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Comments on Finance (Supplementary) Bill, 2023

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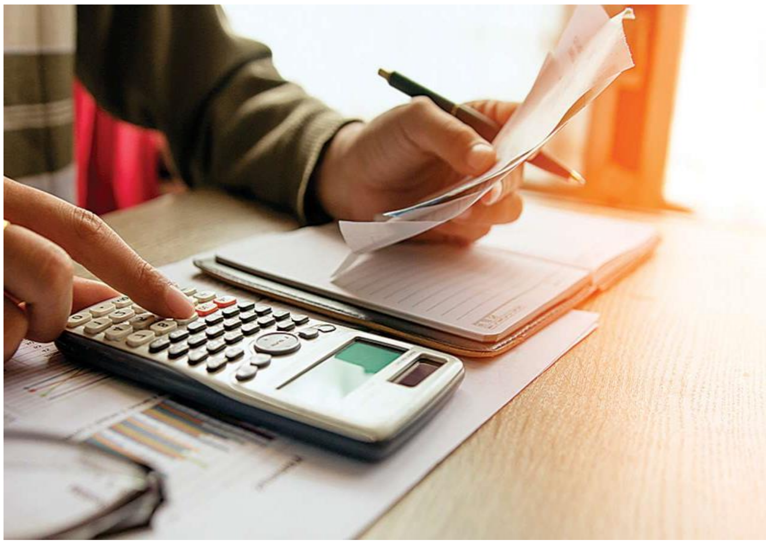
Foreword



This memorandum contains a synopsis of "Finance (Supplementary) Bill, 2023" entailing the amendments made in the tax laws. These amendments are introduced with the aim to increase the tax collection in order to meet the conditions of International Monetary Fund's program. Amendments proposed, especially the enhancement in sales tax rate, will further shrink the disposable income available with the common man who is already bearing the brunt of highest inflation in decades.

The amendments made through the Bill, will be applicable on the next day of the assent given by the President of Pakistan.

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Karachi
February 16, 2023

Contents

Income Tax Ordinance, 2001

1. Capital Gain [Section 37]

The Bill proposes to amend section 37 of the Ordinance by inserting new sub-sections, whereby the purchaser of shares of a company would now be required to withhold advance adjustable tax from the gross amount paid at the rate of 10% of the Fair Market Value (FMV) and shall deposit the same into the Government treasury in the name of seller, within fifteen days of the payment.

The Bill also provides that the FMV of the shares would be determined in the manner which is prescribed under section 101A of the Ordinance, without reduction of liabilities. For working out the FMV under section 101A, Rule 19H of the Income Tax Rules, 2001 already provides the formula.

From the combine reading of proposed amendments in section 37 and 37A it appears that the 10% advance tax is applicable on disposal of shares of a private company, unlisted public company and such listed company whose shares are neither sold through a registered stock exchange and nor settled through NCCPL.

It is also pertinent to add that currently section 152 of the Ordinance requires the payer to withhold tax at the rate of 20% while making payment to a non-resident person that includes the payment on account of disposal of shares in a Pakistani company. However, the amendment introduced in section 37 does not differentiate between a resident or a non-resident seller. So the question would arise whether the non-resident seller can take benefit of the reduced tax withholding rate of 10% as proposed under section 37 or the rate of 20% as applicable under section 152(2) would still be applied in such cases. It is therefore advisable that the changes made should clarify that 10% tax withholding under this section is applicable for a resident seller only, if that is the intent of the legislature.

The seller is required to furnish to the Commissioner within thirty days of the disposal, the prescribed information or documents, in a statement, as may be prescribed by FBR.

Moreover, the Commissioner may also, by notice in writing, require the seller to furnish information, documents and statement within a period of less than thirty days as specified in the notice.

It would be interesting to see as how FBR would be able to collect such information from the seller where the seller is a non-resident person not having any physical or legal presence in Pakistan, unless it is clarified that the proposed changes in section 37 are not applicable to disposal of shares by a non-resident seller.

It is further proposed that the provisions of the Ordinance relating to recovery of taxes not deducted and related to levy of penalty and default surcharge for failure to deduct or pay taxes deducted, and prosecution for non-compliance shall apply to the tax deductible and payable under this section.

The Commissioner is empowered, after making such inquiry as the Commissioner thinks fit, to allow making the payment without deduction of tax or deduction of tax at a reduced rate, where an application is filed by the seller.

2. Capital Gain on Disposal of Securities [Section 37A]

The Bill proposes to insert new proviso in section 37A of the Ordinance, whereby capital gain derived from the disposal of securities covered under section 37A which are made otherwise than through registered stock exchange and which are not settled through NCCPL, shall now be subject to tax under section 37 of the Ordinance instead of section 37A of the Ordinance.

Thus by virtue of this amendment, the capital gain arising on sale of shares of listed companies otherwise through stock exchange and that are not settled through NCCPL will not be able to take the benefit of the reduced tax rates that are applicable in respect of securities chargeable to tax under section 37A.

3. Advance tax on functions and gatherings [Section 236CB]

Advance tax on functions and gatherings was initially introduced through Finance Act 2013 through insertion of a new section 236D whereby advance tax at the rate of 10% of the amount of bill was required to be collected by the prescribed persons from the persons arranging functions in a marriage hall, marquee, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purposes. Rate of advance tax was later reduced to 5% through Finance Act 2014.

Later, through the Finance Act, 2018 an amendment was introduced in Division XI of Part IV of the First Schedule whereby the rate of advance tax was prescribed as higher of 5% of the total amount of the bill or Rs. 20,000 (for cities which are provincial or divisional headquarters) or 10,000 (for the remaining cities) per marriage function.

The said section was omitted through Finance Act 2020.

The Bill now proposes to reintroduce same provisions by inserting a new section 236CB, whereby advance tax at the rate of 10% of the amount of bill is required to be collected by prescribed persons from the persons arranging or holding a function in a marriage hall, marquee, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purpose.

Further, such advance tax will also be applicable where the food, service or any other facility is provided by any other person. The advance tax collected under this section shall be adjustable. It is pertinent to note that the proposed amendment has introduced a blanket rate of 10% irrespective of cities in which functions are being held, unlike the omitted section 236D.

The proposed amendment also defines the terms “function” and “prescribed person” as under:

(a) “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 purpose; and

(b) “prescribed person" includes the owner, a lease holder, 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

Implementation of this provision would be a challenge for FBR as apart from few hotels and restaurants of good repute, majority of the hotels, marriage halls, restaurants (that are mostly owned and managed by with well known elites of the country) are dealing in cash. In fact, this provision would provide another reason to them to remain undocumented.

Sales Tax Act, 1990

1. Scope of Tax [Section 3]

a. Standard Rate of Sales Tax Enhanced from 17% to 18%

As already known through media and other sources, the Bill proposes to enhance the standard rate of sales tax on import and supply of taxable goods from 17% to 18%. The enhancement has been proposed to be made to the section 3 as a whole, as a result of which the applicability of revised rate of 18% shall also apply on import and supplies of items specified in Third Schedule to the Sales Tax Act, 1990 (ST Act) (viz. items chargeable to sales tax on MRP) as well as on the supply of CNG by gas distribution companies which are covered under various provisions of section 3 other than subsection (1).

Moreover, consequent to this proposed change, the ceiling provided under sub-section (5) of section 3 of the ST Act on powers of the Federal Government to levy maximum extra sales tax will also increase from existing 17% to 18%.

Here it is important to mention that just a day prior to issuance of the Bill, the Federal Government using its power under section 3(2)(b) of the ST Act had increased the standard rate specified in subsection (1) of section 3 of the ST Act from 17% to 18% (other than in case of Third Schedule items, CNG sector) through issuance of notification No. SRO 179(1)/ 2023 dated February 14, 2023 which understandably was effective immediately.

It is notable that such change in sale tax rate brought through notification has also been covered through the amendments proposed in the Bill, hence, the SRO would become redundant upon coming into effect of the amendments proposed through the Bill. However, since the amendments proposed will become effective from the date of approval of the Bill by the legislature in the prescribed manner, there is an ambiguity regarding the application of the rates enhanced through the said SRO during the interim period which tends to apply from the date of issuance of SRO unless it is withdrawn or suppressed from the date of its issuance. The question also arises as to the legal strength of said SRO increasing the general rate of sales tax, which is also a prerogative of the parliament under section 3(1) of the ST Act.

b. Federal Government empowered to change sales tax rates of Third Schedule items

Currently, the specification or revision of applicable sales tax rate on Third Schedule items can only be done through changes introduced through amendment in the ST Act. The Bill proposes to add a proviso in clause (a) of sub-section (2) of section 3 to the ST Act by virtue of which the Federal Government will have powers to impose such higher rate of sales tax on the items mentioned in Third Schedule of the ST Act through issuance of notification subject to certain restriction and conditions.

Eighth Schedule
(Goods subject to Specified rates)

Table – I

a) Revision in reduced sales tax rates

To align with the proposed increase in standard rate of Sales tax from 17% to 18% in section 3, the Bill proposes to revise the reference of standard sales tax rate on locally produced coal and Potassium Chlorate as under:

Entry No.	Description	Heading Nos. of the First Schedule to the Customs Act, 1969 (IV of 1969)	Existing Sales Tax Rate	Proposed Sales Tax Rate
47.	Locally produced coal	27.01	Rs. 700 per metric tonne or 17% ad valorem, whichever is higher	Rs. 700 per metric tonne or 18% ad valorem, whichever is higher
56.	Potassium Chlorate (KCLO3)	Respective headings	17% along with rupees 60 per kilogram	18% along with rupees 60 per kilogram

The Ninth Schedule

Table-II Cellular Mobile Phones in CKD / CBU form

To align with the proposed increase in standard rate of Sales tax from 17% to 18% in section 3, the Bill proposes to revise the standard sales tax rate from 17% to 18%, on import of cellular mobile phones or satellite phones, to be charged on the basis of import value per set up to US$500. Whereas for mobile phones with import value exceeding US$ 500 the sales tax rate has been proposed to be increased to from 17% to 25%:

S. No.	Import Value per Set	Sales tax on CBUs at the time of import or registration (IMEI number by CMOs)	
		Existing	Proposed
1	Exceeding US$ 200 but not exceeding US$ 350	17% ad valorem	18% ad valorem
2	Exceeding US$ 350 but not exceeding US$ 500	17% ad valorem	18% ad valorem
3	Exceeding US$ 500	17% ad valorem	25% ad valorem

Federal Excise Act, 2005

First Schedule

Change in Description & Increase in Rates

The Bill proposes to enhance the existing rate of duty on excisable goods and services in the following manner:

Table-I Excisable Goods

<table>
<tr><th rowspan="2">Entry No.</th><th rowspan="2" colspan="2">Description</th><th colspan="2">Rate of Duty</th></tr>
<tr><th>Existing</th><th>Proposed</th></tr>
<tr><td>4</td><td colspan="2">Aerated waters</td><td>13% of retail price</td><td>20% of retail price</td></tr>
<tr><td>5</td><td colspan="2">Aerated waters, containing added sugar or other sweetening matter or flavored</td><td>13% of retail price</td><td>20% of retail price</td></tr>
<tr><td>6</td><td colspan="2">Aerated waters if manufactured wholly from juices or pulp of indigenous vegetables, food grains or fruits and which do not contain any other ingredient, indigenous or imported, other than sugar, coloring materials, preservatives or additives in quantities prescribed under the West Pakistan Pure Food Rules, 1965.</td><td>13% of retail price</td><td>20% of retail price</td></tr>
<tr><td>13</td><td colspan="2">Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinkers</td><td>Rs. 1.50 per kilogram</td><td>Rs. 2 per kilogram</td></tr>
<tr><th rowspan="2">Entry No.</th><th rowspan="2">Existing Description</th><th rowspan="2">Proposed Description</th><th colspan="2">Rate of Duty</th></tr>
<tr><th>Existing</th><th>Proposed</th></tr>
<tr><td>9</td><td>Locally produced cigarettes if their on-pack printed retail price exceeds Rs.6,660 per 1,000 cigarettes.</td><td>Locally produced cigarettes if their on-pack printed retail price exceeds Rs.9,000 per 1,000 cigarettes. [see note]</td><td>Rs. 6,500 per thousand cigarettes</td><td>Rs. 16,500 per thousand cigarettes</td></tr>
<tr><td>10</td><td>Locally produced cigarettes if their on-pack printed retail price does not exceed Rs.6,660 per 1,000 cigarettes.</td><td>Locally produced cigarettes if their on-pack printed retail price does not exceed Rs.9,000 per 1,000 cigarettes. [see note]</td><td>Rs. 2,050 per thousand cigarettes</td><td>Rs. 5,050 per thousand cigarettes</td></tr>
<tr><td colspan="5">Note:
Here it is important to mention that just a day prior to issuance of the Bill, the Federal Government using its power under section 3(3)(b) of the Federal Excise Act, 2005 has also enhanced the retail price ranges and applicable duty rates on cigarettes in the above like manner</td></tr>
</table>

(as identified in Entry No 9 and 10 above) through issuance of notification No SRO 178(1)/ 2023 dated February 14, 2023 which understandably has been made effective immediately. It is notable that such change in price ranges and applicable duty rates brought through notification has also been covered through the amendments proposed in the Bill, hence, the SRO would become redundant upon coming into effect of the amendments proposed through the Bill. However, since the amendments proposed will become effective from the date of approval of the Bill by the legislature in the prescribed manner, there is an ambiguity regarding the application of the rates enhanced through the said SRO during the interim period which tends to apply from the date of issuance of SRO unless it is withdrawn or suppressed from the date of its issuance.

Table-II Excisable Services

Entry No.	Description of service	Rate of Duty	
		Existing	**Proposed**
3.	Facilities for travel (b) Services provided or rendered in respect of travel by air of passengers embarking on international journey from Pakistan. (ii) Club, business and first class.	Rs. 50,000	20% of the gross amount of ticket or Rs. 50,000 per ticket, whichever is higher, on air tickets issued on or after the date of commencement of the Finance (Supplementary) Bill, 2023

New Insertion

The Bill proposes to insert the following new entry in Table-I of First Schedule:

S. No.	Description of goods	Heading/sub heading Number	Rate of duty
59	Sugary fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners excluding mineral and aerated waters.	Respective headings	Ten percent of retail price

Enhancement of Minimum price of locally manufactured cigarettes (Entry No. 9 of Table-I):

The existing description of the restriction provided on minimum retail price of locally manufactured cigarettes in relation to entry No 9 of the Table I has been proposed to be amended in the following manner:

Existing Description	Proposed Description
Restriction-3 – Minimum price. – No brand shall be priced and sold at a retail price (excluding sales tax) lower than **forty-five percent** of the retail price under column (2) against serial number 9 of Table-I of the First Schedule to this Act.	Restriction-3 – Minimum price. – No brand shall be priced and sold at a retail price (excluding sales tax) lower than **sixty percent** of the retail price under column (2) against serial number 9 of Table-I of the First Schedule to this Act.

Contact us

For more information you may contact

Atif Mufassir
Partner - National Leader Tax & Legal
Karachi office
Email: amufassir@yousufadil.com

Zubair Abdul Sattar
Partner Tax & Legal
Karachi office
Email: zsattar@yousufadil.com

Rana Muhammad Usman Khan
Partner
Lahore office
Email: rmukhan@yousufadil.com

Imran Ali Memon
Partner Tax & Legal
Karachi office
Email: immemon@yousufadil.com

Arshad Mehmood
Senior Advisor Tax & Legal
Karachi office
Email: amehmood@yousufadil.com

Sufian Habib
Director Tax & Legal
Islamabad office
Email: sufianhabib@yousufadil.com

Our offices

Karachi
Cavish Court, A-35, Block 7 & 8
KCHSU, Shahrah-e-Faisal
Karachi - 75350, Pakistan
Phones: + 92 (21) 34546494-97
Fax : + 92 (21) 34541314
Email: sghazi@yousufadil.com

Islamabad
18-B/1
Chohan Mansion, G-8 Markaz
Islamabad, Pakistan
Phones: + 92 (51) 8350601, + 92 (51) 8734400-3
Fax: + 92 (51) 8350602
Email: shahzad@yousufadil.com

Lahore
134-A, Abubakar Block
New Garden Town, Lahore, Pakistan
Phones: + 92 (42) 35913595-7, 35440520
Fax: + 92 (42) 35440521
Email: rmukhan@yousufadil.com

Multan
4th Floor Mehr Fatima Tower,
Oposit High Court,
Multan Cantt, Multan, Pakistan
Phones: + 92 (61) 4571131-2
Fax: + 92 (61) 4571134
Email: rmukhan@yousufadil.com

About Yousuf Adil

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