

**PRESENTATION ON
CHANGES IN THE INCOME TAX
ORDINANCE, 2001
THROUGH FINANCE ACT, 2019**

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**AMENDMENTS IN THE INCOME ORDINANCE, 2001 (ORDINANCE)
ARE DIVIDED INTO THE FOLLOWING:**

- **DOCUMENTATION OF ECONOMY**
- **CORPORATE SECTOR**
- **FINANCIAL SECTOR / CAPITAL MARKET**
- **REAL ESTATE SECTOR**
- **INDIVIDUALS & AOP**
- **NON-RESIDENTS / OFFSHORE ASSETS**
- **PROCEDURAL AND OTHER MEASURES**

DOCUMENTATION OF ECONOMY

- Final Tax Regime (FTR) converted to Minimum Tax Regime (MTR) for the following major sectors:
 - (a) Commercial imports.
 - (b) Brokerage and Commission.
 - (c) Non-resident persons for certain services.
 - (d) Local supply of goods.
 - (e) Execution of contracts (residents as well as non-residents).
 - (f) Income from CNG stations.

Impact:

- (i) Preparation of books of account – no concept of imputed income since 2001 Ordinance.***
- (ii) Concept of carry forward of minimum tax over actual tax liability not envisaged, which is very harsh.***
- (iii) Effect of amendment for special tax year companies i.e. whether MTR is applicable from January 1, 2019 or July 1, 2019.***

DOCUMENTATION OF ECONOMY (Contd.)

Tenth Schedule / Non-Filers

- Concept of 'Filer' and 'Non-Filer' has been abolished. Tenth Schedule has been introduced, whereby rate of tax withholding is enhanced by 100% for persons not appearing in Active Taxpayers' List (ATL).
- Some sections of income tax withholding are kept out of Tenth Schedule.
- Summary of withholding provisions covered and not covered under 10th Schedule is as under:

Number of Withholding Provisions	
On which Tenth Schedule is applicable	On which Tenth Schedule is not applicable
29	* 27

** It includes 5 withholding provisions which are exclusively applicable on non-ATL persons. The remaining 22 withholding provisions generally include those which are related to end-consumers or documented sectors.*

DOCUMENTATION OF ECONOMY (Contd.)

- A mechanism has been put in place, whereby a withholding agent or the person from whom tax is required to be collected or deducted, have been empowered to furnish a notice to the Commissioner to allow payment without the enhanced rate of deduction or collection of tax where such a person not appearing in ATL has no requirement to file a return of income or a statement of final taxation.
- The Tenth Schedule provides the procedure for provisional assessment and penalty proceedings if a person fails to file return of income for the respective tax year.
- Provisional assessment is to be made on imputed income concept.

DOCUMENTATION OF ECONOMY (Contd.)

- Any income beyond imputed income is subject to tax under section 111.
- Concept of further amendment of provisional assessment has also been introduced.

Impact:

- (i) Whether any appeal can be filed against final order determined after 45 days of issuance of provincial assessment?***
- (ii) Concept of provisional assessment under the 10th Schedule is closer to best judgement assessment under section 121 and different from provisional assessments under section 123?***

DOCUMENTATION OF ECONOMY (Contd.)

- Late filers can become part of ATL by paying surcharge at the applicable rates. On filing of returns, the taxpayers can claim refund of tax withheld in excess of the actual tax liability. The period during which the names of such persons do not appear in ATL, refund will not be issued during that period. Moreover, the said period will also not be considered for the purposes of additional compensation for delayed refund.
- Non-monetary gifts **NOT** received from grandparents, parents, spouse, brother, sister, son or a daughter be considered as 'other income' for recipient.
- Commission paid or payable in excess of 0.2 % of the gross amount of supplies of Third Schedule products be disallowed, if the person to whom such commission is paid or payable is not appearing in ATL.

Clarity is required that:

- ***In case commission exceeds 0.2% threshold, only the excess amount will be disallowed; and***
- ***If the recipient of commission is not appearing on ATL for a period of time, then proportionate commission expense will be disallowed.***

DOCUMENTATION OF ECONOMY (Contd.)

- An amount equal to 75% of dealer's margin (defined to be 10% of sale price of manufacturer) will be added to the income of the person making supplies of third schedule products under a dealership arrangement with dealers not registered under the Sales Tax Act, 1990 and whose names are also not appearing in the ATL. Effectively, 0.75% of sale price is deemed as income of such persons making supplies, who in this case shall be manufacturers and/or importer.

Clarity is required that:

- *Whether the distributors are also covered under the “dealership arrangement”?*
- *In case the agreement is not in writing, what will be the remedy?*
- *It appears from the definition of dealer's margin that the disallowance is only restricted to the manufacturers making supplies to unregistered dealers. It therefore means commercial importer though subject to 3rd Schedule are not affected by this provision? Or even if manufacturer is importing and selling finished goods, the same would not be subject to this new provision?*

DOCUMENTATION OF ECONOMY (Contd.)

Clarity is required that:

- *Will disallowance apply in case sale made by manufacturer/importer to registered dealer/distributor but the subsequent purchasers in supply chain are not registered (for instance wholesaler)?*
- *What will be the impact, if manufacturer makes direct supplies to final consumers (as in industrial consumers) who do not fulfil the conditions?*
- *If dealer is un-registered but appearing on ATL, then this provisions would not apply?*

DOCUMENTATION OF ECONOMY (Contd.)

- Immunity allowed under Section 111(4) up to the limit of Rs. 5 million (previously Rs. 10 million) worth of foreign remittance through banking channels.
- Displaying of business license by every person engaged in any business, profession or vocation, even where they are not required to obtain NTN.
- Simplified tax regime for small businesses, construction businesses, medical practitioners, hospitals, educational institutions and any other sector specified.
- Tax credit under Section 100C for 'Trusts' and 'Welfare Institutions' will be subject to approval from the Commissioner under Section 2(36) with effect from July 2020.
- Royalty payable to a resident person is subject to adjustable tax withholding of 15% of the gross amount.

CORPORATE SECTOR

- Freezing of corporate tax rate at 29% for tax year 2019 and onwards.
- Certain service sectors falling under [Clause (94) now omitted] for which MTR was rationalized previously at 2% will now be subject to minimum tax of 3%.

Clarity is required that:

- *Corresponding amendment has not been made in section 152 for PE of non-resident (being service provider), resulting that such non-resident service providers who were earlier part of Clause (94) will now be subject to MTR at the standard rate.*
- *For service sectors of the omitted Clause 94, the facility of carryforward of minimum tax has also been done away with. From practical standpoint, the issue is how will the previous carry forwards be taken in to account, if not, they are deemed as lapsed?*

CORPORATE SECTOR (Contd.)

- Exemption on Inter-Corporate dividend even for recipient companies eligible for group relief who do not avail such relief.

Impact:

- ***Exemption from withholding not provided, which results in unnecessary procedure for obtaining exemption certificates.***
- ***The exemption provided for inter-corporate dividend proportionate to the shareholding is ought to be addressed.***

CORPORATE SECTOR (Contd.)

- For industrial undertakings, facility of tax credit for investment in purchase of plant & machinery for extension, expansion, balancing, modernizing & replacement is now restricted to June 30, 2019 (previously 2021). Furthermore, the rate of tax credit is reduced to 5% (previously 10%) for tax year 2019, however, the facility to carry forward unabsorbed tax credit after June 30, 2019 will continue to apply.

Impact:

- ***This is likely to be a subject of litigation, where investment was made keeping in view the 10% tax credit for tax year 2019.***
- ***Taxpayers following special tax year having made investment during the first six months of tax year 2020 (till 30-6-2019) can claim tax credit but the claim might ne subject to dispute with tax authorities.***
- ***In all fairness, tax credit should be allowed for all investments made up to 30-06-2019 (for which installation may take place after July 1, 2019), regardless of tax year being followed.***

CORPORATE SECTOR (Contd.)

- For tax withholding on Dividend, a standard rate of 15% has been specified in all cases other than Independent Power Producers. The withholding and tax rates applicable on dividend are as under:

Sr. No.	Category of Dividend Paying Companies	Rate of Tax Withholding	Rate of Taxability
(a)	Independent Power Producers (IPPs) where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be reimbursed by Central Power Purchasing Agency or its predecessor or successor entity.	7.5%	7.5%
(b)	Mutual Funds and cases other than those covered in S. Nos. (a) and (c).	15%	15%
(c)	Company in whose case no tax is payable by such Company (due to exemption of income or carry forward of business losses or claim of tax credits). <i>[The withholding tax rate for dividend otherwise subject to 25% enhanced rate should have been aligned with charge of tax]</i>	15%	25%

Impact:

- **Shareholders of IPPs not covered by (a) may be subject to 25% tax.**
- **REIT despite parallel to mutual fund not covered in clause (b).**
- **Whether tax payable of even Re 1 on other income would enable the shareholders of company to get out of 25% tax on dividend.**

CORPORATE SECTOR (Contd.)

- General rate of minimum tax on turnover under section 113 is 1.5% (previously 1.25%).
- Initial allowance at 15% on building withdrawn.
- Intangibles with unascertainable use life be amortized over 25 years.
- Amortization not allowed on self-generated goodwill.

Impact:

The matter of self-generated goodwill involved in some cases has got positive assertion for their past claims due to this amendment.

FINANCIAL SECTOR / CAPITAL MARKET

- CGT rates for tax year 2018 in case of sale of securities will continue to apply for tax year 2019.
- Banking companies:
 - (a) Impact of brought forward depreciation and business losses and brought forward amortization is also excluded from the 'income' for the purpose of levying super tax in case of banking companies. Corresponding amendment has not been made in Rule 7C of the Seventh Schedule, which may give rise to interpretational issues.
 - (b) Bad debts of doubtful category will not be allowed, until it becomes loss category.
 - (c) Audit of banking company allowed - a clarificatory amendment?
 - (d) Some explanatory amendments have been made relating to reversals / computation of limit of provision for bad debts, which in effect are not in the nature of explanatory amendments.

FINANCIAL SECTOR / CAPITAL MARKET (Contd.)

- (e) Additional income earned (income earned from additional investment in Federal Government securities by the bank for the tax year) from government securities will be taxed at 37.5%. The term ‘additional investment’ is defined to mean “average investment made in Federal Government securities by the bank during the tax year, in addition to the average investments held during the tax year 2019”.

For the application of enhanced rate of tax, markup income earned from the additional investment for the year is required to be considered for proration. As a result of that, specific mark-up expense utilized towards earning mark-up from Government securities (taxable at higher rates) may also be prorated.

Clarity is required on the manner of computation of additional income.

- Insurance Companies: Commissioner can examine and amend the income of insurance companies with respect to ‘commission paid’ and ‘claims for losses’.

REAL ESTATE SECTOR

- Taxability of gain arising on disposal of immovable properties (open plots and constructed properties) will continue to be separate block of income:
 - (a) For open plot of land, the gain chargeable to tax will be reduced by 25% if the holding period exceeds one year but does not exceed 8 years. Where the holding period exceeds 8 years, gain will be taken as zero.
 - (b) For constructed properties, the gain chargeable to tax will be reduced to 25% if the holding period exceeds one year but does not exceed 4 years. Where the holding period exceeds 4 years, gain will be taken as zero.

Clarity is required:

- *Whether there can be a valid argument of vested interest in case of immovable properties having attained the three year holding period on or before June 30, 2019 and gain on disposal (on or after July 1, 2019) of such properties be subject to exemption provided under the previous provisions of the Ordinance?*
- *How the holding period of constructed property is to be determined i.e., will be date of purchase of land be taken in to consideration only or the construction period also?*

REAL ESTATE SECTOR (Contd.)

- The slab rates specified for taxation is based on the amount of gain on disposal of immovable properties (open plots and constructed properties), which are as under:

S. No.	Description	Rate of tax
1.	Where the gain does not exceed Rs 5 million	5%
2.	Where the gain exceeds Rs 5 million but does not exceed Rs 10 million	10%
3.	Where the gain exceeds Rs 10 million but does not exceed Rs 15 million	15%
4.	Where the gain exceeds Rs 15 million	20%

REAL ESTATE SECTOR (Contd.)

- FBR values are expected to be enhanced to 85% of market values, alongwith introducing concept of indexation. Revised FBR valuation rates to be effective once notified; and until that time, the notified rates of February 2019 shall continue to apply.
- Withholding tax rate on sale/purchase reduced. Advance tax on sale of immovable property will not be collected, if such property is held for more than 5 years.
- Money whitening provision contained in Section 236W (whereby 3% tax on the difference between FBR value and DC value) is abolished.
- Purchase of immovable property of fair market value more than Rs. 5 million and Rs. 1 million in case of other asset is required to be paid through banking channel. Non-compliance will result in penalty and disallowance of deduction for depreciation/amortization; and the cost of asset will be considered 'Nil' for computing capital gains.
- Restriction on Non-Filers (now termed as persons not appearing in ATL) to purchase immovable property no longer applicable.

INDIVIDUALS & AOP

- Non-taxable threshold limit in case of salaried persons increased to Rs.600,000 (previously Rs. 400,000), with maximum tax rate of 35% (previously 25%).
- Limit for considering salaried individual is now 75% or more (previously 50%).
- Highest tax rate in case of AOP / non-salaried individual increased is also 35% (previously 29%).
- Major effect is on persons earning Rs. 100,000 to 400,000 per month, where the effect is more than 200% to 50% as compared to last year.

INDIVIDUALS & AOP (Contd.)

- Tax rates for profit on debt enhanced (5% rate increased for each slab; income exceeding Rs. 36 million will be minimum tax and taxable at applicable slab rate). Tax withholding rate is 15% (previously 10%) in all cases.

Clarity is required:

Whether the income exceeding Rs. 36 million will be subject to higher tax rate as per the applicable slabs for individual or would the additional income (beyond Rs. 36 million) be subject to the tax rate as per the applicable slab starting from lower taxable threshold?

INDIVIDUALS & AOP (Contd.)

- Increase in tax slabs for property income (maximum 35% for rental income exceeding Rs. 8 million). An option is available to individuals or AOPs deriving income from property exceeding Rs. 4 million to claim deductions under section 15A and pay tax at normal rates specified in Division I of Part I of the First Schedule.

Clarity is required:

Tax withholding on gross rentals under section 155 (at higher rate) may result in tax refunds, if filing of such option is applicable at the time of filing of return of income. Filer & Non-Filer have same rate of tax withholding. If tax on rental income is now payable at full rate, why adjustment of same against losses is not allowed.

INDIVIDUALS & AOP (Contd.)

- Individuals present in Pakistan for 120 days or more in any one tax year and 365 days in aggregate in four preceding tax years will be considered as resident persons.

Clarity is required:

Whether for the purpose of determining the residential status of individuals, the 365 days mark be reckoned for the four tax years prior to July 1, 2019 or would the said mark of 365 days be reckoned from July 1, 2019?

- Due date for filing of return of income for salaried individuals is September 30 (previously August 31).

NON-RESIDENTS / OFFSHORE ASSETS

- Payments by withholding agents of contracts being part of an overall arrangement of a cohesive business operation can be done after making an application to the Commissioner, who shall allow the payment to be made after deduction of tax equal to 30% of tax chargeable on such payment under sub-section (1A) of section 152, which works out at 2.1% (30% of 7%). Credit of the said tax deduction will be available to the permanent establishment of the non-resident accounting for overall profits arising on the overall cohesive business operation.

Clarity is required:

- *Whether linking with section 152(1A) also make such withholding as minimum tax in case of off-shore supply component? In that case, would the non-resident be assessed on the overall contract in Pakistan in the hands of PE?*
- *Without there being any amendment in the definition of PE vis-à-vis cohesive business in the tax treaties, the option for approaching CIR for exemption / reduced rate certificate under section 152(5) / 159 still exist.*
- *In case the associate in a cohesive business operation is an independent legal enterprise, how can such entity account for the overall profits of such an arrangement as the proviso only allows PE to claim credit of tax withholding ?*

NON-RESIDENTS / OFFSHORE ASSETS (Contd.)

- Publishing of names of offshore evaders and enablers in print and electronic media.
- Offshore tax evasion - penalty and prosecution for evaders and enablers.
- Penalty and prosecution provisions for concealment of off-shore assets introduced.

PROCEDURAL AND OTHER MEASURES

- Issuance of audit report after completion of audit under Section 177, which shall contain audit observations and findings.
- Commissioner can amend or further amend an order issued in respect of monitoring of withholding taxes.

Impact:

This may result in unnecessary amendment/further amendment of already passed orders, thereby increasing the cost of doing business (including increased matters in appeals) for withholding agents.

- Selection of a person for audit of tax affairs once in every three years no longer applicable.

Impact:

This is likely to result in the same person being selected for audit every year, resulting in enhanced litigations.

PROCEDURAL AND OTHER MEASURES (Contd.)

- Income tax refunds be settled through issuance of 'Promissory Notes'.
- Automated impersonal tax regime for low risk and 'Compliant' taxpayers.
- Penalty provisions for the following have been introduced:
 - (a) purchase of immovable property of fair market value more than Rs. 5m otherwise than through banking channels.
 - (b) offshore tax evader involved in offshore tax evasion.
 - (c) offshore tax enabler resulting in offshore tax evasion.
 - (d) person involved in asset move from specified to an un-specified territory.
 - (e) Reporting financial institutions on failing to comply with or provides incomplete or inaccurate information under Section 165B or Common Reporting Standards (including not providing valid self-certification for new accounts or false self-certifications made by the persons).
 - (f) Reportable jurisdiction person fails to provide valid self-certification or furnished false self-certification under Common Reporting Standards.

PROCEDURAL AND OTHER MEASURES (Contd.)

- Penalty and Prosecution provisions for the following have been introduced:
 - (a) Non-compliance with notice issued under Section 116A (statement of foreign assets) - imprisonment up to one year or with a fine of Rs. 50,000 or both.
 - (b) An enabler in case of offshore tax evasion - imprisonment not exceeding seven years or with a fine of Rs. 5 million or both.

THANK YOU