

**TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2019 - INCOME TAX ORDINANCE, 2001**

The President of the Islamic Republic of Pakistan has made and promulgated the "Tax Laws (Second Amendment) Ordinance, 2019" (**the Ordinance**) on 26 December 2019. The Ordinance shall come into force at once. Significant amendments made through the Ordinance in the Income Tax Ordinance, 2001 and Sales Tax Act, 1990 are given as under.

**Amendments in Income Tax Ordinance, 2001**

**Greenfield industrial undertaking**

**Section 2(27A)**

Clause (126O) was inserted in Part I of the Second Schedule to the Income Tax Ordinance, 2001 through Finance Supplementary (Second Amendment) Act, 2019 to provide exemption from tax to profits and gains of a company from a greenfield industrial undertaking for a period of five years. However, the term greenfield industrial undertaking was not defined in the Income Tax Ordinance, 2001. Now, the term applicable from 01 July 2019 has been defined as under:

"greenfield industrial undertaking" means

(a) a new industrial undertaking which is

- (i) setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work;
- (ii) built without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
- (iii) not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project;
- (iv) using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and

(b) is approved by the Commissioner on an application made in the prescribed form and manner, accompanied by the prescribed documents and, such other documents as may be required by the Commissioner.

**Provided that this definition shall be applicable from 1<sup>st</sup> July, 2019 and onwards.**

**Appellate Tribunal**

**Section 130**

This section has been substituted to streamline affairs of the Appellate Tribunal Inland Revenue (ATIR). The constitution, functioning of benches and procedure of the ATIR shall be regulated by rules which may be prescribed by the Prime Minister. Such rules shall take effect notwithstanding anything contained in section 237, relating to power of FBR to make rules, or any other law or rules for the time being in force. The rules made prior to commencement of this Act shall continue in force unless amended or repealed.

**Payment to non residents**

**Sections 152(1D) & (1E)**

Non-residents are allowed to invest in debt securities and Government securities through Special Convertible Rupees Accounts (SCRA) maintained with banks in Pakistan. To encourage such investment and to simplify taxation in this regard, following amendments have been made by this Act.

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By inserting new sub-sections (1D) & (1E) in this section, every banking company or a financial institution maintaining SCRA of non-resident company having no Permanent Establishment (PE) in Pakistan shall deduct tax from capital gain on the disposal of debt instruments and Government securities including treasury bills and Pakistan investment bonds invested through SCRA at the rate of 10% of the amount of capital gain. Such deductible tax shall be final tax on the income arising out of such capital gain.

**Clause (112), Part IV, Second Schedule**

The withholding tax provisions of advance tax on banking transactions otherwise than through cash, (section 236P) shall not apply to SCRA of a non-resident company having no PE in Pakistan.

**Clause (113), Part IV, Second Schedule**

Non-resident company having no PE in Pakistan shall not be liable to pay advance tax u/s 147 in respect of capital gain arising from investment in debt instruments and Government securities including treasury bills and Pakistan investment bonds through SCRA maintained with a banking company or financial institution.

**Clause (114), Part IV, Second Schedule**

Non-resident company having no PE in Pakistan shall neither be required to furnish final tax statement u/s 115(4) nor to obtain registration number (NTN) u/s 181 solely by reason of capital gain, profit on debt earned from investment in debt securities and Government securities including treasury bills and Pakistan investment bonds through SCRA maintained with a banking company or a financial institution in Pakistan.

**Rule 10(ba), Tenth Schedule**

One hundred percent increased rate of withholding tax for persons not appearing on active taxpayers' list under Tenth Schedule shall not be applicable to capital gains and profit on debt earned by the aforesaid non-resident companies.

**Business license scheme**

**Sections 181D (2) & (3)**

This section was inserted by Finance Act, 2019 and thereby every person engaged in any business, profession or vocation was required to obtain and display the business license as prescribed by FBR.

Now by inserting sub-section (2) in this section, the Commissioner has been empowered to impose fine of Rupees 20,000 on a taxpayer deriving income chargeable to tax under Income Tax Ordinance, 2001 and Rupees 5,000 in all other cases. In case a person fails to obtain business license such fine shall be imposed in addition to and not in derogation of any punishment liable under the Income Tax Ordinance, 2001 or any other law.

Moreover, the Commissioner may also cancel a business license if such person fails to notify any change in particulars within thirty days of such change or such person is convicted on any offence under any federal law.

**Closure of audit**

**Sections 214E (2) & (3)**

The FBR has been empowered to prescribe procedure for conclusion of tax audit of a person selected automatically for audit due to late filing of return of income under the omitted section 214D. Such prescribed procedure may include acceptance of the declared income of a taxpayer subject to conditions specified therein.

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**Disclosure of information by a public servant**

**Section 216(3)(s)**

The new clause (s) has been inserted to disclose, any such particulars prescribed in sub-section (1) of this section, to the Financial Monitoring Unit (FMU) for the purpose of performing functions as laid down in the Anti-Money Laundering Act, 2010.

The FMU is a central agency of Pakistan and is responsible for receiving, analyzing and disseminating the Suspicious Transaction Reports (STR) to the concerned authority for further investigation or regulatory action in cases relating to money laundering and terrorist financing. The aforesaid clause has been added to facilitate the FMU.

**Directorate General of International Tax Operations**

**Sections 230E (5) & (6)**

The Directorate General of International Tax Operations was established through the Finance Supplementary (Second Amendment) Act, 2019 by substituting the section 230E for conducting transfer pricing audit of selected taxpayers. However, procedure to be adopted for conducting such audit was not prescribed in this section.

By inserting sub-sections (5) and (6) in this section, it has now been prescribed that transfer pricing audit of selected cases shall be conducted as per procedure given in section 177 and all other relevant provisions of the Ordinance.

It has been further provided that this section 230E shall not prevent the Commissioner to determine transfer price at arm's length in transactions between associates during the (usual) amendment of assessment proceedings u/s 122 or conducting audit of income tax affairs under section 177 or audit of persons selected for audit through computer ballot u/s 214C.

**THE FIRST SCHEDULE**

**Part II – RATES OF ADVANCE TAX**

**Clause (b) proviso**

Rate of advance tax to be collected u/s 148 on import of mobile phone having value exceeding USD 30 and up to USD 100 has been reduced from Rupees 730 to Rupees 100.

**THE SECOND SCHEDULE**

**Part I – EXEMPTION FROM TOTAL INCOME**

**Clause (103C)**

Inter-corporate dividend under section 59B was exempt from tax to the extent of percentage of shareholding of the company receiving the dividend in the company distributing the dividend. Now by omitting the restriction, complete exemption has been made available to dividend income derived by a company eligible for group relief under section 59B.

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**Part II – REDUCTION IN TAX RATES**

**New clause (28D)**

The rate of minimum tax u/s 113 has been reduced from 1.5% to 0.5% for the tax year 2020 in case of traders having turnover upto one hundred million rupees. The clause contains a proviso whereby the tax liability of such traders for the tax year 2019 and 2020 shall not be less than the tax paid for the tax year 2018 in case of the traders who have furnished their return of income for the tax year 2018.

For the purpose of this clause, a trader has been defined as an individual engaged in business of buying and selling of goods in the same state including a retailer and a wholesaler but shall not include a distributor.

**Clause 28E)**

In case of a trader of yarn being individual, the rate of minimum tax u/s 113 shall be 0.5% for the tax year 2020. Earlier such traders were required to pay minimum tax @ 0.1% on their annual turnover on monthly basis.

**Part III – REDUCTION IN TAX LIABILITY**

**Clause (9A)**

This clause was inserted by Finance Act, 2019 to provide 50% reduction in tax liability on capital gain on first sale of immovable property acquired or allotted to ex-servicemen and serving personnel of Armed Forces or ex-employees or serving personnel of Federal and Provincial Government being original allottees of the immovable property.

Now, the reduction in tax liability shall be available upto 75% in case the capital gain is arising after completion of three years from the date of acquisition of immovable property.

**Part IV – EXEMPTION FROM SPECIFIC PROVISIONS**

**Clause (45A)**

This clause provides reduced withholding tax rate at 1% in respect of local sales, supplies and services provided or rendered under clause (a) and (b) of sub-section (1) of section 153 to the taxpayers falling in categories, (i) textile and articles thereof, (ii) carpets, (iii) leather and articles thereof including artificial leather footwear, (iv) surgical goods and (v) sports goods.

However, this concessional rates was applicable only to the cases of sellers, suppliers, service providers who were registered upto 30 June 2011 as per sub-clause (c) of this clause.

Now, by omitting the said clause (c) the condition of registration on or before 30 June 2011 has been removed.

It is further provided that tax at the rate of 0.5% will be withheld on local sales, supplies and services made by traders of yarn to the above mentioned categories of taxpayers.

**Clause (72B)**

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Under this clause the Commissioner is authorized to issue certificate of exemption from collection of tax at import stage u/s 148 from industrial undertaking with certain conditions. However, any time limit was not provided in the law for issuance of such exemption certificate by the concerned Commissioner.

Now, by adding new proviso in this clause, the Commissioner shall be deemed to have issued the exemption certificate in cases where the certificate is automatically processed and issued by IRIS on expiry of prescribed time period. The Commissioner has further been empowered to modify or cancel the certificate on the basis of reasons to be recorded after opportunity of being heard.

**Clause (115)**

Under section 153(7) an individual having turnover of fifty million rupees or above in any of the preceding tax years is defined as prescribed person for the purpose of withholding tax.

By adding this new clause, traders being individuals having turnover up to one hundred million rupees shall not be liable to deduct tax under section 153 as a prescribed person.

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**Greenfield industry**

**Section 2(12A)**

To allow exemption on imports of certain plant and machinery by greenfield industry, the new definition through clause(12A) has been inserted in this section. The definition of greenfield industry as given below, is same as provided in sub-section (27A) of section 2 of the Income Tax Ordinance, 2001:

“greenfield industry” in relation to serial number 150 of Table – 1 of the Sixth Schedule means

- (c) a new industrial undertaking which is
  - (v) setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work;
  - (vi) built without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
  - (vii) not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project;
  - (viii) using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and
- (d) is approved by the Commissioner on an application made in the prescribed form and manner, accompanied by the prescribed documents and, such other documents as may be required by the Commissioner.

**Provided that this definition shall be applicable from 1<sup>st</sup> July, 2019 and onwards.**

**Tier-1 retailer**

**Section 2(43A)**

The clause (43A) has been amended to clarify that the retailer falling in any one or more of the categories as given in this clause will mean a ‘Tier-1 retailer’. Before this amendment, it was inferred that the retailer falling in all the prescribed categories will be tier-1 retailer.

As per sub-clause (c) of this clause a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeded six hundred thousand rupees was included in definition of tier-1 retailer. Now, this limit has been enhanced to twelve hundred thousand rupees.

Further, the FBR has been empowered to prescribe any other person or class of persons as “Tier-1 retailer”.

**Offences and penalties**

**Section 33 – Serial No. 24-27**

Penalties / fines in case of violation / misuse of provisions of law in respect of integration system with FBR, non printing of retail price, goods supplied from tax-exempt areas, have been prescribed by adding the following serial numbers in this section.

24. Any person, who is integrated for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized	Such person shall pay a penalty of five hundred thousand rupees or two hundred per cent of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction	Sub-section (9A) of section 3 and section 40C
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<p>system, conducts such transactions in a manner so as to avoid monitoring, racking, reporting or recording of such transactions, or issues an invoice which does not carry the prescribed invoice number or barcode or bears duplicate invoice number or counterfeit barcode, or any person who abets commissioning of such offence.</p>	<p>by a Special judge, to simple imprisonment for a term which may extend to two years, or with additional fine which may extend to two million rupees, or with both.</p> <p>Any person who abets commissioning of such offence, shall be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to one year, or with additional fine which may extend to two hundred thousand rupees, or with both.</p>	
<p>25. Any person, who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law.</p>	<p>Such person shall be liable to pay a penalty upto one million rupees, and if continues to commit the same offence after a period of six months after imposition of penalty as aforesaid, his business premises shall be sealed and an embargo shall be placed on his sales.</p>	<p>Sub-section (9A) of section 3 and section 40C.</p>
<p>26. Any person, being a manufacturer or importer of an item which is subject to tax on the basis of retail price, who fails to print the retail price in the manner as stipulated under the Act.</p>	<p>Such person shall pay a penalty of ten thousand rupees or five percent of the amount of tax involved, whichever is higher:</p> <p>Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of the total retail price of such goods.</p>	<p>Sub-section (27) of section 2 and clause (a) of sub-section (2) of section 3.</p>
<p>27. Any person, being owner of the goods, which are brought to Pakistan in violation of section 40D.</p>	<p>Such person shall pay a penalty of ten thousand rupees or five percent of the amount of tax involved, whichever is higher:</p> <p>Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow</p>	<p>Section 40D.</p>

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	redemption of such goods on payment of fine which shall not be less than twenty percent of value, or retail price in case of items falling in the Third Schedule, of such goods.	
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**Provisions relating to goods supplied from tax-exempt areas**

**Section 40D**

To prevent the misuse of tax exemption and monitoring the goods supplied from tax-exempt areas, controlling measures have been provided in this section as briefly given below:

- The conveyance carrying goods supplied from tax-exempt areas shall be accompanied by prescribed documents.
- Check-posts will be established on routes as coming from tax-exempt areas to examine the documents for ascertaining their validity and conformity of goods.
- In the absence of the prescribed documents or discrepancy found in such documents, the goods along with the vehicle shall be seized and notices showing intention to impose penalty shall be issued to owner of goods and the vehicle.

For the purpose of this section, 'tax-exempt areas' mean Azad Jammu and Kashmir, Gilgit-Baltistan, Tribal areas and such areas as may be prescribed.

**Certain transactions not admissible**

**Section 73(4)**

New sub-section (4) has been added in this section whereby a registered manufacturer shall make all tax supplies to person registered under the Sales Tax Act excluding supplies not exceeding value of one hundred million rupees in a financial year or ten million rupees in a month failing which the supplier shall not be entitled to claim credit adjustment or deduction of input tax as attributable to such excess supplies to unregistered person.

The aforesaid sub-section (4) has been introduced to ensure that if supplies are made by a registered person to any person who purchased goods of more than 100 million rupees in the financial year, further supply to such person shall not be made unless the person becomes a sales tax registered person. Similarly, no supplies exceeding 10 million rupees in a month will be made to any person who is not registered under Sales Tax Act, 1990.

It has been clarified by FBR through S.T.G.O No. 1 dated 16 January 2020 that provisions of the aforesaid sub-section (4) shall not apply to supplies made to:

- a) Federal / Provincial / Local Government departments, authorities, etc., not engaged in making of taxable supplies.
- b) Foreign missions, diplomats and privileged persons.
- c) All other persons not engaged in supply of taxable goods.

It is also clarified that the threshold of Rupees 10 million per month / Rupees 100 million per year is applicable on goods supplied to one specific person by the registered manufacturer.



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**Sixth Schedule, Table – 1, serial No. 24**

Import or local supplies of edible oils and vegetable ghee including cooking oil on which FED is charged, levied and collected by registered manufacturer or importer as it were a sales tax payable was exempt from sales tax under this schedule. Now, by amendment in 'Explanation' of this serial number the said exemption will not be available on local supplies made by the importers.

**Sixth schedule, Table – 1, Serial No. 82 & 83  
Eighth Schedule, Table – 1, Serial No. 68 & 69**

Frozen, prepared or preserved sausages and similar products of poultry or meat offal as well as meat and similar product or prepared, frozen or preserved meat or meat offal of all types including poultry meat and fish were exempt as per serial numbers 82 and 83 of the Sixth Schedule.

On the other hand the same entries were also included in Table – 1 of the Eight Schedule, (serial numbers 68 and 69) to charge sales tax at reduced rate. This anomaly has been removed by amendments in the aforesaid four entries.

Now, exemption under the Sixth Schedule will be available to the aforesaid items other than those sold in retail packing under a brand name or a trade mark. And, if sold in retail packing under a brand name or trade mark the same shall be charged to tax at reduced rate of 8% under the Eight Schedule.

**Eighth Schedule, Table – 1, Serial No. 5**

Sales tax rate applicable on import of raw cotton and ginned cotton has been enhanced from 5% to 10%.

**Ninth Schedule, Serial No. 2(A) & (B)**

Sales tax on import or local supply and at the time of registration of cellular mobile phones or satellite phones has been reduced to:

1. Rupees 130 from Rupees 135 if value not exceeding USD 30, and
2. Rupees 200 from Rupees 1320 if value exceeding USD 30 but not exceeding USD 100.

**Twelfth Schedule, New clause 2(x)**

Minimum value addition tax at the rate of 3% ad valorem shall not be applicable on plant, machinery and equipment falling in chapter 84 and 85 of the Fifth Schedule to the Customers Act, 1969 as are imported by a manufacturer for in-house installation or use.

**Twelfth Schedule, clause (4)**

By substituting this clause, refund of excess input tax over output tax which is attributable to tax paid under this schedule will now be allowed to a registered person in case items imported are used for making zero-rated supplies. Earlier, such refund was not allowed.