



UPSHOTS

TAX LAWS (SECOND AMMENDMENT) ACT, 2021

ABSTRACT

The Federal Government is in the process of introducing a Finance Bill i.e., Tax Laws (Second Amendment Ordinance, 2021). This document will highlight the important proposed changes in tax laws vide these amendments. The source of this document is publicly available copy of proposed Finance bill. Therefore, the contents of this document may vary based on the change of source document.

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A. Income Tax Ordinance, 2001 [Ordinance]

1. Power of FBR to Notify Industrial undertaking- Section 2(29C) (b)

The said section empowers FBR to notify any person to be an industrial undertaking. However, the bill proposes to withdraw this power of FBR.

2. First Year Allowance- Section 23A

The bill proposes to withdraw a major allowance available to industrial undertakings set up in specified rural areas in the form of 90% of Plant & machinery cost in the first year. The said allowance was introduced through Finance Act, 2008.

3. Tax credit on Donation, voluntary contributions, or Subscription- Section 61 & Clause 61 (Part 1), 2nd Schedule.

As per section 61 of the Ordinance, a person was entitled to a tax credit. The said credit was limited in terms of nature payment, percentage of amount paid available for credit and nature of donee.

The bill proposes to enhance the scope of this credit in terms of following:

- a. Nature of sum paid voluntary contributions and subscription will also be subject to credit.
- b. Nature of Donee: The person eligible for credit under section 100C will also be considered as eligible done under section 61.

The bill further proposes to remove the entities mention under clause 61 (against which straight deduction was available). Now such entities will be gathered under Schedule 13. The tax credit under section 61 shall also be available against the sum paid to entities under Schedule 13. The

main purpose of this proposed change is to align tax benefits between various non-profit organizations and certain specified organizations.

4. Withdrawal of Tax credits available for employing fresh graduates & for enlistment on stock exchange- Section 64C & 65C.

The bill proposes to withdraw the tax credits available for employing fresh graduates in the form of salary paid to persons. This credit was inserted through Finance Act, 2019.

Further, this bill proposes to withdraw a credit available for enlistment of company in the form of 10% to 20% of taxable income.

5. Conversion of Income exemption into 100% Tax credit for certain persons- Section 65F & Clause 132A, 133 & 143 (Part 1), 2nd Schedule

The bill proposes to convert the exemption available of following incomes into 100% percent tax credit based on certain conditions:

Persons	Old ref	New Ref
Engaged in coal mining projects in Sindh supplying coal exclusively to power generation projects;	Clause 132 A	Section 65F
Startup Certified by Pakistan software Export board	2(62A) Clause 143	2(62A) Section 65 F
Engaged in export of IT Software & IT Services where 80% of sales proceeds are received in Pakistan through proper Banking Channel.	Clause 133	Section 65F

The said credit will be subject to the fulfillment of following conditions:

- a. Filing of annual return
- b. Tax collection or deduction by taxpayer

- c. Filing of withholding statements for the preceding 1 year.
- d. Filing of sales tax returns for the relevant tax year.

The main impacts of this proposed change will be as follows:

- (i) The compliance level will be increased as currently most freelance workers are not filing ITR or sales tax returns.
- (ii) The persons making local supplies or services to the withholding agent will not be eligible for exemption certificates in terms of ratio settled by August Supreme court.
- (iii) Increase in undue refunds for these sectors creating negative impression.

6. Tax credit for Green Field industries & Industrial undertaking producing product for dedicated use of renewable energy- Section 65G, Clause 126O, 126I (Part 1), 2nd Schedule.

The Government introduced exemption on profit & gains of green filed industries and extend the period of exemption for other industrial undertaking cited above through Finance Supplementary (Second Amendment) Act, 2019 for the period of 5 years. Now this bill proposes to remove such exemption and introduce tax credit scheme for such industries vide proposed section 65G. The key factors are as follows:

- a. The tax credit will be available for investment made in purchase & installation of **[Eligible Investment]**:
 - (i) New Machinery
 - (ii) Buildings
 - (iii) Equipment

- (iv) Hardware & Software

Exceptions: self-created software & used capital goods.

- b. The tax credit will be 25% of the eligible investment against tax payable including minimum taxes.
- c. The unadjusted tax credit will be available for carry forward maximum for 2 years.
- d. The eligible person for this credit will be as follows:

- (i) *Green Field industry engaged in the manufacture of goods or materials or the subjection of goods or materials to any process which substantially changes their original condition;*
or

Ship building

(incorporated between 30th June 2019 to 30th June 2024)

- (ii) industrial undertaking engaged in the manufacture of plant, machinery, equipment, and items with dedicated use for generation of renewable energy.

(incorporated till 30th June 2023)

7. 100% Tax credit on the income of NPOs- Section 2(36) & 100C.

The bill proposes to substitute the existing section 100C to simplify and align the eligibility, conditions, and requirements for such tax credit. Otherwise, the crux of the new proposed section is almost inline with the existing section 100C. The salient features are as follows:

- A. Eligible person for Tax credit:
 - (i) Specified person in table ii, Clause 66 Part 1, 2nd Schedule

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- (ii) Trusts including trust administered under certain specified schemes by Government.
- (iii) Registered Welfare institutions
- (iv) NPO under section 42 of Companies Act, 2017
- (v) Wqf, welfare societies, religious charitable institutions, International NGOs
- (vi) University & educational institute run by NPO.

B. Eligible Income for tax credit:

- (i) Grant from governments, Donations, Voluntary contributions & subscriptions
- (ii) Income from house property
- (iii) Profit on debt
- (iv) Income from business expended in Pakistan subject to certain proportion to other heads of income.
- (v) Any income of person specified in Table II; Trust administered by government & educational institute run by NPO.

C. Terms & Conditions:

- (i) Filing of annual return
- (ii) Tax deducted or collected by NPO.
- (iii) Filing of withholding tax statements
- (iv) Admin expenses are less than 15% of receipts subject to certain exceptions.
- (v) Approval under section 2(36) except for entities mentioned under table II, clause 66. For them, the requirement will be applicable from June 2022 and not before.
- (vi) Assets of NPO should not be used for personal benefits.

- (vii) A statement of donation and voluntary contribution received in preceding tax year to be filed.

8. Offences & Penalties- Section 182

Sr. No	Offence	Proposed Amendment						
1	Late filing of ITR under section 114	<p>The minimum penalty of Rs. 5k is proposed to be introduced for persons having total income less than Rs. 800k.</p> <p>Such minimum penalty will be further reduced by:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>75%</td> <td>Late filed by 1 month</td> </tr> <tr> <td>50%</td> <td>Late filed by 2 months</td> </tr> <tr> <td>25%</td> <td>Late files by 3 months</td> </tr> </table>	75%	Late filed by 1 month	50%	Late filed by 2 months	25%	Late files by 3 months
75%	Late filed by 1 month							
50%	Late filed by 2 months							
25%	Late files by 3 months							
1A	Failure to file final statement U/s 115, withholding statements U/s 165, 165A & 165B within due date	The minimum penalty of Rs. 10K is proposed in case where it is established that no tax was required to be deducted or collected during the said period.						
6	Repeat erroneous calculation in	The existing penalty is higher of 30k or 3% of						

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	tax return in more than one tax tear creating less tax payable	tax amount involved. The bill proposes to create an exception to this penalty to the extent of arguable position taken by taxpayer for the applicability of the Ordinance.
10	Making false or misleading statement or filing of false or misleading information to taxation authorities	Earlier the penalty was higher of Rs. 25k or 100% of the tax shortfall. The bill proposes to reduce it to Rs. 25K or 50% of the tax shortfall. Further the bill proposes to limit the scope of this entry to section 114, 116, 174, 176, 117, 114A & 118
11	person who denies or obstructs the access of the Commissioner or any officer authorized by the Commissioner to the premises, place, accounts, documents, computers, or stocks.	Earlier the penalty was higher of Rs. 50k or 100% of the tax involved. The bill proposes to reduce it to Rs. 50K or 50% of the tax involved.

16	Display of NTN and business license on business premises	The penalty of Rs. 5K has been prosed to be extended on non-display of business license on business premises.
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9. Withdrawn Exemption- Part 1, 2nd Schedule

Sr. No	Ref.	Description
1	Clause 57 (1)(III)	Exemption available against voluntary contributions or investments derived by Shaikh Sultan Trust, Karachi
2	Clause 61	Amount paid as donation to certain institution (ref Point 3 above]
3	Clause 64 A	<i>Amount donated to PM fund for victims of terrorism</i>
4	Clause 64B	<i>Amount donated to CMP relief fund for IDPs</i>
5	Clause 64C	<i>Amount donated to PM & CM Flood relief Fund 2010</i>
6	Clause 65	<i>Income of research centers set up by IRCICA derived from donations</i>
7	Clause 72A	<i>Income derived by sukuk holder</i>
8	Clause 72	Exemption of profit on debt payable to a non-resident person with certain conditions
9	Clause 74	Exemption on profit on debt derived by HUBCO on its bank deposits or accounts with financial institutions

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10	Clause 90	Exemption on profit on debt payable by an industrial undertaking in Pakistan subject to certain conditions	17	Clause 103	Income for the distribution received by taxpayer out of capital gain from: (i) Collective Investment Scheme (ii) NIT (iii) REIT Scheme (iv) Private Equity and venture capital Fund
11	Clause 90A	Any profit on debt derived by any person on bonds issued by Pakistan Mortgage Refinance company	18	Clause 103C	Income from inter corporate dividend for persons eligible for group relief under section 59B
12	Clause 91	Any income of a textbook board of a Province established under any law for the time being in force, accruing or arising from the date of its establishment	19	Clause 104	Income derived by the Libyan Arab Foreign Investment Company being dividend of the Pak-Libya Holding Company.
13	Clause 98	Any income derived by any Board or other organization established by Government in Pakistan for the purposes of controlling, regulating, or encouraging major games and sports recognized by Government.	20	Clause 105	Income derived by the Government of Kingdom of Saudi Arabia being dividend of the Saudi-Pak Industrial and Agricultural Investment Company Limited.
14	Clause 99A	Profit & gains on sale of immovable property to a REIT Scheme	21	Clause 105A	Income derived by Kuwait Foreign Trading Contracting and Investment Company or Kuwait Investment Authority being dividend of the Pak-Kuwait Investment Company in Pakistan from the year of incorporation of Pak-Kuwait Investment Company.
15	Clause 100	Exemption on income of a Modaraba registered under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980. Other than manufacturing or trading activity	22	Clause 110B	Any gain by a person on transfer of a capital asset, being a membership right held by a member of an existing stock exchange,
16	Clause 101	Profit & gains of a venture capital company and venture capital fund registered under Venture Capital Companies and Funds Management Rules, 2000 and a Private Equity and Venture Capital Fund.			

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		for acquisition of shares and trading or clearing rights acquired by such member in new corporatized stock exchange during corporatization of an existing stock exchange.			'Pioneer Industry' by Economic Coordination Committee of the Cabinet.
23	Clause 110C	Any gain by a person on transfer of a capital asset, being a bond issued by Pakistan Mortgage Refinance Company to refinance the residential housing mortgage market, during the period from the 1st day of July 2018 till the 30th day of June 2023.	27	Clause 131	Exemption of income of company or other taxpayers against the income of royalty, fee for technical services etc.
24	Clause 114	Any income chargeable under the head "capital gains" derived by a person from an industrial undertaking set up in an area declared by the Federal Government to be a "Zone" within the meaning of the Export Processing Zones Authority Ordinance, 1980 (IV of 1980).	28	Clause 135A	Income derived by a non-resident from investment in OGDCL exchangeable bonds issued by the Federal Government.
25	Clause 126BA	Profits and gains derived by a refinery set up between the 1st day of July 2018 and the 30th day of June 2023 with minimum 100,000 barrels per day production capacity for a period of twenty years subject to other conditions	29	Clause 136	Any income of a special purpose vehicle as defined in the Asset Backed Securitization Rules, 1999 made under the Companies Ordinance, 1984.
26	Clause 126G	Profit and gains derived for a period of five years from the date of start of commercial production by the companies from specified projects that have been declared	30	Clause 141	Profit and gains derived by LNG Terminal Operators and Terminal Owners for a period of five years
			31	Clause 146	Any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution with effect from the 1st day of June 2018 to the 30th day of June 2023.

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10. Amended Exemption Part 1, 2nd Schedule

Sr. No	Ref.	Description
1	Clause 66	The bill proposes to exempt the income of "Islamic Naya Pakistan Certificates Company Limited (INPCCL)
2	Clause 75	The bill proposes to limit the income exemption of foreign agency to the extent of Profit on debt and capital gains. The bill further proposes to exclude foreign national from the preview of such exemption.
3	Clause 126B	The bill proposes to merge the contents of Clause 128BA in this clause. Meaning thereby, the exemption available earlier under clause 126B to the refineries shall stand available.
4	Clause 132	profits and gains derived by a taxpayer from an electric power generation project set up in Pakistan. The bill proposes to restrict the exemption for the following: <ul style="list-style-type: none"> (i) persons entering into agreements, (ii) To whom letter of intents is issued, for setting up an electric power generation project in Pakistan up to 30th June 2021.

11. Omission in part II, 2nd Schedule- Reduction Tax Rates

If these proposed changes are finally approved. The normal applicable rates will become applicable on the following:

Sr. No	Ref.	Description
1	Clause 2	Any income of persons whose profits or gains from business are computed under the Fifth Schedule to this Ordinance.
2	Clause 3	Tax in respect of income from services rendered outside Pakistan and construction contracts executed outside Pakistan at the rate of 50% of applicable tax.
3	Clause 3B	Income of Pakistan Cricket Board ("PCB") derived from sources outside Pakistan including media rights, gate money, sponsorship fee, stadium rights, out-stadium rights, payments made by International Cricket Council, Asian Cricket Council or any other Cricket Board is taxed at a rate of four per cent of the gross receipts from such sources.
4	Clause 5B	Tax in respect of capital gains derived by a person from the sale of shares or assets by a private limited company to Private Equity and Venture Capital Fund are charged at the rate of 10% percent of such gains.

5	Clause 18	For modaraba the rate of income tax is 25% of total income excluding such part of total income to which Division III of Part I of the First Schedule or section 153 or section 154 applies
6	Clause 18B	The corporate tax rate was to be reduced by 2% for shariah compliant Listed Companies.
7	Clause 24AA	The rate of tax, under section 152 in the case of M/S CR-NORINCO JV (Chinese Contractor) as recipient, on payments arising out of commercial contract agreement signed with the Government of Punjab for installation of electrical and mechanical (E&M) equipment for construction of the Lahore Orange Line Metro Train Project, is 6% of the gross amount of payment.
8	Clause 28A	The reduced rates on import of hybrid cars
9	Clause 28B	The rate of tax is 0.15% under section 231A on cash withdrawal by an exchange company.

(v) Edible Oil

Is 0.25% of the revenue. The bill proposes to add locally manufactured mobile phone in the above list.

**13. Omission from Part III, 2nd Schedule-
Reduction in Tax liability**

Sr. No	Ref	Description
1	Clause 2	Reduction in tax liability for a full-time teacher up to 25%.
2	Clause 7	50% tax reduction for foreign film maker in Pakistan.
3	Clause 8	70% tax reduction for local film maker in Pakistan.



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12. Proposed amendments in Part II, 2nd Schedule- Reduction in Tax Rates

Clause 24D: minimum tax under subsection (1) of section 113 in case of dealers and sub dealers, whole sellers, and retailers of

- (i) FMCG
- (ii) Fertilizer
- (iii) Sugar
- (iv) Cement