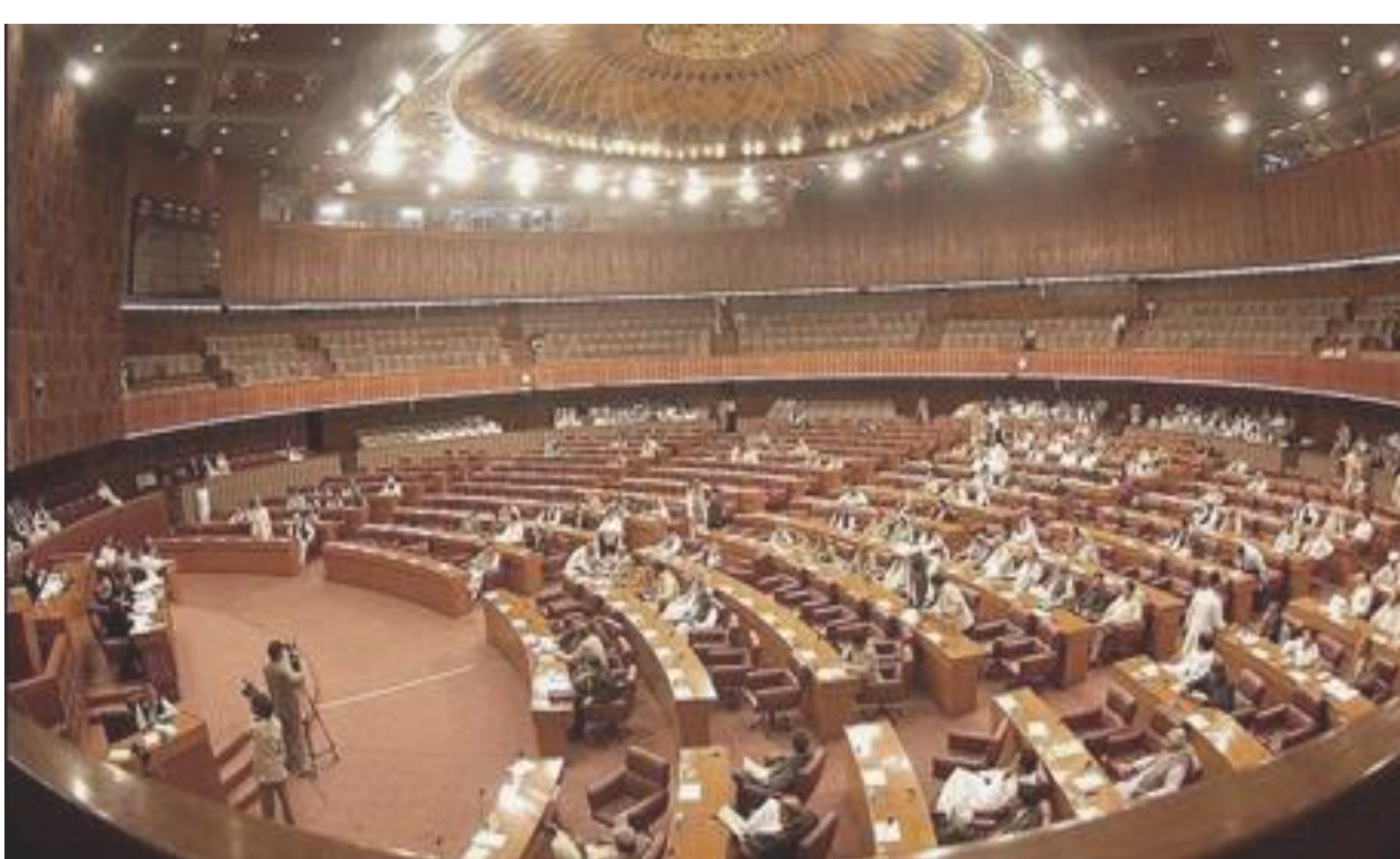




COMMENTS ON CHANGES MADE IN THE FINANCE SUPPLEMENTARY (SECOND AMENDMENT) BILL, 2019





Prologue:

This document provides our comments on important changes introduced in the Finance Supplementary (Second Amendment) Bill 2019 (“The bill”) tabled before the Parliament on January 23, 2019 vide the Finance Supplementary (Second Amendment) Act 2019 (“The Act”). This is the third amendment being introduced during fiscal year 2018-19. The country is suffering of severe economic crisis and through these amendments, government is trying to reinforce the confidence of economy and provide a breathing vent to business community.

The instant commentary contains comments on the amendments the Income Tax Ordinance, 2001 (“ITO”); the Sales Tax Act, 1990 (“STA”), the Federal Excise Act, 2005 (“FED”) and Customs Act, 1969 (“CA”)

The amendments proposed through the bill and enacted through the Act to be effective forthwith, unless otherwise indicated.

This commentary is intended to provide general guidance to our clients and other readers on the important changes between the bill and the act and should not be construed as an expert advice relating to a particular matter. For assessing the impact of proposed changes, reference should be made to the appropriate wording the relevant law, notifications issued thereunder, and judgment given by the Courts.

This Memorandum 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 This Memorandum should not be published or printed in any manner without seeking a written consent from us.

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

Warm Regards

TOLA ASSOCIATES

Thursday, March 07, 2019

Amendments in Income Tax Ordinance, 2001

1. Super Tax - Section 4B

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 3% for others. The tax was continued till tax year 2017.

The super tax was continued till tax year 2020, however the rate of such tax is reduced by 1% each year. For banking companies, the rate for tax year 2018 was 0% whereas, for tax years 2019, 2020 and 2021; the rates were 4%, 3% and 2% respectively.

The bill had proposed that for banking companies, the rates for 2018 to 2021 may be 4%. Whereas, for other companies, the rate for tax year 2020 is proposed to be reduced to 0% from 1%.

The Act in addition to above extends applicability of Super Tax beyond 2020 in section 4B. We understand that the amendment is only made to align charging section with Schedule.

2. Restriction on purchase of certain assets – 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.

Finance Supplementary (Amendment) Act 2018 introduced following exceptions to the restrictions:

- 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 immovable property, prior to the date of registering, recording, or attesting transfer; or
- a legal heir acquiring immovable property in inheritance.

The bill had proposed to add following further exceptions to the general restriction:

- locally manufactured motor vehicle having engine capacity not exceeding 1300 cc; or
- a person holding a Pakistan origin card or a national identity card for a non-resident Pakistani having international passport 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 immovable property, prior to the date of registering, recording, or attesting transfer; or

Through Act, the exception to the general restriction has been extended to all locally manufactured motor vehicles only. We understand, though not mentioned in amendment, that locally manufactured motor vehicle includes locally manufactured motorcycle, motor cycle-rickshaw and rickshaw, locally manufactured agricultural tractor and thus exception to the general restriction is available to these also.

3. Directorate General of International Tax Operations – Section 230E

In FA 2017, as a matter of administrative reform and to bring Pakistan's present system in line with

Amendments in Income Tax Ordinance, 2001

international best practices, a new directorate for transfer pricing had been established. This was a positive step for improving tax culture in the country. Previously, the matters relating to transfer pricing were undertaken by the regular field force. This had resulted in lack of emphasis on this sensitive tax matter which was essential for the development of effective tax culture in the country.

The Directorate of transfer pricing was empowered to conduct independent transfer pricing audits. This was in addition to the regular tax audits undertaken by the field forces.

The Bill had proposed to omit Section 230E, thus transferring transfer pricing matters again to field force.

The Act, has substituted Directorate-General of Transfer Pricing for new Directorate General of International Tax Operation which has wider scope than predecessor, including power to receive and send information from other jurisdiction under exchange of information agreements, receive and transmit and exchange country by country reports, conduct transfer pricing audit selected by Director General of International Tax Operation under criteria specified by FBR in addition to regular audit taken by field force.

4. Collection of tax by stock exchange – Section 233A

Section 233A provides that tax at 0.02% shall be collected by stock exchange on sale and purchase of share. Vide FA 2018, the tax so collected was made adjustable.

The bill had proposed to omit section 233A w.e.f. 01-02-2019. However, the Act has omitted this section w.e.f. 01-03-2019.

5. Exemption from total income under Second Schedule Part I

1. The bill had proposed that any income derived by following institutions shall be exempt from income tax:

- (i) National Disaster Risk Management Fund
- (ii) Deposit Protection Corporation established under sub-section (1) of section 3 of Deposit Protection Corporation Act 2016 (Act XXXVII of 2016)

The Act has added “Sarmaya-e-Pakistan Limited” to above list.

2. The Act has inserted new clause 103C for exemption on dividend income derived by a company if it has availed group relief under section 59B with effect from 1st July 2019. However, the exemption is available proportionate to shareholding of the company receiving the dividend in the company distributing the dividend. This amendment, however, was proposed in Bill as Clause (17) of Part III.

This relief already available in group taxation u/s 59AA read with Rule 231D in Clause 103A P-1 2nd Schedule. However, it was not available to companies availing group relief, thus creating a discrimination. This amendment can remove substantive discrimination between both modes however not absolutely as it is proportionate exemption.

3. The Act has inserted new Clause (126O), not proposed in Bill, which provides exemption from tax on profits and gains derived from a green field industrial undertaking for a period of five years incorporated on or after 01.07.2019.

We understand that the exemption granted on profits and gains do not have any economic benefit to industrial undertaking unless tax benefit on and Alternate Corporate Tax (ACT) under Section 113C of ITO is also offered for same period.

Amendments in Income Tax Ordinance, 2001

6. Exemption from specific provision – Second Schedule, Part IV

1. Clause 11A of Second Schedule Part IV provides the exemption from minimum tax. The bill had proposed exemption from minimum tax on following institutions:

- (i) National Disaster Risk Management Fund
- (ii) Deposit Protection Corporation established under sub-section (1) of section 3 of Deposit Protection corporation Act 2016 (Act XXXVII of 2016).

The Act, in addition to above, also extended benefit to Sarmaya-e-Pakistan Limited and Green Field industrial undertaking qualifying for exemption under clause (126O) of Part 1 of the Second Schedule.

2. The Act also inserted, not proposed in Bill, exemption from application of Section 151 in case of profit on debt paid on (a) promissory notes issued under the provisions of Sales Tax Act, 1990, (b) Pakistan Banao Certificate; (c) Sarmaya-e-Pakistan Limited and (d) bonds issued under Federal Government Duty Drawback Bonds Rules, 2019.

3. The Act, not proposed in Bill, also extended exemption from application of Section 148 on import of firefighting equipment's by industrial undertakings setup in the special economic zones established by the Federal Government.

4. The bill had proposed to introduce a new clause (111) through which the exemption from Super Tax chargeable under section 4B has been proposed on income of banking company earned under Rule 7D, 7E, 7F of the Seventh Schedule of ITO inserted vide the bill.

The Act while maintaining the exemption as above has explained that Banking company means as defined as Section 4B only.

7. Amendments in Seventh Schedule 7D- Reduced rate of tax for additional advances to micro, small and medium enterprise, 7E- Reduced rate of tax for additional advances to low cost housing finance, 7F-Reduced rate of tax for additional advances as Farm credit

After Rule 7C, 3 new Rules were proposed to be inserted to extend reduced rate of 20% to interest income earned by (a) banking company on additional advances to micro, small and medium enterprises for tax year 2020 to 2023, (b) banking company on low cost housing finance for tax year 2020 to 2023, (c) banking company on additional advances to Farm Credit in Pakistan for tax year 2020 to 2023.

The Act while maintaining above, substituted interest income in above rules by Taxable income determined by following formula,

Taxable income subject to reduced rate of tax = $A*B/C$

Where-

- A= is taxable income of the banking company
- B= is net mark-up income earned from such advances for the tax year as declared in the annual accounts; and
- C= is total of the net mark-up, non mark-up income of the banking company as per accounts.

Further, inserting additional requirement to furnish a certificate from external auditor along with accounts while e-filing return of income, adding power of Commissioner to require banking company to furnish details of advances etc.

Amendments in Sales Tax Act, 1990

1. FBR Refund Settlement Company (Private) Limited Section 2(11A)

The Act has inserted a new definition for a company named FBR Refund Settlement Company (Private) Limited whose sole purpose would be to provide settlement of sales tax and income tax refund claims including issuing of refund bonds under Section 67A.

2. Payment of refund through Promissory notes Section 67(A)

Through this Act, the Federal Government has removed the 10th Schedule (proposed earlier vide The Bill) and have provided a new procedure for issuance of refund bonds.

The Federal Government will form a company by the name of FBR Refund Settlement Company (Private) Limited which will be incorporated through by the Securities and Exchange Commission of Pakistan as a central depository company under the Securities Act, 2015. The Board will issue a promissory note to the FBR Refund Settlement Company (Private) Limited with the details of refund claimants and amount of refund determined as payable to each for the issuance of sales tax refund bonds.

The Government has taken a good initiative and relief for the exporters whose refunds amounting to almost Rs 250 million were stuck with the Government. The Government itself is cash strapped and is unable to give the sales tax refunds to the exporters. By issuing promissory notes the Government will have to bear the cost of 10% payable to the holder of promissory note. At this moment it is not clear whether this scheme is perpetual or for future refunds arising in the years to come. Moreover, the procedure for Income tax refunds has not yet been defined in the Income Tax Ordinance, 2001.

The maturity period of the bonds will be three years from the date of issuance and bonds shall be issued in

multiples of one hundred thousand Rupees. The bonds will bear annual simple profit at ten per cent and shall be redeemable after the period of maturity. The bonds will only be redeemable before maturity if the Board allows the same along with profit payable at the time of redemption.

Furthermore, these notes will be traded freely in the country's secondary markets and approved security for calculating the statutory liquidity reserve. In addition to that notes will be accepted by the banks as collateral.

There will be no compulsory deduction of Zakat against the promissory notes and Sahib-e-Nisab may pay Zakat voluntarily according to Shariah.



Amendments in Federal Excise Act, 2005

The Bill proposes to amend the federal excise duty on the luxury cars and SUV having engine capacity of more than 1700cc. Previously in The Bill the engine capacity was specified at 1800cc.

S. No	Description	Heading / sub headings	Rate of Duty
55B	Locally manufactured or assembled moto cars' SUVS and other motor vehicles of cylinder capacity of 1700cc or above, principally designed for the transport of Persons (other than those of headings 87.02), including start on wagons and racing cars of cylinder capacity of 1700cc or above	87.03	Ten percent ad val.

Amendments in Customs Act, 1969

1. Amendments in Customs Act, 1969

The Act made following addition in fifth schedule to extend benefit of reduce rates on import of Industrial inputs/raw materials with effect from 31st March 2019

S.No	Description	PCT Code	Existing Rate of Customs Duty (%)	Reduce Rate of Customs Duty (%)	Conditions
1	Magnesium oxide	2519.9010	3	0	Nil
2	Other	2836.9990	3	0	Nil
3	Cyclopentane	2902.1910	3	0	Nil
4	o-Xylene	2902.4100	3	0	Nil
5	Tetrafluoroethene	2903.3930	3	0	Nil
6	Octanol (octyl alcohol) and isomers thereof	2905.1600	3	0	Nil
7	Formic acid	2915.1100	20	16	Nil
8	Sodium formate	2915.1210	3	0	Nil
9	Other	3204.9000	20	16	Nil
10	Vitrifiable enamels and glazes, engobes (slips) and similar preparations	3207.2000	11	3	Nil
11	Of a kind used in the leather or like industries	3403.1110	20	16	Nil
12	Of a kind used in the leather or like industries including fat liquors	3403.9110	20	16	Nil
13	Of a kind used in the paper or like industries	3809.9200	16	11	Nil
14	Of a kind used in the leather or like industries	3809.9300	16	11	Nil
15	Acrylonitrile butadiene styrene (ABS) copolymers	3903.3000	3	0	Nil
16	Other poly-ethers	3907.2000	3	0	Nil
17	Polyurethanes	3909.5000	3	0	Nil
18	Insulation tape double sided	3919.1010	11	0	Nil
19	Shoe lasts	3926.9060	20	16	Nil
20	Latex	4002.1100	3	0	Nil
21	Other	4002.1900	3	0	Nil
22	Other	4016.1090	20	5	Nil
23	Containing by weight more than 50 of graphite or other carbon or of a mixture of these products	6903.1000	11	3	Nil
24	Other	6903.2090	11	3	Nil
25	Adhesive tape	7607.1910	3	0	Nil
26	Used with HCFC and non-CFC gases	8414.3010	3	0	Nil
27	Of machines of heading 8414.1000 and 8414.3010	8414.9010	3	0	Nil
28	Evaporators (roll bond/ fin / tube on plate types)	8418.9910	3	0	Nil
29	Machines for reeling, unreeling, folding, cutting or pinking textile fabrics	8451.5000	3	0	Nil
30	Other	8452.2900	3	0	Nil
31	Machinery for preparing, tanning or working hides, skins or leather	8453.1000	3	0	Nil
32	Machinery for making or repairing footwear	8453.2000	3	0	Nil
33	Parts	8453.9000	3	0	Nil
34	Other	8465.9190	3	0	Nil
35	Other	8477.3090	3	0	Nil
36	Parts	8477.9000	3	0	Nil

Amendments in Customs Act, 1969

S.No	Description	PCT Code	Existing Rate of Customs Duty (%)	Reduce Rate of Customs Duty (%)	Conditions
37	Injection or compression types	8480.7100	3	0	Nil
38	Motors of an output not exceeding 37.5 W	8501.1000	3	0	Nil
39	Other	8501.4090	20	16	Nil
40	Burglar or fire alarms and similar apparatus	8531.1000	3	0	Nil
41	Other	9030.8900	3	0	Nil
42	Of a kind used in refrigerators, deep freezers and air conditioners	9032.1010	3	0	Nil
43	Other	9032.1090	20	16	Nil
44	i. Other	3506.9190	16	5	If imported by manufacturers of diapers/ sanitary napkins registered under the Sales Tax Act, 1990, subject to annual quota determination and verification by the Input Output Co-Efficient Organization (IOCO) and certification by the Engineering Development Board.
	ii. Other	3906.9090	11	5	
	iii. Of polymers of ethylene	3920.1000	20	16	
	iv. Of other plastics	3921.1900	20	16	
	v. Of polymers of ethylene	3923.2100	20	5	
	vi. Weighing not more than 25 g/m ²	5603.1100	16	11	
	vii. Weighing more than 25 g/m ² but not more than 70 g/m ²	5603.9200	20	16	
	viii. Weighing more than 70 g/m ² but not more than 150 g/m ²	5603.9300	16	11	

- The duty on import of Plant and Machinery excluding consumer durable goods and office equipment as imported by greenfield industries, intending to manufacture taxable goods, during their construction and installation period with effect from 1st July 2019 has been **zero rated**.
- The Act added firefighting equipment in PCT code 9917 with Plant and Machinery with effect from 1st July 2019, thus extending benefits of **zero rated** duty for Plant and Machinery to firefighting equipment as well.