

**Companies, Finance Bill 2020 may address min tax on turnover**

ISLAMABAD: Finance Bill 2020 is expected to address the issue of applicability of higher rate of minimum tax on turnover for companies as compared to the corporate income tax also charged from companies.

Tax experts told Business Recorder that over the years, there is almost 200 percent increase in the rate of minimum tax on turnover imposed initially in 1991 at the rate of half percent when corporate tax rate was 43 percent. Whereas now the rate of minimum tax has increased to 1.5 per cent of turnover whereas corporate tax rates have decreased to 29percent. With the result that much publicised decrease in corporate tax rates has become merely cosmetic as more than 95 per cent companies have to pay minimum tax being higher than their corporate tax liability.

Tax experts have proposed that the rate of 1.5 percent minimum tax ought to be reduced to half per cent which was endorsed by the Supreme Court when the tax was levied in 1991.

When contacted Shahid Jami, a Tax Advisor explained that with two hundred percent increase rate the minimum tax on turnover has assumed the character of indirect tax contrary theme of direct taxation on income and is otherwise counter productive as it discourages declaration of actual turnover which also adversely effect sales tax collection as well.

Jami explained that there is extensive discussion on the rate of half per cent minimum tax in the Supreme Court judgement in famous Elahi Cotton case when levy was challenged as confiscatory in the case loss was declared. In Para 23 of the judgement Supreme Court has reproduced FBR calculation and justification of half per cent rate. Considering that discussion the present rate of one and half per cent has become confiscatory and ought to be reviewed even in the context of government relief measures due to COVID-19 and its benefit be extended to enterprise at Special Economic Zones as well.

Jami explained that the income tax exemption given under Income Tax Ordinance 2001 (ITO 2001) to the industrial undertaking set up within much publicized Special Economic Zones (SEZ) has become defective due to an oversight while drafting the same. Various SEZ have been developed across Pakistan in pursuance of Special Economic Zones Act 2012 preamble of which stated that “whereas it is necessary and expedient to promulgate a law for the creation, development and efficient operation of special economic zones through provision of a legal and regulatory frame work to encourage domestic and international investors for promotion and establishment of industrial infrastructure and for other matters connected or ancillary thereto”.

Section 2 of the SEZ Act provided that this Act to override other laws and stated that provisions of this Act shall have force notwithstanding anything to the contrary contained in any other law for the time being in force. Whereas section 37(b) of the Act as amended provided the benefit of exemption from all taxes on income for all the enterprise for the period of ten years from start of commercial production.

Whereas section 54(a) of the ITO 2001 states that no provision in any other law providing for any exemption from any tax imposed under Income Tax Ordinance shall have legal effect unless also provided for in this Ordinance.

Shahid Jami, a renowned tax lawyer explained that as such both the laws contained overriding provisions which were not well drafted and that is why through Finance Act 2013, clause 126E was substituted in Part I of Second Schedule of the ITO 2001 and income derived by the zone enterprise was exempted from income tax for the period of ten years.

However, this exemption is limited only to tax on income whereas under the Income Tax Ordinance 2001 there are various provisions levying final or minimum tax like final tax under section 154 on exports at the rate of one percent and minimum tax under section 113 @ 1.5 percent on total local turnover in case of loss or exemption from normal tax.

Jami explained that due to oversight exemption from minimum tax under section 113 was not provided to the industrial enterprises established in SEZ though under clause 11A of Part IV such exemption has been given to many other like taxpayers qualifying for exemption under clause 126K of Part I in respect of income from operating halal meat production and taxpayers qualifying for exemption under clause 126J of Part I in respect of operating warehousing or cold storage facilities for storage of agriculture produce.

Recently the present government through Finance Supplementary (Second Amendment) Act 2019 said exemption from minimum tax has been given to green field industrial undertaking qualifying exemption under clause 126O but again earlier oversight in bigger incentive of SEZ got ignored.

Jami added that exemption from final tax under section 154 on exports has been given under clause 93 of Part IV to taxpayers operating halal meat production. As per Jami invariably the tax burden of minimum tax at the rate of 1.5 percent on total turnover is more than normal corporate tax liability on income hence the exemption given to SEZ has become farce and is no more an incentive when the industries have realised the error in law and inability and reluctance of tax authorities to rectify the same.