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A Brief on Tax Laws (Amendment) Ordinance, 2021

Preamble

Tax Laws (Amendment) Ordinance, 2021 has been promulgated by the President of Pakistan on 12 February 2021 and shall come into force at once.

This publication contains our comments on the significant amendments introduced by Tax Laws (Amendment) Ordinance, 2021 (referred to as Amendment Ordinance).

This brief contains the comments, which represent our interpretation of the legislation. We recommend that while considering their application to any particular case reference be made to the specific wordings of the relevant statute.

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Income Tax

Incentives for Non-resident individuals (NRIs) holding Pakistan Origin Card (POC), National ID Card for Overseas Pakistanis (NICOP) or Computerized National ID Card (CNIC)

Tax Laws (Amendment) Ordinance, 2021 (Amendment Ordinance) has provided certain incentives to NRIs holding POC, NICOP or CNIC maintaining with authorized banks in Pakistan

- a Foreign Currency Value Account (FCVA), or
- a Non-Resident Pakistani Rupee Value Account (NRVA).

These are summarized below

Withholding tax suffered made final tax on capital gain on disposal of debt instruments, government securities and certificates

The Amendment Ordinance has added a new subsection (1DA) in section 152 of the Ordinance, whereby, withholding tax suffered at 10% under Division 11 of Part 111 to the First Schedule on capital gain on disposal of debt instruments, government securities and government certificates (both conventional and shariah compliant) is made final tax for NRIs whose investments are through FCVA or NRVA.

Withholding tax collected made final tax on disposal of Immovable property in the hands of non-resident seller

The Amendment Ordinance has added a new proviso under section 236C, whereby, advance tax collected under Division X of Part 1V to the First Schedule at 1% of the gross amount of consideration received is made final tax for foregoing NRIs who acquire immovable property through FCVA or NRVA.

Withholding tax collected made final tax on disposal of Immovable property in the hands of non-resident purchaser

The Amendment Ordinance has added a new proviso under section 236K, whereby, advance tax

collected under Division VIII of Part 1V to the First Schedule at 1% of the fair market value is made final tax for foregoing NRIs who acquire immovable property through FCVA or NRVA.

New non-resident categories prescribed for claiming corporate tax exemption on Profits on debt

Any profits on debt derived from

- foreign currency account or certificate of investments issued by investment banks held with authorized banks in Pakistan; and
- a rupee account held with scheduled banks in Pakistan, if deposits are made exclusively from foreign exchange remitted into said account

are exempt from tax for persons prescribed in clauses (78) and (79) of Part I to the Second Schedule, respectively.

The Amendment Ordinance has substituted the categories of these persons in the foregoing clauses in the following manner:

Clause	Current category	New category
(78)	<ul style="list-style-type: none"> • Citizens of Pakistan and • Foreign nationals residing abroad • Foreign association of persons, • Companies registered and operating abroad and • Foreign nationals residing in Pakistan 	<ul style="list-style-type: none"> • Non-resident individuals • Non-resident Association of person and • Non-resident companies
(79)	Citizen of Pakistan residing abroad	Non-resident individuals holding POC or NICOP or CNIC

The Amendment Ordinance has added a new clause (5AC) in Part II to the Second Schedule, whereby, withholding tax under sections 151 and 152(2) of the Ordinance will be zero percent (0%) of the gross amount of profit on debt paid, covered under clauses (78) and (79) of Part I to the Second Schedule.

Other Benefits for Non-resident individuals (NRIs)

The Amendment Ordinance has inserted a new clause (111AB) in Part IV to the Second Schedule, whereby, higher rates of withholding tax (as applicable to persons not appearing on Active Taxpayers List) will not be applicable to NRIs maintaining FCVA and NRVA with authorized banks in Pakistan.

The Amendment Ordinance has inserted a new clause (112A) in Part IV to the Second Schedule, whereby, the following provisions of withholding taxes will not apply to holders of FCVA or NRVA in respect of these accounts only

- Cash withdrawal from bank under section 231A
- Sale of banking instrument or online transfer of money etc. under section 231AA
- All banking transactions other than cash under section 236P

The Amendment Ordinance has inserted a new clause (114A) in Part IV to the Second Schedule, whereby, foregoing NRIs maintaining FCVA and NRVA with authorized banks in Pakistan are not required to obtain National Tax Number and are also not required to file income tax return.

A proviso to the foregoing clause says that this clause shall not apply if foregoing NRI has Pakistan source taxable income other than

- Profit on debt on FCVA or NRVA;
- Profit on debt earned on GOP securities either conventional or Shariah compliant where investment has been made from proceeds of

FCVA or NRVA;

- Capital gain on disposal of immovable property acquired from proceeds of FCVA or NRVA;
- Capital gain on disposal of listed securities and units of mutual fund that are acquired from proceeds of FCVA or NRVA;
- Dividend income from listed securities and mutual fund that are acquired from proceeds of FCVA or NRVA.

Withholding tax rate prescribed and made final tax for Resident Citizens of Pakistan on profit on debt

The Amendment Ordinance has added a new clause (5AB) in Part II to the Second Schedule, whereby, withholding tax under sections 151 of the Ordinance will be ten percent (10%) from profit on debt from a debt instrument whether conventional or Shariah compliant purchased by a resident citizens of Pakistan who has already declared foreign assets to the Board through FCVA maintained with authorized banks in Pakistan.

As per proviso to the foregoing clause, withholding tax shall be final tax.

Incentives for Distributors / Wholesalers Retailers / Dealers / Sub-dealers

These incentives are summarized as follows

Extension of withholding tax and minimum tax concessions to wholesalers and retailers of fastmoving consumer goods and fertilizers

Currently tax deduction under section 153(1)(a) of the Ordinance read with clause (24C) of Part II to the Second Schedule on receipts in the hands of dealers and sub-dealers of sugar, cement and edible oil are subject to reduced withholding tax rate of 0.25% of the gross amount of payments.

Similarly, the rate of minimum tax under section 113 of the Ordinance read with clause (24D) of Part

II to the Second Schedule is 0.25% for above dealers and sub-dealers.

The Amendment Ordinance has extended the above concessions to wholesalers and retailers of fastmoving consumer goods and fertilizers who are already or get themselves registered under the Act, 1990 within sixty days of the promulgation of the Amendment Ordinance.

Reduction in advance tax rate for Distributors/ Dealers and Wholesalers of Fertilizers

Every manufacturer or commercial importer of electronics, sugar, cement, iron and steel products, fertilizers, motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam sector is required to collect advance tax from distributors, dealers and wholesalers at the rate of 0.7% under section 236G read with Division XIV of Part IV to the First Schedule.

The Amendment Ordinance has reduced the rate of advance tax to 0.25% only in case of fertilizers.

This concession would only be available if the distributor, dealer and wholesaler is already or get himself registered under the Act, 1990 within sixty days of the promulgation of the Amendment Ordinance.

Exemption from withholding of tax on payments made by distributors, dealers, wholesalers and retailers of locally manufactured mobile phone devices

The Amendment Ordinance has inserted a new clause (119) in Part IV to the Second Schedule, whereby, withholding tax under section 153(1)(a) of the Ordinance shall not apply to distributors, dealers, wholesalers and retailers of locally manufactured mobile phone devices as withholding agents.

The exemption has been granted retrospectively from 01 July 2020.

Other Amendments

Collection of advance tax from buyers of locally manufactured vehicles if sold within ninety days of taking delivery

The Amendment Ordinance has inserted a new sub section (2A) in section 231B, whereby, every motor vehicle registration authority of Excise and Taxation Department shall collect advance tax at the time of sale of such vehicles from buyers of locally manufactured vehicles who sell the vehicles within ninety days of taking delivery from the local manufacturers/ assemblers, whether or not registered by the respective authorities.

Collection rates are as follows:

Serial No.	Engine Capacity	Tax (Rupees)
1	Up to 1000 cc	50,000
2	1000 cc to 2000 cc	100,000
3	2000 cc and above	200,000

The above tax shall only be collected upto 30 June 2021.

Concessionary regime of income tax for Cotton Ginners

The Amendment Ordinance has inserted a new clause (17) in Part 111 to the Second Schedule, whereby, tax liability of cotton ginners on their income shall not be more than sum of 1% of their turnover from cotton lint, cotton seed, cotton seed oil and cotton seed cakes.

As per proviso of this clause it is a final tax for cotton ginning and oil milling activities only.

Further, these concessions are available retrospectively from 01 July 2019.

Extension of Super tax in case of banking companies beyond tax year 2021

Super tax on banking companies is 4% for the tax year 2021.

The Amendment Ordinance has extended such levy beyond such year by inserting words "and onwards" after the expression "tax year 2021" in column 6 of table in Part 1 of Division 11A to the First Schedule.

Set up period for Transmission Line projects extended for claiming income tax exemption

Profits and gains derived from a transmission line project is exempt under clause (126M) of Part I to the Second Schedule for a period of ten years from the date of set up of the project on or after 01 July 2015 but before 30 June 2018.

The Amendment Ordinance has extended such period to 30 June 2022.

Exemption to international athletes or sportsmen on goods temporarily imported into Pakistan

The Amendment Ordinance has inserted a new sub-clause (iiiia) in clause 56 in Part 11 to the Second Schedule, whereby, goods temporarily imported into Pakistan by international athletes which would be subsequently taken back by them within 120 days have been allowed exemption from collection of income tax at import stage.

Exemption to Islamic Naya Pakistan Certificates Company Limited (INPCCL)

The Amendment Ordinance has inserted a new clause (148) in Part 11 to the Second Schedule, whereby, any income derived by INPCCL would be exempt from levy of corporate income tax.

The Amendment Ordinance has inserted a new sub-clause (XXXViii) in clause (11A) in Part 1V to the Second Schedule, whereby, the provisions of minimum tax under section 113 shall not apply to INPCCL.

The Amendment Ordinance has inserted a new clause (118) in Part 1V to the Second Schedule, whereby, the provisions of withholding tax shall not apply to INPCCL.

Payments received by National Telecommunication Corporation (NTC) against provision of telecommunication services and other ancillary services made exempt from withholding tax

The Amendment Ordinance has inserted a new clause (79A) in Part 1V to the Second Schedule, whereby, withholding tax under section 153(1)(b) of the Ordinance will not apply to payments received by NTC against provision of telecommunication services and other ancillary services specified in section 41(3) of the Pakistan Telecommunication (Re-organization) Act, 1996.

Advance tax rate prescribed on import of CKD kits of Electric Vehicles (EVs)

The Amendment Ordinance has inserted a new clause (c) under first proviso in Part 11 to the First Schedule, whereby, collection of advance tax at reduced rate of 1% would now be applicable on import of CKD kits of EVs (small cars or SUVs with 50 kwh battery or below) and (LCVs with 150 kwh battery or below).

Sales Tax Act, 1990

FBR powers enhanced for sharing data or information with the Ministries or Divisions of Federal and Provincial Governments

The Amendment Ordinance has inserted a new section 56(1A) in Sales Tax Act, 1990 (Act, 1990), whereby, FBR has been empowered to share data or information including real time data videos, images received under the provisions of the Act, 1990 with the Ministries or Divisions of Federal and Provincial governments subject to certain conditions and limitations as may be specified.

Exemption, reduced rates and exclusion from Minimum Value Addition Tax (MVAT) for manufacturers/ assemblers of Electric Vehicles (EVs)

The Amendment Ordinance has inserted a new serial 157 in Table -1 to the Sixth Schedule, serial 71 to the Eighth Schedule and sub-clauses (Xi), (Xii) and (Xiii) in clause (2) to the Twelfth Schedule, whereby, manufacturers/ assemblers importing and supplying four-wheeler EVs of following prescribed categories have been allowed exemptions, reduced rates of sales tax and exclusion at import stage from Minimum Value Addition Tax (MVAT) respectively in the following manner:

Description	Exemption/ Rate/Condition
Import of: <ul style="list-style-type: none"> CKD kits for Small cars and SUVs with 50 kwh battery or below; CKD kits for Light Commercial Vehicles (LCVs) with 150 kwh battery or below 	Exempt
Locally manufactured / assembled EVs till 30 June 2026: <ul style="list-style-type: none"> Small cars and SUVs with 50 kwh battery or below; and LCVs with 150 kwh battery or below 	1 % if supplied locally

Description	Exemption/ Rate/Condition
Import of: <ul style="list-style-type: none"> Four-wheeler EVs CKD kits for small cars or SUVs with 50 kwh battery or below and LCVs with 150 kwh battery or below till 30 June 2026; Four-wheeler EVs small cars or SUVs with 50 kwh battery or below and LCVs with 150 kwh battery or below till 30 June 2026; Two to three wheelers and heavy commercial EVs in CBU condition till 30 June 2025 	Exclusion from MVAT

Exemption to international athletes or sportsmen on goods temporarily imported into Pakistan

The Amendment Ordinance has inserted a new serial 158 in Table -1 to the Sixth Schedule, whereby, goods temporarily imported into Pakistan by international athletes or sportsmen which would be subsequently taken back by them within 120 days have been allowed exemption from sales tax subject to certain conditions.

MAX.G.W.
67,200 LBS
4,000 KGS
TARE
0.820 LBS
MAX.C.W.
26,480 KGS
58,380 LBS
CU. CAP.
76.4 CU.M.
2.700 CU.FT.

CUSTOMS Act, 1969

Concessions for Special Technology Zones (STZ)

Special Technology Zones Authority Ordinance, 2020 (STZAO) was promulgated on 02 December 2020. The purpose of STZAO, as stated therein, is to establish Special Technology Zone Authority (STZA) to provide institutional and legislative support to Technology Sectors in Pakistan for the development of scientific and technological ecosystem. STZAO provides incentives/concessions to the Zone Authority, Zone developers and Zone enterprises from customs duties and other taxes.

Through the Amendment Ordinance only exemption from customs duty has been incorporated in the Customs Act which are summarized below:

Exemption from customs duty for Zone Authority and Zone Developers (ZDs)

The Amendment Ordinance has inserted a new paragraph (4)(i) in sub-chapter 5, in the First Schedule under Chapter 99, whereby, exemption is granted from customs duty on capital goods including but not limited to materials, plant, machinery, hardware, equipment and software for a period of ten years as prescribed in STZAO, if not manufactured locally, imported from the date of signing of the development agreement for consumption within zones by the STZA and ZDs subject to such conditions, limitations and restrictions as the Board may from time to time impose.

Exemption from customs duty for Zone Authority and Zone Enterprises (ZEs)

The Amendment Ordinance has inserted a new paragraph (4)(iii) in sub-chapter 5, in the First Schedule under Chapter 99, whereby, exemption is granted from customs duty on capital goods including but not limited to materials, plant, machinery, hardware, equipment and software for a period of ten years as prescribed in STZAO, if not manufactured locally, imported from the date of issuance of license by the STZA for consumption within zones by the

STZA and ZEs subject to such conditions, limitations and restrictions as the Board may from time to time impose.

The Amendment Ordinance has not made corresponding amendments in other relevant statutes and we understand that relevant amendments in this regard would be issued in due course.

Extension of concessional customs duty for four-wheeler Electric Vehicles (EVs)

The Amendment Ordinance has extended concessional duties in Table-1 under Part V(A) to the Fifth Schedule on import of CBU, CKD and parts of four-wheeler EVs which were previously available to two and three wheelers in terms of Electric Vehicle Policy, 2020. For this purpose, new serials 7 and 8 with related entries have also been added which are summarized as under:

- Customs duty has been reduced to 25% on import of four-wheeler EV (PCT Code 8703.8090) till 30 June 2026.
- Customs duty has been reduced to 12.5% on import of first 100 EVs 4-wheelers (CBU) units to each manufacturer/ assembler, subject to approval of Engineering Development Board (EDB) till 30 June 2026.
- Concessionary duty rates for import of CKD and spare parts (PCT Code 8703.8090) are provided till 30 June 2026 subject to the following conditions:

Description of Imported goods	Rate	Conditions
EV specific components for assembly / manufacturer in any kit-form (CKD)	1%	Certification and Quota determination by the EDB

Description of Imported goods	Rate	Conditions
Components for assembly/ manufacture in any kit-form: <ul style="list-style-type: none">● Non-localized parts● Localized parts	10% 25%	On fulfilment of conditions mentioned in para 2 of SRO 656(I)/2006 dated 22 June 2006

Furthermore, concession on import of CBU chargers with CKD kits for EVs have been extended to four-wheeler EVs, which was previously available to two and three wheelers.

Exemption to foreign nationals, experts and athletes on goods temporarily imported into Pakistan

The Amendment Ordinance has inserted a new clause (7) in sub-chapter (VI) to the First Schedule under Chapter 99, whereby, professional and technical apparatus or equipment or instrument imported by foreign nationals, experts and athletes etc. participating in international events (including but not limited to sports events) or under any international arrangement shall be exempt from customs duty subject to following conditions

- Endorsement on their passport for use solely during such event or arrangement
- The goods allowed for temporary admission shall be identifiable at the time of import and subsequent re-export

A proviso to the foregoing clause says that the condition of furnishing undertaking or bond by such foreign nationals shall not be applicable for this clause.



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