



COMMENTS ON TAX LAWS (AMENDMENT) ORDINANCE, 2021



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PROLOGUE

The President of Pakistan has promulgated the Ordinance dated 12th February 2021 to make amendments in Income Tax Ordinance, 2001[ITO], Sales Tax Act, 1990[STA] and Federal Excise Act, 2005[FED] and Customs Act. We are pleased to submit our comments on the effect of the said Ordinance on ITO, STA and FED.

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The readers are advised to consult the actual text of the Ordinance when interpreting specific provisions, and to consult our tax department for clear advice on specific issues.

Lastly, we would like to extend our warm regards to all of you during these tough times. You can visit our website www.tolaassociates.com, or download our mobile Application, in order to access our monthly publications, and other publications similar to this, that are issued in light of (a) major development(s). The aforesaid application can be downloaded from the links hereunder:

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Best Regards

TOLA ASSOCIATES

A. Amendments in Income Tax Ordinance, 2001[ITO]

1. Payment to non-resident - Section 152

Section 152 prescribes rules for withholding of tax when payment is made to non-residents on account of royalty, fee for technical services, contract of construction services, contract for digital services, contract for advertisements, etc.

Now through Ordinance, every banking company maintaining a Foreign Currency Value Account (FCVA) or a non-resident Pakistani Rupee Value Account (NRVA) of a non-resident individual holding Pakistan Origin Card (POC) or National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card shall deduct tax @10% on capital gain arising on the disposal of debt instruments and government securities and certificates (including Shariah compliant variant) invested through FCVA and NRVA, and this shall be final tax liability for such non-resident persons.

2. Advance Tax on Motor Vehicle-Section 231B

Every motor vehicle registering authority of Excise and Taxation Department is required to collect advance tax at the time of registration of a new locally manufactured motor vehicle, at the rates prescribe with respect to engine capacity.

Now through Ordinance, every motor vehicle registering authority of Excise and Taxation Department is required to collect advance tax in addition to above from the buyers of locally manufactured motor vehicles who subsequently sell it within 90 days of delivery of such vehicle whether prior to or after registration at the following rates. This tax is adjustable and is applicable till 30th June 2021 only.

S.No.	Engine Capacity	Tax
1	Up To 1000cc	Rs 50,000
2	1000cc to 2000cc	Rs 100,000
3	2000cc and above	Rs 200,000

The tax has been introduced to discourage the 'On Money' culture in Pakistan which has been a major factor in price hikes in car prices over the past years.

3. Advance Tax on sale or transfer of immovable Property -Section 236C

Any person responsible for registering, recording or attesting transfer of any immovable property, at the time of registering, recording or attesting the transfer, is required to collect from the seller or transferor advance tax at the rate of 1%. The Advance tax collected is adjustable, however, where immovable property is acquired and disposed of within the same tax year, the tax collected under this section is minimum tax.

Now through Ordinance, if the seller or transferor is a non-resident individual holding POC or NICOP or Computerized National ID Card, who had acquired the immovable property through a FCVA or a NRVA maintained with authorized banks in Pakistan shall be final tax in lieu of capital gains earned by the seller or transferor from the property so disposed off.

For instance, if Mr. A, who is a non-resident Pakistani holding POC acquires an immovable property through FCVA costing Rs. 100 million and later disposes off the property after one year for Rs. 107 million, he will be required to pay advance tax of Rs. 1,070,000 (107,000,000x1%) at the time of disposal. At the time of filing of return at year end, he will be required to only declare capital gain of Rs.

7 million and will not be required to pay any further tax on such gain.

This fixed tax regime is a discrimination against local buyers and sellers of immovable property. The regime may also be used as a tool to whiten the black money as fictitious capital gains may be booked as was done through earlier fixed tax regime.

On the other hand, if the above transactions have been done by a resident individual, he would have been charged tax on capital gain of Rs. 7 million at 5% as per slab rate provided in division III, Part I, First Schedule.

4. Advance tax on purchase or transfer of immovable property - Section 236K

Any person responsible for registering, recording or attesting transfer of any immovable property, is required at the time of registering, recording or attesting the transfer to collect from the purchaser or transferee advance tax at the rate 1% of fair market value. The advance tax collected shall be adjustable.

Now through Ordinance, if the buyer or transferee is a non-resident individual holding POC or NICOP or Computerized National ID Card who acquires the immovable property through a FCVA or NRVA maintained with authorized banks in Pakistan, the tax shall be final tax for such buyer.

In the above example when Mr. A acquired property through FCVA, he was charged 1% advance tax at the time of purchase of property under section 236K. Therefore, effectively the buyer of the property is charged approximately 2% of the value of property (1% at time of acquisition and 1% at time of disposal) plus 1% on capital gain (as capital gain being part of value of property at the time of disposal) in lieu of capital gain tax under section 37 of ITO.

5. Super Tax on Banking Companies

Section 4B was inserted vide FA 2015, for rehabilitation of temporarily displaced persons to be paid by prescribed persons at the rate prescribed under Division IIA of Part I of the First Schedule. Through Tax Year 2020 onwards the tax was only applicable on Banking companies @ 4% till Tax year 2021. Now this tax has been extended for indefinite period.

6. Advance Tax on Import-Section 148

Currently advance tax rates on imports are as under:

S No.	Persons	Rate
1	Persons importing goods classified in Part I of the Twelfth Schedule	1% of the import value as increased by customs-duty, sales tax and federal excise duty.
2	Persons importing goods classified in Part II of the Twelfth Schedule	2% of the import value as increased by customs-duty, sales tax and federal excise duty
3	Persons importing goods classified in Part III of the Twelfth Schedule, commercial imports	5.5% of the import value as increased by customs-duty, sales tax and federal excise duty

Through Ordinance, the rate in case of importers of CKD kits of electric vehicles for small cars or SUVs with 50kwh battery or below and LCVs with 150 kwh battery or below is prescribed at 1%

7. Advance tax on sale to distributors, dealers or wholesalers - Section 236G

As per Section 236G, every manufacturer or commercial importer of electronics, sugar, cement, iron and steel products, fertilizer,

motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam, at the time of sale to distributors, dealers and wholesalers, shall collect advance tax at the rate 0.7% from fertilizer, and at 0.1% other than fertilizer, from the aforesaid person to whom such sales have been made.

Now through Ordinance, incentive is given in the form of reduced rate to support voluntary registration. The rate of advance tax on sale to distributors, dealers or wholesalers of fertilizer is reduced to 0.25%, if they already are or get themselves registered under the Sales Tax Act, 1990 within 60 days of the promulgation of this Ordinance.

8. Exemptions from Total Income-Part 1 of Second Schedule

8.1 Profit on Debt - Clause 78

Currently, any profit on debt derived from foreign currency accounts held with authorised banks in Pakistan, or certificate of investment issued by investment banks in accordance with Foreign Currency Accounts Scheme introduced by the State Bank of Pakistan, by **citizens of Pakistan and foreign nationals residing abroad, foreign association of persons, companies registered and operating abroad and foreign nationals residing in Pakistan** is exempt from tax.

Now through Ordinance such exemption has been restricted to only **non-resident individuals, non-resident association of person and non- resident companies**.

8.2 Profit on Debt- Clause 79

Currently, any profit on debt derived from a rupee account held with a scheduled bank in Pakistan by a **citizen of Pakistan residing abroad**, where the deposits in the said account are made exclusively from foreign

exchange remitted into the said account is exempt from tax.

Now through Ordinance such exemption has been restricted to only **non-resident individual holding a POC or NICOP or CNIC**.

The restriction of above exemptions to only non-residents is discriminatory against residents. There are approximately USD 7 billion reserves in these foreign currency accounts. Out of these USD 7 billion, USD 5 billion to USD 6 billion are used by the Government to showcase as foreign exchange reserves and to net off foreign exchange liabilities. On the other hand, the above discriminatory incentives are being granted for only USD 458 million of Foreign Direct Investments in addition to paying them interest at 7%.

8.3 Transmission Line Project- Clause 126M

Currently, exemption is available on Profits and gains derived by a taxpayer from a transmission line project set up in Pakistan on or after 1st July, 2015 for a period of ten years. The exemption under this clause shall apply to such project which is

(a) owned and managed by a company formed for operating the said project and registered under the Companies Ordinance, 1984 (XLVII of 1984), and having its registered office in Pakistan;

(b) not formed by the splitting up, or the reconstruction or reconstitution, of a business already in existence or by transfer to a new business of any machinery or plant used in a business which was being carried on in Pakistan at any time before the commencement of the new business; and

(c) owned by a company fifty per cent of whose shares are not held by the Federal Government or Provincial Government or a Local Government or which is not controlled

by the Federal Government or a Provincial Government or a Local Government:

The exemption under this clause was not available to projects which are set up on or after the 30th June, 2018. Now through Ordinance, the deadline for project setup has been extended to 30th June 2022.

8.4 Islamic Naya Pakistan Certificates Company Limited (INPCCL) - Clause 148

Through Ordinance, exemption of tax is given on any income derived by INPCCL.

9. Reduction in Tax Rates-Part II of Second Schedule

9.1 Profit on Debt to non-resident - Clause 5A

Currently, the rate of tax to be deducted under sub-section (2) of section 152, in respect of payments from profit on debt payable to a non-resident person, having no permanent establishment in Pakistan, is 10% of the gross amount paid. The tax deducted on profit on debt from debt instrument, Government securities including treasury bills and Pakistan Investment Bonds is final tax on profit on debt payable to a non-resident person having no permanent establishment in Pakistan and the investments are exclusively made through a special Rupee Convertible Account maintained with a Bank in Pakistan.

Now, through Ordinance, changes have been made whereby this advance tax will not apply if exemption from total income under Clause 78 and 79 of Part 1 is availed, as discussed in 8.1 & 8.2 above.

9.2 Profit on Debt on Resident - Clause 5AB

The rate of tax to be deducted under section 151 have been reduced to 10% (from 15%) from the profit on debt instruments, whether conventional or Shariah compliant, issued by Federal Government under the Public Debt Act, 1944 or its wholly owned special purpose

company, purchased by a resident citizen of Pakistan who has already declared foreign assets to the FBR through FCVA maintained with authorized banks in Pakistan under the foreign exchange regulation issued by the State Bank of Pakistan. The tax so deducted will be final tax.

9.3 Profit on Debt to non-resident/resident - Clause 5AC

The rate of advance tax to be deducted under Section 152(2) or Section 151 have been reduced to 0% of the gross amount of profit on debt paid which are covered under clause 79 and 78 of part 1 as discussed in 8.1 and 8.2 above.

9.4 Deduction on payment u/s 153(1)(a)-Clause 24C

Currently, the rate of tax under clause (a) of sub-section (1) of section 153 in case of dealers and sub-dealers of sugar, cement and edible oil, as recipient of the payment, is 0.25% of the gross amount of payments.

Now through Ordinance, **wholesaler and retailers** of fast moving consumer goods, fertilizer, sugar, cement and edible oil, have also been added in the above category as recipient of the payment.

However, the benefit of reduced rate shall be available to those dealers, sub-dealers, wholesalers and retailers of above sectors who already are or get themselves registered under the Sales Tax Act, 1990 within 60 days of promulgation of this Ordinance.

9.5 Minimum Tax u/s 113-Clause 24D

Currently, the rate of minimum tax under sub-section (1) of section 113 in case of dealers and sub-dealers of sugar, cement and edible oil is 0.25% subject to the condition that the names of such dealers and sub-dealers are appearing on the active taxpayers' lists issued under the provisions of

the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001.

Now, **wholesalers and retailers of fast moving consumers goods, fertilizer**, sugar, cement and edible oil have also been included in the above category.

However, the benefit of reduced rate shall be available to those dealers, sub-dealers, wholesalers and retailers of above sectors who already are or get themselves registered under the Sales Tax Act, 1990 within 60 days of promulgation of this Ordinance.

10. Reduction In Tax Liability - Part III of Second Schedule-Clause 17

With effect from 1st July 2019, the maximum tax payable by cotton ginnerers on their income and profits is capped at 1% of sum of their turnover from cotton lint, cotton seed, cotton seed oil and cotton seed cake. It shall be final tax on cotton ginning and oil milling activities.

11. Exemption from specific provisions - Part IV of Second Schedule

11.1 Minimum tax u/s 113- Clause 11A

Now through Ordinance, Islamic Naya Pakistan Certificates Company limited(INPCCL) is exempt from application of section 113.

11.2 Tax on Import u/s 148- Clause 56

Through Ordinance, exemption has been granted to goods temporally imported into Pakistan by international athletes which would be subsequently taken back by them within 120 days of temporary import.

11.3 National Telecommunication Corporation- Clause 79A

Exemption from withholding tax u/s 153(1)(b) have been extended on services provided by NTC against telecommunication services including ancillary services specified

in Section 41 of Pakistan Telecommunication (Re-organization) Act, 1996.

11.4 Non-resident can be non-filer with filer rates- Clause 111AB

The provisions of Section 100BA and rule 1 of the Tenth Schedule i.e. double rate of tax on non-filer, have been made not applicable on non-resident individual holding POC, or NICOP or CNIC maintaining a FCVA or NRVA.

11.5 Tax on Banking Transaction u/s 236P- Clause 112A

Currently, the provisions of section 236P are not applicable to a non-resident rupee account repatriable (NRAR) or a foreign currency account maintained with a banking company in Pakistan of a non-resident individual investing in a debt instrument, whether conventional or shariah compliant, issued by the Federal Government under the Public Debt Act, 1944.

Now changes have been made whereby, the provisions of **section 231A and 231AA and 236P** are not applicable to the **holders of FCVA or NRPRVA in respect of these account only.**

11.6 Return of income u/s 114 and Taxpayer registration u/s 181- Clause 114A

Section 114 prescribes list of persons who are required to file return of income including every person whose income for the year is subject to final taxation under any provision of ITO [Section 114(1)(ae)]. Currently, the provisions of clause (ae) of sub-section (1) of section 114 and section 181 shall not apply to a non-resident individual solely by reason of profit on debt earned from a debt instrument, whether conventional or shariah compliant, issued by the Federal Government under the Public Debt Act, 1944 and purchased exclusively through a bank account maintained abroad, NRAR or a

foreign currency account maintained with a banking company in Pakistan.

Now amendment has been introduced whereby the provisions of clause (ae) of sub-section (1) of section 114 and section 181 are not applicable to a non-resident individual holding Pakistan Origin Card, or National ID for Overseas Pakistanis(NICOP) or CNIC maintaining a FCVA or NRVA.

It is clarified that the person will be required to file return and obtain registration u/s 181 if he has Pakistan Source income. However, following Pakistan Source income will get exemption from Section 114 and 181:

- Profit on debt on FCVA or NRVA.
- Profit on Debt earned on Government of Pakistan (GOP) securities either conventional or Shariah Compliant where investment has been made from proceeds of FCVA or NRVA.
- Capital gain on disposal of immovable property acquired from proceeds of FCVA or NRVA.
- Capital gain on disposal of securities traded on PSX and units of mutual fund that are acquired from proceeds of FCVA or NRVA.
- Dividend income from securities traded on PSX and Mutual funds that are acquired from proceeds of FCVA or NRVA.

11.7 Islamic Naya Pakistan Certificates Company, Limited (INPCCL) - Clause 117

Amendments have been introduced whereby the provisions of withholding taxes, as provided in ITO, are not applicable to INPCCL as a recipient of payment.

11.8 Withholding agent u/s 153(1)(a) - Clause 118

Amendment has been introduced whereby the provisions of Section 153(1)(a) are not applicable to distributors, dealers,

wholesalers and retailers of locally manufactured mobile phone devices as withholding agent with effect from 1st July 2020.

B. Amendments in Sales Tax Act, 1990[STA]

1. Agreement for the exchange of information - Section 56A

Section 56 empowers Federal Government to enter into bilateral or multilateral agreements with provincial governments or with governments of foreign countries for the exchange of information, including electronic exchange of information, with respect to sales tax imposed under this Act or any other law of Pakistan and under the corresponding laws of such countries and may, by notification in the official Gazette, make such provisions as may be necessary for implementing such agreements.

Now, FBR has been given power to share data or information including real time data videos and images received under the provisions of this Act with any other Ministry or Division of the Federal Government or Provincial Government.

2. Sales Tax Exemptions - Sixth Schedule

Exemptions from sales tax have been provided in case of following:

- Import of CKD kits for the following electric vehicles (4 wheelers) by local manufacturers till 30th June 2026.
 - Small cars and SUVs with 50 kwh battery or below; and
 - Light Commercial Vehicles with 150 kwh battery or below.
- Goods temporarily imported into Pakistan by international athletes or sportsmen which would be subsequently taken back by them within 120 days of temporary import.

3. Specific Rates of Sales Tax - Eight Schedule

A new entry 71 is introduced in Eight Schedule whereby reduced rate of sales tax at 1% has been prescribed on following locally manufactured or assembled electric vehicles (4 wheelers) on local supply till 30th June 2026:

- (a) Small cars or SUVs with 50 kwh battery or below; and
- (b) Light commercial vehicles (LCVs) with 150 kwh battery or below

4. Minimum Value Addition Sales Tax - Twelfth Schedule

Following have been exempted from levy of value addition tax @3% at import stage on following:

- Electric vehicles (4 wheelers) CKD kits for small cars or SUVs, with 50 kwh battery or below and light commercial vehicles (LCVs) with 150 kwh battery or below till the 30th June 2026
- Electric vehicles (4 wheelers) small cars or SUVs with 50 kwh battery or below and light Commercial Vehicles (LCVs) with 150 kwh battery or below in CBU condition till 30th June 2026.
- Electric vehicles (2-3 wheelers and heavy commercial vehicles) in CBU condition till 30th June 2026.

C. Amendments in Federal Excise Tax Act, 2005 [FED]-First Schedule

An amendment has been introduced whereby imported and locally manufactured 4 wheeler electric vehicles have been excluded from levy of federal excise duty.