



COMMENTS ON FINANCE ACT, 2020

These comments summarise important changes introduced by the *Finance Act, 2020* in respect of *Income Tax and Federal Sales Tax*. For better understanding of the effect of changes in the Income Tax Ordinance, 2001 and Sales Tax Act, 1990, we suggest these should be read with reference to the main provisions of the law.

Amendments contained in the Finance Act, 2020 only to correct the mistakes of words, spellings etc., having no effect on the existing provisions and those of administrative nature with no fiscal or legal effect, have been ignored.

Unless otherwise indicated, all the changes are effective for the Tax Year 2021. For the purposes of collection or deduction of tax, changes take effect from July 01, 2020.

July 9, 2020



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SALIENT FEATURES

Income Tax

- All individuals and AOPs can now opt to pay tax on “Income from Property” at the rates specified for “Business Income” derived by individuals and AOPs. Earlier, this option was available only to individuals and AOPs deriving income of more than Rs. 4 million under the head “Income from Property”.
- Expenditures can now be made up to Rs. 25,000 in cash. Earlier this limit was Rs. 10,000. In addition, expenditures under a single account head having aggregate expenditure in a tax year of up to Rs. 250,000 can also be made in cash. Earlier this limit was also Rs. 50,000.
- The bifurcation of immovable properties into open plot and constructed property has been removed. The formula for calculating the capital gain from immovable property has been changed leading to substantially less amount of capital gain becoming chargeable to tax as the years progress. In addition, tax rates on capital gains have been reduced by half.
- Business losses incurred in a tax year commencing on or after July 1, 2020 by a resident company engaged in hotel business can be carried forward for eight (8) years. Earlier, such losses could have been carried forward upto six (6) years.
- A new condition has been introduced for NPOs to claim tax credit under section 100C. Now, a statement of voluntary contributions and donations received in the immediately preceding tax year must be filed in the prescribed form and manner by the NPOs every year.
- For tax year 2020 and onwards, a builder or a developer can opt to pay tax at the rates prescribed in the newly added Eleventh Schedule, on a project by project basis, on the income, profits and gains derived from the sale of buildings or sale of plots from:
 - (a) a new project to be completed by September 30, 2022; or
 - (b) an incomplete existing project to be completed by September 30, 2022.
- Permanent establishment of a non-resident company has been included in the ambit of section 113, making them liable to pay minimum tax.
- Persons whose income is subject to final taxation shall also be required to file a return of income under section 114. Earlier, such persons were not required to file a return of income and were instead required to file a statement in a prescribed form.
- Specified persons who are registered with FBR before September 30, 2020, are required to submit a taxpayer’s profile by December 31, 2020. All persons who register with FBR on or after September 30, 2020 will submit a taxpayer’s profile to FBR within 90 days of registration. Moreover, non-filing of the taxpayer’s profile will result in removal of the person’s name from Active Taxpayer List (ATL).
- Commissioner will be intimated for revision of a wealth statement. And if the Commissioner feels that such revision is not for correcting a bona fide omission or wrong statement, he may declare such revision as void through an order after giving an opportunity of being heard.
- Automatic assessment orders for returns filed will not be issued anymore. Instead, returns filed will be processed through an automated system of FBR to check for any arithmetical error,



incorrect claims, disallowance of any loss or deductible allowance or tax credit and disallowance of any credits. If the process reveals any adjustments to be made, the taxpayer shall be given a system generated notice to explain within 30 days why the adjustments should not be made. In case no adjustments are made within 6 months of filing of return, the filed return will be deemed to be assessed on the day return was filed.

- The limit for an individual and AOP for becoming a withholding agent under section 153 has been increased to annual turnover of Rs. 100 million or more in any previous tax year. Previously this limit was Rs. 50 million. The new limit will also apply for an individual and AOP who are registered under the Sales Tax Act, 1990.
- Now the withholding statements will be required to be filed on a quarterly basis with due dates of filing being April 20th, July 20th, October 20th and January 20th for the respective quarters.
- Advance tax on functions and gatherings; cable operators and other electronic media; dealers, commission agents and arhatis etc.; insurance premium and education related expenses remitted abroad has been removed. Moreover, advance tax to be collected by local educational institutions has been removed for persons appearing in the ATL.
- Rates of tax to be deducted from payment to non-residents or Permanent Establishment of non-residents for certain specified services have been reduced to 3%.

Federal Sales Tax

- The limit of sale made by a retailer for being exempt from the requirements of section 23 have been increased to Rs. 100,000 per transaction including sales tax. Previously this limit was Rs. 50,000 and received a lot of backlash from the retailers. It remains to be seen whether this enhanced limit will encourage retailers to come in the ambit of sales tax or not.
- Commissioner will now be able to conduct audit proceedings electronically through video links or any other facility prescribed by FBR.
- Previously, only a manufacturer was required to make sales of Rs. 100 million or above to registered persons in order to claim input tax adjustment on such sales. However, now all registered persons are required to make sales of Rs. 100 million or above to registered persons in order to be able to claim input tax adjustment on such sales.
- To encourage retailers to integrate with FBR's computerized system for real-time reporting of sales, the rate of sales tax on sales made from such integrated retail outlets has been further reduced to 12%. Previously this rate was 14%.
- Sales tax at 5% will be deducted by Companies from gross value of supplies made by persons "other than Active Taxpayers". This seems like an anomaly as persons other than Active Taxpayers includes registered persons who are not Active Taxpayers and unregistered persons. If registered persons who are not Active Taxpayers are included in this category, then it will lead to confusion if sales tax is deducted at 5% of gross value of supplies made by them since they would have already charged sales tax in their invoice.

END OF SALIENT FEATURES



Income Tax Ordinance, 2001

2 Definitions

(29C) (aa) A new sub-clause i.e. (aa) has been inserted in the definition of an **Industrial Undertaking** which from the 1st day of May, 2020 includes a person directly involved in the construction of buildings, roads, bridges and other such structures or the development of land in the definition of an Industrial Undertaking. However, this inclusion will be 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.

(30A) Existing Clause (30A) and (30AA) have been renumbered as (30AA) and (30AB) so that a new clause can be added as (30A) which defines an “**Integrated Enterprise**” as a person integrated with the Board through approved fiscal electronic device and software.

(30AC) A new clause i.e. (30AC) has been added to define “**IRIS**” as a web-based computer programme for operation and management of Inland Revenue taxes administered by the Board.

(31A) The definition of “**Local Government**” has been updated so as the definition is based on the latest Local Government Acts i.e. Balochistan Local Government Act, 2010, the Khyber Pakhtunkhwa Local Government Act, 2013, the Sindh Local Government Act, 2013, the Islamabad Capital Territory Local Government Act, 2015 and the Punjab Local Government Act, 2019. It has also been clarified in the definition that the definition will apply for the respective provisions and Islamabad Capital Territory. Earlier, this definition was based on Local Government Ordinances of 2001 of respective territories and did not include Islamabad Capital Territory Act or Ordinance.

(36) Sub-clause (a) and (b) The definition of “**Non-Profit Organization (NPO)**” has been made broader by inserting below two changes:

Clause (a): Instead of “development purposes”, the definition now specifies “purposes for general public” as one of the criteria for NPO; and

Clause (b): The definition now specifies that NPOs “formed and registered **by or under**” any law instead of just “formed and registered **under** any law” will fall under the definition of a NPO.

7A Tax on shipping of a resident person

(1)(c) A new clause i.e. (c) has been added in sub-section 1 of section 7A, through which Pakistan resident ship owning companies registered with the Securities and Exchange Commission of Pakistan after November 15th, 2019 and having their own sea worthy vessel(s) registered under Pakistan Flag have been brought under the ambit of presumptive tax regime.

Such companies shall now pay tonnage tax of an amount equivalent to seventy-five US Cents per ton of gross registered tonnage per annum.



- (2) The applicability of section 7A has been extended till June 30, 2030 as earlier it was applicable till June 30, 2020.

15A Deductions in computing income chargeable under the head “Income from Property”

- (1)(h) The allowable deduction limit of expenditure for deriving rent chargeable to tax under the head “Income from Property”, including administration and collection charges, has been reduced to 4% of the rent chargeable to tax before any deductions. Earlier this limit was 6%.

- (7) Now, all individuals and AOPs can opt to pay tax on “Income from Property” at the rates specified for “Business Income”. If they opt so, they can deduct the expenses prescribed in section 15A from their “Income from Property” to arrive at the Taxable Income under the head “Business”.

Earlier, this option was available only to individuals and AOPs deriving income of more than Rs. 4 million under the head “Income from Property”.

21 Deductions not allowed

- (l) After a long time, the limits for expenditures in cash have been enhanced. Now, expenditures can be made up to Rs. 25,000 in cash. Earlier this limit was Rs. 10,000.

In addition, expenditures under a single account head having aggregate expenditure in a tax year of up to Rs. 250,000 can also be made in cash. Earlier this limit was Rs. 50,000.

- (m) Salary can now be paid in cash up to Rs. 25,000 per month per employee. Earlier this limit was Rs. 15,000 per month per employee.

- (p) New clause i.e. (p) has been added in section 21 which mentions that expenditure on utility bills may also be subject to prescribed limitations for allowability as expenses. No limitations have been prescribed at the moment, however, this gives FBR the power to prescribe limitations any time in future.

- (q) To push large traders towards documentation, a new clause i.e. (q) has been added in section 21 which mentions that expenditure attributable to sales made by an industrial undertaking to persons who are eligible to be registered under Sales Tax Act, 1990 but not actually registered will be disallowed as per the following formula:

$$(A/B) \times C$$

Where,

A is the total amount of deductions claimed under Section 21;

B is the turnover for the year; and

C is the total amount of sales exclusive of sales tax and federal excise duty to persons required to be registered but not registered under the Sales Tax Act, 1990.



However, there are three (3) criterion for determining the above disallowance of expenditure which are:

- i. If the sales made to an unregistered person are below Rs. 100 million, then the full expenses related to such sales will be allowed as deductions;
- ii. Total amount of disallowance under this clause shall not be more than 10% of the total deductions claimed under section 21; and
- iii. This clause shall come into force from October 1, 2020.

22 Depreciation

- (2) A new proviso has been added in sub-section (2) to limit the normal depreciation deduction allowed on an asset used for the first time in business. As per the proviso, if an asset is used for the first time after July 1, 2020, then the normal depreciation deduction allowed as per the Income Tax Ordinance, 2001 in the first year will be reduced by 50%. Earlier, 100% depreciation deduction at the specified rate could have been claimed by a taxpayer.
- (8) To balance the reduction in depreciation deduction allowed in the first year as mentioned above, a new proviso has been inserted in sub-section (8) which allows balance 50% of depreciation deduction of the first year of use in the year of disposal. This is only applicable for an asset which is used for the first time after July 1, 2020. Earlier, no depreciation deduction was allowed in the year of disposal.

This means that any assets already in use of the taxpayer will continue to be depreciated like before and no depreciation deduction will be allowed for them in their year of disposal. This may make the accounting for depreciation a bit more complex for the taxpayers since they will have to manage pre and post July 1, 2020 assets separately for tax purposes.

28 Profit on debt, financial costs and lease payments

- (1)(b) A new proviso has been added in clause (b) of sub-section (1) which limits the principal amount to Rs. 2.5 million of passenger transport vehicles not plying for hire for the purpose of determining deduction on account of lease rentals. Although, imposing a limit to make sure that businesses do not charge luxury car lease rentals for tax purposes makes sense but the limit of Rs. 2.5 million seems too low considering the current price range of vehicles in Pakistan. This limit makes only 1,000cc and few 1,300cc vehicles suitable for business and all other vehicles are being considered unsuitable for business as per FBR.

37 Capital gains

- (3A) The bifurcation of immovable properties into open plots and constructed property which was introduced in tax year 2020 has been removed. Moreover, the formula for calculating the capital gain has also been changed to substantially reduce the tax on capital gains from immovable property.



Now, capital gains from immovable properties will be taxed as per the new criteria mentioned below:

S.No.	Holding period	Gain to be taxed
1	Where the holding period of immovable property does not exceed 1 year	A
2	Where the holding period of immovable property exceeds 1 year but does not exceed 2 years	A x 3/4
3	Where the holding period of immovable property exceeds 2 years but does not exceed 3 years	A x 1/2
4	Where the holding period of immovable property exceeds 3 years but does not exceed 4 years	A x 1/4
5	Where the holding period of immovable property exceeds 4 years	NIL

Where **A** is the amount of the gain determined under sub-section (2) of section 37.

Moreover, the tax rates on capital gains in Division VIII of Part I of the First Schedule have also been reduced by half as below:

S.No.	Amount of gain	Rate of tax
1	Up to Rs. 5,000,000	2.5%
2	Between Rs. 5,000,001 and Rs. 10,000,000	5%
3	Between Rs. 10,000,001 and Rs. 15,000,000	7.5%
4	Above Rs. 15,000,000	10%

37A Capital gain on disposal of securities

(3B) A new sub-section (3B) has been inserted in section 37A to clarify that shares of a public company shall be considered as security if such company is a public company at the time of disposal of such shares.

57 Carry forward of business losses

(2B) A new sub-section (2B) has been inserted in section 57 to give relief to resident companies engaged in hotel business due to the Covid-19 situation. Now, a business loss incurred by such companies in a tax year commencing on or after July 1, 2020 can be carried forward for eight (8) years. Earlier, such business losses could have been carried forward upto six (6) years.

61 Charitable donations

A new proviso has been added in sub-section (2) of section 61 where if the donation in cash or in kind is given to an associate by a donor, the limit of tax credit allowed to a donor will be reduced to 15% for individuals and AOPs and reduced to 10% for companies. Earlier there was no such restriction on giving donations to associates.



- (2) This change will affect people who are running recognized non-profit organizations and funding them through earnings of their own businesses. In our country, a lot of good work is being done by people in their individual capacity and this change will affect their efforts.

65C Tax credit for enlistment

- (1) Through this change, the tax credit available to companies for enlisting on any registered stock exchange of Pakistan has been limited to those companies which get enlisted on or before June 30, 2022. Earlier, there was no time limit specified for enlisting to avail the tax credit. This seems like a move to push companies for listing.

100C Tax credit for certain persons

- (1)(d) Sub-clauses (a) and (b) of clause (d) of sub-section (1) of section 100C has been renumbered as sub-clauses (i) and (ii) respectively to remove any complications in reading and referencing.

- (1)(g) A new clause i.e. (g) has been added in sub-section (1) of section 100C through which a new condition has been added for non-profit organizations to claim 100% tax credit. Under the new condition, a statement of voluntary contributions and donations received in the immediately preceding tax year has to be filed in the prescribed form and manner.

This will become an annual filing for the approved NPOs. However, the form and manner are yet to be prescribed by FBR.

- (1A) To make it more clear, sub-section (1A) now mentions that surplus funds of non-profit organizations, trusts or welfare institutions will be taxed at 10%. Earlier, trusts and welfare institutions were not mentioned in the sub-section.

100D Special provisions relating to builders and developers

To give effect to the concessions given to the real estate sector in the Tax Laws (Amendment) Ordinance, 2020 a new section i.e. 100D has been inserted with effect from April 17, 2020, which mentions that:

- i. Builder and Developer are defined as:
 - (a) **Builder** means a person who is registered as a builder with the FBR and is engaged in the construction and disposal of residential or commercial buildings.
 - (b) **Developer** means a person who is registered as a developer with the FBR and is engaged in the development of land in the form of plots of any kind either for itself or otherwise.
- ii. For tax year 2020 and onwards, the tax payable by a builder or a developer, who opts to pay tax under this section shall be computed and paid in accordance with the rules in the Eleventh Schedule, on a project by project basis, on the income, profits and gains derived from the sale of buildings or sale of plots from:



- (a) a new project to be completed by September 30, 2022; or
 - (b) an incomplete existing project to be completed by September 30, 2022.
- iii. However, any income, profits and gains earned up to tax year 2019 by a builder or developer of an incomplete existing project shall not be subject to taxation under this section 100D and will be subject to same tax provisions which existed before the commencement of Tax Laws (Amendment) Ordinance, 2020 i.e. April 17, 2020.
 - iv. Any income of a builder or developer other than income, profits and gains subject to tax under section 100D shall be subject to tax as per the provisions of Income Tax Ordinance, 2001.
 - v. If a builder or developer opts to pay tax under section 100D, his income shall not be chargeable to tax under any head of income or to minimum tax or to alternate corporate tax.
 - vi. Further, no deduction for any expenditure incurred in deriving the income, no deductible allowance and no set off of losses shall be allowed.
 - vii. In addition, no tax credit shall be allowed except credit for advance tax collected after April 17, 2020 under section 236A (collected at sale by auction) or 236K (collected from buyer of a property) on purchase of immovable property utilized in a project;
 - viii. There shall be no refund of any tax collected or deducted under this Income Tax Ordinance, 2001;
 - ix. If a person makes capital investment in a new project, to be completed by September 30, 2022, in the form of money or land, in the manner and subject to the conditions specified by section 100D, then the person will not be liable to explain the source of acquiring that money or land, as the case may be;
 - x. Completion of the projects shall be certified by the prescribed authorities and parties in the prescribed manner;
 - xi. The first purchaser of a building or a unit of the building purchased directly from the builder shall not be liable to explain the source of funds for purchase price of the building or unit of the building if the payment is made during a period starting from the date of registration of the project with the FBR and ending on September 30, 2022 through a crossed banking instrument
 - xii. Purchaser of a plot who intends to construct a building thereon shall not be liable to explain the source of funds for purchase of the plot if the purchase of plot, the payment for the plot and the construction on the plot is made during the specified period and the person registers on IRIS.

However, no such exemption has been given for the money to be used for construction on such plot.
 - xiii. However, following shall not be exempt from explaining the source of funds as the first purchaser of a building or a unit of the building purchased from the builder or as purchaser of a plot intending to construct a building thereon:



- (a) Holder of any public office as defined in the Voluntary Declaration of Domestic Assets Act, 2018 or his benamidar as defined in the Benami Transactions (Prohibition) Act, 2017 or his spouse or dependents;
- (b) a public listed company, a real estate investment trust or a company whose income is exempt under any provision of this Ordinance; or
- (c) any proceeds derived from the commission of a criminal offence including the crimes of money laundering, extortion or terror financing but excluding the offences under Income Tax Ordinance, 2001.
- xiv. 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.
- xv. The rate of tax under section 100D shall be computed in accordance with the Table below:

Area of immovable property	Cities (Areas)		
	Karachi, Lahore and Islamabad	Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	Urban Areas not specified in previous two (2) columns
	TAX ON BUILDERS FOR COMMERCIAL BUILDINGS		
Any size	Rs. 250 per Sq. ft	Rs. 230 per Sq. ft	Rs. 210 per Sq. ft
	TAX ON BUILDERS FOR RESIDENTIAL BUILDINGS		
upto 3,000 Sq. ft	Rs. 80 per Sq. ft	Rs. 65 per Sq. ft	Rs. 50 per Sq. ft
3,000 Sq. ft and above	Rs. 125 per Sq. ft	Rs. 110 per Sq. ft	Rs. 100 per Sq. ft
	TAX ON DEVELOPERS (ENTIRE PROJECT)		
Any size	Rs.150 per Sq. yd	Rs.130 per Sq. yd	Rs. 100 per Sq. yd
	FOR DEVELOPMENT OF INDUSTRIAL AREA		
Any size	Rs. 20 per Sq. yd	Rs. 20 per Sq. yd	Rs. 10 per Sq. yd

- xvi. In case of mixed use buildings having both commercial and residential areas, respective rates mentioned above shall apply.
- xvii. In case of development of plots and constructing buildings on the same plots as one project, both rates shall apply:



Provided that in the case of low-cost housing and all projects developed by NAPHDA, the higher rates shall apply.

106A Restriction on deduction of profit on debt payable to associated enterprise

A new section i.e. 106A has been inserted through which the allowed deduction for profit on debt of a foreign-controlled resident company from a non-resident person or from an associate of the foreign-controlled resident company will be reduced by an amount equivalent to 15% of the sum of taxable income before depreciation and amortization and the foreign profit on debt.

However, the above reduction shall not be applied if the total amount of such foreign profit on debt is less than Rs. 10 million in a tax year.

If any foreign profit on debt is not allowed as deduction under this section, it can be carried forward for the next three (3) tax year.

111 Unexplained income or assets

- (1) Now, if a person cannot provide explanation, to the satisfaction of the Commissioner, with respect to suppressed amount of production, sales or any amount chargeable to tax, or any item of receipt liable to tax, then they will be included in the person's income chargeable to tax under the head "Income from Business". Earlier, these were added to the person's income chargeable to tax under the head "Income from Other Sources". This will enable the unexplained income or assets to be treated in the correct head of income and not treated as other sources, hence allowing benefit of deductions allowed for Business income during the tax year.

113 Minimum tax on the income of certain persons

Permanent establishment of a non-resident company has also been included in the ambit of section 113. Earlier, they were excluded from applicability of minimum tax.

114 Return of income

- (1)(ae) Now, persons whose income is subject to final taxation shall also be required to file a return of income under section 114. Earlier, such persons were not required to file a return of income and were instead required to file a statement in a prescribed form.

114A Taxpayer's profile

A new section i.e. 114A has been inserted which requires specified persons who are registered with FBR before September 30, 2020 to submit a profile in a prescribed format and with prescribed information by December 31, 2020.

If a person registers with FBR on or after September 30, 2020, then they will submit a profile to FBR in a prescribed format and with prescribed information within 90 days of registration.



Once submitted, the profile will be updated for any changes within 90 days of such change. However, the prescribed manner and forms of submitting the profile and changes in the profile is awaited.

The specified persons are:

- (a) Every person applying for registration under section 181;
- (b) Every person deriving income chargeable to tax under the head “Income from Business”;
- (c) Every person whose income is subject to Final Taxation;
- (d) any non-profit organization as defined in clause (36) of section 2;
- (e) any trust or welfare institution; or
- (f) any other person prescribed by the Board.

This means that the existing registered persons who fall in the categories defined in (b) to (f) above will have to file the taxpayer’s profile despite being registered. And all persons applying for new registrations will have to file a taxpayer’s profile.

116 Wealth statement

- (3) Previously, a wealth statement filed by a person could be revised at any time without any approval from or intimation to any authority or officer. Now, sub-section (3) has been amended to require intimation to the Commissioner in a prescribed form and manner for revision of a wealth statement. And if the Commissioner feels that such revision is not for correcting a bona fide omission or wrong statement, he may declare such revision as void through an order after giving an opportunity of being heard.

An explanation has also been added in sub-section, which mentions that a wealth statement cannot be revised after expiry of 5 years from the due date of filing of return of income of that tax year. Previously the law was silent on this aspect.

From the wording it seems that the wealth statement can still be revised without requiring prior approval of the Commissioner. However, based on the intimation the Commissioner may declare such revision void later on after following the above process. Through this change FBR has given itself an option of rejecting the changes in a wealth statement if deemed fit, where previously a wealth statement could be changed without any challenge.

- (4) Sub-section (4) has been deleted. This change makes the filing of wealth statement compulsory for persons falling under final tax regime as previously they were granted exemption from filing a wealth statement under sub-section (4).

120 Assessments

- (2A) Previously, an assessment order was deemed to have been issued against a return on the day the return of income was filed. The IRIS also used to issue an assessment order under section 120 the same day a return was filed.



Through the changes made by inserting a new sub-section (2A) in section 120, the assessment order will not be issued on the same day of filing the return. Now, the return filed by taxpayer will be processed through an automated system of FBR to check for any arithmetical error, incorrect claims, disallowance of any loss or deductible allowance or tax credit and disallowance of any credit.

If the process reveals any adjustment to be made, the taxpayer shall be given a **system generated** notice to explain within 30 days why the adjustment should not be made. In case no adjustment is made within 6 months of filing of return, the filed return will be deemed to be assessed on the day return was filed.

However, the newly inserted sub-section (2A) does not specify the authorized person to make such adjustment. It seems that the process is meant to be carried out through system and without any physical interaction with the taxpayers. This may lead to litigation in the practical scenarios as taxpayers may challenge the process basing it on lack of authority and chance of proper hearing.

122 Amendment of assessments

- (5) Previously an assessment order could have been amended by the Commissioner on the basis of “*definite information acquired from an audit or otherwise*”. This led to a lot of litigation due to different interpretations of the word “*otherwise*”. Sub-section (5) has been amended now, so that an assessment order can now be amended by the Commissioner “*on the basis of audit or on the basis of definite information*”.

However, this may lead to new litigation as an audit, if carried out properly, should ideally highlight definite basis for amendment but the new wording has left the definite part out for the audit.

122D Agreed assessment in certain cases

This new section has been inserted which has introduced a new option for taxpayers. Now, in response to notice of amendment under sub-section (9) of section 122, if a taxpayer chooses to, in addition to his response to the Commissioner he can also file an offer of settlement in the prescribed form before the Assessment Oversight Committee (AOC).

The AOC will then either accept or amend the offer made by the taxpayer. Once both parties reach a consensus the assessment will be amended by the Commissioner, the agreed tax will be deposited and the taxpayer will waive any right to appeal against the amended assessment.

If the AOC and the taxpayer do not agree, the matter will take the normal course under section 122(9). In addition, the AOC will not be able to take up offers of settlement in cases involving concealment of income or where interpretation of question of law is involved having effect on other cases.

The rules regarding the procedure of the AOC are still to be prescribed by the FBR. However, the members have been specified i.e. Chief Commissioner Inland Revenue,



Commissioner Inland Revenue and Additional Commissioner Inland Revenue having jurisdiction over the taxpayer.

148 Imports

(Twelfth Schedule) Previously advance tax was collectable on all imports except the items exempt from tax under the Income Tax Ordinance, 2001. However, a new Twelfth Schedule has been added in the Income Tax Ordinance, 2001 linked with section 148 in which the goods have been specified on which advance tax will be collected at import stage.

Through this change, now a list has been introduced which can be updated as and when desired by FBR to include or exclude any good from collection of advance tax at import stage.

152 Payments to non-residents

(1BBB) Under this new sub-section, tax deducted from payment made for advertisement services to a non-resident media person will be minimum tax.

(2B) Now, tax deducted from all payments made to a permanent establishment in Pakistan of a non-resident person shall be treated as minimum tax, except tax deducted from payment for sale of goods by a company being a manufacturer of such goods.

153 Payments for goods, services and contracts

(1)(a) Toll manufacturing has been included in sub-section (1) clause (a) thus making a payment for toll manufacturing effectively a payment for sale of goods.

(3) Now, taxes deducted from all payments made under section 153 will be considered minimum tax except:

(a) Tax deducted from payments made for sale or supply of goods to a company being a manufacturer of such goods or to a public company listed on a registered stock exchange in Pakistan; and

(b) Tax deducted from payments made for execution of contract to a public company listed on a registered stock exchange in Pakistan.

(4) A public company listed on a registered stock exchange in Pakistan may apply for receiving payment of goods without tax deduction. Such application will be processed within 15 days by the Commissioner and if not processed, will then automatically be issued by IRIS.

(7) In a welcome change for businesses, the limit for an individual and AOP for becoming a withholding agent under section 153 has been increased. Now if an individual or AOP have annual turnover of Rs. 100 million or more in any previous tax year, they will then be treated as a withholding agent. Previously this limit was Rs. 50 million which put extra burden on small/medium businesses to operate as a withholding agent.



In continuation of the above change, persons registered under the Sales Tax Act, 1990 will be a withholding agent if their turnover in any of the previous tax years is Rs. 100 million or more. Previously, a person was treated as a withholding agent if he was registered under Sales Tax Act, 1990 without any regard to turnover, making it extremely difficult for new and small businesses to operate.

These changes will give breathing space to small/medium businesses who were hampered by the restrictions of doing business as withholding agents.

165 **Statements**

- (1) Now the withholding statements will be required to be filed on a quarterly basis with due dates of filing being April 20th, July 20th, October 20th and January 20th for the respective quarters. Last year the filing requirement was changed to bi-annual basis from monthly basis.

In addition, it has now been made clear that if banks are providing the information to FBR under section 165A of the taxes collected, then they will not be required to file the withholding statements under section 165.

- (1) A new sub-section i.e. (1A) has been added which mentions that the FBR can prescribe any person involved or engaged in business to file a quarterly statement in the prescribed format. This will allow FBR to require people who do not fall in the ambit of section 165 to file quarterly statements.

177 **Audit**

- (2A) Through this newly inserted sub-section (2A), Commissioner will now be able to conduct audit proceedings electronically through video links or any other facility prescribed by FBR.

- (2AA) As per this newly inserted sub-section (2AA), if a person:

- (a) has not furnished record or documents including books of accounts;
- (b) has furnished incomplete record or books of account; or
- (c) is unable to provide sufficient explanation regarding the defects in records, documents or books of account.

the Commissioner shall then determine taxable income on the basis of **Sectoral Benchmark Ratios** prescribed by the FBR.

Sectoral Benchmark Ratios is a new term introduced in the Income Tax Ordinance, 2001 which means standard business sector ratios notified by the FBR on the basis of comparative cases and includes financial ratios, production ratios, gross profit ratio, net profit ratio, recovery ratio, wastage ratio and such other ratios in respect of such sectors as may be prescribed.

If implemented properly, this can help reduce subjectivity and variation in assessments and will bring some consistency in the audit proceedings where the taxpayers do not submit the required information.



182 Offences and penalties

Table

Sr. #

4A A new penalty has been inserted for persons who are required to furnish or update taxpayer's profile but fail to furnish or update within the due date. Such persons shall pay a penalty of Rs. 2,500 per day of default with minimum penalty of Rs. 10,000.

4B Utility providing companies will now pay a penalty of Rs. 10,000 per connection if they process any connection of electricity or natural gas for a person not having a NTN.

182A Return not filed within due date

(2) A new sub-section has been added under which a person will be removed from the Active Taxpayer List ("ATL") if he does not file or update the taxpayer's profile within the due date or extended date. However, a person will be included in the ATL if he files the taxpayer's profile after the due date with the following surcharge:

- (a) Rs. 20,000 in case of a company;
- (b) Rs. 10,000 in case of an AOP; and
- (c) Rs. 1,000 in case of an individual.

The above-mentioned surcharge will be in addition to any other liability or penalty which may be imposed under the Ordinance.

This will add another requirement to be included in the ATL for the taxpayers which is not going to be welcomed by taxpayers. Non-filing or delayed filing could have been just penalized but linking it with ATL seems a bit harsh on taxpayers.

231B Advance tax on private motor vehicles

(7) A new proviso has been added in sub-section (7) which clarifies that motor vehicle does not include a rickshaw, motorcycle-rickshaw and any other motor vehicle having engine capacity upto 200cc. Therefore, no advance tax under section 231B will be collected from rickshaw, motorcycle-rickshaw and any other motor vehicle having engine capacity upto 200cc.

236D Advance tax on functions and gatherings

Section 236D has been deleted. As a result, going forward there will be no advance tax collected on payments for functions and gatherings.

236F Advance tax on cable operators and other electronic media

Section 236F has been deleted. As a result, going forward there will be no advance tax collected on payments to cable operators and other electronic media.



236I Collection of advance tax by educational institutions

- (1) Sub-section (1) has been updated so that advance tax on fee collected by educational institutions will not be collected from persons appearing in the ATL. This will give relief to parents who are Filers.

236J Advance tax on dealers, commission agents and arhatis etc.

Section 236J has been deleted. As a result, going forward there will be no advance tax collected on payments to dealers, commission agents and arhatis etc.

236Q Payment to residents for use of machinery and equipment.

- (3) Now, tax deducted under section 236Q will be minimum tax. Earlier, it used to be final tax.

236R Collection of advance tax on education related expenses remitted abroad

Section 236R has been deleted. As a result, going forward there will be no advance tax collected on education related expenses remitted abroad.

236U Advance tax on insurance premium

Section 236U has been deleted. As a result, going forward there will be no advance tax collected on insurance premiums. Earlier, under this section advance tax was collectable from persons not appearing in ATL.

236X Advance tax on tobacco

Section 236X has been deleted. As a result, advance tax on tobacco has been cancelled giving a boost to the Tobacco industry.

THE FIRST SCHEDULE

Part II of the First Schedule has been replaced as below:

PART II RATES OF ADVANCE TAX [See Division II of Part V of Chapter X]

The rate of advance tax to be collected by the Collector of Customs under section 148 shall be:



S. #	Persons	Rate
1	Persons importing goods classified in Part I of the Twelfth Schedule	1% of the import value as increased by customs-duty, sales tax and federal excise duty
2	Persons importing goods classified in Part II of the Twelfth Schedule	2% of the import value as increased by customs-duty, sales tax and federal excise duty
3	Persons importing goods classified in Part III of the Twelfth Schedule	5.5% of the import value as increased by customs-duty, sales tax and federal excise duty

Provided that the rate specified in column (3):

- (a) in case of manufacturers covered under rescinded Notification No. S.R.O. 1125(I)/2011 dated the December 31st, 2011 as it stood on the 28th June, 2019 on import of items covered under the aforementioned S.R.O. shall be 1%;
- (b) in case of persons importing finished pharmaceutical products that are not manufactured otherwise in Pakistan, as certified by the Drug Regulatory Authority of Pakistan shall be 4%.

PART III DEDUCTION OF TAX AT SOURCE

Division I

Advance Tax on Dividend

A new clause (ba) has been added which prescribes that tax at the rate of 25% will be deducted from dividend paid by a company where no tax is payable by such company, due to exemption of income or carry forward of business losses under Part VIII of Chapter III or claim of tax credits under Part X of Chapter III.

Division IA

Profit on Debt

In order to claim the reduced tax rate of 10% on profit on debt the taxpayer will be required to furnish a certificate to the payer of profit that during the tax year yield or profit paid is Rs. 500,000 or less.

Division IB

Return on Investment in Sukuks

Rate of tax on return on investments in Sukuk has been increased to 25% in case the Sukuk-Holder is a company. Previously this rate was 15%.



Division II

Payments to non-residents

As a big relief to the non-residents or Permanent Establishments of non-residents, rate for deduction of tax from payments made for certain specified services has been reduced to 3%. Previously these services were subject to tax deduction at 8% for companies and 10% for non-companies with exception of transport services which were subject to tax deduction at 2%. The specified services are as under:

S. #	Services	Rate of tax deduction
a	Transport services	3%
b	Freight forwarding services	
c	Air cargo services	
d	Courier services	
e	Manpower outsourcing services	
f	Hotel services	
g	Security guard services	
h	Software development services	
i	IT services and IT enabled services	
j	Tracking services	
k	Advertisement services other than by print or electronic media)	
l	Share registrar services	
m	Engineering services	
n	Car rental services	
o	Building maintenance services	
p	Inspection services	
q	Certification services	
r	Testing services	
s	Training services	
t	Services rendered by Pakistan Stock Exchange Limited and Pakistan Mercantile Exchange Limited	

Division III

Payments for goods and services

New services have been added in paragraph (2) sub-paragraph (i) which will be subject to tax deduction at 3% as below:

S. #	Services	Rate of tax deduction
a	Warehousing services	3%
b	Services rendered by asset management companies	
c	Data services provided under license issued by the Pakistan Telecommunication Authority	
d	Telecommunication infrastructure (tower) services	



PART IV
DEDUCTION OR COLLECTION OF ADVANCE TAX
Division VIII

Advance tax at the time of sale by auction

Rate of advance tax in case of immovable property sold by auction has been reduced to 5% of the gross sale price. Previously this rate was 10%.

THE SECOND SCHEDULE
EXEMPTIONS AND TAX CONCESSIONS

PART I
EXEMPTION FROM TOTAL INCOME

- (114AA) A new clause 114AA has been inserted giving a one-time exemption from tax on capital gains derived by a resident individual from the sale of constructed residential property provided that:
- (a) at the time of sale, the residential property was being used for the purpose of 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;
 - (b) 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
 - (c) exemption under this clause has not previously been availed by the individual, his spouse or dependents.

PART III
REDUCTION IN TAX LIABILITY

- (9B) A new clause (9B) has been inserted in Part III which mentions that 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%.

PART IV
EXEMPTION FROM CERTAIN PROVISIONS

- (46AA) Taking some of the items included in S.R.O 586 of June 30, 1991, a new clause (46AA) has been inserted in Part IV to exclude the following from the applicability of section 153 i.e. deduction from payment for supply of goods and services:



1. a Provincial Government;
 2. a local Authority;
 3. persons who are residents of Azad Kashmir and execute contracts in Azad Kashmir only and produce a certificate to this effect from the concerned income tax authority;
 4. persons receiving payments from a company or an association of persons having turnover of 50 million rupees or more or from an individual having turnover of 50 million rupees or more exclusively for the supply of agriculture produce including fresh milk, fish by any person engaged in fish farming, live chicken, birds and eggs by any person engaged in poultry farming and by an industrial undertaking engaged in poultry processing which has not been subjected to any process other than that which is ordinarily performed to render such produce fit to be taken to market;
 5. companies receiving payments for the supply of electricity and gas;
 6. companies receiving payments for the supply of crude oil;
 7. hotels and restaurants receiving payments in cash for providing accommodation or food or both, as the case may be;
 8. shipping companies and air carriers receiving payments for the supply of passenger tickets and for the cargo charges of goods transported;
 9. individuals who are not registered under section 181 of the Income Tax Ordinance, 2001, receiving payments for the supply of sand, bricks, grit, gravel, crushed stone, soft mud or clay; and
 10. Artisans, plumbers, electricians, surface finishers, carpenters, painters or daily wagers, receiving payments in respect of services provided or rendered to the construction sector including construction of buildings, roads, bridges and other such structures or the development of land, subject to the following conditions, namely:
 - (a) services under this clause are provided or rendered by an individual who is not registered under section 181;
 - (b) the name, CNIC and address of such individual is recorded by the recipient of such service; and
 - (c) payment for such services is made directly to such individual.
- (101A)

Under this new clause, the provisions of sections 231A (Tax on cash withdrawal from a bank, 231AA (Advance tax on transactions in bank) and 236P (Advance tax on banking transactions otherwise than through cash) shall not apply to a Pak Rupee Account in a tax year to the extent of foreign remittances credited into such account during that tax year.

END OF SUMMARY OF CHANGES IN THE INCOME TAX ORDINANCE, 2001



Sales Tax Act, 1990

Section

2 Definitions

(46)(j) A new definition has been added to determine the value of supply of used vehicles as below:

“In case of registered person who is engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing, and which are, later on, sold in the open market after making certain value addition, value of supply will be the difference between sale and purchase price of the said vehicle on the basis of the valuation method prescribed by the Board”.

8B Adjustable input tax

(4A) Under this new sub-section, input tax allowed in case of locally manufactured electric vehicles subject to reduced rate of tax under the Eighth Schedule shall be limited to the extent of amount of output tax and no refund or carry forward of excess input tax shall be allowed.

This is a special case, where locally manufacturers of electric vehicles will be allowed to claim input tax, subject to limitations, despite the output tax being at a reduced rate.

11C Power of tax authorities to modify orders, etc.

As a very encouraging change, a new section has been inserted under which the Commissioner or officer of inland revenue may follow the decision of the High Court or Appellate Tribunal in so far as it applies to said question of law arising in any assessment pending before the Commissioner or an officer of Inland Revenue.

If the decision of the High Court or of the Appellate Tribunal is reversed or modified, the Commissioner or an officer of Inland Revenue may, notwithstanding the expiry of period of limitation prescribed for making any assessment or order, within a period of one year from the date of receipt of decision, modify the assessment or order in which the said decision was applied so that it conforms to the final decision.

23 Tax invoices

(1)(b) The limit of sale made by a retailer for being exempt from the requirements of section 23 have been increased to Rs. 100,000 per transaction including sales tax. Previously this limit was Rs. 50,000 and received a lot of backlash from the retailers.



It remains to be seen whether this enhanced limit will encourage retailers to come in the ambit of sales tax or not.

25 Access to records, documents, etc.

(2A) Through this newly inserted sub-section (2A), a Commissioner will now be able to conduct audit proceedings electronically through video links or any other facility prescribed by FBR.

73 Certain transactions not admissible

(4) Previously, only a manufacturer was required to make sales of Rs. 100 million or above to registered persons in order to claim input tax adjustment on such sales. However, now all registered persons are required to make sales of Rs. 100 million or above to registered persons in order to be able to claim input tax adjustment on such sales.

Eighth Schedule To encourage retailers to integrate with FBR's computerized system for real-time reporting of sales, the rate of sales tax on sales made from such integrated retail outlets has been further reduced to 12%. Previously this rate was 14%.

Eleventh Schedule Previously, as per serial number 4 of the TABLE under Eleventh Schedule, sales tax at 5% was deductible by Companies from gross value of supplies made by unregistered persons. However, the serial number 4 has been updated to say that sales tax at 5% will be deducted by Companies from gross value of supplies made by persons "other than Active Taxpayers".

This seems like an anomaly as persons other than Active Taxpayers includes registered persons who are not Active Taxpayers and unregistered persons. If registered persons who are not Active Taxpayers are included in this category, then it will lead to confusion if sales tax is deducted at 5% of gross value of supplies made by them since they would have already charged sales tax in their invoice.

Registered persons who are not Active Taxpayers should have been kept separate from unregistered persons and tax from them could have been withheld at a specified ratio of the sales tax charged by them in the sales tax invoice. If not rectified, practical implication of this change will be difficult and create new issues for taxpayers and FBR.

END OF SUMMARY OF CHANGES IN THE SALES TAX ACT, 1990