

BUDGET FLASH 2018



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This document contains our brief comments on the proposed amendments introduced through the Finance Bill, 2018 in the fiscal laws of the country. Our detailed comments will follow in a separate document which will be released in due course. The comments in this document may not be taken to be our opinion on the proposed amendments.

Income tax

➤ **Bonus shares - Section 2(29)**

The taxation of bonus shares has been proposed to be done away with on the popular demand of the capital market. Corresponding amendments have also been proposed in the withholding provisions to omit withholding of tax on issuance of bonus shares.

➤ **Super tax - Section 4B**

The charge of super tax was extended upto the tax year 2017 through the Finance Act, 2017. It is proposed to extend the levy upto the tax year 2020. The present rate of super tax is 3% which will apply to the tax year 2018. It is now proposed that the rate be reduced to 2% for the tax year 2019 and 1% for the tax year 2020. For banking companies, the rate will be 4%, 3% and 2% respectively for the tax years 2018, 2019 and 2020.

➤ **Taxation of undistributed profits - Section 5A**

The mandatory requirement to distribute at least 40% dividend by listed companies to avoid tax on undistributed profits is proposed to be reduced to 20%. The rate of tax on undistributed profits is also proposed to be reduced from 7.5% to 5%.

➤ **Carry forward of losses - Sections 57 and 59A**

Substantial changes are proposed to be introduced to restrict the allowability of carry forward of depreciation and amortization losses upto 50% of taxable income of the taxpayer arising from income from business only.

➤ **Tax credits - Sections 65B, 65D and 65E**

The eligible period for investment in plant and machinery for availing tax credit is now proposed to be extended to 30 June 2021 from the current period of 30 June 2019.

➤ **Unexplained income - Section 111(2)**

For the purpose of taxability of unexplained income or assets, it is proposed that concealed foreign assets and foreign income can be taxed in the tax year immediately preceding the tax year in which such asset or income is discovered by the Commissioner.

➤ **Immunity to foreign remittances - Section 111(4)**

Presently all remittances irrespective of any threshold are eligible for immunity from any probe by the tax authorities with respect to the sources of funds remitted. It is now proposed to restrict the immunity to remittances upto Rs.10 million in a tax year.

➤ **Fee for Offshore Digital Services - Sections 2, 6, 101, 152 and First Schedule**

Tax at the rate of 5% is proposed to be introduced on fee for offshore digital services paid by a resident person or borne by a permanent establishment of a non-resident person.

- **Advance tax on persons remitting amounts abroad through credit or debit or prepaid cards** - Section 236Y and First Schedule

It is proposed that every banking company be required to collect adjustable advance tax at the rate of 1% (3% in case of non-filers) from every credit card, debit card and prepaid card transaction completed with a person outside Pakistan.

- **Services rendered by a non-resident through its permanent establishment** - Section 152

The Bill proposes that tax deducted on payments for services by a permanent establishment of a non-resident should constitute a minimum tax. The amendment seeks to align the taxability of a non-resident service provider with that of a resident service provider under section 153.

- **Taxability of commercial importers** - Section 148

The Bill proposes that the tax required to be collected from commercial importer at import stage is to be treated as a minimum tax.

- **Advance tax** - Section 147

In its drive for collecting more and more taxes, the Government now seeks to give additional powers to the Commissioner to examine the estimates of advance tax submitted by the taxpayers and also seek supporting information regarding such estimates. The Bill also seeks to give powers to the Commissioner to reject an estimate which in his opinion is not duly supported by proper evidences of estimates.

- **Return not filed within due date** - Sections 182A and 214D

The Bill proposes to omit section 214D which automatically selects a case for audit where the return of income was not filed within the due date or extended due date. However, to continue to have a check on non-filing of tax returns, it is also proposed that if a taxpayer fails to file its return of income within the due date or the extended due date, its name will not be included in the Active Taxpayers List and it will not be entitled to carry forward any loss for the year.

- **Definition of Filer** - Section 2(23A)

The definition of a filer is proposed to be amended to include those taxpayers whose names appear in the Active Taxpayers Lists issued by the AJ&K Council or Gilgit Baltistan Council. Now such taxpayers will also be considered filers for tax purposes.

- **Definition of Permanent Establishment** - Section 2(41)

The concept of "dependent agents" as prescribed within the definition of a permanent establishment has been proposed to be expanded to include agents that not only conclude contracts but also such agents who play the principal role leading to the conclusion of contracts without material modification by the non-resident and who act exclusively or almost exclusively on behalf of the non-resident.

- **Gift** - Sections 37 and 79

The benefits available of non-recognition and valuation on receipt of asset by way of a gift are provided in both the above sections which deal with capital gains and non-recognition of gains on sale of assets. It is now proposed to restrict the above benefits only to such gifts that are given to persons who are relatives.

➤ **Tax credit on investment in shares and insurance - Section 62**

The maximum allowable threshold of eligible investment in shares or Sukuks and premium on insurance policy is proposed to be enhanced from Rs.1.5 million to Rs.2 million.

➤ **Tax credit for non-profit organizations - Section 100C**

Income derived by religious or charitable organizations from investment in deposits with scheduled banks is eligible for tax credit equal to the amount of tax on such income. It is now proposed that profit on debt from deposits with Microfinance banks should also be eligible for such tax credits.

➤ **Business income of a non-resident person - Sections 101 and 152**

The Bill seeks to expand the scope of Pakistan source business income derived by a non-resident person by including import of goods, whether or not the title to the goods passes outside Pakistan, if the import is part of an overall Engineering, Procurement, Construction and Commissioning (EPCC) arrangement irrespective of the fact that the importer is the person, associate of the person or any other person.

➤ **Gain on disposal of assets outside Pakistan - Section 101A**

The Bill proposes to introduce a new section whereby disposal of assets outside Pakistan, by a non-resident, may also be subject to tax in Pakistan if such assets derive their value from assets located in Pakistan.

➤ **Agreements for avoidance of double taxation and prevention of fiscal evasion - Sections 107 and 109**

Keeping in view the drive on Base Erosion and Profit Shifting (BEPS), the Bill proposes that the benefits available under a Double Tax Treaty may also be re-characterized by the tax authorities.

➤ **Concept of beneficial ownership - Section 109**

The Bill seeks to introduce the concept of beneficial ownership by empowering the tax authorities to disregard an entity or a corporate structure that does not have an economic or commercial substance or was created as part of tax avoidance scheme.

➤ **Controlled foreign company - Section 109A**

The Bill proposes to introduce the concept of controlled foreign company whereby subject to certain conditions, the income of a foreign company controlled by a resident person, would be taxable in the hand of such resident person.

➤ **Foreign income and assets statement - Section 116A**

Every resident individual having foreign income equal to or in excess of US\$ 10,000 or foreign assets of value of US\$ 100,000 or more are now required to file a foreign asset and income statement. Consequential changes have also been proposed in sections 114 and 118 regarding filing of return of income to enable filing of statement of foreign assets and income along with the return of income. Corresponding penalty has also been prescribed for non-filing of statement.

➤ **Best judgment assessment - Section 121**

If a taxpayer has been issued a notice for filing of return of income in respect of one or more of the last ten completed tax years and he fails to file such return, a best judgment assessment in such a case can be passed within two years from the end of the tax year in which the notice is issued.

➤ **Alternative Dispute Resolution Committee - Section 134A**

Substantial changes have been proposed in the provisions of the above section which may have far reaching effects. The most significant changes are that it is now proposed that the ADRC shall only hear the case after the withdrawal of appeals filed by either party pending before any appellate authority and that the decision of the ADRC shall be binding on both the parties i.e. the Board and the aggrieved person.

➤ **Recovery of tax - Section 140**

The requirement of payment of 25% of the tax demand along with the appeal filed before the Commissioner Inland Revenue (Appeals) has been reduced to 10% of the tax demand to avoid recovery of tax through attachment of bank accounts or recovery from third parties.

➤ **Relief from withholding - Section 153**

The Bill proposes to enhance non-withholding tax limits in respect of sale of goods and services rendered from Rs.25,000 and Rs.10,000 to Rs.75,000 and Rs.30,000 respectively.

➤ **Furnishing of information by banks - Section 165A**

Through this section, banking companies were required to provide online access to their central database that contains details of account holders and their day to day transactions. Such access was so far denied by the banks for reason of secrecy and confidentiality of banking data. It is now proposed that the banks instead of giving access to online data, may provide details of tax collected on cash withdrawal exceeding Rs.50,000 from filers and non-filers in respect of such accounts where cash withdrawal exceed Rs.1 million or more during each calendar month. The threshold for providing details of deposit in any account during a month has also been proposed to be enhanced from Rs.1 million to Rs.10 million. Similarly, the threshold of credit card transactions is also proposed to be increased from Rs.100,000 to Rs.200,000 per month.

➤ **Claim of credit by a company being a member of an Association of Persons - Section 168**

In order to synchronize the claim of credit by a company being a member of an Association of Persons (AOP) of taxes deducted and collected at source, the Bill proposes to allow credit in proportion to its share in the taxable income of the AOP.

➤ **Appointment in special audit panel - Section 177**

In relation to appointment of special audit panels by the Federal Board of Revenue (the Board), the Bill proposes to empower the appointment of:

- A foreign expert or specialist;
- A tax audit expert deployed under an audit assistance programme of an international tax organization or a tax authority outside Pakistan.

➤ **Penalty - Section 182**

Penalty for non-filing of statements under various provisions of the Ordinance is proposed to be rationalized.

➤ **Service of notices and other documents - Section 218**

Presently service of notice or other documents was required in person or by a registered post or courier. It is now proposed that service of notice on an individual, electronically, may also be treated as a valid mode of service.

➤ **Restrictions of purchase of certain assets - Section 227C**

It is proposed that non-filers shall not be permitted to buy or register immovable property and motor vehicle.

➤ **Directorate General of immovable property - Section 230F**

A new authority for regularizing and monitoring transactions involving immovable property has been setup for carrying out certain functions in relation to immovable properties including acquisition of immovable property where the value declared by the taxpayer is less than the fair market value.

➤ **Tax on transactions in Stock Exchange - Section 233A**

Tax is required to be collected by a registered Stock Exchange in Pakistan from its members on purchase and sale of shares. The tax so collected was declared a final tax through the Finance Act, 2017. It is now proposed to treat the tax so collected as an adjustable advance tax.

➤ **Advance tax on sale and transfer of immovable property - Section 236K**

In relation to collection of advance tax on sale and transfer of immovable property, the Bill proposes that the tax shall also be collected on installment payments for purchase or allotment of any immovable property, where transfer of such property is made subsequently after payment of all the installments.

The First Schedule

Part I

➤ **Rates of tax for individuals**

The income tax rates for individuals (salaried and non-salaried) harmonized by the Income Tax (Amendment) Ordinance, 2018 for the tax year 2019. As per the amended Ordinance, no tax is required to be paid by individuals deriving annual income upto Rs.1,200,000. The Finance Bill 2018 proposed that individuals deriving income from Rs.400,000 to Rs.1,200,000 do not continue to enjoy zero tax benefit and requires them to contribute towards Government kitty by paying certain nominal amount of tax of Rs.1000, and Rs.2,000 for income brackets Rs.400,000 to Rs.800,000 and from Rs.800,000 to Rs.1,200,000 respectively.

➤ **Rates of tax for AOP**

The income tax rates for AOPs are proposed to be rationalized. The highest rate of tax is reduced to 30% from 35%. The proposed change is in line with the tax reduction for corporate and individual taxpayers.

➤ **Rates of tax for Companies**

The corporate tax rate is proposed to be 29% for tax year 2019 which will be reduced by 1% for each tax year onwards upto tax year 2023.

➤ **Capital gain on sale of securities**

The Bill proposes to keep the tax rates in respect of sale of securities same for the tax year 2019 as were applicable in the tax year 2018.

Part III

➤ **Dividend income from rental REIT Scheme**

The Bill proposes to specify a reduced rate of 7.5% in respect of dividend income derived by an individual from a Rental REIT Scheme.

➤ **Enhancement of withholding tax rate for non-filers**

The Bill proposes to enhance the withholding tax rate for non-filers:

- For corporate taxpayer for supplying goods from 7% to 8%
- For non-corporate taxpayer for supplying goods from 7.75% to 9%
- For corporate taxpayer for execution of contracts from 12% to 14%
- For non-corporate taxpayer for execution of contracts from 12.5% to 15%

Part IV

➤ **Reduction in advance tax rates for non-filers**

The Bill proposes to reduce the rate of collection of tax on banking transactions otherwise than through cash from 0.6% to 0.4%.

The Second Schedule

Part I

➤ **Income of certain charitable and other institutions - Clause (66)**

The Bill proposes to add certain charitable institutions in the list of institutions whose income is exempt from tax.

➤ **Income of Modaraba - Clause (100)**

Currently, any income of Modaraba other than trading activity is exempt from tax subject to fulfillment of certain conditions. The Bill proposes to exclude income from manufacturing activity as well from the ambit of exempt income.

➤ **Profit and gains derived from refinery operations - Clause (126BA)**

The Bill proposes to insert a new Clause to provide exemption from tax to profit and gains derived by a refinery setup between 01 July 2018 and 30 June 2023 with a minimum production capacity of 100,000 barrels per day for a period of 20 years. The exemption period starts from the month in which the refinery is setup or commercial production is commenced whichever is later.

This exemption is also available to existing refineries if existing production capacity is enhanced by at least 100,000 barrels per day subject to fulfillment of certain other conditions.

Part III

➤ **Incentive for film makers - Clauses (7 & 8)**

The Bill proposes to insert new clauses to provide reduction in the amount of tax payable by 50% on income derived from film making in Pakistan by foreign film makers / resident companies.

Part IV

➤ **Exemption from the levy of minimum tax under section 113 of the ordinance - Clause (11A)**

The Bill proposes to exempt public sector university whose income is exempt from tax under Clause (126) of part I of the Second Schedule to the Ordinance from the levy of minimum tax as well.

➤ **Non withholding of tax on dividend income - Clause (12)**

The Bill proposes to insert a new clause to provide exemption from withholding tax on dividend paid to Transmission Line Project under Transmission Line Policy 2015.

➤ **Option to commercial importer - Clause (56B)**

Clause (56B) of Part-IV of the Second Schedule to the Ordinance provides an option to a commercial importer to opt out from Final Tax Regime (FTR) subject to fulfillment of certain conditions specified therein. Now, the Bill proposes to delete the said clause. Consequently the option to opt out FTR will no more be available to commercial importers

➤ **Trading Houses - Clause (57)**

The Bill proposes to extend the levy of minimum tax under Section 113 of the Ordinance at the reduced rate of 0.5% upto the tax year 2021.

➤ **Exemption from collection of advance tax at import stage - Clauses (60A), (60AA), (60B) & (60C)**

The Bill proposes that the provisions of Section 148 of the Ordinance shall not apply to certain motorway / CPEC projects on import of plant and machinery / construction material / armored and security vehicle on fulfillment of certain condition.

➤ **Minimum tax on services sector companies - Clause (94)**

Inspection, certification, testing and training services are proposed to be inserted in the list of services specified in the aforesaid Clause. The period for application of Clause (94) is proposed to be extended to 30 June 2019. Moreover, the last date for furnishing an irrevocable undertaking for the tax year 2019 is proposed to be extended to November 2018.

➤ **Tax on profit on debt - Clause (103)**

The Bill proposes that the provisions of section 7B of the Ordinance shall not apply in respect of profit on investment in Bahbood Saving Certificates or Pensioner's Benefit Account provided that the tax on the said profit is paid at the applicable rate provided under Part I of the First Schedule to the Ordinance. However, the tax payable in respect of this income shall not exceed 10% of such profit as provided under Clause (6) of Part III of the Second Schedule to the Ordinance.

Sales tax

➤ **Further Tax - Section 3(1A)**

Rate of further tax is proposed to be increased from 2% to 3%.

➤ **Powers to issue notification - Various Sections**

The powers of the Federal Government to issue notifications under various sections of the Sales Tax Act, 1990 (the ST Act) are sought to be restored which are presently vested with the Board.

➤ **Assessment giving effect to an order - Section 11B**

Concept of appeal effect order has been proposed to be introduced in the ST Act whereby the Commissioner or the Officer Inland Revenue shall be required to issue the order within one year from the end of the financial year in which the appellate order was served to the Commissioner or the Officer Inland Revenue.

➤ **Access to record, documents etc. - Section 25**

It is proposed to insert a proviso whereby audit shall be conducted only once in every three years.

➤ **Default surcharge - Section 34**

Default surcharge is proposed to be fixed at 12% per annum. Presently it is KIBOR plus 3% per annum.

➤ **Alternative Dispute Resolution - Section 47A**

The proposed substituted section may have far reaching effects. The most significant are that the ADRC shall only hear the case after the withdrawal of appeals filed by either party pending before any appellate authority and that the decision of the ADRC shall be binding on both the parties i.e. the Board and the aggrieved person.

➤ **Recovery of arrears of tax - Section 48**

Automatic stay, where appeal is pending before the Commissioner Inland Revenue (Appeals), is sought to be allowed on payment of 10% of the amount of tax due whereas the existing condition is payment of 25% of the amount of tax due.

➤ **Tax credit not allowed - Section 8**

It is proposed to restrict the adjustment of input tax paid on import of scrap compressor.

➤ **Exemptions - Section 13 - Sixth Schedule**

- It is proposed to grant exemption on import of parts by computer manufacturer certified by the Engineering Development Board.
- In order to align with the provisions of the Special Economic Zone Act, 2012, it is proposed to grant exemptions to import of plant and machinery.

➤ **Zero rating - Section 4**

- Zero rating on stationery items is proposed to be restored.
- Rate of further tax on zero rated domestic supplies of finished goods covered under SRO 1125 is proposed to be reduced to 1%.
- Adjustment of input tax on packing material is proposed to be allowed to five export oriented sectors covered under SRO 1125.

➤ **Sales tax on LNG**

The rate of sales tax is intended to be reduced to 12% on import of LNG by PSO and PLL and further supply of RLNG to SNGPL by these companies which is currently taxable at 17%. It is also intended to waive off the value addition tax of 3% on import of LNG.

➤ **Sales tax on Fertilizer Sector**

Following amendments are intended to be introduced-

- Reduction in the rate of sales tax to 3% on all fertilizers.
- Reduction in sales tax rate to 5% on supply of natural gas to fertilizer plants.
- Exemption of sales tax on import of LNG by fertilizer manufacturer for use as feedback stock.

➤ **Rate of sales tax on leather and textile sector**

The rate of sales tax on import and supply of finished articles of leather and textile sector is intended to be increased to 9%, however the rate of sales tax of 6% is intended to apply on the branded outlets which are integrated with the online system of the Board.

Federal Excise Duty

➤ **Powers to issue notifications - Various Sections**

The powers of the Federal Government to issue notifications under various sections of the Federal Excise Act, 2005 (the FE Act) are proposed to be restored which are presently vested with the Board.

➤ **Assessment giving effect to an order - Section 14B**

Concept of appeal effect order has been proposed to be introduced in the FE Act whereby the Commissioner or the Officer Inland Revenue shall be required to issue the order within one year from the end of the financial year in which the appellate order was served to the Commissioner or the Officer Inland Revenue.

➤ **Default surcharge - Section 8**

Default surcharge is sought to be fixed at 12% per annum. Presently it is KIBOR plus 3% per annum.

➤ **Deposit, pending appeal, of duty demanded or penalty - Section 37(3)**

Automatic stay, where appeal is pending before the Commissioner Inland Revenue (Appeals), is sought to be allowed on payment of 10% of the amount of duty due whereas the existing condition is payment of 25% of the amount of duty due.

➤ **Alternative Dispute Resolution - Section 38**

The proposed substituted section may have far reaching effects. The most significant are that the ADRC shall only hear the case after the withdrawal of appeals filed by either party pending before any appellate authority and that the decision of the ADRC shall be binding on both the parties i.e. the Board and the aggrieved person.

➤ **Access to records and posting of excise staff - Section 45**

It is proposed to withdraw the powers of the Chief Commissioner and Commissioner to post an Officer of Inland Revenue to the premises of the registered persons for monitoring of production, removal or sale of goods and the stock position or the maintenance of records.

➤ **Audit - Section 46**

It is proposed to insert sub-section (10) in Section 46 whereby audit shall be conducted once in every three years.

➤ **Change in rates of excise duty - Section 3- First Schedule**

The rate of federal excise duty on tobacco and cement is proposed to be increased.

➤ **Exemptions - Section 16- Third Schedule**

It is proposed to grant exemption to:

- Equipment imported by China Railway Corporation for Lahore Orange Line Metro Train Project.
- Construction materials and goods imported by China State Construction Engineering Corporation Limited for Sukkur-Multan Motorway.
- Commission paid by the State Bank of Pakistan to National Bank or any other banking company, acting as agents for handling banking services of federal and provincial governments.

➤ **Health levy on tobacco**

It is proposed to introduce health levy on tobacco at the rate of ten rupee per kg on every purchaser of tobacco including manufacturers of cigarettes.

➤ **Mobile handset levy**

It is proposed to introduce mobile handset levy ranging from zero to five thousand rupees on smart phones.

Customs

➤ Proposed changes in the rate of customs duty

- Additional customs duty is increased from 1% to 2%.
- Customs duty on more than 100 Pakistan Customs Tariff (PCT) headings relating to import of raw materials/inputs is withdrawn and on more than 25 PCT headings is reduced with the avowed objective to encourage and incentivize exports.
- Reduction in customs duty has been proposed on aluminum foil for liquid food packaging industry, pre-fabricated structures for hotels, input material for dairy sector, poultry sector, manufacturing of optical fiber cables, equipment for cinema industry, manufacturing of LED lights, import of coal, electric vehicles etc.
- Fixed duty of US\$ 5,000 on import of vintage or classic cars and jeeps is envisaged.
- Increase in duty on import of rickshaw tyres, soya bean oil, aluminum auto parts scrap is proposed.
- New PCT codes introduced for radial tyres, CKD/SKD kits for home appliances, mobile phones etc.
- Review of regulatory duty on non-essential and luxury items.

➤ Jurisdiction of customs enforcement activities is extended

- Scope of Customs enforcement activities in the sea is proposed to be extended to 24 nautical miles from existing 12 nautical miles

➤ Amendments in certain powers

- The Bill seeks to restore powers of the Federal Government to issue notifications under the customs law and regulations.
- The Chief Collector is now empowered to take over imported goods.
- Any data obtained through mutual assistance agreements can now be officially used for the purpose of assessment and valuation.
- The Collector (Appeals) is now empowered to grant stay against recovery of duty/taxes for a maximum period of 30 days where an appeal has been filed.

➤ Relief measures

- It is proposed that no proceedings be initiated, if voluntarily payment of short paid duties, taxes or other charges is made before the audit inquiry is initiated.
- It is proposed to dispose off refund claim within 180 days subject to extension of further 90 days.
- Confiscated imported goods will be provisionally released on payment of related duties and taxes and furnishing of bank guarantee or pay order against monetary penalties involved thereof.
- Draft rules are proposed to be provided to public for offering their comments before notifying.

➤ **Penalties**

- Penalties in case of non-compliance of electronic notices issued for requisition of documents have been introduced.
- Penalties for pilferage, replacement *en-route* or in case transshipped goods failed to reach the port of destination have been enhanced.
- It is proposed to provide legal cover to regulatory duty introduced in fiscal year 2018 which has been held ultra vires to Constitution by Superior Courts.

Islamabad Capital Territory (Tax on Services) Ordinance, 2001

➤ **Sales tax on services - Section 3**

It is intended to enhance the scope of services taxable under the Islamabad Capital Territory (Tax on Services) Ordinance, 2001.

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