

Tax Laws (Second Amendment) Ordinance, 2019

Presentation of

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GCA Budget video is “**ICAP
Fraternity**
**including Students &
General Public**”

- ▶ It will come into force at once unless otherwise mentioned.
- ▶ Nothing contained in this document shall be construed as our advice in general or on a given case, accordingly, for ascertaining any effect of these changes in general or particular, the wordings in the Ordinance should carefully be examined, taking into consideration the applicable laws and regulations, and precise advice should be sought before taking any decision based on, or acting up on any of the contents hereof.

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TAX CONCESSIONS FOR TRADERS

Pursuant to the agreement between representatives of FG and trade bodies on October 30th, 2019; certain concessions have been allowed to traders.

“Trader” means an individual engaged in business of buying and selling of goods in the same state, including a retailer and a wholesaler but excluding a distributor.

Min tax rate for trader having turnover up to Rs. 100 million will be:

Old rate: 1.5%

New rate: 0.5%

Traders shall be eligible for reduced rate if they had filed income tax returns for tax year 2018:

Tax liability:

TY 2019 + TY 2020

NOT LESS THAN

TY 2018

Traders being **individuals** having turnover upto Rs. 100 million have been exempted from deducting tax under section 153.

TAX CONCESSIONS FOR EXPORT ORIENTED SECTORS

At present, yarn traders are not subject to WHT on their supply of goods and services to the taxpayers falling in following categories, provided they discharge minimum tax on their turnover on monthly basis @ 0.1%:

1. Textiles and articles thereof;
2. Carpets;
3. Leather and articles thereof (including artificial leather footwear);
4. Surgical goods; and
5. Sports goods.

- ▶ Now, only registered taxpayers shall be subject to withholding tax @ 0.5%.
- ▶ For traders of yarn being individuals, the reduced rate of minimum tax (under section 113) has been prescribed at 0.5% for tax year 2020.
- ▶ The concessionary rate of tax withholding on certain payments and non-applicability of provisions of section 111 for suppliers and service providers [under Clause (45A) contained in Part IV of the Second Schedule to the ITO 2001] were available to those who were registered upto June 30, 2011.
- ▶ Through the Second Amendment Ordinance, the aforesaid condition for registration upto June 30, 2011 has been removed.
- ▶ Exemption from collection of advance tax on electricity consumption is available to taxpayers registered for sales tax as manufacturer or exporter of leather, sports, surgical and textile related goods.

INTER-CORPORATE DIVIDEND IN GROUP COMPANIES

- ▶ Requirement for percentage of holding has been omitted.
- ▶ As a result, partial exemption on inter corporate dividend in group taxation provided with regard to percentage of holdings has been replaced with complete exemption in its original position of 2008.

EMPOWERING FBR TO PRESCRIBE PROCEDURE FOR CLOSURE OF INCOME TAX AUDIT OF PERSONS AUTOMATICALLY SELECTED UNDER OMITTED SECTION 214D

- ▶ Through the Finance Act, 2015, Section 214D was inserted in the ITO 2001 which was deleted through the Finance Act, 2018.
- ▶ To enable closure of tax audits already initiated under section 214D for prior years, a new section 214E was inserted through the Finance Supplementary (Amendment) Act, 2018 enabling FBR to close the audit proceedings (initiated under omitted section 214D) after payment of certain amount of tax / penalty by due date.
- ▶ For those cases of audit selection which are not yet closed, necessary amendment has been made in section 214E so as to enable the FBR to prescribe the procedure for conclusion of such audits (including empowering FBR to accept the income declared by taxpayer subject to such conditions as may be prescribed by FBR).

ENABLING THE FMU TO REQUIRE NECESSARY INFORMATION FROM PUBLIC SERVANTS

- ▶ Under Section 216 of the ITO 2001, public servant are barred from disclosing any information relating to income tax filings, evidences or proceedings of any taxpayer. Certain exceptions to this general prohibition are also contained in the said section whereby information may be disclosed to specified persons, organisations or authorities.
- ▶ By way of an amendment made through the Second Amendment Ordinance, Financial Monitoring Unit (FMU) established under the Anti-Money Laundering Act, 2010 has been included in the list of such exceptions which do not fall within the ambit of confidentiality clause contained in Section 216. This amendment is intended to enable FMU to better implement anti-money laundering procedures by directly obtaining necessary information from public servants.

PROCEDURE PRESCRIBED FOR TRANSFER PRICING AUDIT

- ▶ Section 230E was introduced in the ITO 2001 through the Finance Act, 2017 for establishing a separate Directorate for conducting transfer pricing audit of taxpayers. Through the Finance Supplementary (Second Amendment) Act, 2019, Section 230E was substituted so as to establish Directorate General of International Tax. However, no specific procedure or mechanism for transfer pricing audit was prescribed in the said section which was causing ambiguity amongst the field officers and taxpayers.
- ▶ Transfer pricing audit is to be conducted as per the procedure laid down in section 177 and other provisions of the Ordinance. This way, the ambiguity relating to the transfer pricing audit procedure has now been removed.
- ▶ Transfer pricing audit initiated under section 230E would not preclude the concerned CIR from determining transfer price at arm's length while conducting audit proceedings under section 177 or 214C or amendment proceedings under section 122.

AUTOMATIC RENEWAL OF WITHHOLDING EXEMPTION CERTIFICATE UNDER CLAUSE (72B)

- ▶ Clause (72B) contained in Part IV of the Second Schedule to the ITO 2001 allows a taxpayer to obtain a withholding exemption certificate from the concerned Commissioner Inland Revenue so as to avoid tax collection at import stage.
- ▶ Due to procedural issues, hardships were being faced by taxpayer in getting such withholding exemption certificates renewed, which are generally issued for 6-months validity although tax liability for the entire year as prescribed is discharged.
- ▶ To facilitate the taxpayers, the relevant clause has now been amended to provide for automatic approval of application filed on FBR's IRIS portal for renewal of the certificate in case no action is taken by the Commissioner by the 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

BUSINESS LICENSE SCHEME - POWERS TO IMPOSE FINES AND CANCELLATION OF BUSINESS LICENSE

- ▶ Following fines have 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.
- ▶ These fines are prescribed in addition to any other fine or penalty that may be applicable under the Ordinance or any other law.
- ▶ 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;
 - ▶ is convicted of any offence under any federal tax law.

GREENFIELD INDUSTRIAL UNDERTAKING

- ▶ Under clause (1260) of Part I to the Second Schedule to the ITO 2001, the profits and gains of a company from a greenfield industrial undertaking incorporated on after July 1, 2019 is exempt from tax for a period of five years.
- ▶ The term ‘greenfield industrial undertaking’ was not previously defined in the ITO 2001; hence, there was uncertainty about the undertakings qualifying for this exemption.

DEFINITION

A new industrial undertaking which is (Applicable from July 01, 2019):

- (i) setup on land which has not been previously 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, remodelling or modifying any existing structure, faciality 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
- (v) is approved by the Commissioner Inland Revenue on an application made in the prescribed manner.

TAX ON FOREIGN INVESTMENT IN PAKISTAN'S CAPITAL MARKET

- ▶ Foreign investors particularly Foreign Institutional Investors invest in Pakistan's capital market through Foreign Portfolio Investment (FPI) scheme, which allows such investors to invest in equity and debt securities (including Government Bonds, Term Finance Certificates, Pakistan Investment Bonds) without any physical presence.
- ▶ The FPI scheme makes it mandatory for foreign investors to open Special Convertible Rupee Account (SCRA).
- ▶ The requirement for non-residents to open SCRA is provided in Chapter 20 of the Foreign Exchange Manual issued by the State Bank of Pakistan (SBP).
- ▶ The funds available in SCRA can be transferred outside Pakistan or credited to a foreign currency account of non-resident investor maintained in Pakistan at any time without prior approval of SBP. Such non-resident corporate investors not having a Permanent Establishment in Pakistan are hereinafter referred to as NRI.

The tax incidence applicable on NRI on return from their investment in equity instruments, either as dividend or capital gains, is largely aligned and same (being 15%).

However, tax incidence applicable on return from investment in debt securities by NRI is not aligned. Interest income from debt investment is subject to final tax upon tax withholding at 10% whereas capital gains from disposal of debt instruments are taxable at corporate rate of tax which is presently 29%.

The Second Amendment Ordinance has aligned and rationalised the tax incidence through following amendments, apart from relieving NRI from certain compliances: (i) Banking company / financial institution maintaining SCRA of NRI is now required to deduct tax from capital gains arising on disposal of debt instruments and Government securities (including Treasury Bills and Pakistan Investment Bonds) @ 10%. Such tax deduction constitutes final tax on such capital gains.

It appears that tax withholding is required to be made at the time when proceeds from disposal are accounted for in the SCRA and also that no adjustment for any capital loss may be made by the Banking company / financial institution while deducting tax @ 10% from capital gains earned by NRI on disposal of debt securities.

The requirements to obtain tax registration [under Section 181 of the Income Tax Ordinance, 2001 ('ITO 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.

Advance tax under section 147(5B) will also be not payable in respect of capital gains arising on investment made through SCRA (maintained with a banking company or financial institution) in debt instruments and Government securities (including treasury bills and Pakistan Investment Bonds).

Tax withholding applicable on banking transactions by those not appearing on ATL (under section 236P) will not apply to SCRA. This is a blanket exemption for companies maintaining SCRA regardless of whether investment is made in equity or debt securities.



TIER - I RETAILER

FBR has been empowered to prescribe any person or class of persons to be considered a Tier-I Retailer.

- (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;

Old Limit: 600,000/-

New limit: 1,200,000/-

- (a) 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;
- (b) a retailer, whose shop measures one thousand square feet in area or more; and
- (c) any other person or class of persons as prescribed by the Board.

NEW PENALTIES

New penalties have been inserted from Serial No. 24 to 27 in the Table contained under section 33.

GOODS SUPPLIED FROM TAX EXEMPT AREAS

- ▶ A new section 40D has been inserted containing provisions / control measures relating to monitoring of goods supplied from tax exempt areas to Pakistan.
- ▶ The term ‘tax exempt areas’ has been defined as Azad Jammu and Kashmir, Gilgit Baltistan, Tribal Areas and other prescribed areas.

RESTRICTION AS TO INPUT TAX ON SUPPLIES TO UNREGISTERED PERSONS

Through the Finance Act, 2019, input tax attributable to supplies made to unregistered person has been disallowed, on pro rata basis, where supplies are made to an unregistered person and for which sales invoices do not bear the NIC number or NTN of the recipient. The said restriction, with certain exceptions, was introduced in section 8 of the Act.

Now through Second Amendment Ordinance, it has further been provided that if a registered manufacturer will make taxable supplies to a person (who is not registered under the Act) exceeding Rs. 10 million in a month and Rs. 100 million in a financial year, then input tax adjustment (as attributable to such excess supplies to the unregistered person) will not be allowed.

The said restriction has been placed through a new sub-section introduced in section 73. There is apparently an overlapping or duplication in the disallowance of input tax under sections 8 & 73 in certain situations where supplies are made to unregistered persons.

GREENFIELD INDUSTRY

- ▶ Certain imports of Plant & Machinery by ‘Greenfield Industry’ are exempt from sales tax under serial no 150 of Table I of the Sixth Schedule.
- ▶ The term ‘Greenfield industry’ (which was previously not defined) has now been defined in the manner similar to the one defined for income tax purposes.

EXEMPTIONS AND REDUCED RATE

Import or local supply of edible oil and vegetable ghee, including cooking oil, on which FED is charged, levied and collected in sales tax mode by registered manufacturer or importer was exempt. It has now been clarified that the said exemption shall not be available on local supplies by importer in line with supplies made by distributor, wholesaler or retailer. An amendment has been made to remove anomaly due to co-existent entries in 6th & 8th Schedule.

Now, meat and frozen, prepared or preserved sausages and similar products of meat, poultry meat or meat offal of all types including poultry meat and fish sold in retail packing under a brand name or a trademark is subject to reduced rate of sales tax at 8%. These items if sold otherwise than in retail packing under a brand name or a trade mark will remain exempt. Rate of sales tax on import of raw cotton and ginned cotton has now been increased from 5 % to 10 %.

NINTH SCHEDULE - CELLULAR MOBILE PHONES

The sales tax on import or local supplies and at the time of registration of cellular mobile phones or satellite phones has been reduced in respect of following two categories

	<u>Category</u>	<u>Previous</u>
New Value not exceeding USD 30	Rs 135	Rs 130
Value exceeding USD 30 but not exceeding USD 100	Rs 1320	Rs 200

TENTH SCHEDULE - SALES TAX ON BRICKS

Through FA 2019, section 3 (1B) of the ST Act was substituted along with introduction of Tenth Schedule whereby fixed sales tax on manufacture and sale of bricks was required to be paid on monthly return. Now PCT heading for bricks has been corrected from 6901.1000 to 6901.0000. Further, requirement of monthly return has been omitted.

TWELFTH SCHEDULE

A new entry (x) has been inserted in Clause (2), Procedures and conditions, in Twelfth Schedule whereby value addition tax at 3 percent ad valorem shall not be charged on plant, machinery and equipment falling in Chapter 84 and 85 of the First Schedule to the Customs Act, 1969, as are imported by manufacturer for in house installation or use.

Refund of excess input tax over output tax attributed to the minimum value addition tax paid under twelfth schedule has now been allowed to registered person in case items imported are used for making zero-rated supplies. Previously, no such refund was allowed.

Thank you for watching the video.

Any suggestions/criticisms can be
sent to :

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Disclaimer

This Tax Laws (Second Amendment) Ordinance, 2019 Vedio is correct to the best of our knowledge and belief at the time of its publication. It is intended to provide only a general outline of the proposals announced in the second amendment. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. The GCA Consultants/GCA Official do not accept any responsibility for any loss arising from any action taken or not taken by anyone using this publication.

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