

TAX LAWS (AMENDMENT) ORDINANCE, 2020



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Background

In an attempt to re-energize the economy after the outbreak of pandemic COVID-19, the Federal Government has promulgated the Tax Laws (Amendment) Ordinance, 2020 [the Ordinance] on 17 April 2020 with the object of promoting construction and allied industry in the country. This Ordinance is a step in the right direction to deal with the said crisis due to which industries, businesses, offices, services have also been shut down in Pakistan and economic activity is at a stand-still.

Under these circumstances, the promulgation of said Ordinance offering tax reliefs to construction sector will serve as double-edged sword by meeting the shortage of houses in the country on one hand and creating employment opportunities for the poor and most vulnerable segments of the population, including the daily wagers in Pakistan.

By way of the Ordinance, amendments have been made in the Income Tax Ordinance, 2001 [Ordinance 2001] through insertion of new section 100D and Eleventh Schedule to give effect to income tax matters relating to builders, developers, first purchasers of plots and buildings in new projects and purchaser of plots who intends to construct building.

Income and persons covered

Section 100D(1)

The income or gains derived from the sale of buildings by a builder or sale of plots by a developer shall, at the option of builder or developer, be subject to fixed tax chargeable on the basis of area in respect of a project which meet the following conditions:

- i. a new project to be completed by 30 September 2022; or
- ii. an incomplete existing project to be completed by 30 September 2022.

Provided that any income, profits and gains of a builder or developer of an incomplete existing project earned up to tax year 2019 shall be subject to the provisions of the Ordinance as were in force prior to the commencement of the Tax Laws (Amendment) Ordinance, 2020 [i.e. 17 April 2020]. Provided further that any income of a builder or developer other than income, profits and gains subject to this section shall be subject to tax as per the provisions of the Ordinance.

The term 'new project' as defined in section 100D(9)(e) of the Ordinance means a construction or development project which commenced between the date of promulgation of this Ordinance [i.e. 17 April 2020] and 31 December 2020 and completed before 30 September 2022.

Whereas the term 'existing project' as defined in 100D(9)(d) of the Ordinance means a construction or development project which:

- (i) has commenced before the date of commencement of the Tax Laws (Amendment) Ordinance, 2020;
- (ii) is incomplete;
- (iii) is completed on or before the 30th day of September 2022; and
- (iv) a declaration is provided in the registration form under Eleventh Schedule to the effect of percentage of the project completed up to the last day of the accounting period pertaining to tax year 2019.

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Further, the term "completion of project" as defined in Rule 9 (1)(e) of the Eleventh Schedule means:

- i. in the case of a builder, the date on which the grey structure is completed.
Provided grey structures shall only be considered completed when roof of top floor has been laid as per the approved plan.
- ii. in the case of a developer, the date on which:
 - a. at least 50% of total plots are booked in name of buyers;
 - b. at least 40% of the sale proceeds have been received;
 - c. landscaping has been completed; and
 - d. at least 50% of the roads has been laid up to sub-grade level as certified by the approving authority or NESPAK.

Other conditions

Section 100D(2)

A builder or developer opting to be taxed under the provisions of section 100D of the Ordinance 2001 shall be subjected to following conditions:

- a. the income shall not be chargeable to tax under any head of income in computing the taxable income of the person;
- b. no deduction shall be allowable under the Ordinance 2001 for any expenditure incurred in deriving the income;
- c. the amount of the income shall not be reduced by —
 - i. any deductible allowance under Part IX of Chapter III [i.e. Zakat, WPPF, WWF etc.]; or
 - ii. the set off of any loss;
- d. No tax credit shall be allowed against the tax payable under the Ordinance 2001 except credit for tax collected from the builder or developer under section 236K of the the Ordinance 2001 collected after the date of promulgation of this Ordinance [i.e. 17 April 2020] on purchase of immovable property utilized in an eligible project;
- e. there shall be no refund of any tax collected or deducted under the Ordinance 2001;
- f. if the tax payable has not been paid or short paid, the said amount of tax may be recovered, and all the provisions of the Ordinance 2001 shall apply accordingly;
- g. Section 113 [minimum tax] and 113C [alternative corporate tax] shall not apply on the income, profits and gains of a builder or developer from eligible projects.

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Scope and payment of tax

Rule 2 of the Eleventh Schedule

As discussed above, the Ordinance offers fixed tax regime for builders and developers whereby the tax shall be payable on project-by-project basis under the head 'Income from Business'. The tax liability shall be computed by applying the following rates (mentioned in Rule 10) to the area of the project and be discharged on annual basis as under:

Tax liability as per the rates in Rule 10
Estimated project life in years

ELEVENTH SCHEDULE (Rule 10)

Area	(A) Karachi, Lahore and Islamabad	(B) Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	(C) Urban Areas and other areas not specified in A and B
TAX ON BUILDERS FOR COMMERCIAL BUILDINGS			
Area in Sq. Ft.	Rate / Sq. ft.		
Any size	Rs. 250	Rs. 230	Rs. 210
FOR RESIDENTIAL BUILDINGS			
Area in Sq. ft.	Rate/ Sq. ft.		
upto 3000	Rs. 80	Rs. 65	Rs. 50
More than 3000 & above	Rs. 125	Rs. 110	Rs. 100
TAX ON DEVELOPERS (ENTIRE PROJECT)			
Area in Sq. Yds.	Rate / Sq. Yd		
Any size	Rs. 150	Rs. 130	Rs. 100
FOR DEVELOPMENT OF INDUSTRIAL AREA			
Area in Sq. Yds.	Rate /Sq. Yd		
Any size	Rs. 20	Rs. 20	Rs. 10

The estimated project life for tax purposes shall not exceed two years and six months. Provided that in case of existing incomplete projects, the estimated project life shall be treated as three years from tax year 2020 through tax year 2022, and the tax payable shall be reduced by the percentage of completion up to the last day of the accounting period pertaining to tax year 2019 as declared in registration form. Provided further that tax liability of tax year 2020 shall be paid along with return.

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For the purpose of applying rates to the area, the term "Area" has been defined as:

For builders	<ul style="list-style-type: none"> In case of a commercial or residential buildings excluding a house, the saleable area of the building; In case of a house, the covered area of the house
For developers	<ul style="list-style-type: none"> the total land area of the project.

The Ordinance mentions the 'total land area' in case of developers for the purpose of calculation of the tax liability. The ratio of saleable area to the total land area ranges from 40% to 50% in case of developers. The developers have to take burden of extra tax for unsold areas in their projects which would discourage developers to opt for this scheme.

Tax reliefs to investments made by a Builder or Developer being an Individual

Section 100D(3)(a)

The Ordinance provides exemptions from provisions of section 111 of the Ordinance 2001 to individual builders and developers who intends to make investment in the form of money or land in a new project shall be required to:

- open a new bank account and transfer / deposit money into it on or before 31 December 2020.
- have the ownership title of land at the time of promulgation of this Ordinance [i.e. 17 April 2020] where investment is in the form of land.

Further, the price of land or building shall be higher of:

- 130% of the fair market value as determined by the Board under sub-section (4) of section 68 [section 100D(5)(a)]
- At the option of the person making investment, the lower of the values as determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan [section 100D(5)(b)]

In addition to the above, the following further conditions shall also require to be met:

- The money or land invested shall be wholly utilized in project.
- A person making an investment shall submit a prescribed form on IRIS web portal.
- Map approving authorities or NESPAK in case of builder shall certify that grey structure as per approved map has been completed by the builder by 30 September 2022.
- map approving authority or NESPAK in case of developer shall certify that (i) landscaping has been done by 30 September 2022 and (ii) at least 50% of the roads has been laid up to sub-grade level. Further an ICAP QCR rated firm of chartered accountants notified by the Board shall certify that 50% plots have been booked for sale and at least 40% proceeds have been received by 30 September 2022.

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Tax reliefs for investment made by persons in newly registered AOP and company functioning as Builder or Developer

Section 100D(3)(b)

The Ordinance offers exemption from provisions of section 111 of the Ordinance 2001 to any person who intends to make investment in the form of money or land in a new project. However, such investment shall only be made by the person through a company or Association of Persons (AOP):

- i. that is a single object (builder or developer) company or AOP formed after the date of promulgation of this Ordinance [i.e. 17 April 2020] and before 31 December 2020;
- ii. the person shall be a member or shareholder of such association of persons or company, as the case may be;
- iii. if capital investment is in the form of money, such amount shall be invested through crossed banking instrument only on or before 31 December 2020; or
- iv. if capital investment is made in the form of land, such land shall be transferred to the builder or developer on or before the 31 December 2020.

Provided that the person shall have the ownership title of the land at the time of promulgation of this Ordinance [i.e. 17 April 2020].

Capital investment means investment as equity resources and does not include borrowed funds.

Further, the price of land or building shall be higher of:

- i. 130% of the fair market value as determined by the Board under sub-section (4) of section 68 [section 100D(5)(a)]
- ii. At the option of the person making investment, the lower of the values as determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan [section 100D(5)(b)]

In addition to the above, the following further conditions shall also require to be met:

- a. The money or land invested shall be wholly utilized in project.
- b. A person making an investment shall submit a prescribed form on IRIS web portal.
- c. Map approving authorities or NESPAK in case of builder shall certify that grey structure as per approved map has been completed by the builder by 30 September 2022.
- d. map approving authority or NESPAK in case of developer shall certify that (i) landscaping has been done by 30 September 2022 and (ii) at least 50% of the roads has been laid up to sub-grade level. Further an ICAP QCR rated firm of chartered accountants notified by the Board shall certify that 50% plots have been booked for sale and at least 40% proceeds have been received by 30 September 2022.

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Tax reliefs to first purchaser of building

Section 100D(4)(a)

The provisions of section 111 of the Ordinance 2001 shall not apply in respect of purchase price paid by the first purchaser of a building to builder:

- i. if full payment is made through a crossed banking instrument between the date of registration of the project with the Board and 30 September 2022, in case of purchase from a new project; and
- ii. if full or balance amount is paid through a crossed banking instrument between the date of registration of the project with the Board and 30 September 2022, in case of purchase from an existing incomplete project.

The term "first purchaser" means a person who purchases a building or a unit directly from the builder and does not include a subsequent or a substituted buyer.

The purchase price of a building under section 100D(4)(a) of the Ordinance 2001 shall be higher of:

- i. 130% of the fair market value as determined by the Board under section 68(4); or
- ii. At the option of the purchaser, the lower of the values determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan.

Tax reliefs to purchaser of plot

Section 100D(4)(b)

The provisions of section 111 of the Ordinance 2001 shall not apply to a purchaser of plot who intends to construct a building thereon, if

- i. the purchase is made on or before 31 December 2020;
- ii. full payment is made on or before 31 December 2020 through a crossed banking instrument;
- iii. construction on such plot is commenced on or before 31 December 2020;
- iv. construction is completed by 30 September 2022; and
- v. the person registers himself with the Board on the online IRIS portal

The purchase price of a plot under section 100D(4)(b) of the Ordinance 2001 shall be higher of:

- iii. 130% of the fair market value as determined by the Board under section 68(4); or
- iv. At the option of the purchaser, the lower of the values determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan.

We note that the owners of small sized plots would not be able to follow the tedious process and formalities of registering with the Board. This would have negative impact on the existing inventory of millions of plots in different schemes and areas across Pakistan which should have been given open process under this Ordinance to promote the construction activity.

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Exclusion

Section 100D(6)

The aforesaid exemption from provisions of section 111 of the Ordinance 2001 shall not apply to following persons:

- i. holder of any public office as defined in the Voluntary Declaration of Domestic Asset Act 2018 or his benamidar as defined in the Benami Transactions (Prohibition) Act, 2017 (V of 2017) or his spouse or dependents;
- ii. a public company, a real estate investment trust and a company whose income is exempt under any provision of the Ordinance 2001; or
- iii. any proceeds derived from the commission of a criminal offence including crime of money laundering, extortion or terror financing but excluding the offences under tax laws.

Exemption of Dividend Income

Section 100D(7)

Dividend income paid to a person by a builder or developer being a company out of the profits and gains derived from a project shall be exempt from tax.

Investments made pursuant to this Ordinance could be admissible in evidence against the persons

Any Investments made pursuant to this Ordinance could be admissible in evidence against the person for the purposes of any proceedings relating to imposition of penalty or adverse action for the purposes of prosecution under any law except the Income Tax Ordinance. This would have negative impact on the declarations as fear of other regulatory bodies would prevail.

Exemptions to individual from capital gain tax

Clause 114AA of Part I, Second Schedule

A new clause 114AA has been inserted in Part I of Second Schedule to the Ordinance 2001 whereby capital gains derived by a resident individual from the sale of constructed residential property has been declared exempt subject to the following conditions:

- i. the residential property was being used for personal accommodation by the resident individual, his spouse or dependents and for which any of the utility bills is issued in the name of such individual;
- ii. the land area of the property does not exceed 500 square yards in case of a house and 4,000 square feet in case of a flat; and
- iii. exemption under this clause has not previously been availed by the individual, his spouse or dependents.

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90% tax rebate for Naya Pakistan Housing and Development Authority's approved project

Clause (9B), Part III, Second Schedule

Through the insertion of said clause, the tax payable on the income, profits and gains of projects of 'low cost housing' developed or approved by Naya Pakistan Housing and Development Authority (NAPHDA) or under the Ehsaas Programme shall be reduced by 90%.

Exemption from withholding of tax u/s 150 & 153 Rule 7 of Eleventh Schedule

The provisions of section 153 of the Ordinance 2001 shall not apply to builders and developers on:

- i. purchase of building material except steel and cement.
- ii. on services of plumbing, electrification, shuttering and other similar and allied services other than those provided by companies.

The provisions of section 150 shall not apply to dividend paid to a person by a builder or developer being a company from profits and gains from a new project.

Registration and filing of return

Rule 3 of Eleventh Schedule

All builders and developers and their shareholders or partners or joint venture partners of builder or developer shall submit the registration form along with the irrevocable option to be assessed under this Schedule in respect of each project on IRIS through FBR website by the 31 December 2020.

Registration form as may be prescribed which shall include, *inter alia*, details of a member or shareholder of a builder or developer, as the case may be. Provided that a developer who is also a builder in case of a project shall submit two separate forms for registration as a developer and as a builder.

A builder or developer availing this scheme shall electronically file a return of income and wealth statement.

Certification

Rule 4 of Eleventh Schedule

Every builder or developer shall be required to obtain and provide to the Board a certificate from approving authority or map approving authority or NESPAK to the following effect:

- i. 'total land area' in square yards;
- ii. 'covered area' in square feet;
- iii. 'saleable area' in square feet; and
- iv. Type (commercial, residential or industrial) of saleable area or the total land area.

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Incorporation of profits and gains

Rule 6 of Eleventh Schedule

A builder or developer opting for taxation under section 100D of the Ordinance 2001 shall not be allowed to incorporate profits and gains accruing from such projects in excess of ten times of the tax paid for computation of income.

We understand that profits and gains accruing from projects in excess of ten times of the tax paid would go undocumented as the current scheme is expected to result in heavy profits for the construction industry. The builders and developers would be having such profits especially in the shape of cash and bank balances and the same would not be supported by income tax returns.

Restriction on change in pattern of ownership of a Builder Or Developer before completion of a project

Rule 8 of Eleventh Schedule

Where exemption from the provisions of section 111 has been claimed under sub-section (5) of section 100D, the following restrictions shall apply:

- (1) A shareholder or a partner of a builder or developer shall not be allowed a change in ownership of an incomplete project except where at least fifty percent of the total project cost, as certified by ICAP QCR rated firm of chartered accountants as may be notified by the Board, has been incurred till the date of change of ownership.
- (2) The succession to legal heirs in case of deceased shareholder or a partner shall be allowed.
- (3) The additional partners or shareholders in a builder or developer after the thirty first of December, 2020 may join but additional partners or shareholders shall not be eligible for exemption provided under sub-section (4) of section 100D.

Definition of 'industrial undertaking'

Section 2(29C)

The definition of 'industrial undertaking' given in the Ordinance 2001 has been amended to include from the 1st day of May 2020, a person directly involved in the construction of buildings, roads, bridges and other such structures or the development of land, to the extent and for the purpose of import of plant and machinery to be utilized in such activity, subject to such conditions as may be notified by the Board.

This is a landmark amendment which shall especially entitle the aforesaid newly included industrial undertakings to tax credit under section 65D of the Ordinance 2001. The tax credit under section 65D of the Ordinance 2001 is as high as 100% of the tax payable including on account of minimum tax and final taxes payable under any of the provisions of this Ordinance 2001, on the taxable income arising from such industrial undertaking for a period of five years beginning from the date of setting up or commencement of commercial production, whichever is later.

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