



# TAX PAK

## NEWSLETTER BY TOLA ASSOCIATES



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# JULY 2022

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## EDITORIAL NOTE

Asalam-o-alaikum everyone! Hope this monthly issue of TAXPAK finds you in good spirits and immaculate health! I welcome you to another edition of TAXPAK, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhumdulillah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of, these developments on a monthly basis.



Moving on to the contents of this letter, I would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important notifications and circulars issued by the Federal Board of Revenue and its provincial counterparts. Moreover, notifications from the corporate regulatory body i.e. SECP are also discussed. Furthermore, keeping in mind the aforementioned stated purpose of this document, we usually discuss a (relatively) recent judgment passed by the courts of law. In this monthly edition, we have opted to discuss the judgment passed by the Lahore High Court to declare the Clarification No. 01/Pos/IR/2021-Part-IV/58919-R (“Clarification”) dated 15.03.2022 issued by the FBR as illegal and violative of the provisions contained in Section 8B (6) of the Sales Tax Act, 1990.

Lastly, this newsletter is concluded with our Topic of the month that is titled “CAPITAL GAIN ON IMMOVABLE PROPERTIES”. The said topic discusses about the taxation of income earned from disposal of immovable property.

All our readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com), or download our mobile application from the links mentioned below, in order to access previously published editions of this TAXPAK along with other publications, and to stay updated of future notifications.

1. <https://goo.gl/QDM4ZM> (iOS)
2. <https://goo.gl/LFiWyx> (Android)

Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

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## 1. TAX AND CORPORATE NOTIFICATIONS/ CIRCULARS

### A. INCOME TAX (NOTIFICATIONS)

#### CHANGES IN THE INCOME TAX ORDINANCE, 2001 THROUGH FINANCE ACT 2022

The FBR, vide its Notification F. No. 2(2)SatoDG(WHT)/2021/157424-R dated July 25, 2022 issued changes in the Income Tax Ordinance 2001 (“ITO”), through the Finance Act, 2022 (“FA 22”) for collection of withholding taxes on sale or purchase of immovable property. The rates have been reproduced below and shall be applicable on transfers on or after 01/07/2022 and must certify execution of transfer on or after the said date:

Sr#	Section	Previous Rate		New Rates		
		ATL	Non-ATL	ATL	Non-ATL	Non-Residents with NICOP or POC
1.	Advance Tax on Sale or Transfer of Immovable Property (236C)	1%	2%	2%	4%	2%
2.	Advance tax on purchase or transfer of immovable property (236K)	1%	2%	2%	7%	2%

The said notification also has withdrawn the holding period exemption for collection of Advance Tax on Sale or Transfer of Immovable Property (Section 236C), in simpler words, it shall be collected from every seller irrespective of the holding period, earlier an exemption was available for a seller if he held the property for at least 4 years.

Furthermore, the rate of tax for Non-filers as per the Tenth Schedule of the ITO, 2001 has been increased by 100% for 236C and 250% for 236K.

### B. INCOME TAX (CIRCULARS)

#### CHANGES IN THE INCOME TAX ORDINANCE, 2001 THROUGH FINANCE ACT 2022

The FBR vide its Circular No. 15 of 2022-23 issued an explanation of the important amendments made in the Income Tax Ordinance, 2001. The said circular explained, inter-alia, the following amendments:

- **Disclosure of Beneficial Ownership** was not required for companies and AOP, however vide the Finance Act, 2022 it has become mandatory to furnish electronically and update accordingly as and when required. A penalty of Rs 1,000,000 was also prescribed for each default.
- **For Banking Companies**, basis of advances to deposit ratios will be taxed at graduated tax rates of 55%, 49%, and 39%, if ratio was up to 40%, 40-50% and above 50% respectively, this is applicable on taxable income arising from additional income earned from additional investment in Federal Government Securities. Secondly, the tax rate on income of banking companies has been enhanced to 39% from the existing 35%, also, application of Section 4B has been restricted up to tax year 2022.
- **Super tax on high earning persons** has been imposed on persons earning more than Rs 150 million at graduated rates ranging from 1% to 4% based on graduated income slabs, with an exception of 10% instead of 4% where income exceeds Rs 300 million for the following persons engaged, partly or wholly in the business of (a) airlines; (b) automobiles; (c) beverages ; (d) cement ; (e) chemicals ; (f) cigarette & tobacco; (g) fertilizer; (h) iron & steel; (i) LNG terminal; (j) oil marketing; (k) oil refining; (l) petroleum & gas exploration; (m) production; (n) pharmaceuticals; (o) sugar; and (p) textiles. Furthermore, banking companies will be charged 10% if income for the year exceeds Rs 300 million for the tax year 2023. The circular also provided the following to be considered in computing the income:
  - a. Profit on debt, dividend, capital gains, brokerage and commission;

- b. Taxable income (other than brought forward depreciation/business losses excluding (a);
  - c. Imputable income as per 2(28A) excluding (a);
  - d. Income computed under Fourth, Fifth and Seventh Schedule (other than brought forward depreciation/ amortization/ business losses).
- With effect from tax year 2022 and onwards, **Tax on deemed income from immovable property** was levied in the ITO whereby a resident person shall be chargeable to a tax rate of 20% on the 5% of the fair market value of the capital assets situated in Pakistan. Exceptions have also been prescribed. We have explained this Section in our *June TaxPak Edition*.

***It may be noted that the Section 7E has been challenged in the Lahore High Court.***

- Holding period concession for **Capital Gain on Disposal of Immovable Properties** has been apportioned and shall be applied as follows: (a) Open plots- 6years; (b) constructed property- 4years; (c) flats- 2years. The said shall be applicable on disposal of immovable properties situated in Pakistan only. Furthermore, the whole amount of gain will be taxable and not on certain percentage.
- Earlier a flat rate of 12.5% was charged on **Capital Gain on Disposal of Securities** irrespective of holding period, this has been withdrawn and instead a graduated tax rates has been made on basis of holding periods. However, gain on disposal of securities acquired on or before 30<sup>th</sup> June 2022 will continue to be charged to tax at the earlier flat rate.
- **Employer contribution to an approved gratuity fund, approved pension fund or superannuation fund** was previously granted an entire deduction, however, this has been restricted to 50% of these funds and the remaining shall not be allowed as a deduction.
- The Board, vide an official gazette, may require a **person to integrate his business** with the Board through an approved fiscal electronic device and

software. In case of failure, any expenditure not exceeding 8% of allowable deduction attributable to sales will be disallowed.

- **Restriction on claim of depreciation deduction** in the first year and in the year of disposal was permitted 50% depreciation deduction however, this has been lifted and the depreciable asset will now be granted 100% depreciation deduction for the first time the depreciable asset is introduced in the business. Furthermore, the cost of a depreciable asset being passenger transport plying for hire is restricted to a depreciation deduction of up to Rs 7.5 million. Immovable property or structural improvement to the immovable property has been excluded from eligible depreciable asset for the purposes of initial allowance.
- **Export of services** was taxed at a final rate of 1% on the realization of export proceeds of IT and IT enabled services and 100% tax credit was available to the exporters of such provided certain conditions had been met. However, vide the Finance Act 2022, 100% tax credit has been withdrawn and now a reduced rate of final tax of 0.25% shall be granted to exporters of IT and IT enables services provided that they are registered with the Pakistan Software Export Board (PSEB). Furthermore, the scope of definition has been clarified and widened. Furthermore, **Provisions of the Tenth Schedule** shall no longer apply on tax collectable under Export of Services.
- **Foreign Commission due to an indenting commission agent** was earlier charged at 5% and has now been reduced to 1%.
- Tax Credits for **Investment in Shares and Insurance, Investment in Health Insurance** and deductible allowances for **Profit on debt** have now been withdrawn.
- **Definition of Resident Individual** has now been expanded and now a citizen of Pakistan whose stay in any other country is not more than 182 days during the tax year or is not a resident taxpayer of any other country will also be treated as a resident individual.

- Vide an explanation in the Finance Act, 2022, it is evident that if **income of an AOP is exempt** then the share income of its partners shall also be exempt.
- A special fixed tax regime has been introduced and now retailers (other than Tier-1 Retailers) and specified service providers will pay **fixed income tax through their commercial electricity bills** at rates mentioned in the First Schedule. This shall be treated as a final tax. The Board with the approval of Minister-in charge is also empowered to determine the scope, mode, manner, record keeping, mechanism of collection and deduction to include or exempt any person or class through a general order.
- An explanation is also inserted where in a separate notice is not required to be issued for concealment of income if explanation regarding nature and source has been confronted.
- Carry forward for a person eligible for **minimum tax** has been reduced to 3 succeeding years instead of 5. And the rate of minimum tax on turnover of **Oil Marketing Companies** has been reduced to 0.5% from 0.75%.
- Time limit for **Best Judgement Assessment** has been increased to 6 years from 5 years.
- Mechanism of **Alternate Dispute Resolution** has been revamped and can be read from our "Commentary on Finance Act, 2022".
- Tax collected from an **industrial undertaking on import** of all good for own use has been made adjustable. Withholding tax on **imports of goods** falling under Part I ( 1%) and Part II (2%) of the Twelfth Schedule have been made adjustable for an industrial undertaking provided that it is imported for own use.
- Tax Collectible on **import of edible oil, packaging material, paper and paper board and plastics** is now under minimum tax whether imported by an industrial undertaking for own use or by a commercial importer.
- The rate of withholding tax on **import of goods under Part II of the Twelfth Schedule** has been enhanced to 3.5% for commercial importers and shall be minimum tax.
- Certain goods have been shifted from Part II to **Part I of the Twelfth Schedule** and shall be charged at 1% irrespective of import by industrial undertaking or commercial importers.
- **Service charges/commission/fee paid by an exchange company** licensed by State Bank of Pakistan to a non-resident person shall now be taxable. The exchange companies shall deduct tax at the time of making payment of service charges/commission/fee to global money transfer operators, international money transfer operators or persons engaged in international money transfers/ cross-border remittances for facilitating outward remittances. Furthermore, every **banking company** shall deduct tax at the time of making payment to card network company/ payment gateway/ other person/ any transaction fee/ licensing fee/ service charges/ commission/ fee/ interbank financial telecommunication services. This shall be treated as final tax on the income of the non-resident person.
- The Finance Act, 2022 also introduced a new automated mechanism to collect withholding taxes from **Synchronized Withholding Administration and Payment System (SWAPS)**. Withholding agents shall be integrated with the Board and withholding taxes will be deposited to the treasury in real time while making third party payment processed through SWAPS by the SWAPS agent. It shall also auto submit withholding statements. The receipt generated shall be labelled as SWAPS Payment Receipt (SPR) and will be generated upon deposit of tax. Any person notified by the Board does not integrate, the said agent will not be eligible for credit and exemptions under any provisions of the ITO.

*The following **Withholding Taxes have been omitted:***

- a. Collection of advance tax by educational institutions ( 236I)
- b. Payment to residents for use of machinery and equipment (236Q)
- **Advance tax on Motor Vehicles** shall be applied on all makes and models irrespective of its private/commercial use by the end users except for (a) Motor vehicle used for public transportation/ carriage of goods and agriculture machinery (b) rickshaw/ motorcycle rickshaw and (c) any other motor vehicle having engine capacity up to 200cc. The withholding tax amount collected at the time of purchase/ registration will be applicable on motor vehicles with the engine capacity of 1601cc and above. The amount shall be calculated on basis of the following (a) for electric vehicles where engine capacity is not available and the value exceeds Rs 5 million or more, then the tax rate shall be Rs 20,000/- paid at the time of transfer of registration/ ownership, (b) at 3% import value including customs duty, sales tax, federal excise duty for an imported vehicle and (c) invoice value for locally manufactured/ assembled vehicles. Furthermore, in case person's name does not appear in the ATL then the tax collectible shall be increased by 200%.
- **Advance tax rate on Passenger Transport Vehicles** has been substituted from seating capacity to the facility of Air conditioning, a table of adjustable rates has been provided in the First schedule, in case person does not appear in the ATL then the rate shall increase by 100%.
- **REIT Management Services and services rendered by National Clearing Company of Pakistan Limited** has been included in the list of reduced rate services.
- **Collection of tax from persons remitting amounts abroad** has been reinstated and shall be collected at the time of remitting money outside Pakistan on behalf of the person who has completed a credit card/ debit card or prepaid card transaction. In case a person's name does not appear in the ATL then rates will increase by 100%.
- The exemption provided to a person on **allowance paid outside Pakistan by the Government** to a citizen of Pakistan for rendering services outside Pakistan has been withdrawn and similarly amounts received as monthly installment from an income payment plan invested out of the accumulated balance of specified pension/annuity account has also been withdrawn.
- Any income derived by a **Collective Investment Scheme or a REIT Scheme** is exempt from tax and if not less than 90% of its accounting income of that year as reduced by realized or unrealized capital gains is distributed amongst the unit/certificate holders/shareholders. This has been further extended to a further reduction in accounting income of that year through adjustment of accumulated losses.
- **Incentives for the film industry** were introduced which resulted to the following:
  - a. 5 years tax exemption to a person who derives income from cinema operations (starting from the commencement of cinema operations)
  - b. Exemption to profit and gains derived by a resident producer/resident production house from production of feature films from (1<sup>st</sup> July 2022- 30<sup>th</sup> June 2027).
  - c. Import of machinery and equipment listed in Part I of the Fifth Schedule;
  - d. Exclusion from 153(1b) by an exhibitor/distributor of a feature film as payer on payment made to a distributor / producer/importer of feature film.
- An exemption was made available to the profits/gains derived by **Venture Capital Companies** and **Venture Capital Funds** from (1<sup>st</sup> July 2022 to 30<sup>th</sup> June 2025) as registered with the SECP under applicable rules.
- Reduced rate of withholding at the rate of 1% was provided for payment against transactions of **sale of gold, silver and articles.**

- Profit is taxable at a maximum rate of 5% (reduced from 10%) for income from other sources on **investment in behood savings certificates, pensioners benefit account and Shuhuda family welfare account.**
- The Circular also provided an example that **Audit proceedings u/s 177 and 214C** shall not apply to a person whose income tax affairs have been audited in any proceeding four tax years. However, the Commissioner may select a person for audit with prior approval of the Board.
- Special provisions relating to persons not appearing in active taxpayers' list.
- For **Non-resident Pakistanis** holding Pakistan Origin Card (POC) or National ID Card for Overseas Pakistanis (NICOP) special provisions and rules for not appearing on the ATL list shall not apply on them in respect of transactions on which tax is collectible on the purchase or sale of immovable property.
- Reduced rate of final tax at 15% was made applicable on **profit on debt** as a separate block of income for all persons other than banking companies or insurance companies insofar the profit was derived from investment in Federal Government Securities which has now been withdrawn.

**Capital Value Tax (CVT)** was also introduced in the Finance Act 2022 for motor vehicle, foreign assets and assets as specified by the federal government and is to be collected and charged from 1<sup>st</sup> July 2022. The list provided the mode of determining the value of motor vehicles and collection of tax.

## C. SALES TAX (CIRCULARS)

### 1. EXTENSION IN DATE OF PAYMENT OF SALES TAX AND SUBMISSION OF RETURN FOR SALES TAX AND FEDERAL EXCISE RETURN FOR THE PERIOD-JUNE 2022

The FBR vide its Circular No. 9(11)ST-LPE/Misc/2016/153517-R dated 15<sup>th</sup> July 2022, has extended the date of payment and submission of Sales Tax and Federal Excise Return for the tax period of June 2022 for all taxpayers up to 20<sup>th</sup> July 2022.

### 2. EXTENSION IN THE LAST DATE FOR E-DEPOSIT AND E-FILING OF SINDH SALES TAX FOR THE TAX PERIOD JUNE 2022

The SRB vide its Circular No. 03/2022 dated 18th July 2022, has extended the date of e-payment of the Sindh Sales Tax to 21 July 2022 instead of 15 July 2022 and extended the date of e-filing to July 25, 2022 instead of July 18, 2022.

### 3. SALES TAX GENERAL ORDER

The FBR vide its Sales Tax General Order No. 01 of 2023 dated July 05, 2022, issued a General Order for Tier-I Retailers to have themselves registered and integrated with the FBR's system by 10 July 2022 in order to avail adjustable tax of 60%. The General Order also stated that upon submission of Sales Tax Return for the month of June 2022, those who fail to integrate despite being liable will have their input tax claim disallowed without any further notice or proceedings while creating tax demand by the same amount.



## **D. SECP (NOTIFICATIONS)**

### **1. AMENDMENT TO THE SEVENTH SCHEDULE OF THE COMPANIES ACT, 2017**

The SECP vide SRO 980(I)/2022, issued an amendment to the Seventh Schedule of the Companies Act, 2017, wherein the fees for registration / recording or filing any document related to a scheme of amalgamation and allied document will be on the basis of the following: (a) Small Sized Company, (b) Public Sector Company (wholly owned by the Federal Government directly or indirectly), (c) any other Public Sector Company, (d) Medium Sized Company, (e) Large Sized Company or (d) Public Interest Company excluding Public Sector Company. While rates for seeking approval, sanction, permission, exemption, direction or confirmation of the Commission or the registrar has been substituted. For further reading: <https://www.secp.gov.pk/laws/notifications/>

### **2. AMENDMENT TO THE INSURANCE RULES, 2017**

he SECP vide SRO 1012(I)/2022 issued an amendment to the Insurance Rules, 2017 wherein rule for assets to be invested in securities has been substituted and Right of Use Assets (RoUA) shall be recorded as per the requirements of the International Financial Reporting Standard 16 (Leases). For further reading: <https://www.secp.gov.pk/laws/notifications/>

### **3. AMENDMENT TO THE INSURANCE RULES, 2017**

The SECP vide SRO 1011(i)/2022 substituted the percentage for admissibility of assets for (a) units in any one open ended mutual funds (including exchange traded funds) and (b) units in all open-ended mutual funds (including exchange traded funds managed by the same asset management company). For further reading: <https://www.secp.gov.pk/laws/notifications/>

### **4. AMENDMENT TO THE CREDIT AND SURETYSHIP (CONDUCT OF BUSINESS) RULES, 2018**

The SECP vide SRO 1010(I)/2022 issued an amendment to the Credit and Suretyship (Conduct of Business) Rules 2018, wherein new rules regarding the (a) Risk Assessment of Guarantee/Bond Holder and (b) Maintenance or Record and Internal Controls had been inserted. Furthermore, an

insurer shall procure collateral in case of guarantees / bonds of an amount equivalent to **at least 10 percent** of the sum insured / amount of bond/guarantee instead of at least 80% of the sum.

## **5. COMPANIES REGULATIONS, 2022**

The SECP vide SRO 1119(i)/2022 has issued a draft Companies Regulations, 2022 for public comments, suggestions or objections. The said regulation has a detailed mechanism for registering a company and complying with the statutory regulations/compliance, it also contains tables which briefly describe the type of forms available and the relevant sections/rules against them. The regulation can be read from <https://www.secp.gov.pk/laws/notifications/>.

## **6. SELF-REGULATORY ORGANISATIONS (REGISTRATIONS), 2022**

The SECP vide SRO 1016(I)/2022, has issued Self-Regulatory Organisations (Registrations), 2022 which was issued after consultation with the Policy Board of the Commission, earlier it was published vide SRO 16(1)/2021 and has now come into force. For further reading <https://www.secp.gov.pk/laws/notifications/>.

## 2. CASE LAW

### **CLARIFICATION 01/POS/IR/2021-PART-IV/58919-R BY THE FBR HAS BEEN DECLARED ILLEGAL AND ULTRA VIRES TO SECTION 8B(6) OF THE SALES TAX ACT, 1990**

The Lahore High Court, Lahore (herein after “the LHC”) was approached in the case of Hyundai Nishat Motor (Pvt) Ltd (“Petitioner”) versus FBR (the Respondent) to declare the Clarification No. 01/Pos/IR/2021-Part-IV/58919-R (“Clarification”) dated 15.03.2022 issued by the FBR as illegal and violative of the provisions contained in Section 8B (6) of the Sales Tax Act, 1990 (“Act”).

#### **ARGUMENTS BY THE PETITIONER**

The petitioner was aggrieved by Clauses 3 and 6 of the Clarification as it stated that a taxpayer (eligible for Tier-I registration) was required to be integrated with FBR’s electronic system and his name was supposed to be included in the STGO and if he failed to do so, shall not be allowed to claim adjustment of input tax up to 60% for the defaulting months and such input tax cannot be reversed under any circumstances and tax disallowance shall be permanent in each successive months even if the taxpayer had himself registered later on. The learned Petitioner claimed that such was in contravention to the provisions of the Section 8B(6) of the Act. The learned petitioner also challenged that the Director General (Retail)/Chief (POS)/respondent No. 2 had no authority under the law to issue such Clarification.

#### **ARGUMENTS BY THE RESPONDENTS**

The Learned Respondents stated that 60% disallowance of input tax will only be to the extent of the period it willingly did not integrate with the FBR, and that the disallowance of input tax shall be restricted to 60% as per the provisions of Section 8B(6) of the Act. The Learned Respondents also contested that the Clarification was in accordance with the provisions of Section 8B(6) of the Act.

## FINDINGS OF THE COURT

The Court observed that vide its order in the case of Supreme Tube Industries (Pvt) Ltd Versus Federation of Pakistan (2016 PTD 2058) in which the Court held that 90% and 10% of the adjustable amount will be carried forward to the next month. The Court also observed that Section 8B(6) delays the input tax adjustment up to 60% for the tax period the Tier- I retailer remained in default, and the input tax is then subsequently claimed in the next tax period. Therefore, it was determined that the Clarification was in hindrance to this. Furthermore, the Court observed that where the Act prohibited a taxpayer from claiming input tax, it had been done in expressed words. The Court further found that the petitioner had been in default for the months of February and March 2022 and was thus not allowed to claim the adjustment for that period. However, the unadjusted input tax shall be carried forward in the subsequent tax period in which the taxpayer was duly registered and integrated.

## CONCLUSION

Thereafter, the Court concluded that the writ petition was allowed, and the Clarification was declared to be illegal and ultra vires to Section 8B(6) of the Act as it clogged the rights of the Tier-I retailer to claim input adjustment of the unadjusted input tax of the previous periods.

### 3. TOPIC OF THE MONTH

#### CAPITAL GAIN ON IMMOVABLE PROPERTY

##### INTRODUCTION

The Finance Act 2022 (“FA 22”) brought in many amendments to the Income Tax Ordinance 2001; some of these changes may result in a potential addition to the tax base, while the other changes relate to simplification of the tax laws. The FA 22 brought about changes in the Capital Gains Tax regime (“CGTR”) applicable on immovable property. Through the FA 22, the capital gains tax regime applicable on immovable property under the Income Tax Ordinance 2001 (“ITO”), was changed, dividing immovable property into three categories, with each category having their own tax rates applicable on the said capital gain. We hereby offer a comparative analysis on the CGTR applicable under Section 37(1A) of the ITO, before the amendments introduced vide FA 22 and the applicable regime after the introduction of the amendments through the FA 22.

##### CAPITAL GAINS

To begin with, Capital gains on immovable property is a gain which arises due to the disposal of an immovable property by a person during the tax year. The gain is computed via the following formula:

$$\text{Gain} = A - B$$

Where:

**A** is the consideration received on disposal and;

**B** is the cost of asset; however the amount here should not include any expenditure incurred by the person which has been deducted under any other provisions of the ITO (for e.g. appreciation in building is claimed as a business expense).

The above computation has been retained and **no changes** have been made vide the FA 22.

The **major amendment** for computation of capital gain through the FA 22 was the **omission** of the following calculation used to determine the taxable value of gain arising on the disposal of the asset:

$$\text{Taxable Gain} = \text{Gain} \times \text{Ratio}$$

Where:

**A** was the amount of gain computed, and the value of the fraction was determined on basis of the number of years the underlying property was held for. The table is reproduced as follows:

Sr. No.	Holding Period	Ratio
1.	Does not exceed 1 year	100%
2.	Exceeds 1 year but not 2 years	75%
3.	Exceeds 2 years but not 3 years	50%
4.	Exceeds 3 years but not 4 years	25%
5.	Exceeds 4 years	0%

The above taxable gain was taxed at following rates:

Sr. No.	Amount of Gain	Rate of tax
1.	Does not exceed Rs 5 million	3.5%
2.	Exceeds Rs. 5 million but not Rs. 10 million	7.5%
3.	Exceeds Rs 10 million but not Rs 15 million	10%
4.	Exceeds Rs 15 million	15%

Furthermore, before the amendments introduced vide FA 22, vide Section 37(4A) the fair market value of the asset on the date of transfer/ acquisition was treated as the cost of asset if the property was obtained through the following:

1. Gift, bequest or will;
2. Succession, inheritance or devolution;
3. Distribution of assets on dissolution of an association of persons; or
4. On distribution of assets on liquidation of a company.

Through the FA 22, the aforesaid section has been omitted. Consequently, upon transfer of the asset to the transferee, the cost of the asset will be recorded at the historical value for the transferee. This will result in inflated capital gains when the asset is disposed-off subsequently.

### CHANGES IN RATE OF TAX (DIVISION VIII OF THE ITO)

Rates of Tax were also substituted in the FA 22 wherein deducing the rate of tax is now determined on the basis of (a) Open Plots, (b) Constructed Property or (c) Flats instead of the general categorization of immovable property. Furthermore, exemption is dependable on the basis of the aforementioned categories instead of a general 4 year holding period. We have reproduced the rates of tax under FA 22 and FA 21 in order to comprehend the set of examples set out below:

Amendments made and the rates applicable through the FA 22:

Sr. No.	Holding Period	Rate of Tax		
		Open Plots	Constructed Property	Flats
1.	Does not exceed 1 year	15%	15%	15%
2.	Exceeds 1 year but not 2	12.5%	10%	7.5%
3.	Exceeds 2 years but not 3	10%	7.5%	-
4.	Exceeds 3 years but not 4	7.5%	5%	-
5.	Exceeds 4 years but not 5	5%	-	-
6.	Exceeds 5 years but not 6	2.5%	-	-
7.	Exceeds 6 years	0%	-	-

Below are some scenarios in order to further understand the computation of the amount of tax applicable under both the modules.

#### Scenario 1:

Land was purchased at Rs. 3,000,000/- and disposed at Rs. 35,000,000/- with a holding period of 4 years. The amount of capital gain shall be as follows:

Amount of tax for the gain of Rs 32,000,000/- shall be as follows under:

FA 22	FA 21
<b>(32,000,000) x 7.5% = Rs 2,400,000/-</b>	(32,000,000 x 25%) x 15%= Rs 1,200,000/-
<b>Explanation: 7.5% was used because land is treated as an open plot and holding did not exceed 4 years.</b>	Explanation: 25% was used because holding period did not exceed 4 years.

#### Scenario 2:

A flat was purchased at Rs 2,000,000/- and disposed at Rs 20,000,000/- with a holding period of 2 years.

Amount of tax for the gain of Rs 18,000,000/- shall be as follows under:

FA 22	FA 21
<b>(18,000,000 x 7.5%)= 1,350,000/-</b>	(18,000,000 x 50%) x 10%= Rs 900,000/-
<b>Explanation: 7.5% was used as it was a flat which was held for not more than 2 years</b>	Explanation: 50% was used as it was held for more than 1 year but not more than 2 years.

#### Scenario 3

A constructed bungalow was purchased at Rs 2,000,000/- and disposed within 5 years for Rs 30,000,000/-

Amount of tax for the gain of Rs 28,000,000/- shall be as follows under:

FA 22	FA 21
<b>(28,000,000 x 0) = 0</b>	(28,000,000 x 0) = 0
<b>Explanation: Where holding period exceeds 4 years for a constructed property the rate of tax shall be 0.</b>	Explanation: holding period exceeds four years therefore the gain shall be exempt.

### **Conclusion:**

The amendments introduced vide the FA 22 have simplified the CGTR applicable on immoveable property. Furthermore, the division/categorization of the types of properties into three categories (as stated above) also hints at a stricter CGTR for investment in open plots, and a much relaxed CGTR for investment in flats.

### **DISCLAIMER**

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