



# **COMMENTS ON FINANCE (SUPPLEMENTARY) BILL, 2023**





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## **PROLOGUE:**

A document has been circulating in social media termed as “**The Finance (Supplementary) Bill, 2023**” (“the Bill”). The Bill proposes amendments in Income Tax Ordinance, 2001 (“ITO”), Sales Tax Act, 1990 (“STA”), and Federal Excise Act, 2005 (“FEA”).

The Preamble to the Bill provides that it shall come into force at once, unless otherwise specified. However, the Statement of Object and Reasons given in the Bill state that the Bill shall come into force on the next day of assent given to this act by the President of Islamic Republic of Pakistan.

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.

Furthermore, we do not extend any sort of guarantee or indemnity, financial or otherwise, for the acceptance of the comments mentioned in this document by any statutory or non-statutory authority.

Please feel free to provide your feedback for further improvements in the document. Should you have any queries in relation to this document, do not hesitate in contacting us.

Warm Regards,

**TOLA ASSOCIATES**

Wednesday, 15 February 2023

### A. INCOME TAX ORDINANCE, 2001:

#### 1. ADVANCE TAX ON DISPOSAL OF CERTAIN CATEGORIES OF SHARES (SECTION 37(6))

Through the Finance (Supplementary) Bill, 2023 (“the Bill”) a new Section, namely Section 37(6) has been inserted in the Income Tax Ordinance 2001 wherein a person acquiring a capital asset, being shares of a company, shall deduct an **advance adjustable tax** from the **gross amount paid** as consideration **at 10% of the Fair Market Value (FMV)** to the Commissioner within 15 days of payment.

It has also been made clear, through insertion of Section 37(7) of the ITO vide the Bill, that the value shall be the FMV. Moreover, as per the newly inserted Section 37(8) of the ITO vide the Bill, a person intending to dispose of the shares shall submit an application to the Commissioner, who shall then allow to make payment after deducting tax at 0% or deducting tax at a reduced rate.

Furthermore, as per the newly inserted Section 37(10) of the ITO vide the Bill, the person disposing off the capital asset (being shares of a company) shall furnish prescribed information/ documents to the Commissioner within 30 days of the disposal transaction in a prescribed statement. A proviso was also inserted wherein it stated that the Commissioner (in writing) may require the person to furnish information/ documents within a period of not less than 30 days as specified in the notice.

This amendment shall be applicable to disposal of shares of private limited and unlisted public companies.

#### 2. CAPITAL GAIN ON DISPOSAL OF SECURITIES SECTION 37A

A proviso was inserted for Capital Gain on Securities (Section 37A) vide the Finance (Supplementary) Bill wherein the above provisions shall also be applicable on disposal of securities made otherwise than through a registered stock exchange, not settled through NCCPL.

#### 3. ADVANCE TAX ON FUNCTIONS AND GATHERINGS- SECTION 236CB

An adjustable advance tax of 10% has been levied on functions and gatherings on the total amount of the bill from a person arranging / holding a function in the following premises:

- Marriage hall;
- Marquee;
- Hotel;
- Restaurant;
- Commercial lawn;
- Club;
- Community place; or
- Any other place used for such purpose.

Furthermore, 10% advance tax shall also be paid by the prescribed person on the payment of food, service or facility, where food, service or any other facility is provided.

The following shall also be included in the definition of functions:

- Any wedding related event;
- Seminar;
- Workshop;
- Session;
- Exhibition;
- Concert;
- Show;
- Party;
- Or other gathering held for such purpose.

“Prescribed persons” includes the following:

- Owner;
- Lease-holder;
- Operator;
- Manager of a marriage hall;
- Marquee;
- Hotel;
- Restaurant;
- Commercial lawn;
- Club;
- A community place;
- Or any other place used for such purpose.

### **B. SALES TAX:**

#### **1. STANDARD SALES TAX RATE**

As per the Sales Tax Act, 1990 (“STA”) taxable supplies and goods imported into Pakistan were levied at 17%, the same, vide the Bill, has been increased to 18%.

##### **A. Increase of the standard GST rate from 17% to 18% vide SRO 179(I)/2023.**

The Federal Government, after approval from the Federal Cabinet, has increased the standard rate of GST for goods falling under Section 3(1) of the Sales Tax Act 1990 (“STA”) through the captioned SRO. It is possible that the vires of the said SRO might be challenged before the Honourable High Courts of Pakistan. However, as per Article 77 of the Constitution of Pakistan 1973, **no tax shall be levied for the purposes of the Federation except by or under the authority of Act of Parliament.** As per Section 3(2)(b) of the STA, the Federal Government may increase, decrease or set the tax rates of the taxable goods. However, this power of the Federal Government was also confirmed by the Honourable Lahore High Court (“LHC”) in a judgment reported as **2017 PTD 2469**, wherein the Hon’ble LHC was pleased to hold that,

### QUOTE

... Section 3(2)(b) of the Act reads as follows: the Federal Government may, subject to such conditions and restrictions as it may impose, by notification in the official Gazette, declare that in respect of any taxable goods, the tax shall be charged, collected and paid in such manner and at such higher or lower rate or rates as may be specified in the said notification.

The said provisions authorize the Federal Government to impose conditions and restrictions by way of notification in the official gazette on the manner in which the tax is to be charged, collected and paid and it can also specify higher and lower rates in the notification. The Federal Government is also authorized that in lieu of the tax levied under subsection (1) of section 3, it may levy and collect such amounts as it may deem fit on any taxable supplies or goods in the manner prescribed by it.

... Hence the argument that the Federal Government has encroached upon the jurisdiction of Parliament is without basis as Parliament, through its Act has authorized the Federal Government and the Federal Board of Revenue to levy such amounts and collect in lieu of sales tax as it may deem fit and to specify the mode and manner and time to collect the amount.

### UNQUOTE

Even otherwise, and as stated above, the Federal Government has obtained the approval of the Federal Cabinet, as decided in the **Mustafa Impex Case**, to increase the said GST rate. Therefore, the said SRO is backed by the permission of the Federal Cabinet.

## 2. THIRD SCHEDULE ITEMS

A proviso has been inserted, vide the Bill wherein the Federal Government has been empowered to impose higher rates of taxes on the retail price through a notification in the official Gazette, for the goods mentioned in the 3<sup>rd</sup> Schedule to the STA.

## 3. EIGHTH SCHEDULE ITEMS

Sales tax rates on the following items have been raised as under:

Sr. No.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Locally produced coal	Higher of Rs 700 per metric ton or 17% ad valorem	Higher of Rs 700 per metric ton or 18% ad valorem
2	Potassium Chlorate (KCLO3)	17% along with Rs 90/kg	18% along with Rs 90/kg

## 4. NINTH SCHEDULE ITEMS

Sales tax rates on the following items have been raised as under:

Sr. No.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:		
	E-Exceeding USD \$ 200 but not USD \$350	17% ad valorem	18% ad valorem
	F- Exceeding USD \$ 350 but not USD\$ 500	17% ad valorem	18% ad valorem
	G- Exceeding USD \$ 500	17% ad valorem	25% ad valorem

### C. FEDERAL EXCISE ACT, 2005

#### 1. FED RATES OF FOLLOWING ITEMS HAVE BEEN RAISED AS UNDER:

Sr. No.	Description	Previous rates	New rates
1	Aerated waters	13% of retail price	20% of retail price
2	Aerated waters, containing added sugar or other sweetening matter or flavored	13% of retail price	20% of retail price
3	Aerated waters manufactured wholly from juices or pulp of indigenous vegetables, food grains or fruits and which do not contain any other ingredient, indigenous or imported, other than sugar, coloring materials, preservatives or additives in quantities prescribed under the West Pakistan Pure Food Rules, 1965	13% of retail price	20% of retail price
4	Locally produced cigarettes if their on-pack printed retail price exceeds <b>Rs 6,660</b> (Changed to <b>Rs 9,000</b> ) per thousand cigarettes	Rs 6,500 per thousand cigarettes	Rs 16,500 per thousand cigarettes
5	Locally produced cigarettes if their on-pack printed retail price does not exceed Rs 6,660 (Changed to <b>Rs 9,000</b> ) per thousand cigarettes	Rs 2,050 per thousand cigarettes	Rs 5,050 per thousand cigarettes
6	Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not colored or in the form of clinkers.	Rs 1.50/kg	Rs 2.00/kg
7	Sugary fruit juices, syrups, squashes, waters whether containing added sugar/artificial sweeteners excluding mineral and aerated waters	-	10% of retail price

#### 2. MINIMUM PRICE OF CIGARETTES

Earlier, locally produced cigarettes having their on-pack retail price exceeding Rs 6,660 were not permitted to sell at retail prices lower than 45% of the retail prices mentioned in the FEA, now, the on-pack rate has increased to **Rs 9,000** and the minimum retail price percentage has risen to **60%**.

#### 3. FED ON AIR TRAVEL:

Sr. No.	Description	Existing	Vide the Finance (Supplementary) Bill
	Travel by air of a passenger for international journey from Pakistan availing the club, business and first class. (applicable from the date of commencement of the Finance (Supplementary) Bill	Rs 50,000/-	Higher of 20% of the gross amount of ticket or Rs 50,000/-



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