

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

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TAX BRIEFING JAN 2020



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**COMMENTARY
ON
TAX LAWS (SECOND AMENDMENT)
ORDINANCE, 2019**



This document has been prepared to communicate our understanding of **TAX LAWS 2nd AMENDMENT ORDINANCE 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.

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TAX BRIEFING

FINANCE SUPPLEMENTARY TAX LAWS SECOND AMENDMENT ORDINANCE, 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 **Tax Laws Second Amendment Ordinance 2019** relating to Income Tax, and Sales Tax Laws. We understand that the approval from National Assembly 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.

BOARD OF PARTNERS
JANUARY 5, 2020

1. AMENDMENTS IN INCOME TAX ORDINANCE, 2001

GREENFIELD INDUSTRIAL UNDERTAKING SECTION 2(27A)

Certain tax concessions are provided for “Greenfield industrial undertaking” under clause 126-O, Part I, Second Schedule of Income Tax Ordinance, 2001. Although there is a general understanding of definition of “Greenfield Projects” however our tax laws did not provide any specific definition therefore a specific definition of ‘**greenfield industrial undertaking**’ has now been inserted 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 splitting up or reconstruction of an undertaking already in existence or by transfer of machinery, plant or building form an undertaking established in Pakistan prior to commencement of new business and is not part of expansion project;
 - iv) using any process or technology that has not earlier been used in Pakistan and is so approved by Engineering Development Board; and
- b) is approved by the Commissioner Inland Revenue on an application made in the prescribed manner and accompanied by the prescribed documents as may be required by the Commissioner

Note: The above definition is applicable and effective from July 1, 2019.

APPELLATE TRIBUNAL SECTION 130

Through the Second Amendment Ordinance, significant provisions have been substituted in section 130 of ITO, 2001, the details are here-under;

- 1) There shall be established an Appellate Tribunal to be called the Appellate Tribunal Inland Revenue to exercise the powers and perform the functions conferred on the Appellate Inland Revenue tribunal by this Act,
- 2) The Appellate Tribunal Inland Revenue shall consist of a chairman and such other judicial and accountant members who shall be appointed in such manner as the Prime Minister may prescribe by the rules, which may be made and shall take effect notwithstanding anything contained in section 237 or any other law or rules for the time being in force.

- 3) Criteria for the appointment of Judicial Members has been substituted as follows:

Existing	Revised
Has exercised the powers of a District Judge and is qualified to be a Judge of High Court; or	Has been a Judge of a High Court Is or has been a District Judge; or
Is or has been advocate of a High Court and is qualified to be appointed as a Judge of a High Court	Is an advocate of a High Court with a standing of not less than ten years; or Possesses such other qualification as may be prescribed under sub-section (2) of section 130

- 4) No specific changes made for the appointment of Accountant Members except change of wording.

Existing	Changed
A person may be appointed as an accountant member of an appellate tribunal if	No person shall be appointed as an accountant member of Appellate Tribunal Inland Revenue unless he
He is an officer of Inland Revenue Service equivalent to the rank of Regional Commissioner	is an officer of Inland Revenue Service equivalent to the rank of Regional Commissioner
A Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) having at least three years' experience as Commissioner or Collector	Is a Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) having not less than three years' experience as Commissioner or Collector
a person who has, for a period of not less than ten years, practiced professionally as a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961)	Has for a period of not less than ten years, practiced professionally as a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961)
a person who has, for a period of not less than ten years, practiced professionally as a cost and management accountant within the meaning of Cost and Management Accountants Act, 1966 (XIV of 1966)	Has for a period of not less than ten years, practiced professionally as a cost and management accountant within the meaning of Cost and Management Accountants Act, 1966 (XIV of 1966)

- 5) The constitution, functioning of benches and procedures of the Appellate Tribunal shall be regulated by the rules prescribed by the Prime Minister.

- 6) The rules in respect of the matters covered under section 130 of the ITO, 2001 prior to commencement of (Second Amendment Ordinance, 2019) shall continue in force unless amended or repealed.

TAX ON NON-RESIDENT COMPANIES HAVING NO PERMANENT ESTABLISHMENT (PE) IN PAKISTAN

SECTION 152, CLAUSE 112, 113 & 114 PART IV, SECOND SCHEDULE

1. Tax @ 10% is now required to be deducted from capital gain arising on the disposal of debt instruments and Government securities (including Treasury Bills and Pakistan Investment Bonds) invested through special convertible rupee account (SCRA).
2. Banking Company / financial institution maintaining SCRA of a non-resident companies are the withholding agent.
3. Tax so deducted is final tax on the income of subject non-resident companies.
4. It appears that tax withholding is required to be made at the time when proceeds from disposal are accounted for in the SCRA and that no adjustment for any capital loss may be made by the withholding agent [i.e. Banking Company/Financial Institution]
5. The requirements to obtain tax registration under Section 181 of the Income Tax Ordinance, 2001 and also to file statement of final taxation under Section 115(4) will no longer apply, in case capital gains or profit on debt is earned from investments made through SCRA (maintained with a banking company or financial institution) in debt instruments & Government securities (including treasury bills and Pakistan investment bonds). Despite not appearing on Active Taxpayers List (ATL), they will not be subjected to higher tax withholding under the Tenth Schedule on interest income and capital gains relating to such securities.
6. Advance tax under section 147(5B) will also be not payable.
7. Tax withholding applicable on banking transactions by those not appearing on ATL (under section 236P) will not apply to SCRA.

IMPOSITION OF FINES AND CANCELLATION OF BUSINESS LICENSE

SECTION 181D

Section 181D of the Ordinance was inserted through the Finance Act, 2019 whereby it was made mandatory for every person engaged in any business, profession or vocation to obtain and display a business license as prescribed by the FBR.

The following fines have now been prescribed for persons who fail to obtain business license:

- Rs. 25,000, where the person is deriving income chargeable to tax under the Ordinance; or
- Rs. 5,000 in any other case.

Furthermore, the Commissioner has been empowered to cancel the business license in cases where a person:

- fails to notify any change in particulars within 30 days of change; or
- is convicted of any offence under any federal tax law.

CLOSURE OF INCOME TAX AUDIT OF PERSONS AUTOMATICALLY SELECTED UNDER OMITTED SECTION 214D SECTION 214E

The section 214-D, which provided for automatic selection of taxpayer for audit due to late filing, was deleted through the Finance Act, 2018. However, a large number of audits were pending due to such automatic selection. In order to close such tax audit a new section 214E inserted through the Finance Supplementary (Amendment) Act, 2018 enabling FBR to close the audit proceedings after payment of certain amount of tax / penalty by due date.

Section 214E has been further modified whereby FBR has been empowered to prescribe procedure for conclusion of above referred outstanding audits.

DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT SECTION 216

A public servant is prohibited from disclosure of information to any person except as provided in the law and now Financial Monitoring Unit (FMU) established under the Anti-Money Laundering Act, 2010 is also included in the list of such exceptions with the intention to strengthen better implementation of anti-money laundering procedures by FMU.

PROCEDURE PRESCRIBED FOR TRANSFER PRICING AUDIT SECTION 230E

Section 230E has been modified to provide that transfer pricing audit is to be conducted as per provisions of section 177 of Income Tax Ordinance, 2001 except for following provisions of section 177:

- First proviso to sub-section 1 which provides for reasons to be recorded for calling of books of accounts.
- Sub-section 6A which provides for applicability of section 122.
- Sub-section 10 & 14 which provide for applicability of section 121.

Apart from the above, all provision of section 177 shall apply. Moreover, the provisions of section 230E do not restrict the Commissioner from applying transfer pricing provisions during audit under section 177 or 214C or proceedings under section 122 of Income Tax Ordinance, 2001.

GROUP RELIEF ON DIVIDEND INCOME CLAUSE 103C, PART I, SECOND SCHEDULE READ WITH SECTION 59B

Previously intercompany dividends for companies availing group relief under section 59B were fully exempt however the exemption was modified earlier to provide for exemption of dividend in proportion to holding of parent entity however the changes by this Ordinance has restored original position i.e. full exemption of intercorporate dividends for companies availing group relief.

TAX REGIME FOR TRADERS SECTION 113, SECTION 153, CLAUSE 28D, PART II, SECOND SCHEDULE, CLAUSE 115 PART IV, SECOND SCHEDULE

in pursuance of agreement between representatives of Federal Government and trade bodies on dated October 30, 2019, following changes have been made:

- i) Minimum tax @ 1.5% of turnover is applicable on individuals under section 113 if their annual turnover exceeds Rs. 10 million in tax year 2017 or in any subsequent tax year. The rate of minimum tax has been reduced from 1.5% to 0.5% for tax year 2020 for traders (individuals only) having turnover up to Rs. 100 million. However, for traders who have filed income tax returns for tax year 2018, the tax liability for tax years 2019 and 2020 should not be less than the tax liability for tax year 2018.
- ii) The traders being individuals having turnover up to Rs. 100 million have been exempted from acting as withholding agent under section 153.

It is noted that the definition of turnover is different in section 113 and section 153 whereby turnover under section 113 is exclusive of sales tax while turnover under section 153 is inclusive of sales tax. The exemptions are provided to traders having turnover up to Rs. 100 million for both sections therefore it appears that the legislative intent was to provide exemption to traders with turnover of Rs. 100 million excluding sales tax but there is no clarity provided in the newly inserted provisions in this regard hence likely to be a moot point between taxpayers and FBR.

AUTOMATIC RENEWAL OF WITHHOLDING EXEMPTION CERTIFICATE CLAUSE 72B, PART IV SECOND SCHEDULE

Clause (72B) provides that section 148 i.e. tax collection at import stage shall not apply to industrial undertakings and Commissioner Inland Revenue issues an exemption certificate in this regard subject to conditions provided under subject clause. The exemption certificate is usually issued for a limited period and is thereafter required to be renewed.

Now clause 72B has been amended to provide that the Commissioner shall be deemed to have issued exemption certificate in cases where the certificate is automatically processed and issued by IRIS upon expiry of prescribed time period.

The concerned Commissioner has, however, been empowered to cancel or modify any such certificate automatically issued on IRIS but any such cancellation or modification may be made after granting the taxpayer an opportunity of being heard and for reasons to be recorded by the Commissioner in writing.

EXPORT ORIENTED SECTORS
CLAUSE 28E OF PART I SECOND SCHEDULE
CLAUSE 45A, PART IV SECOND SCHEDULE
CLAUSE 66, PART IV SECOND SCHEDULE

Clause 28E has been inserted to provide 0.5% minimum tax rate under section 113 for traders of yarn.

Clause 45A(a) provides that the five export-oriented sectors (textile, carpets, leather, surgical goods, sports goods) are required to deduct taxes @ 1% in respect of payments made by them against local supplies & services provided to them.

There is a proviso to aforementioned sub-clause “a” which provides that no tax under section 153(1)(a) & (b) shall be deducted from payments to traders of yarn by the aforementioned export-oriented sectors subject to the condition that traders of yarn pay minimum tax @ 0.1% of their annual turnover on monthly basis. This scheme is not changed and the supply of goods and services by yarn traders to afore-mentioned export-oriented sectors is now made subject to withholding tax @ 0.5%.

Sub-Clause “c” of clause 45A restricted the benefits of clause 45A for taxpayers who get themselves registered by June 30, 2011. Clause “c” has now been omitted hence the benefits of clause 45A are now available to taxpayers registered after June 30, 2011 as well.

Clause 66, Part IV, Second Schedule provided exemption to export-oriented sectors from collection of tax at source under section 235 through electricity bills. The sectors were previously under zero rated regime of sales tax as Finance Act 2019 abolished the zero rated regime however clause 66 still referred to the zero rated regime. The text of the clause has been modified to exclude the reference to zero rated regime and the exemption is maintained.

CAPITAL GAIN ON IMMOVABLE PROPERTY
CLAUSE 9A, PART III SECOND SCHEDULE

Under clause 9A, tax payable on Capital gain on sale of immovable property is reduced by 50% on the 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 Governments being original allottees of the immovable property. Now the clause has been further amended to provide for reduction of tax payable by 75% if the immovable property is sold after three years.

2. AMENDMENTS IN SALES TAX ACT, 1990

DEFINITION OF GREENFIELD INDUSTRY SECTION 2(12A)

Import of Plant and machinery and office equipment by greenfield industries during their construction and installation period is exempt under Sales Tax Act, 1990 subject to certain conditions. However, the term “greenfield industry” was not previously defined under Sales Tax Act, 1990 resulting in uncertainty and confusion as to its applicability. This has been defined now in the similar manner to the one as defined under Income Tax Ordinance, 2001.

TIER-1 RETAILER SECTION 2(43A)

As per Sales Tax Act, 1990 retailer falling under Tier-1 retailers are subject to all requirements (registration, charge of tax, monthly filing of return, input adjustment, debit/credit note etc.) of the Act.

Previously there was some ambiguity as to whether the registered person falling under any category of Clause 43A would be classified as Tier-1 retailer or it must fall under all categories to be considered as such. This has been clarified now that a retailer falling any one or more categories would be considered as Tier-1 retailer.

Further, the limit of Rs. 600,000 of cumulative electricity bill during immediately preceding consecutive twelve months has been revised upward to Rs. 1,200,000. A new sub clause has also been added whereby FBR has been empowered to prescribe any other person or class of person to be considered as Tier-1 retailer.

The amended definition of Tier-I Retailer is as follows:

“Tier-1 retailer” means a retailer falling in any one or more of the following categories, namely:–

- (a) a retailer operating as a unit of a national or international chain of stores;
- (b) a retailer operating in an air-conditioned shopping mall, plaza or centre, excluding kiosks;
- (c) a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds Rupees twelve hundred thousand;
- (d) a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers;
- (e) a retailer, whose shop measures one thousand square feet in area or more; and
- (f) any other person or class of persons as prescribed by the Board.

OFFENCES AND PENALTIES SECTION 33

New entries have been added in the table of offences and penalties under Section 33 of Sales Tax Act, 1990 explained hereunder:

OFFENCES	PENALTIES	SECTION OF THE ACT
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 system, conducts such transactions in a manner so as to avoid monitoring, tracking 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	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 by a Special Judge, to simple imprisonment for a term which may extend to two million rupees, or with both. 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	Sub-section (9A) of Section 3 and section 40C
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 computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law	Such person shall be liable to pay a penalty up to 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	Sub-section (9A) of section 3 and section 40C
27. Any person, being owner of the goods, which are brought to Pakistan in	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved,	Section 40D

violation of section 40D	<p>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 value, or retail price in case of items falling in the Third Schedule, of such goods</p>	
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GOODS SUPPLIED FROM TAX EXEMPT AREAS SECTION 40D

In order to safeguard industry in Pakistan and to prevent misuse of exemption, a new section 40D in the Act has been added so as to provide for powers to prescribe documentation in relation to such goods and to examine and check vehicles coming from tax-exempt areas such as AJ&K, Gilgit-Baltistan and Tribal Areas. This section mainly prescribes:

- The conveyances carrying goods supplied from exempt area to carry such documents as may be prescribed under the rules;
- Regional Tax Office having jurisdiction may establish check posts on the routes on the routes originating from tax exempt areas for the purposes of examining the goods carried on and documents related thereto.
- In the absence of prescribed documents or any discrepancy in documents, the goods along with the vehicle may be seized under proper acknowledgment.
- Notices to owner of goods and vehicle for imposition of penalties to be issued within 15 days of such seizure.

CERTAIN TRANSACTIONS NOT ADMISSIBLE SECTION 73

A new sub section has been added to section 73 of the Act, whereby registered manufacturer is required to make all taxable supplies to sales tax registered person excluding supplies not exceeding Rs. 100 million in a financial year and Rs. 10 million in month. The supplier shall not be entitled to claim credit adjustment or deduction of input tax as is attributable to such excess supplies to unregistered person.

FEE AND SERVICE CHARGES SECTION 76

A new section was introduced through Finance Act, 2019 whereby Federal government was empowered to impose levy fee and service charges for valuation. This has been amended now to transfer Federal government's power to FBR with the approval of minister in charge.

CHANGES IN SCHEDULES

SIXTH & EIGHT SCHEDULE

Explanation under **serial 24 of Sixth Schedule** has been amended with the effect of withdrawal of exemption on local supplies made by importers of edible oils and vegetable ghee including cooking oil on which Federal Excise Duty is charges on Sales Tax mode.

In order to remove an anomaly whereby same entries were appearing under **serial no 82 and 83 of Sixth Schedule and serial 68 and 69 of Eighth Schedule** the expression "excluding those sold in retail packing under a brand name or a trademark has been added at the end of serial no 82 and 83 and "if sold in retail packing under a brand name or a trademark" has been added at the end of serial no 68 and 69 of Eighth Schedule. Therefore, items listed in serial no 82 and 83 are exempt if not sold in retail packing under a brand name or a trademark and would be taxable at a reduced rate of 8% if sold in retail packing under a brand name or a trademark.

Rate of sales tax on import of raw cotton and ginned cotton has been revised upward from 5% to 10% by amending **serial 5 of Eighth Schedule**.

NINTH SCHEDULE

Rate of sales tax on mobile phones has been decreased as per following detail:

Description (Import value per set or value in equivalent rupees in case of supply by manufacturer)	Sales tax on import or local supply		Sales tax chargeable at the time of registration of IMEI number by CMO	
	Existing rate	Revised rate	Existing rate	Revised rate
Not exceeding US \$ 30	Rs. 135	Rs. 130	Rs. 135	Rs. 130
Exceeding US\$ 30 not exceeding US\$ 100	Rs. 1,320	Rs. 200	Rs. 1,320	Rs. 200

TENTH SCHEDULE

PCT heading of bricks had been inadvertently mentioned as “6901.1000”, whereas the correct PCT heading is “6901.0000”. Tenth Schedule has been amended to correct the PCT heading.

TWELFTH SCHEDULE

Manufacturers using plant and machinery for in house installation or use have now been excluded from the purview minimum value addition tax under Twelfth Schedule.

Further, refund of excess input tax (3% value addition under 12th Schedule) over output has been allowed to registered person making zero rated supplies.

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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