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Tax Laws (Third Amendment) Ordinance, 2021

Summary

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EXECUTIVE SUMMARY

This document contains summary of amendments introduced through the **Tax Laws (Third Amendment) Ordinance 2021** (‘the Ordinance’). The Ordinance has introduced amendments to the **Income Tax Ordinance 2001** (‘ITO’) and **Sales Tax Act 1990** (‘the Act’). Some amendments have also been made to the **Customs Act 1969** through the Ordinance, which have not been covered under this document for the purpose of brevity.

A number of amendments have been introduced for the purpose of **broadening of tax base**. In this regard Federal Board of Revenue (‘FBR’ or ‘the Board’) has been empowered to issue general orders to non-filers for **disabling of mobile phones, mobile phone sims and/or electricity/gas connections**. FBR has also been empowered to issue similar general orders in case of non-registration of sales tax or non-integration by retail outlets to FBR’s computerized system.

A new section has also been introduced promoting sharing of information by **National Database and Registration Authority (‘NADRA’)** to FBR for the purpose of broadening of tax base. NADRA has been empowered to calculate indicative income and tax of any person based on information pertaining to that person. Such information can be communicated to the person by FBR for payment of tax calculated as per time and conditions prescribed.

Additional taxes/penalties have been imposed as well for promotion of tax filing. Advance tax has been imposed on **electricity bills** of '**Professionals**' operating from residential premises who are non-filers. Furthermore, **penalty for non-filing** has also been increased with a minimum penalty of Rs. 25,000 (Rs. 10,000 for salaried persons).

In addition to broadening of tax base, the Ordinance has also continued to promote integration of Tier-1 retailers, evidenced by the power to issue general orders mentioned above. **Penalty for non-integration** has also been increased with a maximum penalty of Rs. 3 Million as well as sealing of business. Integration has also been promoted through reduced rate of tax being applicable to supplies of goods made from integrated retail outlets via inclusion in Eighth Schedule. Specified goods supplied by integrated retailers had already been included in Eighth Schedule which has now been expanded to cover all such supplies although at different reduced rates.

The rest of the document further describes these amendments along with a number of other amendments which have also been made by the Ordinance.

For any queries or feedback feel free to contact us.

Warm Regards,

Muhammad Hussain Alam ACA, ACCA

Partner



INCOME TAX ORDINANCE 2001

INADMISSABLE DEDUCTIONS FOR BUSINESS INCOME (SECTION 21(1))

EXISTING RULE

Section 21(1) clause I of ITO provides that expenditure in excess of Rs. 250,000 in aggregate in a single account head, other than through banking channels is inadmissible.

This clause is not applicable for the following:

- Expenditures not exceeding Rs. 25,000.
- Expenditures on account of:
 - Utility Bills,
 - Freight Charges,
 - Travel Fare,
 - Postage, and
 - Payment of taxes, duties, fees, fines, or any other statutory obligation

AMENDMENT

The Ordinance has added an additional condition for companies via addition of clause Ia, whereby expenditures in excess of Rs. 250,000 made through bank accounts other than business bank account as notified to the Commissioner under section 114A shall also be inadmissible.

Accordingly, it is necessary for a company's expenditure to be made via business bank accounts notified to the Commissioner for such expenditure to be admissible.

The existing exemptions apply to this clause as well, therefore the requirement is not applicable for exemptions mentioned above.

FOREIGN REMITTANCES THROUGH MODES OTHER THEN BANKS (SECTION 111)

EXISTING RULE

Under section 111(4), exemption is provided from inquiry, to foreign exchange remitted from outside Pakistan through normal banking channels, not exceeding Rs. 5 Million.

AMENDMENT

The Ordinance has added an explanation clarifying that remittance through Money Service Bureaus (MSBs), Exchange Companies (ECs) and Money Transfer Operators (MTOs) such as Western Union, Money Gram and Ria Finance are also deemed to be considered as remittance from normal banking channels for the purpose of this section.

The same explanation had also been provided earlier by FBR via Circular 05 of 2022 dated August 30, 2021.

POWERS TO ENFORCE FILING OF RETURNS (NEW SECTION 114B)

The Ordinance has introduced a new section for enforcement of filing of returns under which certain powers have been provided to FBR, in addition to actions already included in ITO.

FBR has been granted the power to issue income tax general orders for persons who are non-filers but are liable to file returns. The general orders can be for the following:

- Disabling of Mobile Phones or Mobile Phone Sims,
- Discontinuance of Electricity Connections, and/or
- Discontinuance of Gas Connections.

The above order cannot be issued unless the person had been issued a notice under section 114, the time period under the notice has elapsed and the person has still not filed the return.

Electricity/Gas connections or mobile phones/sims of persons named by such orders can be restored upon filing of the return or if it can be satisfied that the person was not liable to file in accordance with ITO.

OFFENCES AND PENALTIES (SECTION 182)

EXISTING RULE

Failure to file return of income under section 114 attracts a penalty of 0.1% of tax payable for each day of default, subject to certain upper/lower limits.



AMENDMENT

The penalty for non-filing of return under section 114 has been amended as follows:

Description	Existing Penalty	Amended Penalty										
Penalty	0.1% of tax payable per day	Higher of: - 0.1% of tax payable per day, or - Rs. 1,000 per day										
Maximum Penalty	50% of tax payable	200% of tax payable										
Minimum Penalty	<table border="1"><tr><td>Salaried person with Salary income of less than Rs. 5 Million</td><td>Rs. 5,000</td></tr><tr><td>Persons with taxable income up to Rs. 8 Lacs</td><td>Rs. 5,000</td></tr><tr><td>Any other case</td><td>Rs. 40,000</td></tr></table>	Salaried person with Salary income of less than Rs. 5 Million	Rs. 5,000	Persons with taxable income up to Rs. 8 Lacs	Rs. 5,000	Any other case	Rs. 40,000	<table border="1"><tr><td>Salaried Person:</td><td>Rs. 10,000</td></tr><tr><td>Other Case:</td><td>Rs. 25,000</td></tr></table>	Salaried Person:	Rs. 10,000	Other Case:	Rs. 25,000
Salaried person with Salary income of less than Rs. 5 Million	Rs. 5,000											
Persons with taxable income up to Rs. 8 Lacs	Rs. 5,000											
Any other case	Rs. 40,000											
Salaried Person:	Rs. 10,000											
Other Case:	Rs. 25,000											
Reduction in Penalty	<table border="1"><tr><td>If return submitted within <u>1 month</u> of due date or extended due date</td><td>75% Penalty Reduced</td></tr><tr><td>If return submitted within <u>2 month</u> of due date or extended due date</td><td>50% Penalty Reduced</td></tr><tr><td>If return submitted within <u>3 month</u> of due date or extended due date</td><td>25% Penalty Reduced</td></tr></table>	If return submitted within <u>1 month</u> of due date or extended due date	75% Penalty Reduced	If return submitted within <u>2 month</u> of due date or extended due date	50% Penalty Reduced	If return submitted within <u>3 month</u> of due date or extended due date	25% Penalty Reduced	No Change				
If return submitted within <u>1 month</u> of due date or extended due date	75% Penalty Reduced											
If return submitted within <u>2 month</u> of due date or extended due date	50% Penalty Reduced											
If return submitted within <u>3 month</u> of due date or extended due date	25% Penalty Reduced											

ADVANCE TAX ON ELECTRICITY CONSUMPTION (SECTION 235)

EXISTING RULE

Currently advance tax is collected from persons who are not appearing in Active Taxpayer List, on electricity bills at the rates specified under ITO.



AMENDMENT

Sub-section 1A has been inserted whereby it is provided that adjustable advance tax shall be collected in addition to the tax mentioned above. This tax shall be collected from:

- Professionals,
- Not appearing in ATL, **and**
- Operating from residential premises having domestic electricity connections.

“Professionals” include accountants, lawyers, doctors, dentists, health professionals, engineers, architects, IT professionals, tutors, trainers, and other persons engaged in provision of services.

The tax rate shall be collected as follows:

Description	Tax Rate
Bill not exceeding Rs. 10,000	5%
Bill exceeding Rs.10,000 but not exceeding Rs. 20,000	10%
Bill exceeding Rs.20,000 but not exceeding Rs. 30,000	15%
Bill exceeding Rs.30,000 but not exceeding Rs. 40,000	20%
Bill exceeding Rs.40,000 but not exceeding Rs. 50,000	25%
Bill exceeding Rs.50,000 but not exceeding Rs. 75,000	30%
Bill exceeding Rs. 75,000	35%

TAX CREDIT FOR CHARITABLE DONATIONS (THIRTEENTH SCHEDULE)

EXISTING RULE

Section 61 provides tax credits for charitable donations made to certain persons. Through Finance Act 2021, Thirteenth Schedule was inserted which lists entities to whom charitable donations made, qualify for the tax credit u/s 61.

AMENDMENT

The Ordinance has added that all entities mentioned in Clause 66 of Part I of the Second Schedule shall be included within Thirteenth Schedule as well. This clause lists certain institutions, foundations, societies, boards, trusts and funds whose income is exempt.

As a result of the amendment, a person shall be allowed tax credit in relation to any charitable donations made to those entities mentioned in clause 66 as well.

INFORMATION SHARING BY NADRA (NEW SECTION 175B)

The Ordinance has inserted new **Section 175B National Database and Registration Authority (NADRA)**, which has provided for NADRA to share information with FBR for the purpose of broadening of tax base or for application of ITO, whether on its own motion or upon application by FBR.

The section has specified that NADRA may:

- Provide information relating to any person whether taxpayer or not pertaining to their assets, income, properties, transactions etc., including the value of any item if it differs from the value as notified by the Board or district authorities or if no value has been so notified,
- Submit proposals and information to FBR for broadening of tax base, and
- Enter into a MOU with FBR for a secure exchange of information and utilization of any person's information.

NADRA has also been provided power to calculate indicative income and tax liability of any person by means such as artificial intelligence, mathematical modelling or otherwise. Such indicative income and tax shall be communicated to the relevant person by FBR, who shall have the option to pay the tax as per the time and conditions as may be prescribed by the Board. In case of non-payment, FBR can take actions under ITO upon the basis of the tax liability calculated.

OTHER CHANGES

Some other changes have also been made by the Ordinance as follows:

- **Section 53:** The section provides FBR the power to grant exemptions and tax concessions, with approval from the Minister-in-Charge.

Through the Ordinance, the power has now been provided to the Federal Government as well.

- **Section 182 S.No.14:** The clause prescribed a penalty of higher of Rs. 5,000 or 3% of tax involved in case of any contravention of ITO for which a specific penalty had not been prescribed.

This clause has now been omitted retrospectively.

- **Section 198:** The section provided that disclosure of any information by a public servant is a criminal offence liable to fine not less than Rs. 500,000 and/or imprisonment of a term not more than 1 year.

This section has now been omitted retrospectively.

- **Section 216:** The section provides that all information provided to a public servant is confidential and shall not be disclosed to any persons. Sub section 3 provides exceptions to the provision whereby information may be provided to certain persons.

Clause kb of this sub-section has been omitted in respect of provision of information to NADRA for broadening of tax base.

- **Second Schedule Part I:** Clause 66 exempts income of certain institutions, foundations, societies, boards, trusts and funds.

Pakistan Mortgage Refinance Company Limited has also been included within the scope of this clause.

- **Second Schedule Part II:** Clauses 24C and 24D provide a lower rate of withholding tax u/s 153 and minimum tax u/s 113 respectively, for certain suppliers.

Distributors, dealers, sub-dealers, wholesalers and retailers of steel have also been included within scope of these clauses.

- **Second Schedule Part IV:** Clause 11A provides exemption from minimum tax u/s 113 to specified persons.

Mobile phone manufacturers engaged in the local manufacturing of mobile phone devices have also been included in the scope of this clause.



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SALES TAX ACT 1990

WITHHOLDING OF TAX IN ONLINE MARKETPLACE (SECTION 3(7))

EXISTING RULE

Section 3(7) requires tax to be withheld at the specified rates by purchaser of goods or services i.e. withholding agents.

AMENDMENT

A further provision is added to the sub section for online marketplaces which facilitate sale of third party goods. Examples of such online marketplaces include Daraz, Olx, affordable.pk etc.

In such a case, the operator of the marketplace itself shall be responsible for withholding of the tax.

DISCONTINUANCE OF GAS AND ELECTRICITY CONNECTIONS (NEW SECTION 14A)

A new section has been inserted whereby FBR has been empowered to issue sales tax general orders to discontinue electricity and gas connections of:

- Any person who fails to register for sales tax purposes, or
- Notified Tier-1 retailers registered but not integrated with FBR's computerized system.

Upon registration or integration, as applicable, FBR can issue sales tax general order for restoration of the discontinued connections.

PENALTY FOR NON-INTEGRATION WITH FBR'S COMPUTARISED SYSTEM (SECTION 33)

EXISTING RULE

Section 3 sub-section 9A requires all Tier-1 retailers to integrate their retail outlets to FBR's computerized system for real time reporting.

Section 33 provides penalty for non-registration or non-integration as required by Section 3(9A). The penalty imposed was up to Rs. 1 Million and in case of continued non-compliance for 2 months from imposition of the penalty, the business premises could be sealed.



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AMENDMENT

The penalty for non-integration/non-registration by Tier-1 retailers u/s 3(9A) has been amended as follows:

- Rs. 500,000 for 1st default.
(This penalty can be waived off by the Commissioner in case of integration of business prior to imposition of 2nd penalty.)
- Rs. 1 Million for 2nd default, imposed after 15 days of order of 1st default.
- Rs. 2 Million for 3rd default, imposed after 15 days of order of 2nd default.
- Rs. 3 Million for 4th default, imposed after 15 days of order of 3rd default.
- Sealing of business premises after 15 days of order of 4th default, till business has been integrated in accordance with section 3(9A).

REDUCED RATE FOR SUPPLIES MADE FROM INTEGRATED RETAIL OUTLETS (EIGHTH SCHEDULE)

EXISTING RULE

S. No. 66 of the Eighth Schedule provides a lower rate i.e. 12% for certain supplies made from retail outlets that are integrated with FBR's computerized system. Such reduced rate apply to supply of:

- Finished fabric,
- Locally manufactured finished articles of textile and textile made-ups,
- Leather and
- Artificial leather.

Subject to condition that they have maintained 4% value addition during the last 6 months.

AMENDMENT

An addition has been made to the schedule (S. No. 66A) where supplies made from integrated retail outlets, other than those mentioned in S. No. 66 are also chargeable at a reduced rate i.e. 16%. The reduced rate is applicable if payment is made through digital mode.



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OTHER CHANGES

Some other changes have also been made to the Act as follows:

- **Section 3(10):** A new sub-section has been inserted whereby FBR has been empowered to require any person or class of person to integrate their invoice issuing machines with FBR's computerized system for real time reporting.
- **Fifth Schedule (Zero Rated) and Eighth Schedule:** Fat filled milk sold in retail packing under a brand name or trademark was included in the Eighth Schedule charged at 10%.

These goods are removed from the Eighth Schedule and inserted within Fifth Schedule becoming zero rated.

- **Sixth Schedule:** The schedule includes supplies exempt from sales tax. Some minor changes have been made as follows:
 - Edible fruits are exempt from sales tax excluding imported fruits other than those imported from Afghanistan. The exclusion of imported fruits from Afghanistan has been omitted resulting in such imports being excluded from the exemption as well.
 - Exemption for import of auto disable syringes, as well as raw materials for such syringes i.e. Tubular metal needles and Rubber Gaskets, has been extended from June 30, 2021 till December 31, 2021.
 - Exemption has been added for import of following raw materials by registered manufacturers of auto disable syringes, subject to conditions:
 - Printing Paper
 - Polypropylene
 - Polypropylene copolymers
 - Plasticized
 - Expoxide Resins
 - Bioxially Oriented Polypropylene (BOPP, Laminated)
 - Import of POS machines are exempt. Amendment has been made for such machines to include credit/debit cards terminals and retail cash registers as well.
- **Eighth Schedule (Reduced Rate)**

Following items have been included in the schedule

 - Import of remeltable scrap if imported by steel melters, chargeable at 14%
 - Import of electric vehicle in CBU conditions, chargeable at 5%
 - Business to business transactions as specified by the Board, if payment is made through digital mode, chargeable at 16.9%.