

Comments on FY2020-21 Budget

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Furthermore, an amendment is made to over-emphasize that only those organisations fall under the ambit of NPOs, which are for the benefit of general public.

To further reinforce compliance by NPOs and other institutions, following amendments have been proposed in section 100C and clause 66 of Second Schedule:

(i) The existing requirement to file a statement of voluntary contributions and donations received in the immediately preceding tax year. Under Rule 217, same information is already required to be submitted by NPO to retain its approval for amounts exceeding Rs 5,000.

(ii) Income derived by institutions/organisations listed in clause 66 of Part I of the Second Schedule to the Ordinance, is presently exempt from tax. Through the Finance Bill, however, the said clause is being replaced and the organisations earlier listed have been bifurcated into two categories whereby:

a. Any income of organisations listed in Table 1 to the said clause is exempt;

b. Exemption on the organisations listed in Table 2 of the said clause has been made subject to the fulfilment of conditions mentioned in section 100C of the Ordinance with effect from July 1, 2021.

The Finance Act, 2019 introduced a requirement of having a status of NPO for trusts and welfare institutions to qualify for tax credit with effect from July 1, 2020. Consequently, once the obtain NPO approval they are required to pay tax on unspent funds (termed as 'Surplus Funds') at the rate of 10%. The scope of such tax has now been extended to include trusts and welfare institutions into its ambit.

Moreover, one of the exclusions from the abovementioned tax is when the donor has placed certain restrictions/obligations on spending of such funds. An amendment has been proposed that this exclusion does not apply in cases where the donor is an associate of the NPO, trust or welfare institution.

This restriction does not appear appropriate for the reason that in most of the cases, donations to NPOs are made by persons who represent an associate of the NPO. This amendment will effectively curtail donations for endowments for specific welfare purposes made to NPOs.

Moreover, the above amendment when made in the context of NPO was also criticized as being inappropriate as it violates the strict tax principles. Donations and voluntary contributions cannot be considered as 'income' if they remain unspent as any money not spent by NPO/trusts/welfare institutions during the year will ultimately be spent for the purposes of such organisations as established; hence taxing such voluntary contributions and donations is not an appropriate step.

CONSTRUCTION INDUSTRY

The President of Pakistan promulgated the Tax Laws (Amendment) Ordinance, 2020 ('Amendment Ordinance') on April 17, 2020 for the Construction Industry to give effect to the incentive package earlier announced by the Premier on April 3, 2020.

In order to validate and give legislative effect to the Amendment Ordinance (being a Presidential Ordinance) which would have otherwise expired after 120 days from the date of promulgation, the amendments made through the same have now been incorporated through the Finance Bill, 2020.

Salient Features of Amendment Ordinance

(a) Constructors of buildings, roads, bridges and other structures or the development of land have been assigned the status of 'Industrial Undertaking', to the extent and for the purpose of import of plant and machinery to be utilized for such purposes.

(b) The provisions of section 100D read with Eleventh Schedule apply to all Builders and Developers opted to be taxed as such by registering themselves with the Federal Board of Revenue (FBR) on a Project-by-Project basis ('eligible projects'). The key features are as under:

i. A scheduler based fixed tax regime for builders and developers, which can be opted for eligible projects being either new or existing incomplete projects.

ii. Immunity from application of section 111 with regards to capital investments in new projects by investors and to the first purchasers of building including units therein in new and existing incomplete projects and for plot purchases.

iii. Facility for builders and developers to incorporate their profits and gains in books of accounts (including wealth statements) up to ten times the amount of fixed tax paid under the regime on eligible projects.

iv. Exemption from tax on Dividend distributed by Corporate builder or developer out of the profits and gains of eligible projects, with specific exemption for tax withholding on such distribution.

v. Builders and developers absolved from withholding tax under section 153 of the Ordinance on purchase of materials (except steel and cement) and services (plumbing, electrification, shuttering and other similar and allied services) provided by non-corporate service providers.

(c) Exemption from tax on capital gains to a resident individual on sale of constructed residential property (house of 500 square yards and a flat of 4,000 square feet) used only for personal accommodation.

(d) Reduction of 90% of the tax payable on the income, profits and gains of projects of 'low cost housing' developed or approved by Naya Pakistan Housing and Development Authority (NAPHDA) or under the Ehsaas Programme.

A note on Amendment Ordinance was published by the firm, which can be accessed on the link <https://www.pwc.com/pk/tax/amendmentord.html> for further details.

TAX REGIME FOR DISPOSAL OF IMMOVABLE PROPERTIES

Short term capital gains on disposal of immovable properties were not taxable in the Ordinance in the past. Such gains were made taxable through Finance Act, 2012.

Determination of short term gains depends on holding period of property. The holding period was initially prescribed as two years for this purpose, which was subsequently enhanced to 4 and 8 years for constructed and open plots respectively by the Finance Act, 2019.

The Finance Bill proposes a reduction in holding period to 4 years in all cases. This means that any capital gains on sale of immovable property will be treated as long term capital gain exempt from tax if the property is held for more than 4 years.

There is a need for examination of tax exemption on cases where properties were held for more than 4 years and disposed during the intervening period when 8 years holding period law was applicable.

We understand that the right of Federal Government to tax capital gains on immovable properties is subsiding before the courts in view of the Federal legislative list. In the incentive package announced on April 3, 2020, it was proposed that the holding period for constructed property for capital gains tax purposes under the Ordinance was proposed to be reduced from 4 to 3 years and that no CGT was to be levied where such property is sold in the fourth year and onwards. It was also proposed that the holding period for real estate open plots was to remain at 8 years with significant reduction in tax rates from fourth year and onwards. However, these incentives were not made part of the Amendment Ordinance.

Finance Bill, 2020 now proposes the uniform basis of taxation of capital gains for all types of immovable properties without any distinction between open plots and constructed properties similar to the position before the Amendment Ordinance. Finance Act, 2019, Capital gains on disposal of immovable property presently taxable subject to holding periods and that proposed to be taxable vide Finance Bill, 2020 on uniform basis are tabulated hereunder:

Existing-Taxability of Capital Gains on Disposal of Open Plot		Taxability of Gain	
Sr. No.	Holding Period		
1	Within 1 year	100%	
2	1 year-8 years	75%	
3	Over 8 years	0%	

Existing-Taxability of Capital Gains on Disposal of Constructed Property		Taxability of Gain	
Sr. No.	Holding Period		
1	Within 1 year	100%	
2	1 year-4 years	75%	
3	Over 4 years	0%	

Proposed (Uniform Basis)-Taxability of Capital Gains on Disposal of Immovable Property		Taxability of Gain	
Sr. No.	Holding Period		
1	Within 1 year	100%	
2	1 year-2 years	75%	
3	2 years-3 years	50%	
4	3 years-4 years	25%	
5	Over 4 years	0%	

Finance Bill, 2020 proposes to reduce by half, the existing tax rates chargeable on capital gains arising on disposal of immovable properties as under:

Sr. No.	Capital Gain	Existing Tax Rate	Proposed Tax Rate
1	Within Rs. 5 million	5%	2.5%
2	Rs. 5 million-Rs. 10 million	10%	5%
3	Rs. 10 million-Rs. 15 million	15%	7.5%
4	Over Rs. 15 million	20%	10%

Advance Tax on Sale of Immovable Property

Presently, adjustable advance tax applicable at the time of sale of immovable property is collectable from the seller or the transferor at the rate of 1% of the gross amount of the consideration received only when the holding period of immovable property disposed of is not more than 5 years. Finance Bill, 2020 proposes to reduce the period from 5 years to 4 years so as to streamline the collection of advance tax on capital gains, which are proposed to be taxed up to the holding period of 4 years.

FIRST SCHEDULE - Part I

Capital gains on disposal of securities

The rates of tax for tax year 2020 onwards on capital gains on disposal of shares and other specified securities are proposed to be kept at par with those applicable for tax years 2018, 2019 and 2020.

FIRST SCHEDULE - Part II

Withholding tax on dividend of companies with no tax payable

Through Finance Act, 2019 the rate of tax was increased to 25% in the case of a person receiving dividend from a company where no tax is payable by such company due to exemption of income or carry forward of business losses or claim of tax credits. However, the tax withholding was prescribed at 15% in such cases. The Bill proposes to enhance the rate of tax withholding to 25% in such cases to address this inconsistency.

Whilst providing for withholding tax at 25%, the case of distribution by mutual funds should have been provided for their standard rate of tax is otherwise 15%.

Requirement to furnish certificate for reduced rate of tax withholding

Presently, a reduced rate of tax withholding at 10 per cent is prescribed in case of Profit on debt up to Rs. 50,000. The Bill proposes that the recipient of Profit on Debt should furnish a certificate to the payer in order to avail the benefit of reduced rate of tax withholding.

Tax withholding on corporate Sukuk holders

Rate of tax withholding in case of corporate Sukuk holders has been proposed to be enhanced from 15% to 25%.

Tax withholding on 'engineering services'

The Bill proposes to omit 'engineering services' from the list of service sectors subject to reduced rate of tax withholding at 3 per cent for resident persons.

FIRST SCHEDULE - Part IV

Tax withholding on extraction of minerals

Category of Persons	Rate of Tax Withholding	Proposed
Whose names are appearing on ATL	Nil	5%
Whose names are not appearing on ATL	5%	10%

SECOND SCHEDULE - Part I

Withdrawal from Voluntary Pension Scheme (VPS)

Presently, exemption is available for receipt of accumulated balance up to 50 per cent from VPS inter alia at the time of retirement. Any receipt in excess of 50 per cent on or after retirement age is taxable at the applicable rate of tax.

The Bill proposes to tax 100 per cent of the receipt from VPS before retirement age and receipt in excess of 50 per cent of the accumulated balance on or after retirement age at the average rate of tax for preceding three tax years as prescribed in sub-section (6) of section 12 of the Ordinance.

Withdrawal in excess of 50 per cent in case of death or disability will continue to be taxed at the applicable rate of tax.

Whilst the provisions of withholding tax under section 156B have been omitted, the liability to withhold tax on withdrawals from VPS has been incorporated in Second Schedule.

Sale of immovable property to Development REIT Scheme

Exemption for profits and gains on sale of immovable property to a Developmental REIT Scheme with the object of development and construction of residential buildings has been proposed to be extended to June 30, 2021.

Exemptions for Gwadar Free Zone

(a) Exemption for income derived by the following entities and their contractors and sub-contractors has been extended to income from operations in Gwadar Free Zone with effect from June 1, 2020:

- China Overseas Ports Holding Company Limited,
- China Overseas Ports Holding Company Pakistan (Private) Limited,
- Gwadar International Terminal Limited,
- Gwadar Marine Services Limited and
- Gwadar Free Zone Company Limited.

(b) Profit on debt derived by any foreign lender or any local bank having more than 75 per cent shareholding of the Government or the State Bank of Pakistan under a Financing Agreement with the following entities has been proposed to be exempted with effect from June 1, 2020:

- China Overseas Port Holding Company Pakistan (Private) Limited,
- Gwadar International Terminals Limited,
- Gwadar Marine Services Limited, and
- Gwadar Free Zone Company Limited.

Exemption to Co-Developer of Special Economic Zone

Currently exemption is available to the following:

(a) the income derived by a zone enterprise as defined in the SEZ Act, 2012 for a period of ten years starting from the date the developer certifies that the zone enterprise has commenced commercial production; and

(b) for a period of ten years to a developer of a zone starting from the date of signing of the development agreement in the SEZ as announced by the Federal Government.

The Bill proposes to extend the exemption to the co-developer as defined in SEZ Rules, 2013 subject to the condition that the developer certifies and the Special Economic Zone Authority validates that the developer has not claimed exemption and has relinquished his claim in favour of the co-developer.

Income of Federal Government Employees Housing Authority

The Bill proposes exemption for the income derived by the Federal Government Employees Housing Authority for Tax year 2020 and following four tax years.

SECOND SCHEDULE - Part II

Tax withholding on Profit on debt to nonresident individuals

The Bill proposes a withholding tax rate of 10% on payment of profit on debt to non-resident individuals on debt instruments issued by the Federal Government under the Public Debt Act, 1944. Such debt instruments must be purchased from bank account maintained abroad, a Non-Resident Rupee Account (NRAR) or a foreign currency account maintained with a banking company in Pakistan. The tax deducted is final tax.

Furthermore, the Bill also proposes exemption from applicability of section 236P on cash withdrawal from such NRAR and foreign currency account maintained with a banking company in Pakistan for the purpose of making investment in debt instruments abroad. Exemption has also been proposed from registration and filing of income tax return if the non-resident is only deriving Profit on Debt on the after-mentioned debt instruments.

Also, the provisions of Tenth Schedule are proposed to be inapplicable on withholding tax rate applicable to such profit on debt.

Reduced rate of withholding tax on supplies of goods to utility stores

The Bill proposes a reduced withholding tax rate of 1.5 per cent on payment against supply of following goods to Utility Stores Corporation of Pakistan by persons other than company:

- tea
- spices
- salt
- dry milk
- sugar
- pulses
- wheat flour
- ghee

Such reduced rate of tax withholding is proposed to be applicable on payments made between April 7, 2020 and September 30, 2020. The proposed rate of tax withholding is not applicable to payment against supply of tea, spices, salt and dry milk which are sold under a brand name and is also not applicable if rate of tax withholding already prescribed is lower than 1.5 per cent.

SECOND SCHEDULE - Part IV

Withdrawal of various exemptions

Tax withholding on purchase of scrap by steel melters and composite steel units

The Bill proposes withdrawal of exemption from provisions of section 153 (1) (a) available on payments for purchase of scrap by steel melters, steel re-rollers, composite steel units.

Exclusion from applicability of minimum tax under section 113

Presently, exemption from applicability of minimum tax under section 113 is available to all Modarabas registered under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

The Bill proposes to restrict such exemption to Modarabas qualifying for exemption under clause (100) of Part I of the Second Schedule. This means that Modarabas not qualifying for said exemption will remain liable to pay minimum tax.

In addition, the Bill proposes exemption from applicability of minimum tax under section 113 the Federal Government Employees Housing Authority for the tax year 2020 and the following four tax years.

Exemption on medical and testing equipment regarding outbreak of COVID-19

Through SRO 236 (I)/2020 dated March 20, 2020, exemption has been provided from income tax withholding on import of identified medical and testing equipment regarding outbreak of COVID-19. Such exemption was initially provided till June 20, 2020 which has now been proposed to be validated through Finance Bill with an extension till September 30, 2020.

Exemption from income tax withholding on import of pulses

The Bill proposes to exempt the applicability of provision of section 148 to persons importing pulses between April 7, 2020 and September 30, 2020.

Exemption from applicability of section 153 to certain persons

The Bill proposes to incorporate the provisions of SRO 586 (I)/91 with regard to exemption of section 153 to the following recipients of payments:

- Provincial Government
- a local authority;
- residents of Azad Kashmir executing contracts in Azad Kashmir only and produce a certificate to this effect from the concerned income tax authority;
- persons receiving payments from a company or an association of persons having turnover of fifty million
- rupees or more from an individual having turnover of fifty million rupees or more exclusively for the supply of agriculture produce including fresh milk, fish and poultry products;
- companies receiving payments for the supply of electricity and gas;
- companies receiving payments for the supply of crude oil;
- hotels and restaurants receiving payments in cash for providing accommodation or food or both;
- shipping companies and air carriers receiving payments for the supply of passenger tickets and for the cargo charges of goods transported.

Exemption from tax withholding to nonresident Hajj group operators

The Bill proposes to provide exemption from tax withholding on payment to non-resident Hajj group operators in respect of Hajj operations.

Exemption from tax withholding on banking transactions

Under the provisions of sections 231A, 231AA and 236P, tax withholding is prescribed on certain banking transactions executed by the persons not appearing on the Active Taxpayers List.

The Bill proposes to render such withholding inapplicable to Pak Rupee Account to the extent of foreign remittance credited in such account.

Exemption from tax withholding on commission

Through SRO 315 (I)/2020, exemption was provided for tax withholding on commission received by a retail branchless banking agent on any amount disbursed by the Ehsaas Emergency Cash Transfer Programme for the period between April 16, 2020 and June 30, 2020. The Bill proposed to extend such exemption till September 30, 2020.

Exemptions provided to the Prime Minister's COVID-19 Pandemic Relief Fund-2020

The Bill proposes following exemptions for the Prime Minister's COVID-19 Pandemic Relief Fund-2020:

- a. Exemption from total income under clause (66) of Part I of the Second Schedule;
- b. Exemption from applicability of minimum tax under section 113;
- c. Exemption from applicability of tax withholding under section 151 on profit on debt; and
- d. Exemption from applicability of tax withholding under sections 231A, 231AA and 236P on banking transactions.

Seventh Schedule - Banking Companies

The Bill proposes to extend the applicability of super tax on banking companies for tax year 2021.

Tenth Schedule

Through Finance Act, 2019, Tenth Schedule was introduced whereby the rate of withholding tax for certain provisions has been to be enhanced by 100% for persons not appearing on ATL. The Bill proposes certain additions and omissions from the Tenth Schedule which are summarized below:

Exclusions from the applicability of Tenth Schedule:

Section	Nature of Payment
Reference	
152 (1)	Dividend to non-residents
152 (1AA)	Royalty and Fee for Technical Services to non-residents
152 (2)	Insurance and re-insurance premium to non-resident persons
152 (2)	Certain payments to non-residents not specifically covered

The above amendments are necessitated due to the applicable tax treaty provisions whereby the cap on taxes for such non-residents result in inapplicability of enhanced withholding tax under the Tenth Schedule.

Additions to Tenth Schedule:

Section	Nature of Payment
Reference	
236B	Purchase of air tickets
236V	Extraction of minerals

SALES TAX

CNIC ON TAX INVOICES

Through Finance Act 2019, input tax attributable to sales made to unregistered persons without having CNIC particulars was made nonadmissible for a transaction exceeding Rs 50,000.

The said threshold is proposed to be enhanced to Rs 100,000.

INPUT TAX RESTRICTION ON SUPPLIES TO UNREGISTERED PERSONS

A manufacturer or producer making supplies to unregistered persons where value of such supplies is in excess of Rs 10 million in a month and Rs 100 million in a financial year are not allowed to claim input tax proportionate to such excess amount of supplies. This provision is now proposed to be extended to all registered persons.

PREScription OF GENERIC WASTAGE QUANTUM/PERCENTAGE FOR INPUT TAX

The input tax is allowable in full if the taxpayer substantiates that the same has been incurred in respect of taxable supplies. There is no prescription of any quantum for determination of wastage in that process.

A restrictive covenant has been proposed in the section whereby the FBR can prescribe the quantum of wastage in that particular process for allowing the input tax. It is expected that the wastage percentages will be prescribed for different industries, such as Electricity transmission and distribution companies, OMCs, Gas supply companies and any other sector where quantum of wastage can be reasonably ascertained, etc.

Similar amendment has also been made in Federal Excise Act.

ACTIVE TAXPAYER

Under the present law, any taxpayer whose account has been 'blocked' by FBR was not considered as Active taxpayer. There was no prescription of determination of the process where a taxpayer's account can be treated as blocked. The proposed amendment aims to omit this basis for determination of active taxpayer status.

VALUE OF SUPPLY

Under Finance Act, 2019, Value of Supply in case of supply of electricity by an independent power producer was inserted as the amount received on account of energy purchase price only; and the amount received on account of capacity purchase price, energy purchase premium, excess bonus, supplemental charges etc. shall not be included in the value of supply. It has now been proposed to extend the said value of supply of electricity to WAPDA with effect from July 1, 2019, bringing it at par with Independent Power Producers.

Further, value of supply in case of registered persons engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing has been restricted to difference between sale and purchase price of the vehicles.

VALUE ADDITION TAX ON IMPORT BY MANUFACTURERS

Under the present regime, a value addition sales tax at the rate of 3% is collected on certain imports. By way of a positive amendment in the law, it is proposed that such tax will not apply on import of raw material and intermediary goods by a manufacturer for house consumption.

The practical aspect of this provision need to be prescribed for enabling the Customs authorities to identify the goods constituting raw material and intermediary goods, as the case may be.

WITHHOLDING SALES TAX ON SERVICES

The scope of withholding of sales tax under section 3 has been extended to purchase of services by withholding agents specified under Eleventh Schedule.

Editorial changes are proposed to Eleventh Schedule for clarity and restricting lower withholding of sales tax rates to Active taxpayers instead of registered persons.

CNIC REQUIREMENT EXTENDED FOR SALES TAX ON SERVICES

Pro-rata disallowance of input tax credit attributable to supply made to unregistered persons, for which sales invoices do not bear the CNIC number of the buyer is now proposed to be extended to rendering of services also.

As the sales tax on services by the Federal government is restricted to Islamabad Capital Territory therefore this proposal will only apply to that extent. However, it is expected that the Provincial Governments may make similar amendments in their respective laws.

POWER OF TAX AUTHORITIES TO MODIFY ORDERS

A new section has been proposed to empower the Commissioner in any assessment proceeding before them to follow a question of law decided by a

High Court or the Appellate Tribunal in the case of a particular registered person on or after July 1, 1990 regardless of the fact that the Commissioner may have filed an appeal or reference against the order of the High Court or Tribunal as the case may be, he would follow the said decision.

In the event the decision of the High Court or Tribunal is reversed or modified, the Commissioner may notwithstanding the expiry of the limitation period prescribed for making any assessment or order, within a period of one year from receipt of the decision modify the assessment or order. Parallel amendment is also proposed in FE Act, 2005.

The above provisions are already part of the Income tax law.

PENALTIES

In respect of failure to integrate business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with FBR or its computerized systems, it is proposed to:

- reduce the grace period of six months before sealing of premises to two months; and
- keep the premises sealed till such time as the business is integrated to certain conditions.

Certain penalties are proposed for not providing real time access to information and data bases by certain agencies and utility companies.

ELECTRONIC SERVICE OF ORDERS, DECISIONS ETC.

It is proposed to allow electronic service of orders, decisions etc to all Registered persons.

Similar amendment has been proposed in Federal Excise Act, 2005.

SCHEDULES

The amendments made through Tax Laws (Amendment) Ordinance, 2019 in Fifth and Sixth Schedules and which have lapsed six months are again proposed to be inserted with effect from June 1, 2020.

Exemption under Serial 103 of Table I of Sixth Schedule to import and supply of certain ships and floating crafts is proposed to be extended till 2023.