KPMG Taseer Hadi & Co.
Chartered Accountants

A Brief on Income Tax (Amendment) Ordinance, 2022

March 2022

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Preamble

The Government has principally approved its third amnesty scheme since 2018 when it took charge with the avowed objective of boosting industrial activity by offering tax incentives to Pakistani businessmen for investment made in 'sick' industrial units or for setting up new industries barring certain sectors such as sugar, aerated beverages, cigarettes manufacturing, explosives and arms manufacturing etc. A minimum investment of Rs. 50 million may be made in new industries on a 'no questions asked' basis from assets not declared up to tax year 2021 by paying 5% tax thereon up to 30 September 2022. The existing companies may also acquire 'sick' units and get their losses adjusted against their own income provided they revive those units by 30 June 2026.

Further a credit equal to 100% of the investment has been offered against tax liability of industries set up by resident and overseas Pakistanis through their foreign assets subject to a minimum investment of Rs. 50 million.

The Income Tax Amendment Ordinance, 2022 (Ordinance, 2022) containing these proposals has received the nod of the Cabinet and will become effective as soon as it is signed by the President, expected to be in a day or so. The amendments brought through the Ordinance, 2022 will be part of the next finance bill, so as to receive the approval of the parliament required by the Constitution.

This paper contains a summary of the amendments brought through the Ordinance, 2022 and are based on the text publicly available. We advise that application of these amendments to any specific case be considered in light of the official gazette copy when available and clarifications to be issued by FBR and SBP with respect to declarations required thereunder.

03 March 2022

Income Tax

Incentive to acquirer companies for the revival of "sick units"

The Income Tax (Amendment) Ordinance, 2022 has introduced a new section 59C whereby a company which acquires the share capital of another company, the later being a "sick unit", has been provided the incentive to adjust the loss for tax year 2022 and brought forward losses for the three preceding tax years subject to the restrictions laid down in section 57 with the following additional requirements:

- There is continued ownership for five years starting from 30 June 2023 and there is no change in share capital of the acquiring company
- The assets of the acquired company are not sold prior to 30 June 2026.
- The acquired company continues the same business till 30 June 2026

The amount of loss shall be adjusted against the income of the acquiring company under the head income from business on a proportionate basis of its shareholding in the acquired company.

However, where the acquirer company is unable to revive the acquired company by 30 June 2026, it will be required to pay tax on its profits where-against it had adjusted business losses of the acquired company.

Revival is deemed to be the event where the acquired company attains maximum production capacity that was obtained before the industrial unit went sick and that the acquirer company obtains a certificate from Engineering Development Board that the acquired company stands revived and furnishes the same with income tax return for tax year 2026.

A sick unit has been defined to mean a company which is an industrial undertaking satisfying either of the following conditions:

- It has accumulated losses for a continuous period of three years prior to 1 July 2022 equal to or exceeding its entire share capital and reserves.
- Has defaulted on repayment of debts owing to banking companies or NBFCs for a consecutive period of three years immediately before acquisition.
- Has been notified so by the Federal Government in a notification published in the official Gazette.

Incentive for investment in an industrial undertaking from foreign remittances

A Pakistani individual who is a non-resident for more than five years or a resident individual having foreign assets declared up to 31 December 2021, may invest in setting up a new industrial undertaking after 1 March 2022 through funds remitted from outside Pakistan in excess of Rs. 50,000,000/- through proper banking channels (as notified by the SBP). The company so set up will be entitled to a one-time tax credit of the amount so remitted and credited in rupees in its bank account.

The tax credit will be available against the tax liability for the tax year in which commercial production commences provided that the same starts before 30 June 2024.

Where the tax credit is not wholly adjusted against the tax liability in which commercial production starts, the credit can be carried forward for adjustment against tax liability of five subsequent years.

The Commissioner is empowered to reverse the tax credit and recompute tax liability where it is discovered that any of the conditions required for claiming the tax credit are not met.

Special provisions related to investment in industrial undertaking

'Eligible persons' have the option to file statement by 30 September 2022 declaring any amounts which had not been declared up to tax year 2021 for investment in equity of a new company formed for establishing and operating an industrial undertaking and incorporate the same in their wealth statements provided that –

- the amount is not less than Rs. 50 million,
- the funds are deposited in rupees in a dedicated bank account as equity of a newly formed company for a company incorporated under the Companies Act, 2017 before filing of the statement due on 30 September 2022,
- the funds are used for the purchase or import of plant and machinery through an LC or construction of building and structure for the industrial undertaking,
- commercial production of the industrial undertaking commences by 30 June 2024 and a certificate from Engineering Development Board is furnished at the time of filing of return for tax year 2024, and
- tax at five percent is paid on such funds at the time of filing of the Statement.

The provisions of section 111 shall not apply where the conditions above are satisfied. Tax so paid is however not adjustable against any other tax liability.

Eligible persons are all persons except the following:

- holders of public office, their spouses and their dependent children;
- a public company as defined in clause (47) of section 2 of the Ordinance.
- a person who has filed a declaration under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018, or, the Assets Declaration Act, 2019
- a person who has been declared a loan defaulter by a bank or a financial institution within the last three years
- a director of a company who has been declared a defaulter by a bank or financial institution within the last three years

The provisions of this section will not apply to –

- any proceeds of crime, corruption, money laundering and terror financing;
- any amount which is subject of any departmental or court proceedings
- the investments for the following sectors:
  - arms and ammunitions
  - explosives
  - sugar
  - cigarettes
  - aerated beverages
  - flour mills
  - vegetable ghee; and
  - cooking oil manufacturing excluding extraction units

The information furnished under this section is to be kept confidential irrespective of the provisions of the National Accountability Ordinance, 1999, Federal Investigation Agency Act, 1974, Right of Access to Information Act, 2017 and section 216 of the Ordinance except clauses (a) and (g) of sub-section 3. Associated changes have also been made to section 216 of the Ordinance to restrict production of evidence related to section 100F.

The statement filed under this section will be void if:

- the newly formed industrial undertaking company fails to prove commercial production by the stipulated date
- there is a change in ownership of the industrial undertaking prior to 30 June 2026, or
- the newly formed industrial undertaking company disposes of any of its assets prior to 30 June 2026.

The provisions of this section also apply *mutatis mutandis*, to an existing company being an industrial undertaking for investment in expansion and modernization provided that the funds will be used for purchase or import of plant and machinery including IT hardware through LC, or software and IT services or for construction of building and structure for the manufacturing premises of the existing industrial undertaking provided that the same shall be completed by 30 June 2024 and a certificate from Engineering Development Board is furnished along with income tax return for tax year 2024.

Offices in Pakistan

Karachi Office
Sheikh Sultan Trust Building No. 2
Beaumont Road
Karachi 75530
Phone +92 (21) 3568 5847
Fax +92 (21) 3568 5095
eMail karachi@kpmg.com

Lahore Office
351-Shadman-1, Main Jail Road,
Lahore Pakistan
Phone +92 (42) 111-KPMGTH (576484)
Fax +92 (42) 3742 9907
eMail lahore@kpmg.com

Islamabad Office
Sixth Floor, State Life Building
Blue Area
Islamabad
Phone +92 (51) 282 3558
Fax +92 (51) 282 2671
eMail islamabad@kpmg.com

home.kpmg/pk