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COMMENTS ON FINANCE SUPPLEMENTARY (AMENDMENT) ACT 2018

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Preamble:

National Assembly passed Finance Supplementary (Amendment) Bill, 2018 ("FSB") on October 3rd, 2018 which proposed further amendments in Income Tax Ordinance, 2001; Sales Tax Act, 1990; Federal Excise Act, 2005; and Customs Act, 1969. These laws were earlier amended vide Finance Act, 2018(“FA”). The bill, as passed by the Assembly with certain amendments, stands as an Act and may be called Finance Supplementary (Amendment) Act, 2018 ("FSA"). Comments on major amendments between FSB and FSA have been provided as under:

INCOME TAX ORDINANCE, 2001

1. Restriction on purchase of certain assets – Exceptions Introduced – Section 227C

FA 2018 imposed restriction on non-filer on first registration of new motor vehicles. The restriction was also imposed on acceptance or processing of any application for registering, recording or attesting transfer of any immovable property valuing more than Rs. 5 million in the name of a non-filer.

FSB 2018 proposed to omit section 227C and remove restrictions imposed vide FA 2018. FSA has introduced following exceptions to the restrictions instead of completely removing the restriction:

- motorcycle having engine capacity of less than 200 cc, motorcycle-rickshaw, agricultural tractor or any other motor vehicle having engine capacity of less than 200 cc;
- a person holding a Pakistan origin card or a national identity card for overseas Pakistani who produces a certificate from a scheduled bank of receipt of foreign exchange remitted from outside Pakistan through normal banking channels during a period of sixty days prior to the date of booking, registration or purchase of motor vehicle or, in case of imovable property, prior to the date of registering, recording, or attesting transfer; or
- a legal heir acquiring immovable property in inheritance.

The above exception to non-resident person does not appear to be logical as a person not residing in Pakistan would not require a motor vehicle. If he requires the same for his family then they may purchase the motor vehicle by filing their returns even if they have to file nil returns. Moreover, by acquiring the motor vehicle having engine capacity over 1000cc, the non-resident person would ultimately be required to file the return as per section 114, thereby, nullifying the effectiveness of the above exception.

With respect to exception on purchase of tractor, it may be noted that only an agriculturist with considerable economic activity would purchase a tractor. Such agriculturist would have been paying agriculture income tax on such activity. Therefore, instead of outrightly exempting him from being filer, he may be required to produce evidence of payment of tax on his agricultural activity.

2. Penalty for non - Compliance of section 227C - Section 182(1) (19), (20)

A Penalty has been introduced for manufacturers of motor vehicles for accepting or processing any application for booking or purchase of a locally manufactured motor vehicle in contravention of section 227C above. The penalty of 5% of the value of motor vehicles shall be imposed on manufacturers of such vehicles.

Penalty has also been introduced for any authority responsible for registering, recording or attesting the transfer of immovable property which accepts or processes the registration or attestation of such property in contravention of section 227C. The penalty has been introduced at 3% of the value of motor vehicle or immovable property.

3. Changes in information required from Banks – Section 165A

Section 165A requires every banking company to make arrangements to provide prescribed information to the Board. Such access was so far denied by the banks for reason of secrecy and confidentiality of banking data. Through Finance Act 2018 the requirement for bank to provide online access to its central database containing details of its account holders and all transactions made in their account was omitted with new requirement for banks to provide list of persons containing particulars of cash withdrawals exceeding Rupees fifty thousands in a day and aggregating to Rupees one million or more during each preceding calendar month including deductions thereon for filer and non-filer;

Through FSA 2018, the requirement for banks to provide a consolidated list of loans written off exceeding rupees one million during a calendar year and a copy of each currency transactions report and suspicious transactions report generated and submitted by it to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010) has been omitted, with new requirement to provide a list of persons receiving profit on debt exceeding one million rupees for filers and five hundred thousand rupees for non-filers and tax deductions thereon during preceding financial year has been added.

Meanwhile, FBR has also proposed draft amendments in Income Tax Rules Chapter VIIIA vide SRO 1165 dated 28 Sep 2018 to enforce the changes made through Finance At 2018, by prescribing format for cash withdrawals statement as ‘Form D’.