

IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL, MOST BENEFICENT

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TAX BRIEFING MARCH 2019



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COMMENTARY FINANCE SUPPLEMENTARY (SECOND AMENDMENT) ACT, 2019

This document has been prepared to communicate our understanding of Finance Supplementary (Second Amendment) Act, 2019. Although the highest standards of Professional Competence and Care has been followed regarding the showing of facts & figures in this Commentary. However, Khilji & Co, Chartered Accountants do not assume any responsibility as to the correctness, alteration or change of these fact & figures. Moreover, Khilji & Co, Chartered Accountants should not be held responsible for any action taken / not taken on the basis of information contained in this document. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This document is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.



TAX BRIEFING

FINANCE SUPPLEMENTARY

(SECOND AMENDMENT) ACT, 2019

Khilji & Co (Chartered Accountants) is pleased to present this tax briefing, which is primarily aimed to help in understanding the impact of the changes that are brought about by Finance Supplementary (Second Amendment) Act, 2019 (hereinafter referred to "FSA 2019") relating to Income Tax, Sales Tax Laws, Federal Excise Duty and Customs Duty. We understand that accent of President is still awaited.

It is suggested that changes should not generally be acted upon without first obtaining appropriate professional advice.

This has always been a pleasure to be of service to our clients.

This briefing can also be accessed on our website

Special thanks to Team KCO for getting this done in time.

Sharif ud din Khilji, FCA

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1. AMENDMENTS IN INCOME TAX

Section 4B – Super Tax

Part I, Division IIA: Rate of Super Tax

Super tax @ 4% is restored for banking companies for all tax years up to Tax Year 2021, earlier it was reduced by Finance Act 2018 to 0% for tax year 2018, 3% for tax year 2020 and 2% for tax year 2021. Now super tax is payable by banking companies @ 4% for tax year 2018 to tax year 2021. Returns for tax year 2018 have already been filed by banks while interestingly, no mechanism and timeline has been provided in the Act for payment of super tax by banks for tax year 2018.

For persons other than banking companies, super tax is reduced from 1% to 0% for tax year 2020 while no change is made for tax year 2018, tax year 2019 and tax year 2021 i.e. it is maintained @ 3%, 2% and 0% respectively.

Section 5A(1) – Tax on undistributed profits

Tax on undistributed reserves is applicable @ 5% for tax year 2017 and onwards. Its application is now restricted till tax year 2019.

Section 37A(5) – Capital gain on sale of securities

Through the insertion of a proviso to sub-section 5, the loss of disposal has been allowed to be carried forward to next three years from TY 2019 & onwards.

"Provided that so much of the loss sustained on disposal of securities in tax year 2019 and onwards that has not been set off against the gain of the person from disposal of securities chargeable to tax under this section shall be carried forward to the following tax year and set off only against the gain of the person from disposal of securities chargeable to tax under this section, but no such loss shall be carried forward to more than three tax years immediately succeeding the tax year for which the loss was first computed."

Section 49(4) – Federal Govt, Provincial Govt and Local Govt Income

The proviso to subsection (4) has been amended so as to extend the exemption on income from sale of spectrum licenses to income on “renewal of the licenses” also.

Section 99B – Special procedure for small traders and shopkeepers

A new section is to be inserted for prescribing special procedure as to taxation of small shopkeepers and traders for cities/territories mentioned in the notification issued in this respect.

“Notwithstanding anything contained in this Ordinance, the Federal Government may' by notification in the official Gazette, prescribe special procedure for scope and payment of tax, filing of return and

assessment in respect of such small traders and shopkeepers, in such cities or territories, as may be specified therein."

The speech by Finance Minister appears to suggest that initially the procedure will be provided for small traders in Islamabad.

Section 123(1A) – Provisional assessment in certain cases

The scope of provisional assessment section 123 has been extended to "offshore asset" through insertion of sub-section (1A).

"(1A) Where an offshore asset of any person not declared earlier, is discovered by the Commissioner or any department or agency of the Federal Government or a Provincial Government, the Commissioner may at any time before issuing any assessment order under section 121 or amended assessment order under section 122, issue to the person a provisional assessment order or provisional amended assessment order, as the case may be, for the last completed tax year of the person taking into account the offshore asset discovered"

Section 148(8)(a) – Imports

The clause (a) of sub-section (8) of section 148 is deleted excluding commercial imports from minimum tax regime and restoring the position prior to Finance Act 2018 i.e. such imports are now again subject to final tax regime.

Section 165 – Statements

Subsection (1) has been amended so as to require "biannual" filing of withholding statements instead of "monthly". Subsection (2) has been replaced as to incorporate the corresponding period requirements fixing July 31 and January 31 to be dates for filing of statements for period ending on June 30 and December 31 respectively.

A new subsection (2B) is inserted empowering the Commissioner to require statement for any period on his/her discretion by a notice in writing.

Section 227C – Restriction on purchase of certain assets

Restrictions had been placed on purchase of motor vehicles by non-filers. These restrictions were relaxed by Finance Supplementary (Amendment) Act 2018 dated October 08, 2018 and now been further relaxed to allow non-filers to purchase any locally manufactured motor vehicle with restriction of engine capacity.

Moreover, "Non-resident Pakistani citizen holding international passport" have been made eligible for purchase of any motor vehicle or property in Pakistan irrespective of their filer status subject to the condition that they can produce a certificate from a scheduled bank for receipt of foreign exchange remitted from outside Pakistan through normal banking channels during a

period of sixty days prior to the date of booking, registration or purchase of motor vehicle or date of registration, recording or attesting transfer of property, as the case may be.

Section 230E - Directorate-General of Transfer Pricing

The above-mentioned section describing the above-mentioned Directorate General and its powers is to be substituted as follows:

"230E Directorate General of International Tax Operations,-

(1) The Directorate General of International Tax Operations shall consist of a Director-General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors and such other officers as the Board may, by notification in the official Gazette, appoint.

(2) The Board may, by notification in the official Gazette-

- (a) specify the functions and jurisdiction of the Directorate General and its officers; and*
- (b) confer the powers of authorities specified in section 207 upon the Directorate General and its officers.*

(3) The functions and powers of the Directorate General of International Tax Operations shall include but not limited to-

(a) receive and send information from other jurisdictions under spontaneous, automatic and on demand exchange of information under exchange of information agreements;

(b) ' levy and recover tax by passing an assessment order under section 123(1A) in case of undeclared off-shore assets and incomes;

(c) receive, transmit and exchange country by country reports to the jurisdictions that are parties to international agreements with Pakistan and

(d) conduct transfer pricing audit in cases selected for such audit by the Director General of International Tax Operations.

(4) The Board may, by notification in the official Gazette, specify the criteria for selection of the taxpayer for transfer pricing audit.

Explanation.- For the removal of doubt, it is clarified that transfer pricing audit refers to the audit for determination of transfer price at arm's length in transactions between associates and is independent of audit under section 177, 214C which is audit of the income tax affairs of the taxpayer.";

Section 233A - Collection of tax by a stock Exchange registered in Pakistan

The above-mentioned section has been made inapplicable from first day of March 2019, hence advance tax collection under the above-mentioned section is to be stopped from March 01, 2019 as per provisions of insertion of sub-section 3.

FIRST SCHEDULE:**Part II: Rates of Advance Tax**

The amendment seeks to insert another proviso setting out rates on import of mobile phones as follows:

S.No	C&F Value of mobile phone (US dollars)	Tax (Rs.)	
		Filer	Non-filer
1	Up to 30		70
2	Exceeding 30 and up to 100		730
3	Exceeding 100 and up to 200		930
4	Exceeding 200 and up to 350		970
5	Exceeding 350 and up to 500		3000
6	Exceeding 500		5200

Part IV: Rates of Advance Tax

The amendment seeks to make following changes:

Division VI: withholding tax on cash withdrawal @ 0.3% of the cash amount for filers to be deleted.

Division VIA: advance tax on banking transaction has been fixed @ 0.6% of the transaction for non-filers only and withdrawn for filers.

Division VII: The rates for non-filers on purchaser of motor vehicles have been substantially increased for each slab starting from vehicles having engine capacity up to 850CC to ones having more than 3000cc.

Division XI: The rate for a function of marriage in marriage hall, marquee or a community place for area less than 500 sq. yards has been reduced to "higher of 5% of the Act ad valorem or Rs. 5000".

SECOND SCHEDULE:**Part I: Exemptions from total income**

Clause (66): The amendment seeks to insert "National Disaster Risk Management Fund", "Deposit Protection Corporation established under sub-section (1) of section 3 of Deposit Protection Corporation Act 2016 (Act XXXVII of 2016)" and "Suramaya e Pakistan Limited" at number "lxiii", "lxiv" & "lxv" respectively in the list of institutions whose income is exempt from tax.

Clause: (103C): a new clause has been inserted introducing the formula for calculation of dividend eligible for exemption for a company recipient of such dividend that has availed group relief u/s 59.

“(103C) Dividend income derived by a company, if the recipient of the dividend, for the tax year has availed group relief under section 59B, computed according to the following formula-

*A * B / C*

Where-

A is the amount of dividend;

B is the shareholding of the company receiving the dividend in the company distributing the dividend; and

C is the total ordinary share capital of the company distributing the dividend”

Clause 126I: Five year tax exemption from date of set up is to be provided in respect of profits and gains of an industrial undertaking set up between March 01, 2019 and June 30, 2023 and engaged in manufacture of plant, machinery, equipment and items with dedicated use (no multiple uses) for generation of renewable energy from sources like solar and wind.

Clause 160O: The new clause has been inserted whereby exemption for five years has been provided to profit and gains of a green field industrial undertaking incorporated on or after July 01, 2019 which is not formed by re-structuring.

Part IV: Exemption from Specific Provisions

Clause 11A: The amendment seeks to insert “National Disaster Risk Management Fund”, “Deposit Protection Corporation established under sub-section (1) of section 3 of Deposit Protection Corporation Act 2016 (Act XXXVII of 2016)”, “Surmaya E Pakistan Limited” and “Green Field Industrial Undertaking as per Clause 160O” at number “xxxi”, “xxxii”, “xxxiii” & “xxxiv” respectively in the list of institutions to which provisions of minimum tax shall not apply.

The newly inserted clause (36B) exempts profit on debt paid on promissory notes issued under the provisions of Sales Tax Act, 1990 from withholding u/s 151

The newly inserted clause (36C) exempts profit on debt paid on Pakistan Banao Certificate from withholding u/s 151

The newly inserted clause (36D) exempts profit on debt paid to SARMAYA-E- PAKISTAN LIMITED from withholding u/s 150 & 151

The newly inserted clause (36E) exempts profit on debt paid on bonds issued under Federal Government Duty Drawback Bonds Rules, 2019 from withholding u/s 151

Clause 38D: The amendment seeks to insert a new clause exempting “National Disaster Risk Management Fund” from provisions of Section 151 and 153 i.e withholding tax on interest income, sale of goods, rendering of services and execution of contracts.

Clause 60D: The newly inserted clause exempts import of firefighting equipment by industrial undertakings set up in the special economic zones established by the Federal Government from the withholding provisions u/s 148.

Clause 81A: The banking companies have been exempted from reporting cash withheld on cash withdrawals and on profit on debt in withholding statements filed in terms of section 165(1)(a).

Clause 95A: has been inserted granting exemption from the provisions of section 236A i.e. advance tax on auction in respect of auction of franchise rights of participating teams in a national and international league organized by a board or organization established by Govt of Pakistan with effect from July 01, 2019.

Clause 101A: has been inserted granting exemption from the provisions of section 231A i.e. advance tax on cash withdrawals if the deposits in the account are made solely from foreign remittances credited directly into such account.

Clause 111: has been inserted exempting a banking company (as defined in the said section to be inserted) from Super tax in respect of taxable income that is subject to reduced rate of 20% under rules 7D, 7E and 7F (additional advances to micro/small/medium enterprises, low cost housing finance & Farm Credit) of the Seventh Schedule for TY 2020 to 2023.

SEVENTH SCHEDULE:

Rule 7D: Reduced rate of tax for additional advances to micro, small and medium enterprises

New Rule is inserted providing reduced rate of 20% on interest income earned on additional loans (loans provided in addition to average advances already provided in TY 2019) to micro, small and medium enterprises for TY 2020 to 2023 subject to furnishing of Auditor certification certifying such/details of advances along with gross and net margin earned from such advances amounts while e-filing return of income. A formula is also provided for calculating taxable income subject to reduced rate.

Rule 7E: Reduced rate of tax for additional advances to low cost housing finance

New Rule is inserted providing reduced rate of 20% on interest income earned on additional loans (loans provided in addition to average advances already provided in TY 2019) to low cost housing for TY 2020 to 2023 subject to filing of details of such advances along with gross and net margin earned from such advances certified by Auditor. A formula is also provided for calculating taxable income subject to reduced rate.

Rule 7F: Reduced rate of tax for additional advances to Farm Credits

New Rule is inserted providing reduced rate of 20% on interest income earned on additional loans (loans provided in addition to average advances already provided in TY 2019) to Farm Credit for Agriculture Financing excluding advances made to a company as defined in section 80 for TY 2020 to 2023 subject to filing of details of such advances along with gross and net margin earned from such advances certified by Auditor. A formula is also provided for calculating taxable income subject to reduced rate.

2. AMENDMENTS IN SALES TAX

Section 2, Clause 11A & 11B:

In section 2, clause 11A will be renumbered as 11B.

While newly inserted clause 11A defines “FBR Refund Settlement Company (Pvt) Ltd” to be incorporated under this name for settlement of refund claims by way of issuing bonds in terms of 67A.

Section 67A:

A new section is inserted for payment of refunds through refund bonds issued by the Company formed u/s 11A. FBR will issue promissory notes instead of cheques or electronic advice to SBP in accordance with mode, manner &, features as below subject to opting so by the claimant. The main features of scheme are as under:

1. Maturity period is three years.
2. To be issued in multiples of Rs. One Hundred Thousand.
3. Rate of interest is 10%.
4. Only FBR can redeem before maturity with simple profit payable at the time of redemption.
5. Notes can be traded freely in country's secondary markets.
6. Shall be acceptable to banks as collateral.
7. No compulsory deduction of zakat.
8. Transferrable subject to conditions.

Sixth Schedule

- Following exemptions have been restricted to June 30, 2023, these were previously available for unlimited period.
 - o Serial # 110 (Table 1) - Certain items (list mentioned under serial 110) with dedicated use of renewable source of energy like solar and wind, subject to verification by AEDB.
 - o Serial # 7 (Table 3) - Machinery, equipment and spares - projects of power generation through nuclear and renewable energy resources
 - o Serial # 14A (Table 3) - Systems and items for dedicated use with renewable source of energy like solar, wind, geothermal etc.
- Serial # 117 and 118 of Sixth Schedule provided for exemption to “appliances for colostomy” and “colostomy and urostomy bags” respectively. Serial # 118 is omitted and Serial # 117 is substituted to extend exemption on import & supply of appliances and

items required for ostomy procedures as specified in the Chapter 99 of the First Schedule of the Customs Act, 1969 (HS Code 99.25). The change is in line with change in PCT Code # 9925 of First Schedule to Customs Act 1969.

- Exemption from sales tax on import & supply to is now provided to Plant and machinery (Chapter 84 & 85) excluding consumer durable goods and office equipment by greenfield industries for manufacture of taxable goods during their construction and installation period subject to conditions that importer be registered on or after July 2019, the industry is not established by splitting up or reconstruction or reconstitution of an undertaking already in existence or by transfer of machinery or plant from another industrial undertaking in Pakistan and issuance of exemption certificate by the Commissioner having jurisdiction.

Ninth Schedule

- Serial No 2 is to be substituted as follows:

Description	Sales tax on import or local supply	Sales tax chargeable at the time of registration of IMEI number by CMOs	Sales tax on supply payable at time of supply by CMOs
Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:			
A. Not exceeding US \$ 30	Rs. 150	Rs. 150	-
B. Exceeding US \$ 30 but not exceeding US \$ 100	Rs. 1,470	Rs. 1,470	-
C. Exceeding US \$ 100 but not exceeding US \$ 200	Rs. 1,870	Rs. 1,870	-
D. Exceeding US \$ 200 but not exceeding US \$ 350	Rs. 1,930	Rs. 1,930	-
E. Exceeding US \$ 350 but not exceeding US \$ 500	Rs. 6,000	Rs. 6,000	-
F. Exceeding US \$ 500	Rs. 10,300	Rs. 10,300	-

3. AMENDMENTS IN CUSTOM DUTY

- Zero rating benefit extended to fire fighting equipment
- The Finance Act amended PCT code 9925 of First Schedule to the Customs Act, 1969 to extend zero rating to a detailed list of “items and appliances for ostomy use” which was previously available to “colostomy bags and appliances identifiable for Ostomy use” only.
- The Finance Act decreases the rate of customs duty from 5% to 3% in respect of Polymers of ethylene, in primary forms (PCT Code - 3901.0000) and Polymers of propylene or of other olefins, in primary forms (PCT Code - 3902.0000).
- The Finance Act decreases the rate of customs duty from 5% to 0% in respect of Newsprint in rolls or sheets [PCT Code - 4801.0000].
- The Finance Act provided reduced rate of customs duty in respect of raw material imported by various industrial sectors subject to certain conditions. The sectors include footwear, tanners, leather, gloves, furniture, ceramics, diapers/ sanitary napkins, home appliances, infant formula, chemical manufacturing and PVC/ Plastic manufacturers.

4. AMENDMENTS IN FEDERAL EXCISE

Appointment of Federal Excise officers and delegation of powers

[Section 29(2)(aa)]

- Editorial correction.

First Schedule - Table I

- Currently 20% FED is applicable in respect of Imported motor cars, SUVs and other motor vehicles of cylinder capacity of 1700 cc or above, principally designed for the transport of persons (other than vehicles falling under PCT heading 87.02 i.e. Motor vehicles for the transport of ten or more persons, including the driver). The Finance Act proposes to increase the rate of FED for vehicles as follows:
 - For aforementioned imported vehicles exceeding 1700 cc but not exceeding 3000 cc, the rate is to be increased to 25% ad valorem.
 - For aforementioned imported vehicles exceeding 3000 cc, the rate is to be increased to 30% ad valorem.
 - For aforementioned locally manufactured vehicles exceeding 1700 cc or above, the rate is to be made applicable at the rate of 10% ad valorem as opposed to NIL previously.

5. MOBILE HANDSET LEVY

- Finance Act 2018 introduced mobile handset levy in respect of all smart phones exceeding Rs. 10,000. The table providing the levy rates has now been replaced with new applicable rates as follows:

S.NO.	Mobile Phones having C&F value (US \$)	Rate of levy per set (Rs.)
1.	Up to 30	NIL
2.	Above 30 and up to 100	NIL
3.	Above 100 and up to 200	500
4.	Above 200 and up to 350	1500
5.	Above 350 and up to 500	3500
6.	Above 500	7000

THANKING NOTE

Lastly, it is matter of true privilege for Khilji & Co, Chartered Accountants, to thank all its team members for their contributions during preparation of this document. It was really helpful to have all inputs. KCO considers itself extremely fortunate to have this highly capable, dedicated and exemplary team.

It has been a monumental effort for all team members contributing through their services and expertise to make this document possible in such a short span of time. We hope and believe that this document would assist our clients and team members in better understanding and evaluation of the Budget proposals.

We always strive to improve our quality of services and feedback on this document would be of great help in achieving this goal.

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