BRIEF COMMENTS ON FINANCE (AMENDED) BILL, 2020

DATED: MONDAY, 29 JUNE 2020

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PROLOGUE:

After the promulgation of Finance Bill 2020 ("**The Bill**"), an anomaly committee was constituted under the chairmanship of Mr. Ashfaq Tola to identify and rectify legal and technical anomalies in FB. This committee identified and recommended various technical and legal anomalies, many of which were incorporated while passing Finance Act 2020 ("**The Act**").

This document provides our comments on important changes introduced in the bill tabled before the Parliament on June 29, 2020 vide the Act.

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").

The amendments proposed through the bill and enacted through the Act to be effective from 1st July 2020, 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.

This Memorandum should not be published or printed in any manner without seeking a written consent from us.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

Our detailed commentary on the final Act will be followed.

Warm Regards

TOLA ASSOCIATES

Monday, 29 June 2020

INCOME TAX ORDINANCE, 2001

1. DEFINITION OF "INDUSTRIAL UNDERTAKING" – SECTION 2(29C), 57

A resident company engaged in hotel business in Pakistan has been added in the definition of Industrial Undertaking.

Moreover, the loss sustained by a hotel business in Pakistan, incurred after July 01, 2020, shall be allowed to be carried forward for 8 years.

2. TAX ON SHIPPING OF A RESIDENT PERSON – SECTION 7A

Section 7A provides for taxation on shipping of a resident person under the Final Tax Regime on a per tonnage basis. The Bill had proposed to extend the application of Section 7A till 2023 instead of 2020. The Act has further extended the same till 2030.

3. INCOME FROM PROPERTY – SECTION 15A

The Bill had proposed to reduce the limit of 6% expenditure claim to 2% in case of separate block of income. The Act has now relaxed this limit to 4%

4. DISALLOWANCE OF EXPENDITURES – SECTION 21(P), 21(Q)

The Bill had also proposed to disallow expenditure by an industrial undertaking in proportion of supplies made to sales tax unregistered persons. However, this proportionate disallowance was only proposed to be applicable in cases where supplies equal or exceed Rs. 100 million per person. Moreover, this proportionate disallowance was proposed to not exceed 20% of total expenditure claimed under this clause.

The Act has further relaxed the disallowance limit up to 10% only, from the proposed 20%. The Act has also deferred application of this disallowance till 30th September 2020.

5. DEFINITION OF SECURITY – SECTION 37A

The Act has inserted a new subsection (3B) under Section 37A. Consequently, an explanation has been added with respect to securities. The subsection provides for shares of a public company to be treated as 'security', if at the time of disposal of such shares the company is public. This means that in case of shares held by shareholders of a private company, which has been converted into public company before disposal of such shares, such disposal shall be taxed under Section 37A.

6. NON-PROFIT ORGANIZATIONS – SECTION 100C

Surplus funds of the NPOs, which are not spent during the year for welfare, are taxed at the rate of 10% with certain exclusions. One such exclusion is funds which could not be spent due to any obligation or restriction placed upon the NPO by the donor. However, where the donor is an associate of the NPO, such a restriction can be a mechanism to shift profit to the NPO. Therefore, an amendment was proposed so that the above exclusion does not apply in case where the donor is an associate of the NPO.

The Act has now omitted this proposed amendment.

7. REVISION OF WEALTH STATEMENT – S. 116

Currently, for revision of wealth statement, the Commissioner's approval is not required under Section 116.

The Bill has proposed that the wealth statement shall be revised after approval from Commissioner. It also proposed that in cases of bonafide omission and wrong statements, the Commissioner shall compulsorily approve the revision request.

The Act has now withdrawn the requirement for prior approval of Commissioner and has replaced the same with intimation to the Commissioner. However, the Act has also empowered the Commissioner to render the revision void after providing opportunity of being heard in case the revision is not for the purpose of correction of bonafide omission and wrong statements in his opinion.

8. DEPOSIT OF 10% OF DEMAND BEFORE FILING APPEAL TO ATIR – S. 129, 131

The Bill had proposed to attach proof of payment of 10% of the tax amount upheld by Commissioner (Appeals) along with the Appeal documents and make it a precondition to deposit 10% of the amount upheld before admission of Appeal by Appellate Tribunal.

The Act has now omitted this proposed amendment.

9. ADVANCE TAX AT IMPORT – SECTION. 148

In order to provide a level playing field to commercial importers, viz-z-viz manufacturers, remove distortions in the incidence of income tax on the import of capital goods and raw materials, plug revenue leakages and facilitate manufacturing by SMEs, a paradigm shift in the current regime was proposed by shifting from person-specific rates to goods specific rates cascaded according to the type of goods, with tax @1% for capital goods, 2% for raw materials and 5.5% for finished goods irrespective of status of the importer. However, the prevailing concessional rates on certain items such as remittable scrap of iron and steel, potassic and urea fertilizers, LNG, Gold, Cotton, goods that were importable by manufacturers under the rescinded SRO 1125(I)/2011 dated 31.12.2011, mobile phones etc. are being maintained.

The products were proposed to be specified in Part I (capital goods), II (raw materials) and III (others) of newly introduced Twelfth Schedule to ITO.

The Act now has further empowered the Board to specify goods, imported to be used as raw material for importers' own use, to be treated as classified under Part II of the twelfth Schedule.

10. ADVANCE TAX ON PAYMENT OF DIVIDEND

Currently, as per Section 5 of the ITO, the tax chargeable in case of a person receiving dividend income from a company where no tax is payable by such company, due to exemption of income or carryforward of business losses or claim of tax credits, is 25%. Whereas, the advance tax for such persons is 15% under Division I Part III of First Schedule to ITO.

The Bill had proposed to align the advance tax rate with tax rate charged and increase the advance tax from 15% to 25%.

The Act has further specified advance tax rates in case of dividends paid by mutual funds to be 15% in line with tax charged under Section 5.

11. WITHHOLDING TAX ON SPECIFIED SERVICES AT 3% - SECTION 153

Currently, engineering services have been included in specified services on which reduced withholding tax of 3% is applicable. The Bill proposed to exclude such services from the list of specified services.

The Act has now reincluded 'engineering services' in the specified list along with other services of warehousing services, services rendered by asset management companies, data services provided under license issued by the Pakistan Telecommunication Authority, telecommunication infrastructure (tower) services.

12. ADDITIONS IN CLAUSE (66) PART I, SECOND SCHEDULE

The following institutions have been added in Clause (66) of Part I of the Second Schedule, so that incomes derived by such institutions would be exempt from tax:

TABLE 1:

i. Sindh Institute of Urology and Transplantation, SIUT Trust and Society for the Welfare of SIUT.
ii. Shaukat Khanum Memorial Trust (Parallel to Govt. Institutions)
iii. National Endowment Scholarship for Talent (NEST).

TABLE 2: (Exemption subject to 100C)

i. Alamgir Welfare Trust International
ii. Foundation University

13. EXEMPTION FROM MINIMUM TAX – 113, CLAUSE (11A), PART IV, SECOND SCHEDULE

The Act has exempted application of section 113, i.e. turnover tax, on following further organizations:

- Naya Pakistan Housing and Development Authority for tax years 2020 and next four years;
- Hajj Group Operators for tax year 2021; and

- A resident company involved in hotel business in Pakistan I respect of turnover for the period from 01-04-2020 to 30-009-2020.

14. EXEMPTION FROM SECTION 148 – CLAUSE (12D), (12E), PART IV, SECOND SCHEDULE

Some further drugs and medical equipment relevant to Covid-19 treatment have been provided an exemption from Section 148 on fulfillment on certain conditions.

15. EXEMPTION FROM SECTION 153 – CLAUSE (46AA), PART IV, SECOND SCHEDULE

Following persons, as recipient of payment, have been exempted from application of Section 153:

- Unregistered individuals receiving payments for supply of:
  - Sand
  - Bricks
  - Grit
  - Gravel
  - Crushed stone
  - Soft mud
  - Clay
- Following persons in respect of services provided to construction sector:
  - Artisans
  - Plumbers
  - Electricians
  - Surface finishers
  - Carpenters
  - Painters
  - Daily wagers
- Subject to following conditions:
  - The person is unregistered;
  - The CNIC number and address of such individual is recorded by payer; and
  - Payment is made directly to the individual

16. OTHER AMENDMENTS

- Alamgir Welfare Trust International has been added in Clause (61) of Part I of the Second Schedule, exempting any amount of donation paid to the institution.
- Income of Naya Pakistan Housing and Development Authority has been exempted vide Act.
- The bill proposed to extend exemption on capital gain on sale of immoveable property to a Developmental REIT Scheme from 2020 to 2021.

  The Act now extends exemption on capital gain on sale of immoveable property to both Rental and Developmental REIT Scheme from 2021 and 2020, respectively, to 2023.

SALES TAX ACT, 1990

1. AMENDMENT IN DEFINATIONS- SECTION 2

Value of supply- Section 2(46)

The bill proposed a new definition for value of supply had been proposed for supply of used vehicle, whereby if a person is engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing, and it is now sold in the open market after making certain value additions i.e. not in the same condition as when imported or manufactured, the value of supply will be the difference between sale and purchase price of that vehicle, means the person will charge output tax only on difference amount.

Now vide Act, a change has been made, whereby the sale and purchase price will be determined on basis of valuation method prescribed by FBR.

2. RESTRICTION ON INPUT TAX- SECTION 8B

As per Section 8B a registered person shall not be allowed to adjust input tax in excess of 90% of the output tax for a particular tax period. Therefore, in case of lower profit margin he is required to pay 10% of his output tax to FBR. It means that if his input tax during a tax period exceeds his output tax as a result of loss or overbuying (closing stock), he is not entitled to get refund instead he will pay 10% of his output tax to FBR. Input tax disallowed due to this restriction shall be carried forward to the next period and shall be treated as input tax of that period.

Now through Act, changes have been made whereby, above rules will not be applicable in case of locally manufactured electric vehicles listed in Eight Schedule of Sales Tax Act, 1990. In that case, the input tax can be adjusted up to 100% of output tax, however, if input tax exceeds output tax, no refund or carry forward of excess tax shall be allowed.

3. REAL TIME ACCESS TO NADRA AND IMMIGRATION DATABASES- SECTION 56A

In order to increase tax base and to crack on potential tax evasions, the bill had proposes FBR to make arrangements to have real time access to information and database of following for Sales Tax and FED purposes:

- National Database and Registration Authority (NADRA)
- Federal Investigation Agency and Bureau of Emigration and Overseas Employment
- Islamabad Capital Territory and Provincial and Local land record and development authorities.
- Islamabad Capital Territory and Provincial Excise and taxation Departments
- All Electricity suppliers and gas transmission and distribution companies.
- Any other agency, authority, institution, or organization notified by FBR.

The detail from Federal Investigation Agency and Bureau of Emigration and Overseas Employment was related to details of international entry and exit of all persons, and information pertaining to work permits, employment visas and immigration visas.

Now through Act, the information from both agencies has been restricted to only international travel.

The same amendment has also been introduced in ITO.

4. REPRESENTATIVE - SECTION 58A

Section 58A provides provisions regarding representative of a taxpayer including of a non-resident person to represent it in department and appellate forums. Through bill an explanation was proposed that non-resident for sales tax purposes shall have same meaning as provided in Income Tax.

Now Act also has provided FBR, power to specify persons or class of persons through notification and subject to such conditions and restrictions, to be considered as representatives of non-resident.

5. PAYMENT THROUGH BANKING CHANNEL - SECTION 73

The taxpayer is allowed input adjustment/refund, only if payment to supplier is made through banking channel. Through FA 2019 a condition for manufacturers was inserted whereby it was made mandatory for manufacturers to make all taxable supplies, exceeding certain monetary threshold, to a person who has obtained registration of sales tax, failing which the supplier shall not be entitled to claim credit adjustment or deduction of input tax as attributable to such excess supplies to unregistered person. The bill had proposed to apply above provisions to all registered suppliers in value chain.

Through Act, this proposed amendment is deleted and the position before bill is restored.

6. AMENDMENT IN SIXTH SCHEDULE -EXEMPT ITEMS

In Table 1:

- The exemption under entry 103 related to import and supply of ships and all floating craft etc. which expires on 2020 was proposed to be extended to 2023.

Now it is extended up to 2030.

Through Act the following items are also added in sixth schedule:

- Oil cake and other solid residues, whether or not ground or in the form of pellets (PCT code 2306. 1000 [Entry 155])
- Import of CKD kits by local manufacturers of following Electric Vehicles: [Entry 156]–
  - (i) Road Tractors for semi-trailers (Electric Prime Movers) (PCT code 8701.2060)
  - (ii) Electric Buses (PCT code 8702.4090)
  - (iii) Three-Wheeler Electric Rickshaw (PCT code 8703.8030)
  - (iv) Three-Wheeler Electric Loader (PCT code 8704.9030)
  - (v) Electric Trucks (PCT code 8704.9059)
  - (vi) Electric Motorcycle (PCT code 8711.6090)

In Table 3:

Through Act, entry no. 20 is added as follows:

- Plant and machinery for the assembly/ manufacturing of electric vehicles, subject to condition that the exemption shall be admissible on one time basis for setting up the new assembly and/or manufacturing facility of the vehicles and expansion in the existing units to the extent of electric vehicles specific plant and machinery, duly approved/ certified and determined by the Engineering Development Board (EDB)

7. AMENDMENT IN EIGHT SCHEDULE

Table 1

Deleted entry through Act:

- Oil cake and other solid residues, whether or not ground or in the form of pellets PCT 2306.1000. Rate of tax 5%. [entry 2]

Table 2

New entry no. 70 through Act:

- Following locally manufactured electric vehicles
  - (i) Road Tractors for semi-trailers (Electric Prime Movers) PCT code 8701.2060, Sale Tax rate 1%,; local supplies only
  - (ii) Electric Buses PCT code 8702.4090 Sale Tax rate 1%,; local supplies only
  - (iii) Three wheeler electric richshaw PCT code 8703.8030, Sale Tax rate 1%,; local supplies only
  - (iv) Three-wheeler electric loader PCT code 8704.9030, Sale Tax rate 1%; local supplies only
  - (v) Electric trucks PCT code 8704.9059, Sale Tax rate 1%, local supplies only
  - (vi) Electric motorcycle PCT code 8711.6090, Sale Tax rate 1%; local supplies only

8. AMENDMENT IN NINTH SCHEDULE

The previous table proposed vide Bill has been splitted into two separate Tables without any changes in Sales Tax rates, as under:

Table 1

Sales Tax on supply (payable at the time of supply by CMOs):

S.No.	Description/Specification of Goods	Sales tax on supply (payable at time of supply by CMOs)
1.	Subscriber Identification Module (SIM) Cards	250

Table 2

Cellular mobile phones in CKD/CBU form:

S.No.	Description / Specification of Goods	Sales tax on CBUs at the time of import or registration (IMEI number by CMOs)	Sales tax on import in CKD/SKD condition	Sales tax on supply of locally manufactured mobile phones in CBU condition in addition to tax under column (4)
1.	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category: -			
	A. Not exceeding US$ 30 (excluding smart phones)	Rs 130	Rs 10	Rs 10
	B. Not exceeding US$ 30 (smart phones)	Rs 200	Rs 10	Rs 10
	C. Exceeding US$ 30 but not exceeding US$ 100	Rs 200	Rs 10	Rs 10
	D. Exceeding US$ 100 but not exceeding US$ 200	Rs 1,680	Rs 10	Rs 10
	E. Exceeding US$ 200 but not exceeding US$ 350	Rs 1,740	Rs 1,740	Rs 10
	F. Exceeding US$ 350 but not exceeding US$ 500	Rs 5,400	Rs 5,400	Rs 10
	G. Exceeding US$ 500	Rs 9,270	Rs 9,270	Rs 10

"LIABILITY, PROCEDURE AND CONDITIONS" and note has also been deleted and new clauses are inserted as follows through Act:

(i) The liability to pay the tax on the goods specified in this Schedule shall be,–

a) In case of the goods specified in Table-I, of the Cellular Mobile Operator (CMO);

b) in case of goods specified in columns (3) and (4) of Table-II, of the importer; and

c) in case of goods specified in column (1), against S. No. 2, in column (2),–5) of Table-II, of the local manufacturers of the goods.

(ii) The time of payment of tax due under this Schedule shall be the same as specified in section 6;

(iii) The tax paid under this Schedule shall not be deductible against category A, the output tax payable by the purchaser or importer of the goods specified in this Schedule;

(iv) The input tax paid on the input goods attributable to the goods specified in this Schedule shall not be deductible for the tax payable under this Schedule; and

(v) The Board may prescribe further mode and manner of payment of tax due under this Schedule

9. AMENDMENT IN TENTH SCHEDULE

The tenth schedule prescribes fixed tax rate on bricks in (PCT heading 6901.0000). Now through Act Tax on cement/concrete blocks PCT code 6810.1100 has also been added as follows with no input tax adjustment:

Table

S.No.	Item	Tax
1	Paver	Rs 2 per square ft.
2	Hollow Block (volume less than 1 cubic ft)	Rs 3 per piece
3	Solid Block(volume less than 1 cubic ft)	Rs 3 per piece
4	Kerb Stone (volume less than 1 cubic ft)	Rs 5 per piece
5	Kerb Stone (volume greater than 1 cubic ft)	Rs 10 per piece

10. AMENDMENT IN ELEVENTH SCHEDULE

Through bill editorial changes are proposed to Eleventh Schedule for clarity and restricting lower

SALES TAX ACT, 1990

withholding of sales tax rates to Active taxpayers instead of registered persons.

Now through Act, supply of sand, stone, gravel/crush and clay to low cost housing schemes sponsored or approved by Naya Pakistan Housing and Development Authority has also been excluded from withholding under Eleventh Schedule.

FEDERAL EXCISE ACT, 2005

➢ AMENDMENTS IN FIRST SCHEDULE

- The bill had proposed new entry "6a. Caffeinated energy drinks PCT code 2202.1010 2202.9900 25% of Retail Price". Now Act has deleted this entry.
- Before bill, FED was levied on cigars, cheroots, cigarillos and imported cigarettes at 65% of 'retail price'. Through bill the duty was increased to 100%. Now Act, the duty imported cigarettes of tobacco or tobacco substitutes [entry 8] is 65% of retail price. For Cigars, cheroots and cigarillos of tobacco and tobacco substitute the rate of duty will be 65% of retail price or Rs 10,000/kg whichever is higher.
- As per bill duty on cement was proposed to be reduced by 12.5% from Rs 2 to Rs 1.75 per kilogram implying a decrease of Rs 12.5 per standard bag of 5o kilogram. Now Act has further reduced duty from Rs 1.75 to 1.50.
- As per bill a new entry 55d was added whereby locally manufactured double cabin (4x4) pick-up vehicles except the vehicles were subject duty 7.5% ad valorem. Now Act has restricted this to vehicles booked on or before the 30th June 2020 subject to the restriction or conditions specified by the FBR.

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