DOING BUSINESS IN PAKISTAN

COMPENDIOUS STUDY ON STATUTORY STIPULATIONS

(4th Edition)

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WORDS FROM THE PRESIDENT

Assalam-o-alaikum everyone! Hope you are in high spirits and good health. I am glad to inform you that we have been able to complete the 4th Edition of our annual publication called "**Doing Business in Pakistan** – Compendious Study on Statutory Stipulations". This publication gives a good overview of the tax laws, company laws and other laws/regulations that are intrinsic from an investment point of view in Pakistan. Our team has made its best effort is to give a quick glance of the legal framework that is important with regards to investment in Pakistan.

We hope this publication will assist in a better understanding of the legal framework that influences investment in Pakistan.

We are grateful to Mr. Rizwan Manai - FCA for his valuable contribution and a detailed review of this document.

If you have any queries in relation to this document, do not hesitate in contacting the undersigned or our team members. The contact details of our team are as follows;

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EXECUTIVE SUMMARY

A crucial aspect and effect of globalization has been cross-border flows of foreign direct investment (FDI) and the footprints created by multi-national companies. Every developing nation is striving to implement investment liberalization policies to enhance growth by attracting FDI. Pakistan has been working towards creating a better environment for businesses that also promotes ease of doing business. Moreover, it has also been open to foreign investment with creation of Economic Zones and Linkages of trade and industrial and monetary policies for greater convergence.

Taxes in Pakistan are categorized into two types: Direct and Indirect Taxes. Direct Tax includes Income Tax which is a federal subject as per the Constitution of Pakistan 1973. Hence, it is being administered by the Federal Board of Revenue under the Income Tax Ordinance, 2001 and its related rules. Indirect taxes include Sales Tax on Goods and Services, Excise Duty and Customs Duty etc. All the indirect taxes, except for sales tax levied on services, are a subject matter on which the Federal Government has competency to legislate, and hence, are administered by the FBR. Sales tax on goods is governed under Sales Tax Act, 1990 and its related rules, whereas excise duty on goods and services is covered under the Federal Excise Act, 2005 and its related rules. Moreover, Custom duty and regulatory duty is levied under the Customs Act, 1969 and Pakistan Customs Tariff.

Since sales tax on services is a provincial subject, all the four provincial tax authorities have promulgated their respective sales tax on services acts and the rules thereon. It may be noted that sales tax on services within the Islamabad Capital territory is the domain of the FBR for which the FBR has issued Islamabad Capital Territory (Tax on Service) Ordinance, 2001.

Foreign Direct Investment (FDI) in Pakistan is governed under policies issued by Board of Investment (BOI) from time to time including privatization, liberalization, and deregulation, which is in line with the existing transformation of Pakistan as a regional trade hub and increased regional connectivity through China-Pakistan Economic Corridor (CPEC), political stability and revival of economic growth to catch up with the Eastern Asian economies. Some of the relevant portions of the BOI policy have also been described in document. Naturally, if foreign and local investment is made in the corporate sector, the Companies Act 2017 is of paramount importance. Similarly, regulations made by the SECP pursuant to different sections under the Companies Act 2017 are also essential. Furthermore, when cross border transactions are involved, the Foreign Exchange Regulations issued by State Bank of Pakistan (SBP) comes into play of which some relevant provisions have also been discussed in the document.

Although covering many relevant areas, this document should not be considered as exhaustive since it has not been designed to provide complex and detailed information required for decision-making in relation to investment.

PROLOGUE

Pakistan has a rapidly growing youth population, with 64% of its population being younger than the age of 30.[1] A young population can always be the catalyst to success for a country and be the driving engine for economic growth. Moreover, the world has just recently, and finally, started tapping the potential in the start-up sector(s) of Pakistan. A statistic testament to this is that there has been investment worth USD 305 million during January – September 2021.[2] Combine all these factors with the potential opportunities the China Pakistan Economic Corridor brings to Pakistan, it is one of the most exciting countries to invest in at this point in time, with a lot of potential business opportunities in the offing. A crucial thing CPEC has brought with it is the significant improved and efficient transportation system across the country.

It may be noted that legal protection to foreign investment in Pakistan is fully protected by the following legislation:

- Foreign Private Investment (Promotion and Protection) Act, 1976;
- Protection of Economic Reforms Act, 1992; and
- Bilateral investment treaties with various countries

DEMOGRAPHICS OF PAKISTAN

As per the final results of Population and Housing Census 2017, the national population is 207, 684,626.[3] Moreover, as per https://worldpopulationreview.com/, Pakistan's current population is 226,329,115, making it the 5th most populous country in the world's sixth most populous country. The average population growth rate during 1998-2017 stood at 2.40%.[4]

Pakistan has witnessed rapid urbanization and emergence of megacities with currently 36.44% of the entire population residing in urban areas[5]. Moreover, as per Article 11 of the Constitution of Pakistan 1973, the minimum age of employment in a factory, mine or any other hazardous employment is 14 years. The following table depicts the age wise and gender wise distribution of population according to latest consensus.

Age group	Male	Female	Total	Percent
0–14	43,533,720	40,182,776	83,716,496	40.3%
15–64	59,756,600	57,478,712	117,235,312	56.45%
65+	3,027,900	3,683,144	6,711,044	3.23%

INVESTMENT POLICIES

In order to protect and stimulate investment (both local and foreign) in Pakistan, The Investment Policy 2013 has been designed to provide a comprehensive framework for creating a conducive business environment for the attraction of FDI.

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[1] Shakeel Ahmad, 'Unleashing the potential of a young Pakistan' (UNHDR 24 July 2018) <http://hdr.undp.org/en/content/unleashing-potential-young-pakistan> accessed on 4th October 2021.
[2] Abdul Razak Dawood, the Advisor to the PM on Commerce and Industry <https://twitter.com/razak_dawood/status/1444953720190554115> accessed on 4th October 2021.
[3] Pakistan Bureau of Statistics, 'Housing Census' (2017) <https://www.pbs.gov.pk/sites/default/files//population_census/National.pdf> accessed on 4th October 2021.
[4] Ibid.
[5] Ibid.

The guiding principles of the said policy are stated on https://invest.gov.pk/investment-regime. These are as follows:

a. Reducing the cost of doing business in Pakistan

b. Reducing the processes of doing business

c. Ease of doing business with creation of industrial clusters and Special Economic Zones.

d. Linkages of trade, industrial and monetary policies for greater convergence.

With such business-friendly guiding principles that form the edifice of the investment policy, it won't be an exaggeration to state that the government has tried to potentially give a liberal and conducive environment for investors to make their investments. Furthermore, the tax guide mentioned below will allow a basic understanding as to how the taxation system is also aligned with the above.

➢ TAX OVERVIEW

There are two types of duties and taxes applicable in Pakistan. these are as follows:

	FEDERAL TAX	PROVINCIAL TAX
Direct Tax A tax on the profits of individuals, corporations and other entities	Income tax This tax contains 5 heads of income. These are: • Salary • Income from property • Capital gains • Income from business • Income from other sources	Agriculture Tax, Professional Tax etc.
Indirect tax Tax on the final consumer when they pay for goods and services	• Sales tax on goods • FED on Goods and Services • Customs Duty	Sales tax on Services

The major developments in taxation in the past one year and since our previous edition of this document have been the following: Automatic Income Tax Refunds, special instructions regarding books of accounts, documents to be maintained by designated persons (DPs) and reporting of suspicious transactions, Issuance of names of Tier-1 retailers not yet integrated with FBR systems, SECP enacting the Anti-Money Laundering and Countering Financing of Terrorism Regulations 2020, thereby repealing the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulations, 2018, facilities and tax reliefs to Non-resident individuals on Roshan Digital Account, withdrawal and streamlining of inefficient exemptions into tax credits, Tax Laws (Amendment) Ordinance, 2020, Finance Act 2021 and Tax Laws (Third Amendment) Ordinance 2021. We have incorporated these amendments in this document so the same is up-to-date.

In addition to the above, we also have two monthly newsletters that cover taxation and the economy of Pakistan. These are called 'Tax Pak' and 'Pakonomics'. Moreover, we also issue publications whenever there are major tax and economic developments in the country. All of the aforesaid publications can be accessed through our website www.tolaassociates.com, or Android and iOS mobile applications. Mobile applications may be downloaded from the links below:

1. https://goo.gl/QDM4ZM (**IOS**)
2. https://goo.gl/LFiWyx (**Android**)

INCOME TAX

1. INCOME TAX

➢ INTRODUCTION:

A brief overview of the income tax legislation(s) predating Pakistan's independence should be looked at in order to trace the origins of the income tax being levied in Pakistan. The first income tax legislation in the then British India was introduced by the Government in India in 1860.[6] It was titled 'The Income Tax Act 1860'. The 1860 Act imposed a scheduler income tax system, whereby, 4 heads of income were taxed separately under different schedules.[7] The 1860 Act also included a direct tax on agricultural income arising from land. However, the 1860 Act expired in 1863, and a license tax was imposed in India.[8] Furthermore, an income tax was reimposed in 1869 for 4 years.[9] After the income tax expired again, the government in 1878 reintroduced many license taxes. However, due to recurring financial difficulties, the then Government in India decided to levy the income tax again in 1886.[10] This was done by virtue of the Income tax Act 1886. Again, the income taxes introduced were applied through a scheduler income tax system.

The Income Tax Act of 1886 was a general income tax that had been imposed on traders by some provinces in 1878. Its basic scheme, by and large, survives till today. The 1886 Act continued for 32 years, until it was repealed by the Income Tax Act of 1918.

The 1918 Act implemented amendments to the 1886 Act.[11] It introduced a total income tax and replaced the schedular income tax system and also made filing income tax compulsory.[12] Thereafter, through the Income Tax Act 1922, it was settled that the tax rates will be allowed to be fixed through annual Finance Acts.[13] The 1922 Act was adopted by Pakistan upon its independence. Furthermore, the 1922 Act remained in force in Pakistan till 30th June 1979, when General Mohammad Zia ul Haq, the then president of Pakistan during an era of Martial Law, decided to enforce a new law, the Income Tax Ordinance, 1979 which came into effect from 1st July 1979.

The 1979 Income Tax Ordinance was amended a number of times to remove the loopholes therein.

After 23 years, the then Government headed by the Military Ruler General Pervez Musharraf decided to repeal the 1979 Ordinance. Hence, a new Income tax Ordinance was promulgated on 13th September 2001, reportedly in a hurried manner due to pressure from a stand-by agreement with an international lending institution.[14] The same was made effective from 1st July 2002 vide SRO 381(I)/2002 dated 15th June 2002.

1.1. RESIDENTIAL STATUS

As mentioned earlier, Income Tax in Pakistan is levied through the Income Tax Ordinance, 2001 (ITO 2001) the implementation of which is administered by the Federal Government. It applies to all individuals, companies, firms, association of persons and other artificial judicial persons. A Normal tax

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[6] B.A. Azhar, 'Taxation of Agriculture Income: A Holistic View', The Pakistan Development Review 30(4)(II) (1991) 1065
[7] Facundo Alvaredo, Augustin Bergeron and Guilhem Cassan, 'Income concentration in British India, 1885 – 1946' 1 <http://piketty.pse.ens.fr/files/AlvaredoBergeronCassan2017Appendix.pdf> accessed on 13th September 2021
[8] ibid
[9] ibid
[10] Ibid 2
[11] Ibid 3
[12] Ibid
[13] ibid
[14] Huzaima Bukhari and Ikram ul Haq, *Tax Reforms in Pakistan Historic & Critical view* (PIDE 2020) foreword viii <https://www.pide.org.pk/pdf/Books/Tax-Reforms-in-Pakistan-Historic-and-Critical-View.pdf> accessed on 13th September 2021.

year runs from 1st July to 30th June in Pakistan. Pakistan opts to tax entities based on whether they are residents for tax purposes, in addition to income sourced within Pakistan. Non-residents are only taxed on the income that is sourced in Pakistan, the rules of which are set out in the ITO 2001. This is known as a residence based tax system.

As per the ITO 2001, the residential status can be determined as under:

Category	Condition for qualifying as a 'Resident'
Individuals	• Present in Pakistan for 183 days or more in tax year or • An employee of the Government whether physically present in Pakistan or not.
Companies	• Companies incorporated in Pakistan • A company incorporated outside Pakistan, if control and management of the company affairs is situated wholly in Pakistan at any time of the year • It is a Provincial or Local Government • A body corporate formed by or under any law in force in Pakistan • A modaraba • A co-operative society, a finance society or any other society • A non-profit organization • A trust, an entity or a body of persons established or constituted by or under any law for the time being in force • A foreign association, whether incorporated or not, which the Board has, by general or special order, declared to be a company for the purpose of this Ordinance.
Association of Persons	An association of persons shall be a resident association of persons for a tax year if the control and management of the affairs of the AOP is situated wholly or partly in Pakistan, at any time during the tax year.

1.2. TAXABLE INCOME

Residential status	Income taxable in Pakistan
Resident	Domestic income + Global income (subject to tax treaties)
Non-resident	Income that arises in Pakistan (subject to tax treaties)

1.3. RESIDENTIAL STATUS AND TAXABILITY IN PAKISTAN

- A resident person is liable to be taxed on his world income.
- A Non-Resident person is liable to be taxed for his Pakistan source income only.

1.4. HEADS OF INCOME

Income is classified, and hence taxable accordingly, under the following heads:

Head of Income	Description of Income
Income from Salaries	Income arising on account of employment is taxable in the hands of the employee.
Income from Properties	The rented out property is charged to tax in the hands of the owner at the higher of the rent earned or the fair market rent of the period in which the property is let out.
Income from Business	Income earned by a taxpayer on exercise of a business or profession less deductible tax credits and allowances
Capital gains	Capital gains are gains arising on the disposal of capital assets.
Income from other sources	Income which does not fall in any of the other heads falls in this head.

1.5. EXPATRIATES -TAXABILITY

It is a common trend for expatriates to take up employment in Pakistan. All expatriates that are employed at a Liaison Office and a Branch Office in Pakistan are required to obtain a work visa before their to employment begins.

Naturally, these expatriates are concerned about the taxability of their income in Pakistan. However, there is a unique concept within the residency principle under the tax laws of Pakistan. By virtue of the said concept, a resident individual shall be exempt in respect of his foreign-source income which is not brought/ received in Pakistan **if** he is resident only by reason of his employment and he is present in Pakistan for **not exceeding 3 years**.

Furthermore, as per Section 44 of the ITO, any salary received pursuant to an Aid Agreement with a foreign government or public international organization, by an individual **who is not a Pakistani citizen**, shall be exempt from income tax in Pakistan, if the individual is a non-resident, or is only a resident due to performing of services mentioned in the Aid agreement, and that salary has been paid to the individual out of funds or grants released as aid to Pakistan pursuant to the aid Agreement. Moreover, if the aid Agreement is with a foreign country, then the individual is also required to be a citizen of the foreign country with which Pakistan has signed the Aid Agreement.

Similarly, as per Section 44(3) of the ITO, any income received by a non-citizen person in Pakistan that has been engaged as a contractor, consultant, or a expert on a project in Pakistan, shall be exempt from tax, to the extent provided for in a bilateral or multilateral technical assistance agreement between the Federal Government and a foreign government or public international organisation. Other requirements mentioned in the said sub-section also need to be met.

1.6. TAX RATES

There are different types of income for individuals, with various thresholds found under Schedules in the ITO. The tax rate for companies in Pakistan high at 29%, with a couple of other tax obligations applicable as well, such as the Alternate Corporate Tax or the Minimum Tax. The tax rates for companies, individuals and AOPs have been discussed hereinbelow.

1.7. TAX RATE FOR COMPANY

For Financial Year 2021-22

Type of Company	Tax Rate
Domestic Company	29%
Foreign Company	29%
Small Company	21%
Banking Company	35%
Alternate Corporate Tax	17%
Super Tax for Banking Companies	4%
Small and Medium Enterprises (Normal Tax Regime) Where annual business turnover does not exceed Rs 100 million Where annual business turnover exceeds Rs 100 million but does not exceed Rs. 500 million	7.5% of Taxable Income 15% of Taxable Income
Small and Medium Enterprises (Final Tax Regime) Where annual business turnover does not exceed Rs 100 million Where annual business turnover exceeds Rs 100 million but does not exceed Rs. 500 million	0.25% of Gross Turnover 0.5% of Gross Turnover

1.8. TAX RATES FOR INDIVIDUALS

- **Category 1** (non-salaried case i.e. where taxable salary is nil or up to 75% of taxable income)

S.NO	TAXABLE INCOME	RATE OF TAX
1	Up to Rs. 400,000	0%
2	Where the taxable income exceeds Rs.400,000 but does not exceed Rs.600,000	5% of the amount exceeding Rs. 400,000
3	Where taxable income exceeds Rs. 600,000 but does not exceed Rs. 1,200,000	Rs. 10,000 plus 10% of the amount exceeding Rs. 600,000
4	Where taxable income exceeds Rs. 1,200,000 but does not exceed Rs. 2,400,000	Rs. 70,000 plus 15% of the amount exceeding Rs. 1,200,000
5	Where taxable income exceeds Rs. 2,400,000 but does not exceed Rs. 3,000,000	Rs. 250,000 plus 20% of the amount exceeding Rs. 2,400,000
6	Where taxable income exceeds Rs. 3,000,000 but does not exceed Rs. 4,000,000	Rs. 370,000 plus 25% of the amount exceeding Rs. 3,000,000
7	Where taxable income exceeds Rs. 4,000,000 but does not exceed Rs. 6,000,000	Rs. 620,000 plus 30% of the amount exceeding Rs. 4,000,000
8	Where taxable income exceeds Rs. 6,000,000	Rs. 1,220,000 plus 35% of the amount exceeding Rs.6,000,000

- **Category 2** (salaried case i.e. where taxable salary exceeds 75% of taxable income)

S.NO	TAXABLE INCOME	RATE OF TAX
1	Where taxable income does not exceed Rs. 600,000	0%
2	Where taxable income exceeds Rs. 600,000 but does not exceed Rs. 1,200,000	5% of the amount exceeding Rs. 600,000
3	Where taxable income exceeds Rs. 1,200,000 but does not exceed Rs. 1,800,000	Rs. 30,000 plus 10% of the amount exceeding Rs. 1,200,000
4	Where taxable income exceeds Rs. 1,800,000 but does not exceed Rs. 2,500,000	Rs. 90,000 plus 15% of the amount exceeding Rs. 1,800,000
5	Where taxable income exceeds Rs. 2,500,000 but does not exceed Rs. 3,500,000	Rs. 195,000 plus 17.5% of the amount exceeding Rs. 2,500,000
6	Where taxable income exceeds Rs. 3,500,000 but does not exceed Rs. 5,000,000	Rs. 370,000 plus 20% of the amount exceeding Rs.3,500,000
7	Where taxable income exceeds Rs. 5,000,000 but does not exceed Rs.8,000,000	Rs. 670,000 plus 22.5% of the amount exceeding Rs. 5,000,000
8	Where taxable income exceeds Rs. 8,000,000 but does not exceed Rs. 12,000,000	Rs. 1,345,000 plus 25% of the amount exceeding Rs. 8,000,000
9	Where taxable income exceeds Rs. 12,000,000 but does not exceed Rs.30,000,000	Rs. 2,345,000 plus 27.5% of the amount exceeding Rs. 12,000,000
10	Where taxable income exceeds Rs. 30,000,000 but does not exceed Rs.50,000,000	Rs. 7,295,000 plus 30% of the amount exceeding Rs. 30,000,000
11	Where taxable income exceeds Rs. 50,000,000 but does not exceed Rs.75,000,000	Rs. 13,295,000 plus 32.5% of the amount exceeding Rs. 50,000,000
12	Where taxable income exceeds Rs.75,000,000	Rs.21,420,000 plus 35% of the amount exceeding Rs. 75,000,000

1.9. TAX RATES FOR ASSOCIATION OF PERSONS

S.NO	TAXABLE INCOME	RATE OF TAX
1	Up to Rs. 400,000	0%
2	Where taxable income exceeds Rs. 400,000 but does not exceed Rs. 600,000	5% of the amount exceeding Rs. 400,000
3	Where taxable income exceeds Rs. 600,000 but does not exceed Rs. 1,200,000	Rs. 10,000 plus 10% of the amount exceeding Rs. 600,000
4	Where taxable income exceeds Rs. 1,200,000 but does not exceed Rs. 2,400,000	Rs. 70,000 plus 15% of the amount exceeding Rs. 1,200,000
5	Where taxable income exceeds Rs. 2,400,000 but does not exceed Rs. 3,000,000	Rs. 250,000 plus 20% of the amount exceeding Rs. 2,400,000
6	Where taxable income exceeds Rs. 3,000,000 but does not exceed Rs. 4,000,000	Rs. 370,000 plus 25% of the amount exceeding Rs. 3,000,000
7	Where taxable income exceeds Rs. 4,000,000 but does not exceed Rs. 6,000,000	Rs. 620,000 plus 30% of the amount exceeding Rs. 4,000,000
8	Where taxable income exceeds Rs. 6,000,000	Rs. 1,220,000 plus 35% of the amount exceeding Rs.6,000,000

1.10. SUPER TAX

A Super Tax at 4% for rehabilitation of temporarily displaced persons is imposed only for banking companies for the year[15] 2022 and onwards.

1.11. TAXABILITY OF DIVIDEND

Taxability of dividends is in the hands of the company declaring the dividend only, as tax is required to be deducted from the dividend income which is taxable under the Final Tax Regime, as full and final tax liability for a shareholder. A shareholder includes a corporate shareholder, and no expense or deduction is allowable from such income.

Rate of tax	Industry
7.5%	Independent Power Purchasers where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be re-imbursed by Central Power Purchasing Agency (CPPA-G) or its predecessor or successor entity.
15%	Dividend received from Mutual Fund, [16] Real Estate Investment Trust and other cases not mentioned above and below
25%	dividend from a company where no tax is payable by such company, due to exemption of income or carry forward of business losses under Part VIII of Chapter III or claim of tax credits under Part X of Chapter III
7.5%	Dividends declared by a company as are “attributable” to profits and gains derived from a bagasse and biomass-based co- generation power project qualifying for exemption under clause (132C) of Part-I of Second Schedule

[15] Amended vide Finance Act 2020
[16] Amended vide Finance Act 2021

With a view to incentivize the corporatization of the agricultural sector, dividend income out of corporate agriculture income is exempt.

1.12. CAPITAL GAINS

Capital gains are taxed at certain specified rates depending on several factors, such as the nature of an asset, duration for which it is held before its transfer or disposal, the status of transferor, and inter-alia. relationship with transferor of transferee.

<table>
<tr><th>Type of asset</th><th>Holding period before sale/ Amount of gain</th><th>Formula</th><th>Rate of Tax for ATL</th><th>Rate of Tax for Non-ATL</th></tr>
<tr><td rowspan="2">Capital Assets u/s 37
• Shares of a private company
• Transferable Membership card
• Share in a partnership firm
• Mining rights; and
• Certain personal movable assets</td><td>Less than year</td><td>(Consideration-Cost of asset) * Relevant Rate as per 1.8 or 1.9.</td><td colspan="2">N/A</td></tr>
<tr><td>More than a year</td><td>(Consideration-Cost of asset) * ¾* Relevant Rate i.e. as per 1.8 or 1.9.</td><td colspan="2">N/A</td></tr>
<tr><td rowspan="4">• [17]Immoveable properties(including investment property and dwelling house but excluding the depreciable building and construction or development projects of builders or developers.</td><td>Where the gain does not exceed Rs. 5 million</td><td rowspan="4">Gain * Relevant Rate

[if holding period does not exceed 1 - year full gain will be accounted, if holding period exceed 1 year but not exceed 2 years 75% of gain will be taxable, if holding period exceed 2 year but not exceed 3 years 50% of gain will be taxable, if holding period exceed 3 year but not exceed 4 years 25% of gain will be taxable,

if period exceeds 4 years then no gain will be taxable)</td><td colspan="2">3.5%</td></tr>
<tr><td>Where the gain exceeds Rs. 5 million but does not exceed Rs. 10 million</td><td colspan="2">7.5%</td></tr>
<tr><td>Where the gain exceeds Rs. 10 million but does not exceed Rs. 15 million</td><td colspan="2">10%</td></tr>
<tr><td>Where the gain exceeds Rs. 15 million</td><td colspan="2">15%</td></tr>
<tr><td rowspan="5">Capital Assets u/s 37A
• Shares of a public company
• Voucher of PTCL
• Modaraba Certificates
• An instrument of redeemable capital as defined in the Companies Act 2017
• Debt securities; and
• Derivative products as defined u/s 37A</td><td>Acquired before 1.7.2013</td><td>(Consideration- Cost of asset) * Relevant Rate</td><td colspan="2">0%</td></tr>
<tr><td>Acquired on or after 1.7.2013</td><td>(Consideration- Cost of asset) * Relevant Rate</td><td>12.5</td><td>25%</td></tr>
<tr><td>Future commodity contracts entered by the members of Pakistan Mercantile Exchange.
Cash settled derivatives traded on stock exchange</td><td>-</td><td>5%</td><td>10%</td></tr>
<tr><td>Gain on units of mutual fund or a collective investment scheme or a REIT scheme (Individual/AOP)</td><td></td><td>10% for Stock/Other funds</td><td>20% for Stock/Other funds</td></tr>
<tr><td>Gain on units of mutual fund or a collective investment scheme or a REIT scheme (Company)</td><td></td><td>10% for stock funds 25% for other funds</td><td>20% for stock funds 50% for other funds</td></tr>
</table>

[17] Amended vide Finance Act 2020

- Choice of Investment Vehicles for foreign investors

Forms of Entity	Taxability
Liaison Office ("LO")	The activities of a LO of a foreign entity are restricted to undertaking promotional activities, provision of technical assistance, exploring the possibility of collaboration and export promotion on behalf of its parent company in Pakistan. Such an office is strictly restricted from entering revenue generating activities and is required to meet its operational expenses through remittances from its parent company through normal banking channel and converted to local currency account. Additionally: ● Requirements for approvals for liaison offices of foreign companies shall be permitted by BOI. ● A foreign company LO is required to file prescribed returns/ documents with Registrar of Companies as per provisions of the Companies Act, 2017, after obtaining permission from the BOI. ● The requirements relating to accounts, audit, and submission of accounts to Registrar of Companies are also applicable. ● LO is required to be registered with the tax authorities.
Branch Office ("BO")	A foreign entity can operate in Pakistan by establishing a BO. A BO is set up specifically to execute the contracts awarded to the foreign entity, therefore, activity is restricted to the extent stated in the signed agreement / contract. **A BO cannot indulge in commercial / trading activities**. ● Revenue generated / profit earned from BO activities (other than Banking Operations) can be repatriated to the Head Office, **subject to payment of applicable taxes**. Such repatriation should be in compliance with the procedure mentioned in the Foreign Exchange Regulations of the SBP through an authorized dealer (banker) under normal banking channels and Tax regulations. ● All expenses incurred from BO activities will be met out of funds transferred from abroad through normal banking channel and converted to local currency account, or from the amounts received through execution of the agreement / contract. ● A foreign company desirous of setting up a BO in Pakistan is required to apply for permission to the BOI on a specified application format along with the prescribed documents / information. ● Permission for opening of branches of foreign banks is granted by the State Bank of Pakistan. ● A foreign company BO is required to file prescribed returns/ documents with Registrar of Companies as per Provisions of Companies Act, 2017 after obtaining permission from BOI. ● The requirements relating to accounts, audit, and submission of accounts to Registrar of Companies are also applicable.
Pakistan Subsidiary/ Joint Ventures	A foreign company can set up its own wholly owned subsidiary in Pakistan or establish a joint venture company with a Pakistani or foreign partner, subject to fulfilling the policies for FDI and requirements of the Companies Act, 2017. A subsidiary or a joint venture company can be formed as a private company or a public company.
Permanent Establishment ("PE")	A PE is a place of business through which the business of a non-resident is wholly or partly carried out, including: ● A place of management, branch, office, factory or workshop, premises for soliciting orders, warehouse, permanent sales exhibition, or sales outlet, except a liaison office except where the office engages in the negotiation of contracts (other than contracts of purchases) ● An agriculture, pastoral, or forestry property. ● A mine, oil or gas well, quarry, or any other place of extraction of natural resources.

	• A building site, a construction, assembly, or installation project; or supervisory activities connected with such site or project if such activity continued for more than 90 days within any 12-month period. • The furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for that purpose. • A person acting in Pakistan on behalf of the person, other than an agent of independent status (excluding a person acting exclusively/almost exclusively on behalf of such person) in the ordinary course of business as such, if the agent: (i)has habitually exercises authority to conclude contracts on behalf of another person or plays a principal role in execution of contacts that are concluded without any material variations and these contracts are: ○ in the name of the person ○ for the transfer of the ownership of or for the granting of the right to use property owned by that enterprise or that the enterprise has the right to use, or ○ for the provision of services by that person. (ii) has no such authority, but habitually maintains a stockin-trade or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person; • Any substantial equipment installed, or other asset or property capable of activity giving rise to income. • A fixed place of business that is used or maintained by a person if the person or an associate of a person carries on business at that place or at another place in Pakistan and: ○ that place or other place constitutes a PE of the person or an associate of the person under this sub-clause, or ○ business carried on by the person or an associate of the person at the same place or at more than one place constitutes complementary functions that are part of a cohesive business operation. The definition of a PE provided in a Double Taxation Treaty "DTT" will prevail in cases where a DTT is executed by Pakistan with the related country of origin of the PE.
Controlled Foreign Company ("CFC")	The concept of CFCs has been around since decades. However, this concept has been introduced in Pakistan as recently as in 2018. Moreover, recommendations to strengthen the CFC rules were also a crucial part of the Base Erosion and Profit Shifting (also known as "BEPS") initiative taken by the OECD. The BEPS Action 3 report set out certain recommendations to improve the CFC rules back in 2015. The purpose of having CFC rules is to counter structures imposed by taxpayers to shift income from the jurisdiction in which they are tax resident to a foreign tax haven using a subsidiary in that foreign jurisdiction. The primary catch is the taxpayer having a 'controlling interest' in a foreign company, hence the term "**controlled** foreign company". Section 109A of the ITO 2001 appears to be a part of the overall scheme to bring into tax ambit the income earned by Pakistani tax residents, through offshore entities owned by them.

This scheme is termed as CFC regime is summarized as under:

(a) A company shall be considered CFC if

ii. Capital or voting rights of the non-resident company is held directly or indirectly by the persons resident in Pakistan:
   - More than 40% in case of single person;
   - More than 50% in case of two or more persons.

iii. Tax paid, after rebate, on the income of the non-resident company outside Pakistan is less than 60% of tax otherwise payable on the said income in Pakistan assuming that the company is a resident company taxable in Pakistan under the Income Tax Ordinance, 2001.

iv. The non-resident company is not listed in any stock exchange outside Pakistan, and

v. The non-resident company does not derive active business income.

(b) The income of CFC taxable in the hands of Pakistani residents shall be as per the following

A*(B/100)

Where
A= income of CFC
B=% of capital or voting rights whichever is higher held by the resident person in CFC

(c) Income of CFC shall be calculated in foreign currency but for the purpose of inclusion in the income of the resident person it shall be converted into Rupees at the State Bank of Pakistan rate applicable on the last day of the tax year.

(d) The income taxable under this section shall not be taxable again when received in any subsequent tax year. A tax credit shall be allowed in case of tax paid on dividend income in the foreign country in any subsequent tax year as lower of following:
   - Foreign tax paid
   - Pakistan tax payable on such dividend income in the tax year in which the dividend is received

(e) These provisions shall not apply in the following cases:
   - Income of CFC is less than Rs. 10 million
   - Capital or voting rights of the resident person in CFC is less than 10%.

1.13. TAXATION OF BUSINESS TRUSTS

Real Estate Investment Trusts (REIT) Collective/ Investment Schemes

REIT makes direct investment in Real Estate properties/ Stocks Shares listed on recognized stock exchange which generates rent, dividends, and capital gain. REIT may also invest in SPVs (acquire controlling stake) which are holding rent producing real estate properties. REIT issue units to unit holders which may be or may not be listed in Pakistan stock exchange.

It may be worthwhile to note that if any offshore company is created outside Pakistan which owns real estate assets in Pakistan, any gain from such Property will be taxed in Pakistan as Pakistan Source income u/s 101A of ITO.

Stakeholders	Income Source	Taxability	
REIT/Collective Investment Schemes	• Rental income • Interest on loans to SPV • Dividend from SPV Shareholding • Capital Gain on property sale	Exempt	Taxable (In case of dividend, bonus etc.)

1.14. MINIMUM TAX

The income tax laws of Pakistan prescribe a 'Minimum Tax'. What this means if that, pursuant to are certain legal provisions within the ITO, a business entity's tax liability shall not be less than the specified amount or percentage of turnover/ net profit etc. The provisions of minimum tax are as under:

a) The following business entities shall pay tax at the rate of 1.25% of turnover if their tax liability is nil or less than 1.25% of turnover. This section shall apply even if the income of the business entity is exempt from income tax or no tax is otherwise payable on account of loss for the tax year, brought forward loss, tax credit, depreciation etc.:

   i. A resident company

   ii. An Individual or AOP having turnover of Rs 100 million or above in the tax year 2017 or in any subsequent tax year. [18]

   iii. Permanent Establishment of non-resident. [19]

b) Turnover has been defined as:

   i. Sales exclusive of

      - Sales tax;
      - Excise duty;
      - Trade discount shown on invoices; and
      - Sales/ receipts taxable under FTR.

   ii. Gross fee for services, commission and gross receipts from contracts excluding covered under FTR.

   iii. The Company's share of turnover, fees for services, commission and gross receipts from contracts of any AOP of which the company is a member excluding those covered under FTR.

c) Minimum tax in excess of normal tax liability shall be carried forward and adjusted against the normal tax liability of subsequent 5 tax years.

d) This minimum tax provision shall not apply to certain persons and entities if they meet the conditions set out in clause 11A of Part IV of the 2nd Schedule to the ITO. It is pertinent to note that a specific carve-out from the minimum tax provisions has been created for Small and Medium Enterprises, as per Clause 7 of the Fourteenth Schedule to the ITO. .

[18] Amended vide Finance Act 2021
[19] Amended vide Finance Act 2020

e) The turnover in this Section covers receipts from all business activities including but not limited to receipts from sale of immoveable property where such receipt is taxable under the head Income from Business

EXAMPLE

Turnover for Tax Year 2022	Rs 60,000,000
Taxable income	Rs 1,500,000
Income tax calculated as per 1st Schedule	Rs 115,000
1.25% of turnover	Rs 750,000

Income Tax payable on taxable income of Rs 1,500,000 will be Rs 750,000 instead of Rs. 115,000 and minimum tax [Rs 750,000] in excess of income tax calculated as per applicable tax rates [Rs 115,000] amounting to Rs 635,000 will be carried forward in the following 5 years for adjustment against the income tax payable calculated as per applicable tax rates on taxable income, to the extent it exceeds the minimum tax of that year.

1.15. ALTERNATIVE CORPORATE TAX

Corporate taxpayers are liable to pay higher of the following:

Tax liability calculated under General Provisions

- Computed at 29% of taxable income as applicable
- Taxable income computed under normal provisions of ITO 2001

Alternative Corporate Tax

- Means tax calculated at the rate of 17% of the accounting income of the firm
- Accounting income means the accounting profit before taxes as disclosed in the financial statements

In case ACT liability exceeds Corporate Tax, the excess will be carried forward to the following year for a period of no more than 10 years.

EXAMPLE

Total Receipts:	200
Total Expenses	50
Accounting Income as per accounts	150
Taxable Income	25
<u>Breakup of total receipts</u>	
Export Sales	20
Contract Receipts	30
Business Receipts	130
Dividend Receipts	10
Exempt Income	10

Computation of Accounting Income for calculating ACT

a. Total Receipts in the accounts 200
b. Less amounts covered under exemption/ FTR 113C (8)

Export Sales	20
Dividend Receipts	10
Exempt income	<u>10</u>

c. Receipts pertaining to accounting income for section 113C(a-b) = 200 -40 = 160

Less: apportionment of expenses

Percentage of receipts of accounting income u/s 113C	80%
d. 80% of total expenses	40
Accounting income for ACT = (c-d) = (160-40)	**120**

Computation of total tax liability

A. Tax Liability under ACT @ 17% of 120	20.4
B. Corporate Tax @ 29% of 25	7.25

As A is higher, A or tax liability under ACT will apply

C. Final Tax Liability

Export sales @1%			0.2
Contract Receipts @ 7.5%			2.25
Dividend @15%			1.5
Total Final Tax			3.95
Total tax payable (A+C)	(20.4+ 3.95)	=	24.35

1.16. FINAL TAX REGIME

To ease the determination of tax liability and undertaking tax compliances, specified businesses/professions are permitted to pay tax on a small percentage of their gross receipts, thereby dispensing any need to prepare detailed accounts or to undergo tax audit. The requirements of maintenance of minimum books of account and records under Rule 30 of the Income Tax Rules, 2002 are not attracted in case of business income where tax collectible or deductible is the final tax.

Head of Income	TAX RATE
Dividend Income of Shareholders from Independent Power Purchasers where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be re-imbursed by Central Power Purchasing Agency (CPPA-G) or its predecessor or successor entity.	7.5%
Dividend received from mutual funds and REITs, and cases other than those mentioned in the above head of income and the head of income mentioned below head of income, i.e the 3rd head of income in this table.	15%
Dividend from a company where no tax is payable by such company, due to exemption of income or carry forward of business losses under Part VIII of Chapter III or claim of tax credits under Part X of Chapter III	25%
Non-Resident person carrying on Shipping activities/ air transport income	8% in case of shipping income, 3% in case of air transport income, of the gross amount of freight received or receivable on account of carriage of passengers, livestock, mail or goods shipped at any port in/outside Pakistan.

[20]Any resident person carrying on Shipping business, where ships and all floating crafts including tugs, dredgers, survey vessels and other specialized craft purchased or bare-boat chartered and flying Pakistan flag registered with SECP after 15th November 2019	one US $ per gross registered tonnage per annum
Any resident person carrying on Shipping business, ships, vessels and all floating crafts including tugs, dredgers, survey vessels and other specialized craft not registered in Pakistan and hired under any charter other than bare-boat charter.	15 cents per gross registered tonnage per chartered voyage. However, such tax cannot exceed the threshold of $1 per ton of gross registered tonnage per annum.
Resident ship owning company carrying on Shipping business, registered with SECP after 15th November 2019, having its own sea worthy vessel registered under the Pakistani Flag. [21]	75 US Cents per gross registered tonnage per annum.
Exports	1% on export proceeds from direct exporters and indirect exporters.
Petrol Pump Operators	12% on gross amount of commission for taxpayers in the active tax list (24% for persons not in the active taxpayers list)
Income of non-resident media persons	10% of the gross amount
Income of foreign produced commercials	20% of the gross amount
Sale of right to collect tolls	10% (20% for non-filers)
[22]Income of builders and Developers	As per rates given in Eleventh Schedule of ITO on basis of covered area and location.

It may also be noted that the Finance Act of 2021 has introduced an option for Small and Medium Enterprises to be taxed under the FTR. By virtue of the said Act, the Fourteenth Schedule has been introduced in the ITO. As per Clause 4 of the newly added Fourteenth Schedule, there are two categories of SMEs that can opt for the FTR. The criterion for both categories is based on a certain threshold. The first category of SMEs are those which have an annual turnover that does not exceed the threshold of PKR 100 million. The tax rate for such SMEs is 0.25% of their gross turnover. Moreover, the second category is where the annual turnover of the SME is more than PKR 100 million but does not exceed PKR 250 million. Where an SME falls within the second category, the tax rate prescribed is 0.5% of their gross turnover. However, there are a couple of things that are crucial to note here. The first is that this option to be taxed under the FTR can only be exercised at the time the SME is filing its return of income, as per Clause 4(3). Secondly, this option once exercised, cannot be revoked for three tax years, as per the same clause.

1.17. TAX DEADLINES

Every taxpayer is required to submit number of returns and statements, such as:

- Annual filing of:
    - Return of Income
    - Wealth Statement (if applicable)
    - Wealth Reconciliation Statement (if applicable)

[20] Amended vide Finance Act 2020
[21] Amended vide Finance Act 2020
[22] Amended vide Finance Act 2020

  - Foreign income and Assets statement

- Quarterly deposition of advance tax by each company/AOP and individual having latest taxable income exceeding 1 million.
- Quarterly deposition of withholding tax statements by withholding agents on or before 20th October, 20th January, 20th April and 20th July each year. [23]
- Statements of final taxation
- Notice of Discontinued Business
- A Notice if the person is likely leaving Pakistan, during a tax year, with no intention to return back, The said notice shall be given to a Commissioner not less than 15 days before the 'probable date' of his departure, as per Section 145 of the ITO.

To be submitted by:

- **30th September for**
  - Return of income/Statement of final taxation by an individual or AOP, alongwith a wealth statement, wealth reconciliation statement, and statement of foreign assets and liabilities where applicable.
  - Return of income and statement for Final Tax Regime by a company having year end between 1st July to 31st December
- **31st December for**
  - Return of income and statement for Final Tax Regime by a company having year end between 1st January and 30th June.

1.18. TAXATION OF PERSONS (INDIVIDUAL, AOP AND COMPANIES) NOT APPEARING ON ACTIVE TAXPAYERS LIST [ATL]

The 10th Schedule has been included in the ITO, whereby rules have been prescribed for persons not appearing in the ATL issued by FBR. These rules are as follows:

- The rate of withholding tax for certain provisions will be enhanced by 100%.
- Person not liable to file Return of Income can get exemption certificate from Commissioner to avoid enhanced withholding. If the Commissioner does not issue the exemption certificate within 30 days, permission not to deduct tax at the 100% enhanced rate shall be deemed to be granted.
- If enhanced tax has been deducted and person still does not file return, the commissioner can pass provisional assessment order within time limit prescribed.

1.19. PURCHASING OF ASSETS THROUGH BANKING CHANNEL

In order to discourage cash transactions and to document the economy, the purchase of the following assets is required to be made only through crossed cheque drawn on a bank or through crossed demand draft or crossed pay order or any other crossed banking instrument showing transfer of the amount from one bank account to another bank account:

- Immovable property having fair market value greater than Rs 5 million; or
- Any other asset having fair market value more than Rs 1 million

If a transaction does not adhere to the above requirement, the depreciation/amortization and cost for computation of capital gain will be disallowed in addition to a penalty amounting to 5% of the purchase value.

[23] Amended vide Finance Act 2020

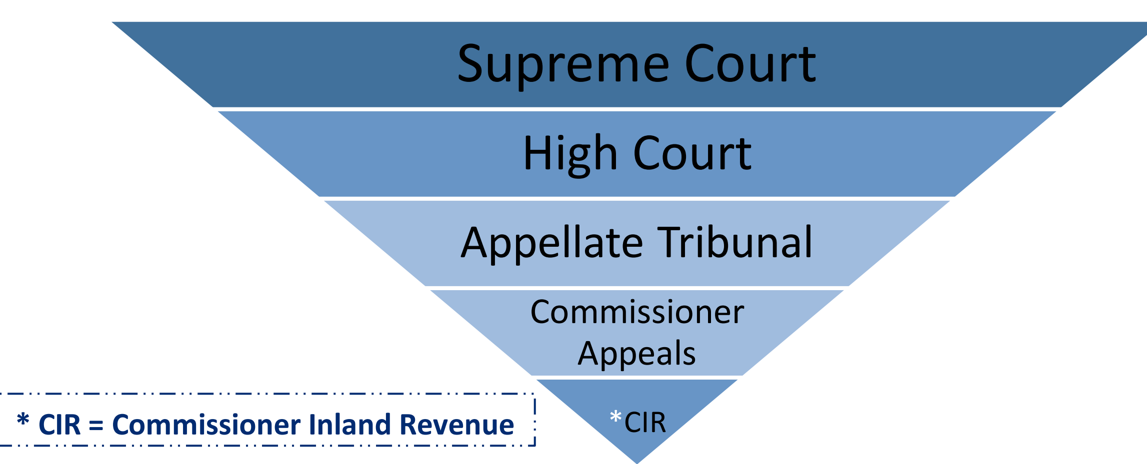
1.20. PAYMENT THROUGH DIGITAL MEANS[24]

To promote the payment of any expenses of companies to be made through digital means, there has been an amendment in Section 21 of the ITO. Through this amendment, the Federal Government has disallowed any expense, whether paid or payable under a single account, head that exceeds an aggregated amount of PKR 250,000/- and is not paid through digital means from the business bank account of the taxpayer company. eans notified to the Commissioner under Section 114A. However, there are a few exceptions to this general rule. These exceptions are as follows:

- 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

1.21. TAX ADMINISTRATION AND DISPUTE RESOLUTION

- In certain circumstances, the Board shall subject the taxpayer to an audit. This process is called an assessment under Pakistani law.
- If a taxpayer is unhappy with the assessment, he can challenge the assessment in the appeals process as under



1.22. ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution mechanism (also known as "ADR"), is a system that operates side by side with the existing conventional appellate system, but with simple procedures and lesser technicalities.

If any taxpayer, decides to opt for the ADR regime instead of the appellate regime, then the decision of ADRC will be binding on the Commissioner when the applicant is satisfied with the decision and has withdrawn his appeal before the court of low or any appellate authority in the prescribed form alongwith communicating the withdrawal to the commissioner. Moreover, as per Section 134A(6) of the ITO, if the order of withdrawal is not communicated to the Commissioner by the applicant within 60 days of the service of the decision of the ADRC, the decision of the ADRC shall not be binding on the Commissioner.

[24] Inserted vide Tax Laws (Third Amendment) Ordinance, 2021

1.23. AVOIDANCE OF DOUBLE TAXATION AND UNILATERAL RELIEF

Tax treaties to avoid double taxation are entered into by countries so that there can be legal certainty regarding economic double taxation (mainly transfer pricing) and international juridical double taxation. International juridical double taxation occurs where there has been taxation on the same taxpayer with respect to the same income in two or more jurisdictions.[25] An example is where Mr. X, a resident of State X for tax purposes, is taxed on his worldwide income, and he earns income in State Y that also taxes the same income. In this situation Mr. X will be taxed in both States on the same income, hence this will be a case of international juridical double taxation. Tax treaties between two countries allocate taxing rights, hence they provide legal certainty to remedy or mitigate double taxation. On the other hand, economic double taxation arises where tax has been levied on the same income, but in the hands of different taxpayers in two or more jurisdictions.[26] Pakistan has entered into agreements for avoidance of double taxation (DTAAs) with the following countries, including those where the conventions restrict the taxation of income from international air / shipping traffic. These DTAAs get their legal basis from Section 107 of the ITO.

A. FULL SCOPE TREATY:

S. NO	Country	Maximum Tax Rate		
		Interest Rate	Royalties	Fee for Technical Services
1	Hong Kong	10	10	12.5
2	Brunei Darussalam	15	15	15
3	Czech Republic	10	10	10
4	Nepal	15	15	15
5	Ukraine	10	10	N/A
6	Kyrgyz Republic	10	10	N/A
7	Spain	10	7.5	10
8	Serbia	10	10	10
9	Yemen	10	10	10
10	Vietnam	15	15	15
11	United State of America	N/A	N/A	N/A
12	Uzbekistan	10	15	0
13	United Arab Emirates	10	12	12
14	United Kingdom	15	12.5	12.5
15	Turkmenistan	10	10	0
16	Tunisia	13	10	0
17	Turkey	10	10	0
18	Tajikistan	10	101	0
19	Thailand	25	20	0
20	Saudi Arabia	10	10	0
21	Syria	10	18	0
22	Switzerland	10	10	10
23	Sweden	15	10	10
24	Sri lanka	10	20	0
25	Singapore	12.5	10	10
26	Romania	10	12.5	0
27	Qatar	10	10	10

[25] OECD, Manual on Effective Mutual Agreement Procedures (February 2007) 8 <https://www.oecd.org/ctp/dispute/36249394.pdf> accessed on 11th October 2021.
[26] Ibid

S. NO	Country	Maximum Tax Rate		
		Interest Rate	Royalties	Fee for Technical Services
28	Portugal	10	10	10
29	Poland	0	15	0
30	Philippines	15	25	0
31	Oman	10	12.5	12.5
32	Norway	10	12	12
33	Nigeria	15	15	0
34	Netherlands	15	15	0
35	Morocco	10	10	10
36	Mauritius	10	12.5	0
37	Malta	10	10	0
38	Malaysia	15	15	0
39	Lebanon	10	7.5	0
40	Libya	N/A	N/A	N/A
41	Korea	12.5	10	0
42	Kazakhstan	12.5	15	0
43	Kuwait	10	10	0
44	Jordan	10	10	10
45	Japan	10	10	10
46	Italy	30	30	0
47	Ireland	10	10	10
48	Iran	10	10	0
49	Indonesia	15	15	15
50	Hungary	15	15	15
51	Germany	20	10	10
52	France	10	10	10
53	Finland	15	10	10
54	Egypt	15	15	15
55	Denmark	15	12	12
56	Chine	10	12.5	12.5
57	South Africa	10	10	10
58	Canada	25	15	0
59	Bosnia and Herzegovina	20	15	0
60	Belarus	0	15	0
61	Belgium	15	20	0
62	Bangladesh	15	15	0
63	Bahrain	10	10	10
64	Azerbaijan	10	10	0
65	Austria	15	10	10

B. LIMITED SCOPE TREATY

Sr #	Countries
1	India (Air Transport Agreement)
2	Saudia Arabia
3	Kenya
4	Jordan (Treaty Partners)

As can be seen above, Pakistan has a reasonable DTA treaty network. If we compare the number of DTAAs Pakistan has signed with other countries in the region, Pakistan has a relatively larger DTAA treaty

network. India has signed DTAAs with around 100 countries[27], whereas, Bangladesh has signed DTAAs with 36 countries.[28] Moreover, Sri Lanka has a DTTA treaty network that consist of 44 countries.[29] The main reason behind the signing of these DTAAs is to allocate taxing rights on the covered categories of income to either the resident jurisdiction (where the taxpayer is resident) or the source jurisdiction (where the income is sourced). This mitigates the possibility of juridical double taxation. Moreover, the DTAAs also cover the situation wherein the taxpayer is a dual tax resident, i.e tax resident in two jurisdictions at the same time. Therefore, there is increased certainty of taxing rights within the treaty network of a country, when a taxpayer is a dual resident. Recently, Pakistan has become a signatory to the Multilateral Convention (MLI) to Implement Tax treaty related measures to prevent BEPS and has enforced the changes made by the MLI through SRO 405(I)/2021.

However, if there is no tax treaty with any jurisdiction, double taxation is regulated through Section 103 of the ITO, which provides for a tax credit in respect of foreign source income chargeable to tax in Pakistan, if foreign income tax has been paid in respect of foreign source income, equal to the lesser of:

- The foreign income tax paid, or
- Pakistan income tax payable in respect of the net foreign source income at different rate of tax.

A credit shall be allowed under this provision only if the foreign income tax is paid within two years, after the end of the tax year in which the foreign income to which the tax relates was derived by the resident taxpayer.

However, as per Section 102 of the ITO, in case of foreign source salary, the same will be exempt on the basis of foreign income tax paid or deduction of withholding tax by the employer

The most common types of income of nonresidents comprises are of interest, dividends, royalties, fee for technical services and capital gains. Above table depicts the maximum tax rate which the contracting states that have signed a tax treaty with Pakistan can charge to nonresidents. There is no such limit on capital gain.

1.24. ANTI-AVOIDANCE

Anti-avoidance provisions are present and used in a tax system to prevent base erosion and profit shifting. Similarly, the ITO has a few anti-avoidance provisions which help the tax authority in preventing tax avoidance. These are as follows:

- Section 108: This section is the legal authority for situations concerning transfer pricing. It covers transactions between associates, and empowers the Commissioner to "distribute, apportion or allocate income, deductions or tax credit between the persons as is necessary to reflect the income that the persons would have derived in an arm's length transaction." Moreover, this section also places compliance requirements for persons that have transactions between their associates. Some of the requirements are to maintain a master and a local file, keep a country-by-country report (also known as "CbCR"). These are in-line with the best practices internationally. However, the prescribed files, documents, information and reports are yet to be notified by the Board.[30]

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[27] PWC, 'India- Individual – Foreign tax relief and tax treaties' <https://taxsummaries.pwc.com/india/individual/foreign-tax-relief-and-tax-treaties> accessed on 11th October 2021.

[28] KPMG, 'Other issues- Double taxation treaties' <https://home.kpmg/xx/en/home/insights/2021/05/bangladesh-thinking-beyond-borders.html> accessed on 11th October 2021.

[29] PWC, 'Sri Lanka- Treaty WHT Rates' <https://taxsummaries.pwc.com/sri-lanka/corporate/withholding-taxes> accessed on 11th October 2021.

[30] Huzaima and Ikram, *Law & Practice of Income tax* (December 2020, vol 1 5th Edition) 702

- Section 109 (a): This sub-section is a General Anti-avoidance Rule (also known as "GAAR"). A GAAR is usually present in the law to prevent unacceptable tax avoidance schemes.[31] As per this sub-section, the Commissioner may recharacterize a transaction or an element of a transaction that was entered as part of a tax avoidance scheme. The subtlety of this section is that it has been drafted in such a way that it has merged the definition of 'tax avoidance scheme' with the 'main purpose' test. What this means is that a tax avoidance scheme will only be present for the purposes of Section 109(a), if one of the main purposes of a transaction was to avoid or reduce his/her tax liability.
- Section 109(b): The Commissioner may disregard a transaction that does not have substantial economic effect.
- Section 109(c): The Commissioner may recharacterize a transaction where the form of the transaction does not reflect the substance.
- Section 109(d): From TY 2018 and onwards, the commissioner has been empowered to disregard corporate structures or an entity that doesn't have an economic or a commercial substance or was created as part of a tax avoidance scheme. The second part of this subsection is also a GAAR.

1.25. ORGANISATION FOR ECONOMIC COOPEARTION AND DEVELOPMENT

The Organization for Economic Cooperation and Development (OECD) has been the institution to lead the way for tackling issues related to international taxation and bringing in reforms in the international tax sphere. A key aspect in that regard has been the multilateral convention on mutual administrative assistance in tax matters (MAATM) that was developed jointly by the OECD and the council of Europe.[32] It gives the countries signatories to the MAATM, the legal basis for automatic and spontaneous exchange of information. Pursuant to Article 6 of the MAATM, several jurisdictions have signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAEOI) and a global model of Common Reporting Standard (CRS) for the automatic exchange of information with respect to financial accounts.

Pakistan has joined both MAATM and the MCAEOI. For implementation of CRS in Pakistan, necessary legislative changes have been made in the ITO and the Income Tax Rules, 2002 to collect and provide relevant financial accounts information to the foreign tax jurisdictions. Hence, Pakistan has put in place all the necessary legislative and administrative measures and other relevant safeguards to implement the CRS and is exchanging financial accounts information with partner jurisdictions since September 2018.

As mentioned earlier, the OECD in the past decade undertook to tackle base erosion and profit shifting, through the BEPS project. They authored a comprehensive report on several different action plans, and provided recommendations. An example that has been discussed previously is the strengthening of the CFC regulations. The BEPS Project sought to identify the gaps and mismatches in tax rules and eliminate the tax planning strategies/schemes that are used to artificially shift profits into jurisdictions that have low or no taxation where there is barely any economic activity, or use deductible payments such as interest or royalty to erode the tax base of a country.[33] Furthermore, the OECD has also authored a comprehensive report on hybrid mismatches that can lead to double non-taxation..

1.26. AUTOMATIC EXCHANGE OF INFORMATION

As mentioned earlier, pursuant to Article 6 of the MAATM, several jurisdictions have, through their Competent Authorities, of the Parties to the Convention have signed the MCAEOI.

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[31] IMF, 'Introducing a GAAR' ((1) 2016) 1 <https://www.imf.org/external/pubs/ft/tltn/2016/tltn1601.pdf>

[32] OECD, 'Convention on Mutual Administrative Assistance in Tax Matters' <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm> accessed on 25th September 2021

[33] OECD, 'What is BEPS?' <https://www.oecd.org/tax/beps/about/> accessed on 11th October 2021.

In the Finance Acts of 2015 and 2016, Pakistan introduced section 165B and made certain amendments to section 107 of the ITO respectively, thus providing primary legislation for the purpose of automatic exchange of information in line with international standard(s). Moreover, Section 107(1B) guarantees the confidentiality of the information received by virtue of the bilateral and multilateral treaties, except for cases mention in Section 216(3) of the ITO.

Furthermore, changes were also made to the Sales Tax Act, 1990 and Federal Excise Act of 2005. Moreover, through the Finance Act 2017, an explanation was inserted in Section 165B of the Income Tax Ordinance, 2001 in order to bring more clarity and to quell any hint of ambiguity involving the terms "reportable person" and "financial institution" as assigned in the CRS.

1.27. MUTUAL LEGAL ASSISTANCE

A mutual legal assistance treaty (MLAT) is an agreement between two or more countries for the purpose of gathering and exchanging information in an effort to enforce public or criminal laws.

The **United Nations Convention against Corruption (UNCAC)** is a multilateral convention that can help in extradition and can aid in providing mutual legal assistance in cases pertaining to corruption**.** Pakistan has signed the said convention on 9th December 2003 and ratified the same on 31st August 2007.[34]Moreover, Pakistan is also a signatory to the **United Nations Convention against Transnational Organized Crime (UNTOC)**, having signed the UNTOC on 14th December 2000. Pakistan also ratified the UNTOC on 13th January 2010.[35]

1.28. BENAMI LAW

In 2017, the Pakistan Benami Transactions (Prohibition) Act, 2017 was enacted to curb the huge parallel economy in Pakistan. The Act provided a mechanism and a procedure for confiscation of property held as Benami and for matters connected therewith or incidental thereto. To provide the procedural framework for implementation, the Federal Government has enacted Benami Transactions Rules through the SRO 326 dated 11 March 2019.

1.29. ANTI MONEY LAUNDERING LAW

Pakistan introduced its first standalone Anti Money Laundering law in September 2007 through the promulgation of the Anti-Money Laundering Ordinance 2007. This was followed by the Anti-Money Laundering Ordinance 2009 and Anti-Money Laundering Act 2010. Presently, the Pakistani AML/CFT framework consists of, and is, regulated through following legislations:

- The Anti-Money Laundering Act 2010 (AML Act)
- The Anti-Terrorism Act 1997 viz. basic legal framework for counterterrorism prosecutions in Pakistan.
- The Anti-Money Laundering Regulations 2015
- The Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations 2020 are applicable to SECP regulated entities. Moreover, the SECP has also issued Guidelines on implementation of Regulations.

[34] United Nations, 'Signature and Ratification Stats' <https://www.unodc.org/unodc/en/corruption/ratification-status.html> accessed on 17th October 2021

[35] United Nations, 'Treaty Collection' <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en#EndDec> accessed on 17th October 2021

1.30. RECORDS SHARING BY NATIONAL DATABASE AND REGISTRATION AUTHORITY (NADRA)[36]

NADRA is allowed 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 regarding the information, who may utilize the information for the purposes of ITO. NADRA is allowed to compute indicative income and tax liability.

1.31. THRESHOLD ON IMMUNITY ON FOREIGN REMITTANCE

Prior to Income Tax (Amendment) Ordinance, 2018, any amount of foreign exchange remitted from outside Pakistan through normal banking channel and encashed into Pak Rupees could not be subject to any enquiry for income tax purposes. Currently the above blanket exemption is unavailable for remittances above Rs 5 Million per person in a tax year.

1.32. THIN CAPITALIZATION AND RESTRICTION ON DEDUCTIONS OF PROFIT ON DEBT PAYABLE TO ASSOCIATED ENTERPRISES.

The legislation concerning thin capitalization has been introduced in the Pakistani tax law to refrain foreign companies from injecting debt instead of equity in their subsidiaries formed in Pakistan more than a certain approvable threshold. The governing section is Section 106 of the ITO. Moreover, thin capitalization rules apply to Foreign Controlled Resident Company, in which 50% or more of the underlying ownership is held by a non-resident person (either alone or together with an associate), other than a financial institution or banking company.

The acceptable foreign debt-to-equity ratio/threshold of the FCRC is 3:1. If this ratio is exceeded during any time of the year, then the profit on debt paid by the company in that year on the part of the debt exceeding 3:1 ratio will not be allowed as deduction, while computing income of the FCRC. This rule is also applicable to the Pakistan branchi of a foreign company.

Thin capitalization is inapplicable, if interest on foreign debt is chargeable to tax under the Ordinance and does not enjoy any exemption or reduced rate applicability.

Section 106A will also come into operation when/if the deduction claimed of foreign profit on debt is PKR 10 million and above.37 If profit on debt claimed as a deduction is more than 10 million, effectively 15% of foreign profit on debt payable to non-resident person or associate will be disallowed in computing income of FCRC. It may be noted that the 'higher of' the two amounts, i.e under Section 106 and 106A disallowed will be considered, as per Section 106A (4).

1.33. ADVANCE RULING

The mechanism of Advance Ruling helps bring clarity and certainty to the tax affairs of a non-resident taxpayer. This is regulated by Section 206A of the ITO. Moreover, till 2017, Permanent Establishments were not allowed to seek Advanced Rulings. However, through the Finance Act of 2017, that restriction was removed from the law, and now Permanent Establishments can also seek such Rulings.

The law is silent about the situation where non-resident taxpayers after obtaining the ruling becomes resident, whether ruling be still binding or not? The detailed procedure is on FBR website link

https://www.fbr.gov.pk/Contents/introduction-procedure-of-advance-ruling/156.

[36] Inserted vide Tax Laws (Third Amendment) Ordinance, 2021
[37] Amended vide Finance Act 2020

1.34. DIRECT TAX INCENTIVES FOR INVESTORS

1.34.1. Generating Employment

As per Section 64B, when a company incorporated between 1st July 2015 and 30th June 2018 Where a new manufacturing unit was set up between 1st July 2015 and 30th June 2019, the owner can avail a tax credit for 10 years equal to 2% of tax for every 50 employees registered with Employees Social Security Institutions of Provincial Governments for a maximum of 10% tax payable starting from the year in which production has commenced.

1.34.2. Tax Credit for Greenfield Industrial Undertaking

Tax credit of 25% of the investment made in plant and machinery will be available to a Greenfield industrial undertaking (incorporated between 30th June 2019 and 30th June 2024) engaged in manufacture of goods or subjection of goods to a process that substantially changes their conditions, or shipbuilding. It may also be noted that the greenfield industrial undertaking will only be allowed to avail this credit if it is not formed by splitting up, or reconstitution of an already existing undertaking or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencing the new business and isn't part of an expansion project.

1.34.3. Tax Credit for Other Industrial Undertaking

A tax credit of 25% of the investment in plant and machinery will be available to an industrial undertaking set up by 30th June 2023 and is engaged in manufacture of plant and machinery, equipment and items with dedicated use (not multiple uses) for generation of energy from sources like solar and wind for a period of five years beginning from the date such undertaking is setup.

1.34.4. Tax credit for point of sale machine

Where a company is required to integrate with FBR for the real time reporting of sale, and the company installs the system, a tax credit is given which will be the lower of the amount invested in machines or PKR 150,000 per machine.

1.34.5. Taxation of Income of aperson being a Member of an Association of Persons

An Association of Persons is liable to tax at specified rates. The share of a member of an Association of Persons is exempt from tax. However, the same shall be added in partners' income for the purposes of adjudging the person's tax rate only.

1.34.6. Minimum Tax Regime

The minimum tax regime has also been lowered to a certain extent in some industries such as 0.75% for oil marketing companies and poultry breeder, 0.5% for oil refineries and 0.25% for distributors of pharmaceutical products, fast moving consumer goods and cigarettes, rice and flour mills, sugar, cement and edible oil.

1.34.7. Start-Ups

Startup has been defined in Section 2(62A) of the ITO as; (a) a business of a resident individual, AOP or a company that commenced on or after 1.7.2012 and the person is engaged in or intends to offer technology driven products or services to any sector of the economy provided that the person is registered with and duly certified by the Pakistan Software Export Board (PSEB) and has turnover of less than Rs 100 Million in each of the last five tax years; or (b) or any business of

a person or class of persons, subject to the conditions as the [Board with the approval of Federal Ministerin-charge] may, by notification in the official Gazette, specify

Previously, startups were exempt from tax for the tax year in which they were certified by the Pakistan Software Board and the following two tax years. However, now they have been made subject to tax, whilst offering them a tax credit. As per Section 65F of the ITO, a startup will get a 100% tax credit for the tax payable, for the tax year in which it has been certified by the PSEB and the following two tax years.

Section 153, i.e the withholding tax provision is not applicable to start-ups when they are recipients of a payment, as per Clause 43F of Part III of the Second Schedule to the ITO. However, after the Finance Act 2021, start-ups are subject to minimum tax, as the 2021 Act removed Part IV Clause 11A(xxix) of the Second Schedule to the ITO through which an exemption from the application of the minimum tax regime (Section 113) was stated in the law.

1.34.8. Online Market place

Online Market place means an information technology platform run by e-commerce entity over an electronic network that acts as a facilitator in transactions that occur between a buyer and a seller.

The minimum tax rate applicable on the turnover of the person from supplies through running an online market place shall be 0.25%,

1.34.9. Import of Goods

Advance tax at the time of Import of goods where title passes outside Pakistan and is supported by import document is exempt from tax deduction, unless the import is part of Cohesive Business Operations

1.34.10. Educational and Medical

If education or medical expenses are remitted abroad by the individual to non-resident in accordance with the regulations of the SBP, an exemption against withholding tax will be allowed,

1.34.11. Tax Credits for Profit on Behbood Savings Certificates or Pensioners' Benefit Account

The Behbood Certificates are not subject to withholding tax and subject to maximum rate of tax of 10%. If income falls in slabs on which tax rate is higher than 10%, a tax credit equal to additional tax above 10% will be available.

1.34.12. Tax Reduction for Woman Entrepreneur(s)

A reduction of tax payable by 25% in tax payable for woman enterprises on profit and gains derived from business chargeable to tax under head "income from business". [38] A woman enterprise means a startup established on or after first day of July 2021 as sole proprietorship concern owned by a woman or an AOP all of whose members are women or a company whose 100% shareholding is held or owned by women

1.34.13. Advance Tax at Import Stage

A regime for advance tax has also been put into effect decreasing the tax rate for raw materials and machinery listed in part 1 and 2 of twelfth schedule of ITO to 1% and 2% respectively. [39] In case of manufacturers covered under rescinded Notification No. S.R.O. 1125(I)/2011 dated the

[38] Inserted vide Finance Act 2021

[39] Amended vide Finance Act 2020

31st December, 2011 as it stood on the 28th June, 2019 on import of items covered under the aforementioned S.R.O. shall be 1%. In case of persons importing finished pharmaceutical products that are not manufactured otherwise in Pakistan, as certified by the Drug Regulatory Authority of Pakistan shall be 4%.

1.34.14. Exemptions for Mutual Funds

Mutual funds are exempt from income tax if up to90% of its income is distributed as dividend subject to provisions in Pakistani law.

1.34.15. Coal Plants

Coal plants in Sindh for supply of coal exclusively to power stations have been given 100% tax credit from tax. Furthermore, these companies also have their dividend tax reduced to 7.5%.

1.34.16. Developmental REIT Scheme

A developmental REIT scheme established by 30th June 2020 will have reduced rate on dividend by 50% on recipient for three years from setting up of the scheme.

1.34.17. Immunity from Probing

Immunity from probing has been provided to investments made by an individual in a Greenfield industrial undertaking provided that the investment is made on or after January 1, 2014 and commercial production is commenced by June 30, 2019. This exemption is subject to certain conditions.

1.34.18. Tax Holiday for Refineries

The exemption is available for a period of 20 years beginning from the date of commercial production in case of new refinery and for 10 years from date of completion of up gradation, modernization or expansion project of existing refinery.

1.34.19. Loan to SME - Tax Reduction

Under the existing regime, all income of banking companies is subject to uniform rate of tax of 35%. It is provided that 'income' from advances to the following will be subject to reduced rate of 20% for tax years 2020 to 2023:

a) Micro and small enterprises;
b) Low cost housing finance; and
c) Farm credit.

The above terms are defined as per State Bank of Pakistan's Prudential Regulations. With regard to farm credit and low-cost housing finance, advances would not qualify for the above concessional rate and the same is subject to submission of details of advances along with gross and net margin earned from such advances.

The above concessional rate is available on 'additional advances', which term has been defined as advances in addition to average amount of advances to the above sectors for tax year 2019.

A clause in Second Schedule has been inserted to exempt the above income from Super Tax too for tax years 2020 to 2023.

1.34.20. Builders and Developers- Tax concessions[40]

If a company with single object as a builder or developer is incorporated on or before 31st December 2020, the following benefits are available:

[40] Amended vide Finance Act 2020

- The tax rate will be fixed tax rate based on area of project
- The Dividend income paid to shareholder out of profits will be exempt from withholding tax on dividend.
- Minimum tax under section 113 of the Ordinance shall not be applicable on turnover of a builder or developer in respect of a project registered under the scheme.
- The profit can be incorporated in Balance Sheet i.e. white money, of the company up to 10 times of tax paid.
- The company shall not be liable to withhold tax under Section 153 on payments made to vendors on purchase of building material except, cement and steel and on services of plumbing, electrification, shuttering and other similar services provided by individuals or an AOP.
- A builder or developer falling under this scheme shall pay advance tax equal to one-fourth of the tax liability for the year as determined under the scheme in four equal installments. Builders and developers opting for the scheme shall only be eligible for availing tax credit for tax collected under section 236A and 236K of the ITO from such builders or developers pursuant to the commencement of the Tax Laws (Amendment) Ordinance, 2020 (I of 2020) i.e. from 17th April, 2020 onwards on the purchase of immoveable property utilized in a project registered under the scheme.
- The scheme provides immunity from the provisions of section 111 of the Ordinance, and no questions will be asked regarding nature and source of funds from investors making capital investment in NEW construction projects in the form of money or land, either as an individual, as an association of persons or a company, subject to the conditions:
  - Such amount invested through crossed banking instrument deposited in the bank account of new company on or before 30th June 2021
  - Land is owned by the company as on 17.04.2020 shall be transferred to such company on or before 30th June 2021.
- In case the actual profits of the company are more than 10 times of the taxes paid, the excess profits will be required to be offered for tax at normal rates (i.e. 29% for companies) under normal tax regime.
- The first purchaser of a building or a unit in the building is not required to explain the source of funds used for purchase from a project registered with FBR under this scheme if the complete payment is made before 30.09.2023 and is made through banking channels.
- In case of a builder, the project shall be treated as complete on the date of completion of the grey structure. Moreover, the roof of the top floor has been laid as per the approved plan. Furthermore, the map approving authority or NESPAK shall certify that the grey structure as per the approved map has been completed by the builder on or before the 30th day of September, 2023.

(See detailed comments through the following link: https://bit.ly/35HEYhq)

1.34.21. Incentives for Non-Resident Individuals (NRIs) Holding Pakistan Origin Card (POC), National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card(CNIC).[41]

To promote and encourage investment by non-resident Pakistanis, the State Bank of Pakistan has introduced the Roshan Digital Account (RDA). Tax incentives for RDAs are briefly mentioned as follows:

Interest income from foreign currency and Pakistan rupee RDAs (Term Deposits) shall be exempt from tax, including withholding tax, with no requirement to obtain an exemption certificate. Additional incentives / concessions for Non-Resident Individuals (NRIs) who invest in Government debt securities, Immovable property, Listed securities and units of Mutual Funds; and Term deposit and other products of the Bank through Foreign Currency Value Account (FCVA) or a Non-Resident Pakistani Rupee Value Account (NRVA) with authorized banks in Pakistan. These incentives / concessions, inter alia, included waiver of requirements to obtain National Tax Number and to file tax return in Pakistan if such NRI has no income other than income from above referred investments. Moreover, certain tax withholding provisions as well as the provisions of Tenth Schedule (which prescribe for 100% increased tax withholding) are inapplicable to such NRIs operating through FCVA/NRVA.

1.34.22. Incentives for Resident Individuals on Naya Pakistan Certificates

A reduced tax withholding rate of 10%, which would also constitute full and final discharge of tax liability, is prescribed for interest income earned by such resident citizens of Pakistan who invest in Naya Pakistan Certificates and other Government securities through FVCA, out of foreign assets declared to FBR.

[41] Inserted vide Finance Act 2021

SALES TAX ON GOODS

2. SALES TAX ON GOODS

Sales tax in Pakistan was a provincial tax at the time of partition. It was being administered in the provinces of Punjab and Sindh as a provincial levy. However, it was declared as a federal subject in 1948 through the General Sales Tax Act 1948. Hence, this levy was made a Federal subject in 1952. Sales Tax was levied at the standard rate of 6% at every stage of sale. The regulation and imposition of sales tax on goods is done through the Sales Tax Act 1990 ("the Act").

2.1. FEDERAL SALES TAX SALIENT FEATURES

The Sales tax operates like a Value Added Tax (VAT) system. It is an indirect tax on the consumption of the public-at-large, that is collectable from the whole supply chain i.e. importers, manufacturers, wholesalers (including dealers and distributors) and retailers with certain exceptions. Therefore, the sales tax is a multi-stage tax payable on value of:

- Taxable supplies by a registered person in respect of any taxable activity carried on by him;
- Goods imported into Pakistan; and
- Specified taxable services.

The Sales tax normally utilizes a system of tax credit (called input tax adjustment) to place the ultimate and real burden of tax on the final consumer and to relieve the intermediaries from any tax burden.

2.2. RETAILERS

Under the new procedures, retailers have been segregated into 2 categories:

1. Retailers who are subject to tax under the normal tax regime. These are called 'Tier 1 retailers' and include:
    - National or international chains
    - Retailers operating in air-conditioned malls
    - Retailer who has a credit and debit card machine
    - Retailers whose cumulative electricity bill exceeds Rs. [42]1,200,000 for a 12-month period
    - Wholesaler-cum-retailer who engages in bulk import of goods and supply of consumer goods on wholesale basis to retailers as well as on a retail basis to the general body of the consumers.
    - A retailer whose shop measures one thousand square feet in area or more [43](or two thousand square feet in area or more in the case of retailer of furniture) or
    - a retailer who has acquired point of sale for accepting payment through debit or credit cards from banking companies or any other digital payment service provider authorized by State Bank of Pakistan.

These retailers will be charged tax under the regular procedures of law. This means sales tax will be charged at 17% with the relevant input adjustment.

2. Retailers other than Tier-1 retailers are not required to be registered and they shall pay sales tax with their monthly electricity bill as under:
    - 5% where the monthly bill does not exceed Rs 20,000; and
    - 7.5% where the monthly bill exceeds Rs 20,000.

[42] Inserted vide Finance Act, 2021
[43] Amended by The Tax Laws (Amendment) Act, 2020

The above sales tax is the final discharge of their sales tax liability and they are not allowed to claim input tax adjustment. Monthly sales tax return is not required to be filed and they are not subject to audit.

2.3. TAX RATE

Sales tax is applied at the rate of 17%. Further tax at 3% shall also be charged when the goods are supplied to unregistered persons. It means that the tax rate is 17% + 3% on supplies of goods to unregistered persons. However, further tax shall not be charged in the following cases:

- Supply of goods directly to end consumers including supplies by retailer (however CNIC of buyer is required in case of sales amount greater than Rs 100,000[44])
- Items that fall under the 3rd Schedule
- Electricity supplied to domestic and agricultural consumers
- Natural gas supplied to domestic consumers and CNG stations
- Supply of second-hand worn clothing and other work articles
- Goods falling under zero rating
- Fertilizers
- Supplies by steel milters, re-rollers and ship breakers and few other items specified in the notification.
- Supplies made to Government, semi-government, and statutory regulatory bodies.
- Supply of white crystalline sugar.
- Supplies of foam or spring mattresses and other foam products for household use.

Further tax shall not become part of output tax, which means that further tax is payable to the FBR as a bottom-line figure. It should, however, be noted that sales through factory outlets means sales to end users and therefore further tax is not chargeable. Likewise, sales to employees, educational institutions, hospitals government department and so on will not be subject to further tax being end users.

FBR with the approval of Federal Minister in charge has the power to fix a lower or higher rate on specified items. Examples of lower rate of sales tax is petroleum products through notifications issued by the FBR from time to time.

The 8th schedule specified imports or supply of certain goods on which sales tax is chargeable at reduced rates subject to certain conditions. Few examples are:

- 10% on flavored milk, milk and cream concentrated or containing added sugar or other sweetening matter, cheese, butter etc. if sold in retail packing under a brand name
- 10% on import of plant and machinery not manufactured locally and having no compatible local substitutes.
- Imported Oilseeds meant for sowing 5%.

FBR has the authority to levy and collect sales tax on fixed basis or on the basis of capacity of plant in lieu of sales tax on the basis of value of supply of goods (may also be called as capacity tax)

The 9th Schedule specifies imports or supply of certain goods on which sales tax is charged on fixed basis. Fixed sales tax has been imposed under 9th Schedule as under:

[44] Amended through Finance Act, 2020

- On activation of SIM card by a Cellular Mobile Operator(“CMO”) [45] up to 30th June 2020
- On mobile phones including smart phones and satellite phones ranging from Rs.[46]130 to Rs. 9,270.
- Fixed sales tax under 9th Schedule shall be paid by the CMO, importer or manufacturer, as the case may be, and the purchaser is not entitled to claim input tax of such fixed sales tax paid by him. CMO is not entitled to claim any input tax against fixed sales tax charged by it from its customers.

2.4. SALES TAX ON FIVE EXPORT-ORIENTED ITEMS AND OTHERS

Now, Sales tax on five export sectors i.e. Textile, carpets, leather, sports, and surgical goods on local supplies is under the normal tax regime @ 17% which was previously covered under SRO 1125 dated 31.12.2011. The facility of supply of zero-rated electricity, gas, diesel oil, furnace oil and coal to registered manufacturers has also been withdrawn. However, if supplied goods are finished fabric, and locally manufactured finished articles of textile and textile made-ups and leather and artificial leather from retail outlets, as are integrated with FBR’s computerized system for real time reporting, subject to the condition that they have maintained 4% value addition during the last six months, the tax rate will be 10% instead of 17% [entry no. 66, 8th Schedule of the Act]. [47]

2.5. IMPORTED GOODS- SALES TAX TO BE CHARGED ON RETAIL PRICE

Sales tax is charged by a manufacturer or importer @17% in respect of goods falling under third schedule of the Act on the recommended retail price fixed by the manufacturer or importer, which shall be legibly printed on the label etc. along with the amount of the sales tax. After charging such sales tax by a manufacturer or importer, the same amount of sales tax will be charged by the wholesaler of finished goods and retailer from their customers.

2.6. WHO IS LIABLE TO PAY SALES TAX?

Liability to pay the sales tax to the tax department shall be of the **person:**

- Making the supply, in the case of supply of goods (it means that the purchaser who pays sales tax, does not pay sales tax to FBR, instead he pays sales tax to the supplier and the supplier pays sales tax to FBR after making his input adjustment).
- Importing the goods, in the case of goods imported into Pakistan and
- Providing taxable services

However, FBR with the approval of the Federal Minister-in-charge may specify the goods in respect of which liability to pay sales tax to FBR shall be of the person receiving the supply (i.e. the Reverse charge mechanism).

The **Cottage Industry** is not required to register and pay sales tax. Cottage industry is defined under the Act by Section 2(5AB) as a manufacturer that does not have an industrial gas or electricity connection, is located in residential area, whose annual taxable turnover during the last 12 months ending any tax period does not exceed Rs 10 million[48] and does not have a total labour force of more than ten workers.

[45] Amended through Finance Act, 2021
[46] Amended through Finance Act, 2020
[47] Amended through Finance Act, 2021
[48] Amended through Finance Act, 2021

2.7. GST RETURNS

Under Pakistani law, the standard operating procedure has been to file monthly tax returns by the 18th of every month.

1.	Standard Procedure	Monthly Returns	18th of every month
2.	Private or Public Limited Company (in addition to Point 1)	Annual Return	By 30th September

2.8. GST EXEMPTIONS AND INCENTIVES

2.8.1. Zero Rated Supplies

Zero rated supplies are supplies that are chargeable to sales tax, but at a zero rate. This means that they are not exempt. The difference between the two is that under a zero-rated supply, the supplier can credit/adjust the input tax they have paid in respect of that good or service. Exports to any country are zero rated supplies. This covers a wide variety of goods and services. Some examples are supply to diplomats, diplomatic missions and duty-free shops, stationery, and bicycle industries. Refund on zero rated supplies because of input tax will be made in 72 hours in the new Fully Automated Sales Tax eRefund (FASTER). A few important examples of zero-rated supplies mentioned in the Fifth Schedule to the Sales Tax Act 1990 ("STA") are:

- Supply to diplomatic mission and privileged persons
- Supply of raw materials and components for further manufacture of goods in export processing zone
- Supply of locally manufactured plant and machinery of specified specifications (mentioned in the Serial 6A of the Fifth Schedule to the STA) to manufacturers in the in EPZ subject to certain conditions mentioned in Serial 6A of the Fifth Schedule to the STA
- Imports or supplies made to the Gwadar Special Economic Zone excluding vehicles falling under heading 87.02 of the Pakistan Customs Tariff, subject to conditions, limitations and restrictions as the Board may impose.
- Supply to exporters under Duty and Tax Remission Rules 2001 (DTRE) subject to observance of procedures, restrictions, and conditions prescribed therein.
- Local supplies of raw materials, components, parts and plant and machinery to registered exporters authorized under Export Facilitation Scheme, 2021 notified by the Board with such conditions, limitations and restrictions.";
- Milk (under the PCT heading 04.01).
- Fat filled milk excluding that sold in retail packing under a brand name or a trademark (under the PCT heading 1901.9090).

  (i) Supply, repair or maintenance of any ship which is neither; (a) a ship of gross tonnage of less than 15 LDT; nor (b) a ship designed or adapted for use for recreation or pleasure.

  (ii) Supply of spare parts and equipment for ships falling under (i) above.

  (iii) Supply of equipment and machinery for salvage or towage services. (iv) Supply of equipment and machinery for other services provided for the handling of ships in a port.]

2.8.2. Exempt Supplies

Exempt supplies are as their title suggests, 'exempt'. This means that these are supplies which fall outside the purview of sales tax, hence not subject to sales tax. A few essentialexempt items are:

- Live animals
- Agricultural produce not subject to any further manufacture
- Edible oil, vegetable ghee and cooking oil on the part of the importer and manufacturer (FED is applicable on these items)
- Holy Quran and other holy books or recorded in audio or video cassettes
- Imported samples (local samples of taxable items are subject to sales tax)
- Goods imported by diplomats, diplomatic missions or privileged person
- Personal baggage imported by overseas Pakistanis
- Import of machinery and materials for EPZ
- Goods imported temporarily for subsequent exports
- Import of replacement goods supplied free of cost in lieu of defective goods imported
- Goods produced in and exported from Pakistan which are subsequently imported in Pakistan within one year of their export
- Goods imported by or donated to government hospitals and non-profit educational and research institution
- Goods supplied to government hospitals, charitable hospitals of 50 beds or more of the teaching hospitals of statutory universities of 200 or more beds
- Supply of fixed assets otherwise than stock in trade against which input tax adjustment is not available e.g. resale of car, furniture, or office equipment being a depreciable asset
- Specified goods including
  - Energy saver lamps and tube light
  - Pharmaceutical raw materials and finished products with few exceptions
  - Laptops, computers, and notebooks
- Specified machinery and capital goods subject to certain conditions such as
  - Equipment's for coal firing system
  - Machinery for power generation
  - Networking equipment's for educational and training institution
  - Machinery imported for setting up of a Special Economic Zone (SEZ) as prescribed in the SEZ Act, 2012
- Raw materials or intermediary goods produced (or services provided) by a registered person used by himself in the manufacture of taxable goods. Such in-house consumption is a supply as per the definition and shall itself be a taxable supply if used for any purpose other than taxable supply.

2.8.3. Input Tax Adjustment

Pakistani tax law restricts admissibility of input tax with respect to

- Goods and services not related to taxable supplies
- Commodities acquired for personal or non-business use.
- Goods used in immovable property
- Vehicles, their parts, their electrical appliances, furniture, furnishings, office equipment other than goods for sale or resale

2.8.4. Restriction on Input Tax

A registered person other than public listed companies[49] shall not allow to adjust input tax in excess of 90% of the output tax for a particular tax period. Therefore, in case of a 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.

Moreover, 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.

However, input tax on the acquisition of fixed assets or capital goods, if any, is claimable in the same tax period and the said restriction of 90% is not applicable in this case.

Furthermore, input tax allowed in the case of locally manufactured electric vehicles, subject to a reduced rate of tax under the Eighth Schedule, shall be limited to the extent of amount of output tax and no refund or carry forward of excess input tax shall be allowed.[50]

FBR has power to increase the limit from 90% to 95% in any particular case.[51] FBR has specified the following cases where the limit is 95%:

- All Tier-1 retailers who have integrated all their point of sales (POS) with the FBR
- Wholesalers of yarn.
- Automobiles manufacturing companies which are listed on PSX till December 2020.

In case a Tier-1 retailer does not integrate his retail outlet in the manner as prescribed under sub-section (9A) of section 3, during a tax period or part thereof, the adjustable input tax for whole of that tax period shall be reduced[52] by 60%[53].

➢ **Exceptions:**

This restriction of 90% is not applicable in the following cases i.e. they can adjust input tax from output tax without any restriction:[54]

1. All Tier-1 retailers who have integrated all their POSs with the Board in terms of Chapter XIV-AA of Sales Tax Rules, 2006.Oil marketing companies, petroleum refineries and Pakistan Steel Mills.

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[49] Amended through Finance Act, 2020
[50] Amended through Finance Act, 2020
[51] Through SRO 1190 dated 2.10.2019
[52] Amended by Finance Act, 2019
[53] Amended by Finance Act, 2021
[54] Substituted by S.R.0.344(I)/2020 29th April 2020.

2. Fertilizers manufacturers
3. Distributors
4. Commercial importers provided the value of imports subjected to 3% value addition as per Twelfth Schedule, where commercial imports exceed 50% of value of all taxable purchases in a tax period.
5. Persons making zero rated supplies provided value of such supplies exceeds 50% of value of all taxable supplies during a tax period.
6. Telecommunications
7. Registered persons other than manufacturers, making supplies of items covered under the third schedule to the Sales Tax Act, 1990 on which sales tax has been paid by manufacturers or importer on retail price, provided that value of such supplies exceeds 80% of value of all taxable supplies in a tax period.
8. [55]CNG dealers provided the value of natural gas on which sales tax is charged on the basis of value notified by FBR exceeds 50% of all taxable supplies.
9. Petroleum dealers of licensed oil marketing companies.

[55] Through SRO 1190 dated 2.10.2019

FEDERAL EXCISE DUTY

3. FEDERAL EXCISE DUTY

Section 3 of the Federal Excise Act 2005 ("FEA") provides that all goods and services are subject to FED at a general rate of 15%, except for those goods and services specified in the First Schedule. These goods and services in the First Schedule will be subject to FED on the rates specified in the First Schedule. However, Section 16 provides that all goods and services are exempt except goods and services specified in the First Schedule. This means that FED is applicable only on goods and services specified in the First Schedule, whereas sales tax is chargeable on all goods unless specifically exempt.

3.1. SALIENT FEATURES

- FED is not taxable on services which are already taxable under provincial sales tax, except for:
  - Carriage of passengers by air within or outside Pakistan at fixed rates;
  - Inland carriage of goods;
  - Services provided by port and terminal operators; and
  - Chartered flight
- Goods which are manufactured in the 'non-tariff areas', including Azad Jammu and Kashmir, and brought to the tariff areas shall be leviable for duty. Examples are vegetable ghee, cigars and cigarettes.
- Goods which are imported irrespective of their final destination in Territories of Pakistan, including non-tariff areas, shall be charged FED duty.
- FED on the goods shall be charged on either of the following basis, depending on the category of goods:
  - Ad valorem
  - Retail price
  - weight or quantity
  - measurement
  - Units
  - Charges, bill of lading and premium
  - Production capacity, machinery, undertakings establishment or installation
  - on fixed basis on any goods or services

3.2. APPLICATION OF THE SALES TAX ACT 1990

Provisions of the STA will apply to the goods and services in VAT mode specified under the FEA. This means that the registered person, in respect of goods and services under VAT mode, is entitled to adjust the amount of input tax paid under the Sales Tax Act against FED payable by it under the FED Act. Conversely, the amount of FED paid on such goods/ services can be adjusted against the output tax payable by the registered person under the Sales Tax Act 1990. Therefore, FED charged by the registered person is regarded as output tax in accordance with the Sales Tax Act and he is entitled to claim as input tax, inter alia, the following amounts:

- Sales tax if any, in relation to purchase/ import of goods liable to sales tax e.g. raw materials, utility bills, stationery
- FED, if any, in relation to acquiring of services liable to FED under the Federal Excise Act in the sales tax mode e.g. insurance, advertising, telecommunication services etc. and
- Sales tax if any on identifiable services subject to provincial sales tax e.g. advertising on TV, radio and services provided by courier services and customs agent

3.3. ADJUSTMENT OF FED

Adjustment of duty is allowed on excisable goods used as direct input for further manufacture of such goods liable for FED, provided that the registered person has a valid proof

- In the form of purchase invoice, goods declaration or any other lawful document issued in his own name
- That he has paid the price of goods inclusive of FED through banking channels including online payment; and
- That he has received the price of goods sold by him inclusive of FED through banking channels including online payment

It should be noted that input tax adjustment is only available to

- A Manufacturer
- In respect of goods used as direct input for manufacture of excisable goods only

3.4. FEDERAL EXCISE DUTY INCENTIVES

- Zero rate of duty is allowed on the goods
  - Exported out of Pakistan
  - Specified by the Federal Government
- The Federal Board of Revenue may, by notification and subject to such conditions and rates as may be prescribed, allow drawback of duty paid on goods used for the manufacture of goods:
  - Manufactured in and exported outside Pakistan
  - Shipped as provisions or stores for consumption in board of a ship or aircraft proceeding to a destination outside Pakistan
- Adjustment of FED will be available to zero-rate excisable goods

FBR may prohibit and restrict payment of duty drawback, refund or adjustment of FED in respect of export of goods or any specified goods to any specified foreign country

SALES TAX ON SERVICES

4. SALES TAX ON SERVICES

Indirect taxes on services provided is a provincial subject in Pakistan. Moreover, it is based on the idea of self-assessment, self-compliance and self-reporting by the taxpayer, whilst the revenue authorities possess the power to conduct an audit as they deem fit. It is the responsibility of the taxpayer to issue tax invoices, assess his tax liabilities, file sales tax returns, make tax payments, keep proper records and accounts of his taxable transactions and comply with other legal obligations. Succinctly put, compliance for sales tax on services is a burden borne by the taxpayer himself.

There are a few differences between the provincial tax schemes, but generally, they are similar with only minor adjustments. The legal basis for the levy of sales tax on services being a provincial subject is found in the Constitution of Pakistan. The Fourth Schedule to the Constitution contains a Federal Legislative list which contains matters that the Federal Government is competent to legislate on. At entry No. 49 of the said list, sales tax on services has been carved out from the Federal Legislative list, thereby, implying that sales tax on services is not a legislative area for the Federal Government. This carve out was done through the famous 18th Amendment to the Constitution in 2010. After the carve out, the provinces have legislated on this subject matter and passed their own Acts pertaining to sales tax on services. An example is the Sindh Sales Tax on Services Act. An interesting aspect of tax law is the point at which the tax is liable. There are 2 major points in the provincial tax law where tax arises. These can be called the point of destination and point of origin. A point of service is where the service being taxed is finished. For example, if a courier is delivering a letter from Sindh to a city in Punjab, where the letter is received is where the service has concurred and that is where the tax is applicable. A point of origin is where the service has arisen. Taking the same example as earlier, if a courier is delivering a letter from Sindh to a city in Baluchistan, the service will be taxed in Sindh on the basis of point of origination and will also be taxable in Baluchistan on the basis of point of destination.

This table depicts which scheme will be applicable where:

Revenue Authority	Scheme Type
Punjab Revenue Authority	Both
KPK Revenue Authority	Both(But more emphasis on point of Destination through Section 4)
Baluchistan Revenue Authority	Both
Sindh Revenue Board	Both
Islamabad Capital Territory (FBR)	Point of destination

All the provincial sales tax legislations have their own tax rates and usually a penalty on withholding tax for non-registered parties.

Tax Authority	Sales Tax Rate for Active	Sales Tax Rate for Non-Active	Withholding Tax Rate for Active	Withholding Tax Rate for Non-Active
Punjab Revenue Authority	16%	16%	0%	16%
Sindh Revenue Board	13%	13%	20% of prevailing rate of tax	13%
KPK Revenue Authority	15%	15%	20% of prevailing rate of tax	15%
Baluchistan Revenue Authority	15%	15%	20% of prevailing rate of tax	15%

4.1. REVERSE CHARGE:

If a taxable service is provided to a resident person by a non-resident person in the course of an economic activity, including the commencement or termination of activity, the liability to pay the tax shall be on the person receiving the service.

4.2. EXPORT OF SERVICES

The export of services is chargeable to Sales Tax if the services are listed in Second Schedule of the sales tax on services Acts of the respective Provinces. However, some services which are listed in Second Schedule are exempt from Sales Tax on Services through relevant SROs issued by Provincial Authorities. For e.g. Accountants and Auditors services exported from Sindh to outside Pakistan, subject to the condition that the value of export of the services is received in foreign exchange through banking channels in the business bank accounts of the registered person exporting the services and is also reported to the State Bank of Pakistan in the manner prescribed by the SBP, Software or IT based system development services exported outside Pakistan with same conditions as in Accountants and Auditor services (SRO SRB-3-4/29/2019 dated 18th June 2013].

4.3. NEGATIVE LIST/ TAXABLE SERVICES

Currently there is no negative list of taxable services as only the services which are enlisted in second schedules of the relevant provincial Acts are chargeable to tax.

CUSTOMS DUTY

5. CUSTOMS DUTY

The Customs Act 1969 ("CA") the primary source for dealing with matters pertaining to customs duty in Pakistan. Customs duty pertains to the import of and export from goods in Pakistan. As per Section 18 of the CA, goods that are "dutiable" i.e. subject to customs duty are: (a) goods imported into Pakistan; b) goods brought from any foreign country to any Customs station and without payment of duty there they are transported or transshipped to, and imported at, any other customs station; and c) Goods bought in from bond from one custom station to another. There is an express carveout for export duty on goods exports from Pakistan. Moreover, the Federal Government is empowered to decide whether any goods can be exempt. The CAt generally levies custom duties at rates prescribed under the Finance Act or any other law in force at the time which deals with imports and exports.

5.1.SALIENT FEATURES

- Pakistan uses the Harmonized System to classify goods. Customs duties are levied on ad-valorem basis under the First Schedule of the CA at duty rates specified in Pakistan Custom Tariff which is divided in 99 Chapters. The rate of duty ranges from 0% to 100%.
- The custom value of imported goods is the transaction value. The transaction value, as per Section 25(1) of the CA is the price actually paid or payable for the goods when sold for export to Pakistan. Moreover, this transaction value must include the following, inter-alia,: (a) the cost of transport, excluding inland freight after importation, of the imported goods to the Port, Airport or place of importation; (b) loading, unloading, handling charges associated with the transport of the imported goods to the Port, Airport or place of importation; and (c) cost of insurance.
- To extend benefits of reduced rates of duty on import of raw material to support local industries, the goods specified under the Fifth Schedule of the CA are chargeable to reduced rates of duties subject to such conditions, limitations and restrictions mentioned in the said schedule.
- The Federal government is empowered u/s 18(5) of the CA, to impose additional customs duty on imported goods specified in the First Schedule of the CA, through a notification in the official gazette. The average additional duty on various items is currently 2%. The additional customs duty should not exceed 35% of the goods value.
- For making short term adjustments in imports to create a favorable balance of payment, the Federal government is empowered u/s 18(3) of Customs Act, 1969, to impose regulatory duty on all or any of the imported or exported goods through a notification in official gazette subject to limitations and restrictions. The regulatory duty on various items is currently 0-100%. The regulatory duty should not exceed 100% of the goods value, as specified under Section 25-1B or Section 25A.
- Pakistan does not levy an export duty.
- Where goods are imported with a view to exporting them later, the Chief Customs Authority has the power to exempt them from duty subject to preconditions as provided for under the rules.
- Where goods are imported with the purpose of being used in production, manufacture, and repair or refitting, the Chief Customs Authority with the permission of the Federal Government and subject to such terms and conditions as it sees fit to impose, can exempt goods from duty, and authorize repayment in full or in half of duty already paid.
- Where customs duty has already been paid off on imported goods and they are subsequently exported, seven-eighth of such duty shall be repaid as drawback, subject to the fact that goods are identified by

an officer of Customs not below the rank of Assistant Collector of Customs at the same Customs Station through which goods had been imported and goods are entered for export within 2 years of date of their importation as shown by records of Customs House or if such time is extended by Central Board of Revenue or Collector of Customs shall not extend time beyond three years beyond importation of such goods.

CORPORATE LAWS

6. CORPORATE LAWS

6.1.COMPANIES REGULATORY REQUIREMENTS

Business activities may be carried out through a company, modaraba, branch, partnership or sole proprietorship. Companies incorporated in Pakistan and branches or liaison / representative offices of foreign companies are regulated by the Companies Act, 2017, and Rules framed there under, are administered by the Securities and Exchange Commission of Pakistan (SECP).

6.1.1. Forms of Companies

The Companies Act 2017 mentions the following types of companies:

- **Company Limited By Shares**

The personal liability of shareholders is limited to the amount (if any) unpaid on their shares. Effectively, the shareholder's liability does not exceed the amount committed, when taking up the shares in the company.

- **Company Limited By Guarantee**

In this type of company, the memorandum binds each member to contribute to the assets of the company in the event of the being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

- **Unlimited company**

  - The law also allows formation of company with unlimited liability of its members.
  - Must have "Unlimited" at the end of its name within its memorandum of association.

- **Private Company**

A private company can be easily formed by a minimum of two members (except for a single member company) and may commence its business immediately after its incorporation. A private company, through its Articles of Association (AoA):

  - Restricts its members to transfer shares
  - Limits the number of its members to fifty; and
  - Prohibits any invitation to the public to subscribe for its shares or debentures.

- **Single-Member Company**

A single member company has been defined as "a company which has only one member".[56] This implies that an individual can conduct business through his own 'single-member company' rather than a sole proprietorship.

Moreover, for a single member company, it is necessary for the subscriber to the memorandum of association, to nominate a person who will handle the transfer of shares in the event the subscriber dies, and also act as a trustee and manage the affairs of the company.[57] Furthermore, single member companies are required to have at least one director[58] and can only have one member.[59] All the shares

[56] Section 2(65) of the Companies Act 2017.
[57] Section 14(c) of the Companies Act 2017.
[58] Section 154 of the Companies Act 2017.
[59] Single Member Company Rules 2003.

are vested with single member; however,he / she is required to nominate two individuals, one of whom shall become nominee director in case of death of the single member and the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director to transfer the shares to the legal heirs of the single member[60]

A Single-Member Company is required to appoint a qualified company secretary and to write "SMC" in addition to Private Limited with its name.

- **Limited Liability Partnership**

A Limited liability partnership (LLP) is a form of partnership wherein partners have a limited liability. Moreover, by design, in an LLP one partner may not be responsible for another partner's wrongful actions or omissions. This has been spelt out in Section 16(2) of the Limited Liability Partnership Act 2017 (LLPA). The only situation in which joint liability may arise is for "designated partners" if they contravene Sections 8, 9 and 10 of the LLPA.[61] This aspect differentiates an LLP from a conventional partnership under the Partnership Act 1932, in which each partner has joint (but not several) liability.[62] In an LLP, some or all partners have a form of limited liability similar to that of the shareholders of a company. However, in the event the LLP and/or its partners intentionally defraud the creditors of the LLP or any other person, the liability of the LLP and the partners involved becomes unlimited.[63]

The LLP structure is a fairly new one in Pakistan, as this concept was introduced through the LLPA in 2017. If we compare with the introduction of LLPs in Pakistan with our neighboring countries, India had introduced this concept relatively earlier in 2008 and Bangladesh does not have the concept of a LLP within its legal system. If we look at other countries, and in particular developed countries, the United Kingdom had introduced LLPs as early as 2000 through the LLP Act 2000, and in the United States it was introduced in the 1990s and adopted in 1997 as an amendment to the Uniform Partnership Act 1997.

- **Public Company**

A public company can be formed by three members or more.[64] Once the application to register the memorandum and other documents, made to the registrar, is approved by the same provided all formal requirements provided in the Companies Act 2017 are met, the registrar shall issue a certificate of incorporation for the company. However, before commencing business, the company must satisfy the registrar that the requirements mentioned in Section 19 of the Companies Act 2017 are met. Once the registrar is satisfied about the requirements being met, he will register the documents, which shall be conclusive evidence that the company can commence business and exercise borrowing powers.

A public company, that is not listed, is obliged to have at least 3 directors.[65] If it is a public listed company, then it needs to have a minimum of 7 directors.[66] Moreover, public companies have also got the option to get any of their securities listed on a stock exchange, making it a public listed company.

However, a public listed company cannot get itself listed on the stock exchange, unless it has made a public issue which is subscribed by a minimum of 500 applications and has a minimum post issue

[60] Rule 7 of the Single Member Company Rules 2003.
[61] Section 11 of the LLPA.
[62] Section 25 of the Partnership Act 1932.
[63] Section 17 of the LLPA.
[64] Section 14(a) of the Companies Act 2017.
[65] Section 154(c) of the Companies Act 2017
[66] Section 154(d) of the Companies Act 2017.

paid-up capital of PKR 200 million.[67] However, this is applicable for the listing of the shares of the company only. For listing of securities other than shares, minimum number of members is three.

A listed company may buy back its own shares, subject to conditions specified in the Companies Act 2017 and the Regulations prescribed by the Listed Companies (Buy-Back of Shares) Regulations 2019.[68]

Key differences between a public company and private company are highlighted below:

Particulars	Private Company		Public Company	
	Single member	Other private	Unlisted-	Listed
Minimum number of members (shareholders)	1	2	3	7
Maximum number of members (shareholders)	1	50	Unlimited	Unlimited
Minimum number of directors	1	2	3	7
Limitations for share transfer	Transfer subject to conditions in Section 76 of the Companies Act 2017	Transfer subject to conditions in Section 76 of Companies Act 2017	Free Transferability	Free Transferability

- Certain Practical aspects of companies in Pakistan
  - From a practical perspective, the limited liability company with share capital would be the type of company contemplated by a non-resident interested in investing in Pakistan.
  - A company incorporated in Pakistan, may either be a "Public Company" or a "Private Company". A public company can also be a listed company.

Companies are required to get themselves registered under the tax laws and obtain a National Tax Number (NTN).

6.2.ADDITIONAL CONSIDERATIONS FOR FOREIGN COMPANIES

Foreign companies have been defined as a company or a body corporate incorporated outside Pakistan that has a place of business or liaison office in Pakistan itself or through an agent, in a physical or electronic manner, or conducts any business activity in any other manner specified. These foreign companies are regulated by the Companies Act 2017 and the Foreign Companies Regulations 2018. The table below provides guidance in this regard.

[67] Regulations 5.5.1 and 5.5.3 of the PSX Regulations. <https://www.psx.com.pk/psx/themes/psx/uploads/MainBoard_16_10_2019.pdf> accessed on 2nd October 2021.

[68] Section 88 of the Companies Act 2017 and SRO 574(I)/2019 < https://www.secp.gov.pk/document/listed-companies-buy-back-of-shares-regulations-2019-updated-july-2019/?wpdmdl=35569&refresh=61583a79cbd8f1633172089> accessed on 2nd October 2021.

Policy Parameters	Manufacturing Sector	Agriculture	Infrastructure and Social	Services including IT and Telecom Services
Govt. Permission	Not required except 4 specified industries *	Not required except specific licenses from concerned agencies.		
Remittance of capital, profits, dividends, etc.	Allowed	Allowed		
Upper Limit of foreign equity allowed	100%	100%**	100%	100%
Customs duty on import of Plant Machinery and Equipment	5%	0%	5%	0-5%
Tax relief (Initial Depreciation Allowance, % of Plant, Machinery and Equipment cost)	25%	25%		
Royalty and Technical Fee	No restriction for payment of royalty and technical fee.	Allowed as per guidelines - Initial lump-sum up to $100,000 - Max Rate 5% of net sales - Initial period 5 years		

Specified Industries:

- Arms and ammunitions
- High Explosives.
- Radioactive substances
- Security Printing, Currency and Mint.
- No new unit for the manufacturing of alcohol, except, industrial alcohol

** Only for CAF (Corporate Agriculture Farming)

(Source: BOI)

6.2.1. Remittance of Dividend

Companies must nominate a bank through which they would remit dividends to non-resident shareholders.[69] Once a bank has been nominated, the SBP authorizes the relevant bank to effect the remittance of dividends to the non-resident shareholders of the company, without its prior approval.[70]

6.2.2. Royalty and Technical Fee

- **Definition**

Royalty has been defined as "a fee paid by a local firm to a 'foreign collaborator' in consideration of the right to use any patent, invention, design or model, secret formula or process, trademark or other intangible property or right. Royalty is for the right to use, transfer of all or any rights, granting of a license, receiving any information concerning their working or use and receiving of any technical, industrial, commercial or scientific knowledge, experience or skill. Essentially, Royalty signifies payment for 'user right' and it could be an annual payment or a pre-decided periodical payment."[71]

[69] Board of Investment, 'Pak – China Investment & Business Prospects' <http://cpec.gov.pk/brain/public/uploads/documents/Final_English_Version.pdf> accessed on 3rd October 2021.
[70] ibid
[71] Foreign Exchange Manual, Chapter 14 Regulation 12, 20. <https://www.sbp.org.pk/fe_manual/pdf/2020/Chp-14.pdf> accessed on 4th October 2021.

Technical service fee has been defined as "a fee paid (whether periodic or lump sum) by the local firm to the foreign collaborator for any managerial, technical or consultancy services. The service provider makes his technical knowledge, experience, skill, and know-how etc., known to the recipient of the service, so as to equip the recipient to independently perform the technical function in future, without the help of the service provider."[72]

- **Manufacturing Sector**

For the manufacturing sector, the SBP has prescribed several conditions for the remittance of Royalty and Technical Fee to help in executing agreements that pertain to the transfer of technology.[73] An initial one-time lumpsum amount/fee can be paid to the foreign collaborator. However, this fee cannot exceed USD 1 million.[74] Besides that, a recurring royalty payment for the non-export manufacturing sector has been limited to 8% of the net local sales of the unit/component (excluding sales taxes and imported cost of the component) for which know-how has been given by the foreign collaborator.[75] The maximum life span of such an agreement is of 10 years. For export related sales, the restriction threshold is 10% of the net local sales of the unit/component (excluding sales taxes and imported cost of component).[76]

For the non-manufacturing sector,

In relation to the non-manufacturing sector, royalty and technical fee payments are

- **Agriculture, Social, Infrastructure and Service Sector Projects Including International Food Chains. (Excluding Financial Sector)**

For the captioned sectors, payment of a lump-sum amount for royalty, franchise / technical services procured from the foreign collaborator shall be capped to a threshold of USD 100,000.[77] Moreover, the recurring payment shall be capped to a threshold of up to 5% of net local sales (excluding sales taxes and cost of imported items) relevant to the agreement for the RFT services.[78] The maximum length of such agreements is 5 years.[79]

6.2.3. Repatriable Foreign Currency Loans by Foreign Controlled Companies for Working Capital

Foreign controlled companies can avail foreign currency loans from banks / financial institutions abroad or from their Head office or from other overseas branches / associates abroad for meeting their working capital requirements.[80] However, such loans are subject to the conditions that the repayment period should not exceed twelve months and the interest should not exceed 1% over LIBOR.[81] These loans can be rolled over for further periods not exceeding 12 months.

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[72] Ibid.
[73] Board of investment (n 69).
[74] Foreign Exchange Manual (n 71).
[75] Ibid.
[76] Ibid.
[77] ibid
[78] Ibid.
[79] Ibid.
[80] Ibid Chapter 19 Regulation 15.
[81] Ibid.

6.2.4. Lending to Foreign Controlled Companies for Capital Expenditure

Foreign controlled companies engaged in manufacturing are allowed to obtain Rupee loans for meeting capital expenditure requirement from banks, development financial institutions and other financial institutions or by issuing Participation Term Certificates, etc. However, other foreign controlled companies require a special permission to obtain medium and long-term Rupee loans.[82]

6.2.5. Loans against guarantees of non-residents

As per Regulation 3, Chapter 19 of the Foreign Exchange Manual, Authorized Dealers are empowered to grant Rupee loans to their clients (including foreign controlled companies subject to compliance with the Prudential Regulations of SBP.

6.3. FOREIGN NATIONALS AS DIRECTORS

Foreign nationals can become directors in Pakistani companies. A foreigner or a non-resident Pakistani may become an executive or a non-executive / independent director of Pakistani companies whether public or private.

Required Documents for Foreign Director:

The following documents are required to be filed with the SECP/registrar concerned:

1. Copy of passport, in case of foreigner, of each subscriber and witness to the memorandum and article of association,
2. Memorandum and articles of association four printed copies of Memorandum and Articles of Association in case of offline submission and one copy for online submission, duly signed by each subscriber in the presence of one witness. In order to facilitate the general public, the standardized specimen of Memorandum of Association of various sectors has been provided on the Commission's Website.
3. Form – 1 Declaration of applicant for compliance
4. Form – 21 Notice of situation of registered office of the company
5. Form – 29 Particulars of first directors of the company
6. Registration/filing fee Original paid challan evidencing the payment of fee as prescribed in Table – II, in any of the authorized branches of MCB Bank Limited.

[82] Ibid Regulation 4.

NOTES:

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OFFICES IN PAKISTAN

Karachi Address:

408, 4th Floor, Continental Trade Center
Block-8, Clifton, Karachi 75600
Tel: +92 021 3530 3294-6

Islamabad Address:

144, 1st Floor, Street No. 82,
Sector E-11/2, FECHS
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Tel: +92 051 835 1551

Lahore Address:

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69- The Mall Road, Lahore
Tel: +92 042 3628 0403