



COMMENTS ON CHANGES MADE VIDE AMENDED FINANCE BILL 2018





Prologue:

This commentary gives an overview of important changes made in Finance Bill 2018 (“Bill”), tabled before the Parliament on April 27, 2018, introduced through Amended Finance Bill 2018 which has been converted into Finance Act, 2018 (“Act”) by the Parliament. Earlier, we also issued our detailed comments on the bill which may be accessed through <https://bit.ly/2IsPrAB>. The Act has also assented **Foreign Assets (Declaration and Repatriation) Act, 2018** and **Voluntary Declaration of Domestic Assets Act, 2018**. Our comments on the same may be accessed through <https://bit.ly/2IS754f> and any change therein by the Act will be communicated later.

The instant commentary contains highlights on the amendments proposed in the bill 2018; through the Income Tax Ordinance, 2001; the Sales Tax Act, 1990 and the Federal Excise Act, 2005.

The amendments proposed through these laws are intended to be effective, once the Bill is passed by the Parliament in its present form or with some further amendments and would therefore be effective thereafter, unless otherwise indicated.

This commentary has been prepared on the basis of media reports and publicly available information and is intended to provide general guidance to our clients and other readers on the important changes made and should not be construed as an expert advice relating to a particular matter. For assessing the impact of amendments, reference should be made to the appropriate wording to the relevant law, notifications issued thereunder and judgment given by the Courts.

This commentary has been prepared exclusively for the use of our staff, clients and intended readers based on public information available with us till the time of giving it for printing. This Memorandum should not be published or printed in any manner without seeking prior written consent from us.

It should be noted that the instant commentary is our interpretation of the amendments. Our comments in this commentary should not be construed as definite and should therefore, be used only as a guidance.

Please be informed that we intended to issue a comprehensive document covering final form of the Federal Finance Act, 2018 and Finance Acts of the provinces, however, due to no or minor changes brought by the provinces, we are currently issuing this bridge document only.

Warm Regards

Tola Associates

Dated: May 18, 2018

INCOME TAX ORDINANCE, 2001

1. Gain on disposal of Assets Outside Pakistan – Section 101A

The bill introduced a new section 101A whereby any gain from the disposal or alienation, outside Pakistan, of an asset located in Pakistan of a non-resident company shall be Pakistan-source.

The bill proposed that the person acquiring the asset from non-resident person shall deduct tax at 15% of fair market value of asset. The rate of 15% for deduction of tax has been reduced to 10%.

It has also been clarified that in case any gain is taxable under this section and also under any other provision of ITO, the gain shall be taxable under such other provision of ITO.

2. Recharacterization of income and Deductions – Section 109

Section 109 provides that Commissioner shall have power to:

- a. Recharacterize a transaction that was entered into as part of a tax avoidance scheme;
- b. Disregard a transaction that does not have substantial economic effect; or
- c. Recharacterize a transaction where the form does not reflect the substance.

The bill proposed to extend the powers of Commissioner under section 109 to recharacterize a transaction. The bill proposes that the commissioner shall have the power to disregard an entity or a corporate structure that does not have an economic or commercial substance or was created as part of the tax avoidance scheme.

The act has restricted the extension of powers with respect to tax year 2018 and onwards only.

3. Controlled Foreign Entity – Section 109A

The bill proposed to add a new concept of a controlled foreign entity by adding a new section 109A. A controlled foreign entity had been proposed to be defined as a non-resident company if:

- a. more than 50% of the capital or voting rights of the non-resident company are held, directly or indirectly, by one or more persons resident in Pakistan or more than 40% of the capital or voting rights of the non-resident company are held, directly or indirectly, by a single resident person in Pakistan;
- b. tax paid, after taking into account any foreign tax credits available to the non-resident company, on the income derived or accrued, during a foreign tax year, by the non-resident company to any tax authority outside Pakistan is less than 60% of the tax payable on the said income under this Ordinance;
- c. non-resident company does not derive active business income; and
- d. the shares of the company are not traded on any stock exchange recognized by law of the country or jurisdiction of which the non-resident company is resident for tax purposes

A company shall be treated to have derived active income if:

- a. more than 80% of income of the company does not include income from dividend, interest, property, capital gains, royalty, annuity payment, supply of goods or services to an associate, sale



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- or licensing of intangibles and management, holding or investment in securities and financial assets; and
- b. the company principally derives income under the head “income from business” in the country or jurisdiction of which it is a resident.

The bill proposes to tax attributable income of a foreign controlled entity as Pakistan source income.

The Act has further clarified that the attributable income of a controlled foreign entity shall be taxed at the rates applicable on dividend income as provided in Division III, Part I of First Schedule. Moreover, in case tax has been paid by the resident person on the income attributable to controlled foreign company and in a subsequent tax year the resident person receives dividend distributed by the controlled foreign company, after deduction of tax on dividend, the resident person shall be allowed a tax credit.

4. Alternative Dispute Resolution – 134A

Through the Finance Bill it was proposed to revamp the Section 134A whereby any aggrieved person, who has filed an appeal before any Appellate Authority will file an appeal before the Board and simultaneously will withdraw such appeal filed before any appellate authority for the resolution of hardship or dispute.

The bill further proposed that the Board may, within 60 days of receipt of application, appoint a committee comprising of:

- a. an officer of Inland Revenue not below the rank of a Commissioner
- b. person to be nominated by the taxpayer from a panel notified by the Board comprising:

- i. senior chartered accountants and senior advocates having experience in the field of taxation
- ii. reputable businessmen as nominated by Chambers of Commerce and Industry
- iii. a retired Judge not below the rank of District and Sessions Judge

Both the parties will be bound to accept the recommendations of ADRC.

The powers of ADRC have also been proposed to be enhanced whereby it can resolve any pending disputes which are pending before any Appellate Authority.

Vide act, the recovery of tax payable by a taxpayer in connection with any dispute for which the ADRC has been formed will be stayed upto the date of decision by ADRC.

5. Minimum Tax on Imports – Section 148

Section 148 provides that the tax required to be collected from a person under section 148 shall be minimum tax for a tax year on the import of–

- edible oil;
- packing material; and
- plastic raw material imported by an industrial undertaking falling under PCT headings 39.01 to 39.12.”

The bill proposed to further make addition in the list and proposed that tax required to be deducted under section 148 on import of goods, where goods are sold in the same condition as they were when imported; shall also be minimum tax and not Final Tax, however, the act has provided that minimum tax shall be 5% of the import value as increased by customs duty, sales tax and federal excise duty.

INCOME TAX ORDINANCE, 2001

For e.g tax @ 5.5% from a corporate commercial importer (8% for non-filer) is collected at the time of import. In such a case, the importer shall calculate and pay its normal tax liability or minimum tax @ 5% of import value; whichever is higher.

Moreover, the reduced rate of 1% (1.5% for non filer), for designated buyer of LNG to import LNG, on behalf of government, has been made available to every person importing LNG.

6. Late filing of Return – Section 182A, 214D

The bill proposed to insert a new section 182A, whereby, in case of late filing of return, the person would not be added in the active tax payers’ list even after filing of the return. Moreover, losses for that year shall also not be allowed to be carried forward.

The bill also proposes to delete section 214D, whereby, cases of late filers were automatically selected for audit owing to audit incapacity of FBR.

The act further explains that section 182A shall apply from tax year 2018 and onwards for which the first Active Taxpayers List is to be issued on first day of March, 2019. It means that any person who has filed return for tax year 2017 but not filed or late filed return for tax year 2018 will remain in active tax payers list until February 28th, 2019.

7. Restriction on purchase of certain assets – Section 227C

The bill proposed to impose restriction on non-filer on registration of motor vehicles, and immovable property.

The act clarifies that in case of imported vehicles, the restriction shall be imposed on first registration only. It means that vehicles may be registered to non filers subsequently.

The act further clarifies that restriction on registration of immovable property will be applied to properties having values exceeding five million rupees.

8. Collection of advance tax by educational institutions – 236I

Section 236I provides that every educational institution shall collect adjustable advance tax @ 5% of the amount of fee where the annual fee exceeds Rs. 200,000.

The act introduces a further exemption to amounts collected by way of scholarships.

9. Income tax rates on Individuals – Division I, Part I First Schedule

The bill proposed to reduce rates of tax for individuals and introduced following slab rates:

S. No.	Taxable Income	Rates of Tax/Tax
1.	Less than Rs. 400,000	0%
2.	400,001 to 800,000	Rs. 1,000
3.	800,001 to 1,200,000	Rs. 2,000
4.	1,200,001 to 2,400,000	5% of the amount exceeding Rs. 12,00,000
5.	2,400,001 to 4,800,000	Rs. 60,000 + 10% of the amount exceeding Rs. 24,00,000
6.	More than 4,800,000	Rs. 300,000 + 15% of the amount exceeding Rs.48,00,000

INCOME TAX ORDINANCE, 2001

As is evident from above slab, there is an anomaly in case of fourth slab, wherein, tax was levied only on amounts exceeding Rs. 1,200,000. Meaning thereby that there was a tax of Rs. 2000 on income of Rs. 1,200,000, whereas, on income of Rs. 1,200,001 there was a tax of Rs. 0.05 only.

To remove the above anomaly, the act has inserted a proviso making all amounts exceeding Rs. 800,000 to be taxed minimum at Rs. 2,000.

10. Tax rates for small companies - Division II, Part I First Schedule

The act has introduced reduction in rates for small companies too in line with reductions for Companies. The rates have been introduced as under:

Tax Year	Rate of Tax
2019	24%
2020	23%
2021	22%
2022	21%
2023 and onwards	20%

11. Super Tax for Banking Companies – Section 4B, Division II, Part I First Schedule

A super tax was levied, for tax year 2015, vide Finance Act 2015 (“FA-15”) for every banking company and every other company whose taxable profits exceeded Rs. 500 million. The super tax was charged in the backdrop of Military operation ‘Zarb-e-Azb’ for rehabilitation of Temporarily Displaced Persons (“TDPs”). The tax was levied at 4% for Banking Companies and at 2% for others. The tax was continued till tax year 2017.

Vide finance bill the super tax was proposed to be continued till tax year 2020, however it was

proposed that the rate of such tax shall be reduced by 1% each year.

However, for banking companies, the act has abolished super tax for tax year 2018 and has charged rates of 4%, 3% and 2% for tax years 2019, 2020 and 2021. Moreover, it has been made mandatory for banking companies to deposit super tax for tax year 2019 on estimation basis by 30th June, 2018. This means that the tax for 2019 has to be deposited even before filing of return for tax year 2018.

12. Second Schedule

- In clause 61, Part I, ‘Sardar Trust Eye Hospital, Lahore’ has been added.
- In clause 66, Part I, following institutions has been added:
 - Habib University Foundation;
 - Begum Akhtar Rukhsana Memorial Trust Hospital;
 - Al-Khidmat Foundation;
 - Dawat-e-Islami Trust; and
 - Sardar Trust Eye Hospital, Lahore.
- Exemption on income from export of computer software, IT services or IT enabled services has been extended from 30th June, 2019 to 30th June, 2025.
- The amount of tax payable by resident companies deriving income from film-making was proposed to be exempt upto 50%. This exemption has been made upto 70%.
- The tax payable on profits and gains derived by a person from low cost housing projects has been reduced by fifty percent.

SALES TAX ACT, 1990

1. Exemption - Section 13

The Act has withdrawn power to exempt sales tax from 'Board with the approval of the Federal Minister-in-charge, pursuant to the approval of the Economic Coordination Committee of the Cabinet' and has vested the same to 'Federal Government'.

2. Alternative Dispute Resolution (ADRC) - Section 47A

Through the Finance Bill it was proposed to revamp the Section 47A whereby any aggrieved person, who has filled and appeal before any Appellate Authority will file an appeal before the Board and simultaneously will withdraw such appeal filed before any appellate authority for the resolution of hardship or dispute. Both the parties will be bound to accept the recommendations of ADRC.

The powers of ADRC have also been proposed to be enhanced whereby it can resolve any pending disputes which are pending before any Appellate Authority.

Vide act, the recovery of tax payable by a taxpayer in connection with any dispute for which the ADRC has been formed will be stayed upto the date of decision by ADRC.

3. Sixth Schedule

- A new serial number 149 has been inserted in table 1, whereby, import of Micro feeder equipment (8437.0000) has been exempted from sales tax.
- A new serial number 23 has been inserted in table 2, whereby, supply of Match Boxes have been exempted from sales tax.

4. Eighth Schedule

- The following new entries have been inserted in eighth schedule levying sales tax rates as mentioned hereunder:

S. No.	Description	PCT Heading	Rate	Condition
55	Fish babies / seedlings	Respective headings	5%	Nil
56	Potassium Chlorate (KClO ₃)	Respective headings	17% along with rupees 40 per kilogram	Import and supply thereof. Provided that rate of rupees 40 per kilogram shall not apply on imports made by and supplies made to organizations under the control of Ministry of Defense Production.
57	Rock phosphate	Respective headings	10%	If imported by fertilizer manufacturers for use in the manufacturing of fertilizers."

FEDERAL EXCISE ACT, 2005

1. Alternative Dispute Resolution (ADRC) - Section 38

Through the Finance Bill it was proposed to revamp the Section 38 whereby any aggrieved person, who has filled and appeal before any Appellate Authority will file an appeal before the Board and simultaneously will withdraw such appeal filed before any appellate authority for the resolution of hardship or dispute. Both the parties will be bound to accept the recommendations of ADRC.

The powers of ADRC have also been proposed to be enhanced whereby it can resolve any pending disputes which are pending before any Appellate Authority.

Vide act, the recovery of tax payable by a taxpayer in connection with any dispute for which the ADRC has been formed will be stayed upto the date of decision by ADRC.

2. Health support levy

The bill proposed a health levy on tobacco at Rs. 10 per Kg which has been withdrawn by act.

3. Rates on cigarettes

The bill proposed to enhance the FED rates on cigarettes which have further been enhanced by the act as under:

Tier	Rupees		
	Existing Rates	Rates proposed in Bill	Rates in Act
Tier-1	3,740	3,964	3,970
Tier-2	1,670	1,770	1,776

Tier-3	800	848	854
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These rates (alongwith change in rates of cement from Rs. 1.25 to Rs. 1.5 per Kg) shall have effect on the next day of assent given by the President of the Islamic Republic of Pakistan, i.e. from May 19th, 2018.