



# **Comments on Tax Laws (Second Amendment) Ordinance, 2022**





## **Prologue:**

The Tax Laws (Second Amendment) Ordinance, 2022 ("Ordinance") was promulgated by the President on 23<sup>rd</sup> August, 2022. The Ordinance has made amendments in Income Tax Ordinance, 2001 ("ITO"), Sales Tax Act, 1990 ("STA"), Federal Excise Act, 2005 ("FEA") and Capital Value Tax 2022.

The interpretations of the amendments are based on our understanding of tax law and past practices. These comments are provided for general use of public and should not be used for any specific transaction. We do not guarantee that these interpretations will be acceptable by the tax department. The comments are prepared for general business understanding of masses. This document is not, and shall not be construed to be a legal opinion, legal assistance, a legal advice, or a financial advice for, inter-alia, investing, managing taxes, incorporating any legal entities. Tola Associates does not assume, nor does it bear any responsibility, financial or otherwise, that can or may arise out of the use of this document by any individual or entity. Moreover, the laws (including Rules, Regulations, Acts and Ordinances) covered in this document are subject to changes, hence, it is recommended that the reader must refer to the actual text of the law being referred to in this document, and the actual text of any supplementary legislation (including any rules, by-laws, regulations, cross-referenced Acts or Ordinances) thereto which may not have been mentioned in the document. Tola Associates also bears no responsibility to update this document for events and circumstances occurring on or after the date of this document.

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Warm Regards,

**TOLA ASSOCIATES**

Wednesday, 24 August, 2022

### A. AMENDMENTS IN INCOME TAX ORDINANCE, 2001

#### 1. PAYMENT OF TAX THROUGH ELECTRICITY CONNECTIONS - SECTION 99A

Through the Finance Act 2022 ("FA 22" or "FA 2022"), retailers (**except** Tier-I retailers), and specified service providers were charged taxes on their commercial electricity connections via rates mentioned below:

Gross amount of monthly Bill	Tax in PKR
Where the amount does not exceed Rs. 30,000/-	3000
Where the amount exceeds Rs. 30,000 but does not exceed Rs. 50,000	5000
Where the amount exceeds Rs. 50,000 but does not exceed Rs. 100,000	10,000
Specified retailers and service providers through Income Tax General Order	50,000

It was also provided that the collection/ payment of such taxes will be treated as final taxes on the income of persons whom it covers. Such collection was required to be made from the electricity connection installed on the premises.

It was also proposed that the Board may issue an Income Tax General Order ("ITGO") provided it had been approved by the Minister in-charge. The ITGO shall:

1. Provide the scope, time, payment, recovery, penalty, default surcharge, adjustment or refund of tax payable under conditions and manners as may be specified.
2. provide record keeping, filing of return, statement and assessment in such manner and conditions as may be specified;
3. provide mechanism of collection, deduction and payment of tax in respect of any person; or
4. include or exempt any person or classes of persons, any income or classes of income in such manner with such conditions as may be specified."

However, the retailer was not required to pay income tax under the newly proposed Section 99A provided he had already paid sales tax on his commercial electricity connections under section 3(9) of the Sales Tax Act, 1990 ("STA"). The discharge of sales tax liability under Section 3(9) of the STA constituted a discharge of income tax liability under Section 99A of the ITO, pursuant to Section 99A(2) of the ITO.

Now, the Ordinance has omitted the above rates and has provided that the rates shall be notified through an Income Tax General Order by Federal Government or the Board through approval of Economic Coordination Committee.

**This amendment has been given retrospective effect (from 1<sup>st</sup> July 2022)**, which means the additional tax levied vide FA 2022 shall not be collected for the time being, with effect from July 01, 2022, from the electricity bills of small retailers and specified service providers until the Income Tax General Order is issued.

#### 2. ADVANCE TAX ON VEHICLES PLYING FOR HIRE - SECTION 234 - DIV. III, PART IV, FIRST SCHEDULE

Through the FA 2022, the rates per seat on basis of air conditioning, were increased for the passenger vehicles plying for hire. These rates have been revised again as under

Capacity	Rs. per seat per annum				
	Prior to FA 2022	Vide FA 2022		Vide Ordinance	
		Non-Air Conditioned	Air Conditioned	Non-Air Conditioned	Air Conditioned
4 to 9 person	50	500	1,000	200	375
10 to 20 persons	100	1,500	2,000	500	750
20 or more persons	300	2,500	4,000	1,000	1,500

Moreover, it has also been provided that the tax deductible on goods transport and passenger transport vehicles from August 23<sup>rd</sup>, 2022 to June 30<sup>th</sup>, 2023 shall not be subject to double taxation in case the taxpayer is not in active taxpayers list (ATL).

### 3. EXEMPTIONS – SECOND SCHEDULE, PART I

Exemption from Income Tax to following incomes have been provided through the Ordinance:

- Any allowance or perquisite paid or allowed as such outside Pakistan by the Government to a citizen of Pakistan for rendering services outside Pakistan [**Clause (5A)**]
- Any income derived by Kuwait Foreign Trading Contracting and Investment Company or Kuwait Investment Authority being dividend of the Pak-Kuwait Investment Company in Pakistan from the year of incorporation of Pak-Kuwait Investment Company.

### B. AMENDMENTS THE IN SALES TAX ACT, 1990

#### 1. DEFINITION – VALUE OF SUPPLY – SECTION 2(46)

Vide the FA 22, an explanation was provided that value of supply of electricity, for the purpose of charging sales tax, does not include the amount which the Federal Government provides as a subsidy to the consumers.

The Ordinance has now also included natural gas including re-gasified liquid natural gas (LNG) in the above explanation having effect that any subsidy provided by the Federal Government to the consumers on consumption of these commodities will not be included while computation value of supply for the purpose of charging sales tax.

### 2. TAX ON ELECTRICITY BILLS OF RETAILERS – SECTION 3

Prior to FA 2022, Section 3 of the STA charged tax on retailers (other than Tier 1) as mentioned below from monthly electricity bills, and the electricity supplier was obliged to deposit the amount so collected directly without adjustment against his input tax.

Sr. No.	Monthly bill:	Rate of Tax on Retailers
1	Does not exceed Rs 20,000/-	5%
2	Exceeds Rs 20,000/-	7.5%

The FA 2022 levied a **fixed tax** on retailers (other than Tier-1) from their monthly electricity bills at the following rates:

Sr. No.	Monthly bill:	Fixed Tax Rate
1	Does not exceed Rs 30,000/-	Rs 3,000/-
2	Exceeds Rs 30,000/- but not Rs 50,000/-	Rs 5,000/-
3	Exceeds Rs 50,000/-	Rs 10,000/-

A proviso was added in Section 3(9) of the STA, in addition to the already existing provisos. This proviso added to the aforesaid Section which stated that rates of tax on monthly electricity bills shall be increased by 100% for persons whose name are not on the Active Taxpayers List (ATL) issued by FBR, on the date the electricity bill is issued. The STA also empowered the Board to collect up to Rs 200,000/- per month from the electricity bill against any person or class of persons as notified by the Board.

The Ordinance has now reversed the charges levied vide FA 2022. Now, sales tax shall be collected from retailers (other than Tier – I Retailers) at earlier rates as under:

Sr. No.	Monthly bill:	Rate of Tax on Retailers
1	Does not exceed Rs 20,000/-	5%
2	Exceeds Rs 20,000/	7.5%

This amendment has been given retrospective effect (from 1<sup>st</sup> July 2022) which means that the above rates will be deemed to be effective from July 01, 2022. It has further been provided that the above tax will be in addition to the sales tax, further tax and extra tax charged in the normal manner.

### 3. EXEMPTION – SIXTH SCHEDULE

The Ordinance has exempted local supplies of ‘Single Cylinder agriculture diesel engines (compression ignition internal combustion piston engines) of 3 to 36 HP’.

### C. AMENDMENTS IN FEDERAL EXCISE ACT, 2005

The Ordinance has revised the rates of Federal Excise Duty as under:

Description	Duty
Un-manufactured tobacco	Rs. 390/Kg
Locally produced cigarettes if their on pack printed retail price exceeds six thousand six hundred sixty rupees per thousand cigarettes	Rs. 6500/1000 cigarettes
Locally produced cigarettes if their on pack printed retail price does not exceed six thousand six hundred sixty rupees per thousand cigarettes	Rs. 2050/1000 cigarettes

### D. AMENDMENTS IN CAPITAL VALUE TAX 2022

A capital value tax vide FA 2022 was levied on specified domestic assets and foreign assets. The Ordinance has now defined the ‘motor vehicles held in Pakistan’ to include car, caravan, automobiles, jeep, limousine, pickup, sports utility vehicles, trucks, vans, wagon and any other automobile but excludes following:

- A motor vehicle used for public transportation, carriage of goods and agriculture machinery; and
- Any motor vehicle held in Pakistan by a foreign diplomat or a foreign diplomatic mission.



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