



COMMENTS ON TAX LAWS (THIRD AMMENDMENT) ORDINANCE, 2021



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PROLOGUE:

This documents contains analytical comments over the newly promulgated Tax Laws (Third Amendment) Ordinance, 2021 [hereinafter referred to as “**Ordinance**”]. The said Ordinance has brought forward changes in the Income Tax Ordinance, 2001 [hereinafter as “**ITO**”], the Sales Tax Act, 1990 [hereinafter as “**STA**”] and Customs Act, 1969. The changes are examined and elaborated in detail for the people involved in tax practices or are affected by them in any way. The changes brought forward vide the Ordinance is effective from **16 September 2021**.

Major amendments introduced through the ordinance pertain to broadening of tax base and exchange of information with other government bodies outside FBR.

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Tola Associates

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INCOME TAX ORDINANCE, 2001

1. PAYMENTS THROUGH DIGITAL MEANS – S. 21

Section 21(l) of ITO provides that a business expense of **any person** shall not be allowed if paid through any means other than through **crossed banking instrument** from business bank account of the taxpayer.

The ordinance has now amended the above clause and has also introduced another clause (la), whereby, payments of business expenses by companies through **digital means from business bank account of the taxpayer notified to the Commissioner** have been made compulsory for claim of such expenses.

All other exceptions to the above restrictions are still applicable. The exceptions are as under:

- Expense under a single account head does not exceed Rs. 250,000 in aggregate in a year.
- Transaction of expenditures not exceeding Rs. 25,000
- expenditures on account of
 - Utility bills;
 - Freight charges;
 - Travel fare;
 - Postage; and
 - Payment of taxes, duties, fee, fines or any other statutory obligation

Option of payment through **digital mode** have also been introduced for payment of salaries by employer to employees.

2. POWER TO GRANT EXEMPTIONS AND TAX CONCESSIONS – S. 53

Section 53 provides powers to grant exemptions and tax concessions. These powers have been vested into FBR with the approval of Federal Minister Incharge.

The ordinance now provides that such powers shall also be available to Federal Government.

3. REMITTANCES THROUGH CHANNELS OTHER THAN BANKS – S. 111

Section 111(4) provides immunity from inquiry to an amount, upto Rs. 5 million, remitted through normal banking in Pakistan in foreign currency and converted into PKR.

The Ordinance, through insertion of an explanation, has now also deemed remittances through Money

Service Bureaus (MCBs), Exchange Companies (ECs) and Money Transfer Operators (MTOs) such as Western Union, Money Gram and Ria Finance or other like entities as foreign exchange remitted from outside Pakistan through normal Banking channels.

The above explanation has been introduced consequent to decision of Appellate Tribunal Inland Revenue, Lahore in ITA no. 3609/LB/2020, wherein, remittances from above listed services were treated as foreign exchange. After the decision, a detailed circular No. 05 of 2020 was also issued, comments on which have been covered in our [August](#) Edition of our Monthly Newsletter Tax Pak.

4. POWER TO ENFORCE FILING OF RETURNS | DISCONTINUATION OF UTILITIES – S. 114B

Through a newly introduced section 114B, FBR has been vested with powers to issue Income Tax General Order in respect of persons who are not appearing on ATL but are liable to file return under the provisions of ITO. FBR has also vested with the powers of discontinuation of Mobile Phone connections, electricity connections and gas connections.

FBR or concerned commissioner has also been empowered to issue orders to restore above discontinued connections in cases where he is satisfied that the return has been filed or the person was not required to file return of income under ITO.

Before inclusion of any person in the general order, following conditions are required to be met:

- (i) Notice under sub section (4) of section 114 has been issued;
- (ii) Date of compliance of the notice under sub section (4) of section 114 has elapsed; and
- (iii) The person has not filed the return.

5. RECORDS SHARING BY NATIONAL DATABASE AND REGISTRATION AUTHORITY (NADRA) – S. 175B

The Ordinance has allowed NADRA to share its records or any information available or held by it, on its own motion or upon application by FBR.

The Ordinance provides that FBR may forward such information to the concerned income tax authority having jurisdiction in relation to the subject matter

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regarding the information, who may utilize the information for the purposes of ITO.

The ordinance has also allowed NADRA to compute indicative income and tax liability.

For example, NADRA may create a relationship between expenses (such as air travel, expenses paid through debit/credit cards, etc.) and declared Incomes and assets and may create risk scores for further probe by FBR.

Such indicative income and tax liability shall be communicated to the person to whom it relates and such person shall have the option to pay such liability as per terms, conditions, installments, default surcharge and penalties (or waivers of such default surcharge and penalties) as prescribed by FBR. In case the person does not pay such liability within specified time, FBR shall take action under ITO on the basis of incomes and liabilities computed by NADRA.

In our opinion, amendments of assessments as per above procedures and on the basis of information by NADRA will only be possible if such information is used in proceedings of audit and amendment of assessment and are not used stand alone to amend the assessment. In case such information are directly made basis of any amendment of assessment, such amendments may result in litigations from taxpayers and the objective of broadening of tax base and tax collections may not be achieved.

6. PENALTY FOR NON-FILING OF RETURN OF INCOME WITHIN DUE DATE – S. 182(1)

Serial no. 1 of table in subsection (1) of section 182 provides for penalty for non-filing of return of income within time. Before promulgation of the Ordinance, the penalties were as under:

- 0.1% of tax payable for each day of default
- Maximum - 50% of tax payable
- Minimum
 - Rs. 5,000 if
 - 75% or more is salary income and salary is less than Rs. 5 million; or
 - Taxable income is upto Rs. 800,000
 - Rs. 40,000 in other cases

The ordinance has now revised the penalties as under:

- Higher of 0.1% of the tax payable for each day of default or Rs. 1,000 per day:
- Maximum – 200% of tax payable
- Minimum
 - Rs. 10,000 if 75% or more is salary income
 - Rs. 50,000 in other cases

7. PENALTY FOR CONTRAVENTION OF ANY PROVISION OF ITO – S. 182(1)

Serial no. 14 of table to subsection (1) of section 182 provides for penalty of Rs. 5,000 or 3% of the amount tax involved, whichever is higher, for contravention of any of the provision of the ITO for which no penalty has specifically been provided under section 182.

The Ordinance has omitted this serial no. 14 and has provided that this serial no. shall always be deemed to have been so omitted since the commencement of ITO. We understand that this has been done to provide immunity to then persons who may have shared information of taxpayers in past to other organizations in contravention of section 198 of ITO which has also been omitted by the ordinance (read below).

8. PROSECUTION OF UNAUTHORIZED DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT – S. 198

Section 198 provides that a person who discloses any particular in contravention of subsection 1B of section 107 (which provides for confidentiality of any information exchanged under a tax treaty, a tax information exchange agreement, a multilateral convention or a similar arrangement or mechanism) or section 216 (confidentiality of information submitted by tax payer) shall commit an offence punishable on conviction with a fine of minimum Rs. 500,000 or imprisonment for a term of maximum 1 year, or both.

The Ordinance has omitted section 198 and has stated that it shall always be deemed to have been so omitted since the commencement of the ITO. As per the news reports in widely circulated newspapers, this omission was sought be incorporated in Finance Act, 2021 by the Apex probe agency of the country, however, since the same could not have been made part of the Finance Act, 2021, the same has been omitted through the Ordinance.

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9. EXEMPTION OF INCOME OF CERTAIN ORGANIZATIONS - CLAUSE 66 OF PART 1 OF SECOND SCHEDULE

Any income derived by the institutions, foundations, societies, boards, trusts and funds listed in Clause 66 is exempt from tax. Now Pakistan Mortgage Refinance Company Limited is also included in this list.

10. REDUCTION IN TAX RATES -CLAUSE 24C OF PART 1I OF SECOND SCHEDULE

This clause was inserted through Finance Act 2021, whereby the rate of tax under clause (a) of sub-section (1) of section 153 in the case of distributors, dealers, sub-dealers, wholesalers and retailers of fast moving consumer goods, fertilizer, electronics excluding mobile phones, sugar, cement, and edible oil as recipient of payment shall be 0.25% of gross amount of payments subject to the condition that beneficiaries of reduced rate are appearing on the Active Taxpayers' Lists issued under the provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001 (XLIX of 2001). The benefit under this clause shall only be available to those Tier-1 retailers as defined under Sales Tax Act, 1990 who are integrated and configured with Board or its computerized system for real time reporting of sales or receipts. Now through Ordinance, the benefit is extended to steel also.

11. REDUCTION IN TAX RATES - CLAUSE 24D OF PART 1I OF SECOND SCHEDULE

This clause was inserted through Finance Act 2021, whereby the rate of minimum tax under sub-section (1) of section 113 in the case of distributors, dealers, sub-dealers, wholesalers and retailers of fast moving consumer goods, fertilizer, locally manufactured mobile phones, sugar, electronics excluding imported mobile phones, cement and edible oil shall be 0.25% subject to the condition that beneficiaries of reduced rate are appearing on the Active Taxpayers' Lists issued under the provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001: Provided that the benefit under this clause shall be available to only those Tier-1 retailers as defined under Sales Tax Act, 1990 who are integrated and configured with Board or its computerized system for real time reporting of sales or receipts. Now through Ordinance, the benefit is extended to steel also.

12. EXEMPTION FROM SPECIFIC PROVISIONS - CLAUSE 11A OF PART IV OF SECOND SCHEDULE

Clause 11A gives exemption to certain persons or class of persons from application of Section 113 Minimum Tax on Turnover. Now through Ordinance, the benefit has been extended to Mobile Phone manufacturers engaged in the local manufacturing of mobile phone devices.

13. TAX CREDIT ON DONATION- SECTION 61 AND THIRTEEN SCHEDULE

A tax credit is available under Section 61 whereby tax liability of a person is reduced on basis a certain formula, when person makes donation to institutions listed in thirteenth schedule. Now through Ordinance, all entities mentioned in Table – I of clause (66) of Part I of the Second Schedule of the Ordinance are included in thirteenth schedule and donation to them is eligible for tax credit under section 61.

14. ADVANCE TAX ON ELECTRICITY - SECTION 235(1A), DIVISION IV, PART IV, FIRST SCHEDULE

As per Section 235 the Electricity supply companies are required to collect advance tax on the amount of electricity bill of a commercial or industrial or domestic consumer. However, no tax is required to be collected from domestic consumer of electricity if his name appears on the Active Taxpayers' List.

Now through Ordinance, a new subsection 1A is added whereby, in addition to tax collectable above, there shall be collected additional advance tax at the rates given below from professionals including Accountants, Lawyers, Doctors, Dentists, Health Professionals, Engineers, Architects, IT Professionals, Tutors, Trainers and other persons engaged in provision of services not appearing on **ATL and operating from residential premises** having domestic electric connections from DISCOs. The Tax collected in this case from domestic consumer will be adjustable.

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S.No	Description	Rate of Additional Tax
(1)	(2)	(3)
1	Where the bill does not exceed 10,000 rupees	5%
2	Where the bill exceeds 10,000 rupees but does not exceed 20,000 rupees	10%
3	Where the bill exceeds 20,000 rupees but does not exceed 30,000	15%
4	Where the bill exceeds 30,000 rupees but does not exceed 40,000	20%
5	Where the bill exceeds 40,000 rupees but does not exceed 50,000	25%
6	Where the bill exceeds 50,000 rupees but does not exceed 75,000	30%
7	Where the bill exceeds 75,000 rupees	35%

However, it has not been clarified that how the DISCOS will identify these professionals working from domestic premises.

SALES TAX ACT, 1990

1. SCOPE OF TAX- ONLINE MARKET PLACE

As per Section 3, the sales tax is charged @17% on the value of taxable supplies by a registered person in the course of furtherance of any taxable activity carried on by him. The provision of reverse charge is also provided in sub section 7, **whereby the tax shall be withheld** at the rate as specified in the Eleventh Schedule, **by any person or class of persons being purchaser of goods or services** as withholding agent for the purpose of depositing the same, in such manner and subject to such conditions or restrictions as the Board may prescribe in this behalf through a notification in the official Gazette

Now through Ordinance, an amendment is made in this reverse charge mechanism, whereby in case of the online market place facilitating the sale of third party goods, the liability to withhold tax on taxable supplies of such party **shall be on the operator of such market place**.

For example, if a seller on Daraz is selling yogurt in retail packing (sales tax on yogurt is charged at 10%), Daraz will withhold 10% of such sales tax from sales price of the yogurt and will deposit the same with FBR.

2. SCOPE OF TAX- ONLINE INTEGRATION

Many amendments have been made in Sales Tax Act, 1990 by Legislator, whereby various business including Tier-1 retailers were mandatory to integrate their outlets with FBR's online system for monitoring of sales and purchase. Now through Ordinance, a technical amendment is made in **charging section 3** of Sales Tax Act, 1990 whereby FBR is now given power to require any person or class of persons to integrate their invoice issuing machines with the Board's Computerized System for real time reporting of sales in such mode and manner and from such date as may be prescribed.

3. DISCONTINUANCE OF GAS AND ELECTRICITY CONNECTIONS.

Now a new Section 14A is introduced whereby FBR shall have power through Sales Tax General Order to direct the gas and electricity distribution companies

for discontinuing the gas and electricity connections of any person who fall in the following categories;-

- Any person, including tier-1 retailers, who fail to register for sales tax purpose; or
- Notified tier-1 retailers registered but not integrated with the Board's Computerized System.

However, upon registration or integration of the above said persons, the FBR shall notify the restoration of their gas or electricity connection through Sales Tax General Order.

4. OFFENCES AND PENALTIES

A new entry 25A, is added whereby if a person required to integrate his business as stipulated under sub-section (9A) of section 3, who fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under the law and rules made thereunder. Such person shall be liable to pay:

- (i) penalty of five hundred thousand rupees for first default;
- (ii) penalty of one million rupees for second default after fifteen days of order for first default;
- (iii) penalty of two million rupees for third default after fifteen days of order for second default;
- (iv) penalty of three million rupees for fourth default after fifteen days of order for third default;

If such person fails to integrate his business within fifteen days of imposition of penalty for fourth default, his business premises shall be sealed till such time he integrates his business in the manner as stipulated under sub-section (9A) of section 3. If the retailer integrates his business with the Board's Computerized System before imposition of penalty for second default, penalty for first default shall be

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waived by the Commissioner. The penalties provided in entry no.25 for this category is omitted.

5. ZERO RATING-FAT FILLED MILKED

A new category of Fat filled milk excluding that sold in retail packing under a brand name or a trademark (PCT heading 1901.9090) was added in Fifth Schedule whereby it was chargeable at zero percent sales tax with benefit of input refund. Now through Ordinance, this benefit is also extended to those sold in retail packing under a brand name or a trademark also. The corresponding entry 60 in eight schedule is omitted to give effect to this amendment.

6. EXEMPT SUPPLIES-SIXTH SCHEDULE

The following amendments are made:

- Edible fruits excluding imported fruits (except fruits imported from Afghanistan) whether fresh, frozen or otherwise preserved but excluding those bottled or canned. Now exemption is also extended to fruits imported from Afghanistan. (Clause 15 of Table 1)
- Import of auto disable Syringes till 30th June, 2021 (i) with needles (ii) without needles is now extended to 31st December 2021. (Clause 159 of Table-1)
- Import of following raw materials for the manufacturers of auto disable syringes till 30th June, 2021 (i) Tubular metal needles (ii) Rubber Gaskets; is now extended to 31st December 2021 (clause 160 of Table-1)
- A new entry 2A in Table 3 is inserted whereby the following raw materials imported by registered manufacturer of auto disabled syringes are exempt available to registered manufacturers of auto disabled syringes with quota determination by IOCO and subject to NOC from Ministry of National Health Services Regulation and Coordination.
 - Printing paper 4802.5510
 - Polypropylene 3902.1000

- Propylene copolymers 3902.3000
- Plasticized 3904.2200
- Epoxide Resins 3907.3000
- Bioaxially Oriented Polypropylene (BOPP film, laminated) 3920.2040

- Import of POS machines for installation on retail outlets as are integrated with the Board's computerized system for real-time reporting of sales is amended to include credit/debit cards terminals and retailer cash registers also. (Entry no. 21 Table 3)

7. REDUCED RATE - EIGHT SCHEDULE

The following amendments have been made:

- New entry 66A is added, wherein, Supplies excluding those specified in S. No. 66, as made from retail outlets integrated with Board's Computerized System for real time reporting of sales are chargeable @16% if payment is made through digital mode.
- New entry 66B is added, wherein, Import of remeltable scrap is chargeable @ 14% if imported by steel melters.
- New entry 75 is added, wherein, import of electric vehicle in CBU conditions (Tariff Heading 8703.8090) is charged @ 5%.
- New entry 76 is added, wherein, business to business transactions specified by the board through a notification in official gazette subject to such conditions and restrictions as specified therein chargeable @ 16.9% If payment is made through digital mode.



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