequently their PE status will continue to be determined under the DTT provisions.

ADVANCE TAX ON CONSTRUCTION / DISPOSAL OF BUILDINGS AND PLOTS

An amendment has been made in section 147 through FA, which requires payment of advance tax on project-by-project basis in four equal instalments by persons deriving income from business from the following:

- i) construction and disposal of residential, commercial and other buildings
- ii) development and sale of residential, commercial and other plots

The said advance tax is required to be discharged by the dates prescribed for corporate and non-corporate persons, as the case may be. The rates prescribed for advance tax are aligned with the tax rates applicable on builders and developers who opted to be taxed under section 100D read with Eleventh Schedule.

Builders or developers in respect of projects registered / covered under the Eleventh Schedule will continue to discharge their tax liability (including advance tax) under the said Schedule. However, for projects which are not registered / covered under the Eleventh Schedule, the advance tax liability under section 147 will be discharged as stated above whilst their taxability will be governed under normal provisions of the law.

ADVANCE TAX ON MOTOR VEHICLES

Through the FA, the rate of advance tax collected on registration of motor vehicle by motor registration authority or by the manufacturer on sale of motor vehicle has been amended as under:

S. No.	Engine Capacity	Existing Tax	Revised Tax / Rate of Tax
1	Upto 850cc	Rs 10,000	Rs 10,000
2	851cc to 1000cc	Rs 20,000	Rs 20,000
3	1001cc to 1300cc	Rs 25,000	Rs 25,000
4	1301cc to 1600cc	Rs 50,000	Rs 50,000
5	1601cc to 1800cc	Rs 150,000	Rs 150,000
6	1801cc to 2000cc	Rs 200,000	Rs 200,000
7	2001cc to 2500cc	Rs 300,000	6% of the Value
8	2501cc to 3000cc	Rs 400,000	8% of the Value
9	Above 3000cc	Rs 500,000	10% of the Value

For the purpose of advance tax, the value of motor vehicle above 2000cc will be as follows:

- i) **Imported vehicle** – value assessed by the customs authorities as increased by the customs duty, federal excise duty and sales tax payable at import stage
- ii) **Locally manufacture / assembled vehicles** – invoice value inclusive of all duties and taxes
- iii) **Auctioned vehicle** – the auction value inclusive of all duties and taxes

There is no change in rate of advance tax collected on transfer of registration of motor vehicle.

ADVANCE TAX ON CASH WITHDRAWAL FROM NON-FILERS

Adjustable advance tax on cash withdrawals of non-filers was reintroduced through the FB at the rate of 0.6% where the sum of the payments for cash withdrawal in a day exceeds Rs 50,000. Since the said tax is applicable on non-filers only, therefore, corrective amendment has been made in the Tenth Schedule to avoid duplicate implications.

THRESHOLD FOR SALARY PAYMENT OTHERWISE THROUGH BANKING CHANNEL

Presently, salary payments exceeding Rs 25,000 per month are not allowed as admissible deduction while computing income from business.

The said limit is now enhanced to Rs 32,000 per month.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The concept of ADR was introduced in the law to avoid protracted litigation and delay in settlement of cases. This mechanism was introduced in parallel with taxpayer's right to appeal before appellate forums. Despite of various amendments made over the years; this forum has not achieved the desired results.

To make this forum effective, following amendments have been made through the FA:

- Under the revised mechanism, the committee shall include a retired judge, not below the rank of a judge of a High Court, who shall also be the Chairperson of the Committee. The retired judge would be nominated by FBR from the panel notified by the Law and Justice Division. The other two members of the Committee shall be the concerned Chief Commissioner Inland Revenue and a person to be nominated by the taxpayer from the panel notified by FBR.
- Presently, the taxpayer needs to withdraw his appeal for seeking relief under the ADR. Under the revamped procedure, the taxpayer, if satisfied with the ADRC decision, is required to withdraw appeal and communicate the withdrawal to the Commissioner within 60 days of the ADRC decision.
- Presently, the offer of tax payment made by taxpayer in initial proposal for resolution of dispute, accompanied with the application for ADR, is irrevocable. Through amended provisions, such offer would not be binding.
- Under the amended mechanism, the decision of the Committee shall only be binding upon the Commissioner if the taxpayer has withdrawn the appeal and has communicated the same to the Commissioner within 60 days of service of decision of the Committee. In such circumstances, Commissioner is also required to withdraw his appeal within 30 days of appeal withdrawal notice from the taxpayer.
- Time period for the appointment of Committee as well as time period prescribed for the decision of the dispute has also been reduced in the following manner:

Description	Current	Amended
	-----number of days-----	
Constitution of committee	45 days of receipt of application	15 days of receipt of application
Decision in dispute	120 days	45 days, extended by 15 days

Similar amendments have been made in the Sales Tax Act, 1990 and the Federal Excise Act, 2005. In the Customs Act, 1969, amendments on above lines were made through the Finance Act, 2020 except for appointment of a retired judge as member of the ADRC which has now been made through the FA.

AMENDMENTS PROPOSED THROUGH THE FB BUT NOT ADOPTED IN THE FA:

Following amendments proposed in the FB have not been adopted in the FA:

- 1) Enhancement of monetary limit for immunity on foreign remittances received from abroad through permissible channels from Rs 5 Million to an amount equivalent to USD 100,000 per annum.
- 2) Reduction of minimum turnover tax from 1.25% to 1% for listed companies.
- 3) Tax credit for tax years 2024 to 2026 for an individual on construction of a new residential house.
- 4) Extension in period of exemption on profits and gains on the sale of immoveable property or shares of Special Purpose Vehicle to any REIT scheme from June 30, 2023 to June 30, 2024.
- 5) Reduction in tax liability on income from new construction projects to a 'builder'.
- 6) Reduction in tax liability on income from business of a youth enterprise.
- 7) Increase in the threshold of Special Tax Regime for SME having turnover upto Rs 800 Million (from Rs 250 Million) and inclusion of persons engaged in the provisions of IT services and IT enabled services under the said Special Tax regime. Conditional tax holiday for SMEs setup exclusively as Agro based industry in a rural area.
- 8) Reduction in tax liability of a banking company on income arising from additional advances to certain specified sectors.
- 9) Non-applicability of advance tax on purchase of immovable property by overseas Pakistanis through Roshan Digital Account.

INCOME TAX SCHEDULES

INCREASE IN TAX RATES FOR NON-CORPORATE TAXPAYERS

There was no proposal for increase in the rate of tax for individual and Association of Persons in the FB. Through the FA, the rate of tax for tax year 2024 and onwards has been increased as under:

- Flat increase of 2.5% in the tax rates applicable on salaried individuals earning more than Rs 2.4 Million per annum with highest slab rate of 35% starting from Rs 6 Million per annum (previously Rs 12 Million).
- Flat increase of 2.5% in the tax rates applicable on non-salaried individuals and AOPs earning more than Rs 600,000 per annum with highest slab rate of 35% starting from Rs 4 Million (previously Rs 6 Million).

SALARIED INDIVIDUALS (COMPARISON OF EXISTING AND NEW RATES)

<i>Sr No.</i>	<i>Taxable income</i>	<i>Existing Rates</i>	<i>New Rates</i>
1.	Where the taxable income does not exceed Rs 600,000	Rs. 0	Rs. 0
2.	Where the taxable income exceeds Rs 600,000 but does not exceed Rs 1,200,000	2.5% of the amount exceeding Rs 600,000	2.5% of the amount exceeding Rs 600,000
3.	Where the taxable income exceeds Rs 1,200,000 but does not exceed Rs 2,400,000	Rs 15,000 + 12.5% of the amount exceeding Rs 1,200,000	Rs 15,000 + 12.5% of the amount exceeding Rs 1,200,000
4.	Where the taxable income exceeds Rs 2,400,000 but does not exceed Rs 3,600,000	Rs 165,000 + 20% of the amount exceeding Rs 2,400,000	Rs 165,000 + 22.5% of the amount exceeding Rs 2,400,000
5.	Where the taxable income exceeds Rs 3,600,000 but does not exceed Rs 6,000,000	Rs 405,000 + 25% of the amount exceeding Rs 3,600,000	Rs 435,000 + 27.5% of the amount exceeding Rs 3,600,000
6.	Where the taxable income exceeds Rs 6,000,000 but does not exceed Rs 12,000,000	Rs 1,005,000 + 32.5% of the amount exceeding Rs 6,000,000	Rs 1,095,000 + 35% of the amount exceeding Rs 6,000,000
7.	Where the taxable income exceeds Rs 12,000,000	Rs 2,955,000 + 35% of the amount exceeding Rs 12,000,000	

The impact of the above-mentioned changes is illustrated as under:

Annual taxable income	Tax Year 2023	Tax Year 2024	Excess tax
600,000	-	-	-
1,200,000	15,000	15,000	-
2,400,000	165,000	165,000	-
3,600,000	405,000	435,000	30,000
6,000,000	1,005,000	1,095,000	90,000
12,000,000	2,955,000	3,195,000	240,000

NON-SALARIED INDIVIDUALS / AOPs (COMPARISON OF EXISTING AND NEW RATES)

Sr No.	Taxable income	Existing Rate	New Rate
1.	Where the taxable income does not exceed Rs 600,000	0%	0%
2.	Where the taxable income exceeds Rs 600,000 but does not exceed Rs 800,000	5% of the amount exceeding Rs 600,000	7.5% of the amount exceeding Rs 600,000
3.	Where the taxable income exceeds Rs 800,000 but does not exceed Rs 1,200,000	Rs 10,000 + 12.5% of the amount exceeding Rs 800,000	Rs 15,000 + 15% of the amount exceeding Rs 800,000
4.	Where the taxable income exceeds Rs 1,200,000 but does not exceed Rs 2,400,000	Rs 60,000 + 17.5% of the amount exceeding Rs 1,200,000	Rs 75,000 + 20% of the amount exceeding Rs 1,200,000
5.	Where the taxable income exceeds Rs 2,400,000 but does not exceed Rs 3,000,000	Rs 270,000 + 22.5% of the amount exceeding Rs 2,400,000	Rs 315,000 + 25% of the amount exceeding Rs 2,400,000
6.	Where the taxable income exceeds Rs 3,000,000 but does not exceed Rs 4,000,000	Rs 405,000 + 27.5% of the amount exceeding Rs 3,000,000	Rs 465,000 + 30% of the amount exceeding Rs 3,000,000
7.	Where the taxable income exceeds Rs 4,000,000 but does not exceed Rs 6,000,000	Rs 680,000 + 32.5% of the amount exceeding Rs 4,000,000	Rs 765,000 + 35% of the amount exceeding Rs 4,000,000
8.	Where the taxable income exceeds Rs 6,000,000	Rs 1,330,000 + 35% of the amount exceeding Rs 6,000,000	

The impact of the above-mentioned changes is illustrated as under:

Annual taxable income	Tax Year 2023	Tax Year 2024	Excess tax
600,000	-	-	-
800,000	10,000	15,000	5000
1,200,000	60,000	75,000	15,000
2,400,000	270,000	315,000	45,000
3,000,000	405,000	465,000	60,000
4,000,000	680,000	765,000	85,000
6,000,000	1,330,000	1,465,000	135,000

SALES TAX

INCREASE IN RATE OF FURTHER TAX

Further tax is required to be charged on supply of taxable goods to person who has not obtained registration or not an active taxpayer, subject to certain exclusions.

The FA has increased rate of further tax from 3% to 4%.

PREPARATION SUITABLE FOR INFANTS – ZERO RATING

At present, supply of ‘preparation suitable for infants’, put up for retail sale not exceeding Rs 500 per 200 grams as well as raw materials, packing materials, components etc. used in manufacturing thereof are subject to sales tax at the rate of 0%.

FA has enhanced the threshold of ‘Rs 500 per 200 grams’ to ‘Rs 600 per 200 grams’.

EXEMPTIONS

Through the FB, import or supplies of following goods were proposed to be exempted from levy of sales tax:

Description	Heading
Contraceptive and accessories thereof	3926.9020 4014.1000
Bovine semen	0511.1000
Saplings	Respective Heading
Combined Harvester –Thresher	8433.5100
Dryer for agricultural products	8419.3400
No-till-direct seeder, planters, trans-planters and other planters	8432.3100 8432.3900
Import of goods as mentioned under S. No. 159 of Part III of Fifth Schedule to the Customs Act, 1969 (IV of 1969) chargeable to customs duty at the rate of zero percent, subject to the conditions, restrictions and limitations mentioned therein, by the software exporters registered with the Pakistan Software Export Board.	7471.3010, 8471.3020, 8471.3090, 8471.4110, 8471.6010, 8471.6020, 8471.6090, 8471.7040, 8471.9020, 8471.7020, 8471.5000, 8517.6270

The exemptions proposed have not been adopted in the FA. As a result, the above goods shall remain taxable at applicable rates.

DIAMMONIUM PHOSPHATE (DAP)

Import or supplies of DAP are exempt from sales tax. FA has withdrawn the exemption and made it taxable at reduced rate of 5% with no refund of excessive input tax.

PHARMA SECTOR

Through FB, while specifying reduced rate of sales tax at 1% on ‘drug’, registered under Drugs Act, 1976, and ‘medicaments’ classifiable under Chapter 30 of the First Schedule to the Customs Act, 1969, it was proposed that input tax on such supplies would not be available in case of importer and manufacturer only. Now, through the FA, it has been provided that input tax adjustment would not be available to any person in the supply chain of such drugs/ medicaments.

Further, through the FB, reduced rate of sales tax at 1% was restricted on raw materials / ingredients, including excipients, which are liable to customs duty not exceeding 11% *ad valorem*. The said restriction was made effective from July 1, 2022. As a result, the standard rate of sales tax had become applicable on aforesaid goods subject to customs duty above 11% retrospectively. The FA has removed the retrospective application of aforesaid amendment. Further, bar on adjustment of input tax relating to these supplies, earlier specified by reference to importer and manufacturer only, has been made applicable in case of all the persons in the supply chain.

FEDERAL EXCISE DUTY

DUTIES OF EXCISE TO BE LEVIED

Through the FB, a new clause (e) was proposed to be added to sub-section (1) of section 3 to read as under:

“(e) any item specified in the First Schedule”

It was statedly not a revenue measure but introduced as a streamlining measure, to further elaborate the chargeability of FED on goods and services. The FA has finally corrected clause (e) as under;

“(e) any item not covered in clause (a) to (d) above and specified in the First Schedule”

The amendment seems to cover imposition of FED on items which are neither goods (imported or manufactured) nor services, specified in the First Schedule.

FIRST SCHEDULE

DUTIABLE GOODS

(a) The FA has increased FED on following goods which were not proposed in the FB:

<i>Description</i>	<i>Existing Rate of duty</i>	<i>Proposed Rate of duty</i>
Tobacco mixture in an electrically heated tobacco product by whatever name called, intended for consumption by using a tobacco heating system without combustion	Rs 5,200 per kg	Rs 16,500 per kg
Sugary Fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners excluding mineral and aerated waters	10% of retail price	20% of retail price

(b) The FA has imposed FED on Fertilizers at the rate of 5% ad valorem.

(c) The levy of FED on following dutiable goods has been made effective from January 1, 2024:

<i>Description</i>	<i>HS Code</i>	<i>Proposed duty</i>
Imported and locally manufactured energy inefficient fans which do not comply with the MEPS, notified by PSQCA	Respective heading	Rs 2000 per fan
Imported and locally manufactured incandescent bulbs	8539.2200 8539.2990	20% ad valorem

CUSTOMS DUTY

FIRST SCHEDULE TO THE CUSTOMS ACT

Reduction in customs duty on import of following goods proposed through the FB has not been adopted in the FA:

PCT code	Description	Existing %	Proposed in FB but not adopted (%)
2710.1995	Liquid paraffin	3	0
3206.4100	Ultramarine and preparations based thereon	16	11
3823.7000	Industrial fatty alcohols	16	11
3920.4910	Polyvinyl Chloride (PVC) Rigid film	20	16
3920.9900	Plates, sheets, films, foils and strips of plastics	20	16
4805.2500	Testliner (recycled liner board) weighing more than 150 g/ m ²	20	16
4805.9190	Other uncoated paper or paperboard weighing 150 g / m ² having dielectric strength less than 0.5 Kv per millimeter	20	16
4806.2000	Greaseproof papers	20	16
8421.9990	Centrifuges, including centrifugal dryers filtering or purifying machinery and apparatus for liquid or gases	20	16
8503.0020	Parts for use with the machines of headings 8501.5340, 8501.5390, 8502.1110, 8502.1390 & 8502.2000	11	3

In addition to above, changes have been made in various PCT heading as well as description to rationalize the duty structure.

FIFTH SCHEDULE TO THE CUSTOMS ACT (CONCESSION / EXEMPTION)

Exemption from Customs Duty on import of following goods proposed through the FB has not been accepted in the FA.

- (i) Certain machinery, equipment, and inputs for manufacturing of solar panels, inverters and batteries by local assembler / manufacturer of renewable energy sector.
- (ii) Seeds for sowing.
- (iii) Raw materials imported by manufacturers of diapers & sanitary napkins;
- (iv) Organic composite solvents and thinners for manufacture of Butyl Acetate and Dibutyl Orthophthalates.
- (v) Roasted peanuts for manufacturing of Ready to Use Supplementary Foods (RUSF) & Ready to Use Therapeutic Foods (RUTF).
- (vi) Specified raw materials / inputs by manufacturers of Adhesive Tapes, Moulds and Dies, Mining machinery, Machine Tools and Rice mill machinery.
- (vii) Baby shrimp/prawns/juvenile for breeding in commercial fish farms and hatcheries.
- (viii) Active Pharmaceutical Ingredients (APIs) Dextrose Anhydrous Injectable Grade (Pyrogen Free) USP
- (ix) Gefitinib, Caspian (Caspofungin 50 mg and 70 mg injection) and Bovine Lipid Extract Surfactant
- (x) Flavouring powders for food preparation.

Reduction in Customs Duty on import of following goods proposed through the FB has not been adopted in the FA:

Description	Existing (%)	Proposed in FB but not adopted (%)
PET scrap, if imported for the manufacture of polyester filament yarn	20	11
Import of specified raw materials / inputs by manufacturers of Capacitors	16	5
Printed Composite Packaging of Aluminum Foil backed with Paper and Plastic	10	5

The FA has not adopted reduction in the assessed value of the IT related equipment proposed through the FB for the purpose of levying customs duty, in case of imports by the software exporters registered with Pakistan Software Export Board.

Regulatory Duty (RD)

RD has been imposed on the following goods through the FA:

PCT Code	Description	Rate of Regulatory Duty
2849.1000	Calcium (Carbides)	5%
3824.9980	Chloroparaffins liquid	10% till Dec 31, 2023 and 5% from January 1, 2024 to June 30, 2024
7002.3200	Tubes of other glass having a linear coefficient of expansion not exceeding 5×10^{-6} per Kelvin within a temperature of 0°C to 300°C	10%

ISLAMABAD CAPITAL TERRITORY (SALES TAX ON SERVICES) ORDINANCE, 2001 ('ICTO')

Following amendments in the ICTO proposed through the FB have not been adopted in the FA:

- (i) Reduction in sales tax rate applicable on IT services and IT enabled services to 5%; and
- (ii) Exemption from sales tax registration granted to Freelance exporter.

FOREIGN INVESTMENT (PROMOTION AND PROTECTION) ACT, 2022

In December 2022, 'Foreign Investment (Promotion and Protection) Act, 2022 ['FIPPA'] was passed with a view to attract, encourage, and protect, large scale investments in Pakistan.

FB proposed amendments in the following fiscal laws to address procedural issues arising out of implementation of the exemptions and tax concessions provided in the FIPPA:

- Income Tax Ordinance, 2001
- Sales Tax Act, 1990
- Federal Excise Act, 2005

The amendments relating to the Customs Act not proposed through the FB have now been made through the FA.

PETROLEUM PRODUCTS (PETROLEUM LEVY) ORDINANCE, 1961

Through the FA, the maximum petroleum levy rate as specified in the Fifth Schedule to the Petroleum Products (Petroleum Levy) Ordinance, 1961 has been increased from Rs. 50 to Rs. 60 for High Speed Diesel Oil and Motor Gasoline.