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# A Brief on Finance (Supplementary) Bill, 2023



# Preamble

The Federal Government on 14 February 2023 issued two SROs followed by presenting the Finance (Supplementary) Bill, 2023 ("The Bill") in both the Houses the very next day.

Salient features of the two SROs and the amendments proposed in the Bill are stated in the document below. It is recommended that while considering the application of these measures to any case, reference be made to the specific wordings of the amendments and the relevant statutes as they apply to the facts of the case.

The proposed amendments shall come into force on the next day of assent given to the Act by the President of Islamic Republic of Pakistan.

As to the effective date of the two SROs i.e. SRO 178(I)/2023 and SRO 179(I)/2023 both dated 14 February 2023 issued by the Federal Board of Revenue enhancing respectively the FED and GST, a question arises as to whether powers conferred by Federal Government under relevant sections of Federal Excise Act and Sales Tax Act are legitimate to enhance the FED and GST through notifications. Further whether said amendment in STA should not apply to items mentioned under Third, Eighth and Ninth schedules of the STA.

As per Section 3(2)(b) of the STA, the Federal Government may increase, decrease or set the tax rates of the taxable goods and this power of the Federal Government was also confirmed by the Honorable Lahore High Court in a judgment reported as 2017 PTD 2469.

Even though this matter has been extensively thrashed out by Supreme Court of Pakistan in PTCL 2017 CL 456 wherein it has been held that levy of tax is the function of parliament under Article 77 of the Constitution of Pakistan and the regulation and issuance of fiscal notification is in the nature of subordinate legislations. Such powers, if given to Executive per se, would amount to a negation of the doctrine of Parliamentary supremacy and the doctrine of separation of powers. Both these propositions are valid and make the distinction between Executive and legislative power clear.

Though fiscal notifications enhancing the levy of tax issued by the Secretary Revenue Division or the Minister are ultra vires, the Federal Government has obtained the approval of the Federal Cabinet, as decided in the Mustafa Impex Case to increase the FED and GST rates. Therefore, the said two SROs are backed by the permission of the Federal Cabinet.

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16 February 2023

# Income Tax

## Income tax withholding on purchase of shares

Section 37 deals with the taxation of capital gains other than shares of a public company and Government securities. The Bill proposes an amendment whereby the person acquiring a capital asset being shares of the company shall deduct advance tax from the gross amount paid as consideration for the shares at the rate of 10% of the fair market value of the shares which shall be paid to the Commissioner by way of credit to the Federal Government within 15 days of the payment which shall be adjustable tax in the hands of the person disposing off the shares.

For the purpose of fair market value of the shares, the Bill proposes valuation of shares as the value derived from the assets, if on the last day of the tax year preceding the date of transfer of share the values of such assets exceeds Rs 100 million and represents at least 50 percent of the value of all the assets owned without reduction of liabilities.

The Bill proposes to empower the Commissioner to allow the payment of sales consideration without deduction of tax or deduction of tax at a reduced rate subject to filing of application by the person disposing of the shares. Provisions of sections relating to withholding of taxes, penalties, default surcharge and prosecution shall apply accordingly on the tax deductible and payable under this section.

The Bill proposes to require the person disposing of the shares to furnish information and documents (to be prescribed later by FBR) within thirty (30) days of the transaction of disposal. It is further provides powers to the Commissioner to seek such information, documents and statement from the seller within a period of thirty (30) days as specified in the notice.

It is clarified that this section does not apply to listed shares, which will continue to be taxed as per the existing mechanism and rates provided in the Ordinance, 2001. However, it will be

applicable on every person who purchases shares of a private company, where value of such shares meet the threshold specified in section 37.

## Capital Gain on certain securities to be taxed under section 37

Section 37A deals with capital gain on disposal of securities which are chargeable to tax at the rates specified in the First Schedule. The Bill proposes to insert a new proviso which provides for non-application of this section to securities sold otherwise through registered stock exchange and which are not settled through NCCPL. the Bill proposes to tax gain arising on such securities under section 37 of the Ordinance 2001.

From the bare reading of above proposed amendment, it can be construed that Government securities, mutual fund and sukuk, not being traded at Pakistan Stock Exchange and not settled through NCCPL, shall be subject to tax under section 37 of the Ordinance 2001. This will effectively result in taxation as per the rate applicable to the person disposing them off.

## Re-introduction of advance tax on function and gatherings

The Bill proposes insertion of a new section whereby every prescribed person shall collect advance tax at the rate of 10% on the total amount of the bill from a person arranging or holding a function in a marriage hall, marque, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purpose, subject to such conditions and limitations as may be prescribed.

Where the food, service or any other facility is provided by another person, the prescribed person shall also collect advance tax on the payment of such food, service or facility at the rate of 10% from the person arranging or holding the function.

The advance tax collected above shall be adjustable by the person arranging or holding the function.

Function includes any wedding related event, a seminar, a workshop, a session, an exhibition, a concert, a show, a party or any other gathering held for such purposes.

Prescribed person includes the owner, a leaseholder, an operator or a manager of a marriage hall, marquee, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purpose.

# Sales Tax

## Enhancing the general rate of sales tax

The Bill proposes to enhance the rate of sales tax from 17% to 18% in respect of taxable supplies and goods imported.

To legally support the enhancement of rate by notification for third schedule items a new proviso has been proposed to be inserted empowering Federal Government subject to certain conditions and restrictions as it may impose by notification in official gazette declaring that the tax on goods specified in the third schedule shall be collected and paid at such higher rate or rates on the retail price thereof as may be specified in the said notification.

Description	Current	Proposed
<b>Exceeding US\$ 350 but not exceeding US\$ 500</b>	17%	18%
<b>Exceeding US\$ 500</b>	17%	25%

## Enhancing sales tax rate on goods taxable at reduced rate (Eighth Schedule)

The Bill proposes to enhance the rate of sales tax on following goods currently taxable at reduced rate:

- On locally produced coal from Rs 700 per metric tonne or 17% ad valorem, whichever is higher to Rs 700 per metric tonne or 18% ad valorem, whichever is higher.
- On Potassium Chlorate from 17% along with Rs 60 per KG to 18% along with Rs 60 per KG.

## Enhancing sales tax rate on import of cellular mobile phones (Ninth Schedule)

The Bill proposes to enhance the rate of sales tax under Ninth Schedule on supply of cellular mobile phones in CBU form at the time of import or registration for the following categories:

Description	Current	Proposed
<b>Exceeding US\$ 200 but not exceeding US\$ 350</b>	17%	18%

# Federal Excise Duty

The Bill proposes to enhance the rate of FED

- on different categories of aerated waters from 13% of retail price to 20% of retail price.
- on locally produced cigarettes from Rs. 6,500 per thousand cigarettes with existing on-pack printed retail price threshold exceeding Rs. 6,660 per thousand cigarettes to Rs. 16,500 per thousand cigarettes with proposed on-pack printed retail price threshold exceeding Rs. 9,000 per thousand cigarettes.
- on locally produced cigarettes from Rs. 2,050 per thousand cigarettes with existing on-pack printed retail price threshold not exceeding Rs. 6,660 per thousand cigarettes to Rs. 5,050 per thousand cigarettes with proposed on-pack printed retail price threshold not exceeding Rs. 9,000 per thousand cigarettes.

The Bill proposes to levy FED at 10% of the retail price on sugary fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners excluding mineral and aerated waters.

The Bill proposes to enhance FED to Rs. 2 per kilogram from Rs. 1.50 per kilogram on Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not colored or in the form of clinkers.

The Bill proposes to enhance FED on services provided or rendered in respect of travel by air of passengers embarking on international journey from Pakistan in Club, business and first class from Rs. 50,000 to Rs. 50,000 or 20% of the gross amount of the ticket whichever is higher.

It is to be noted that the proposed amendment shall be applied on the air tickets issued on or after the date of commencement of the Bill.



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