YOUSUF ADIL

Comments on the Income Tax (Amendment) Ordinance, 2022

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Foreword



This memorandum contains a synopsis of "Income Tax (Amendment) Ordinance 2022" entailing the amendments made in the tax laws that include incentives for investment in industrial undertaking, revival of sick units and an amnesty for persons making investment for industrial promotion.

The Ordinance is being promulgated after approval of Promotion Package for Industry (PPI) by the Federal Cabinet on March 1, 2022. The amendments brought through the Ordinance will be effective immediately i.e. after passing of the Ordinance by the President of Pakistan and following legislative procedure.

The memorandum is prepared and aimed at providing general guidance with the objective of keeping our clients and staff abreast of the changes introduced. Yousuf Adil, Chartered Accountants accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication. The users are therefore advised to seek professional advice before exercising any judgment, interpretation of any legal provision and acting thereupon.

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1. Amnesty for investment for industrial promotion [Section 100F]

The newly introduced amnesty, largely focusing on industrialization, provides for an amnesty equivalent to 5% of the funds declared by the eligible persons making investment in an industrial undertaking. This will allow the eligible persons to disclose omitted / undeclared funds by September 30, 2022 with safety net of non-disclosure to other government agencies.

FBR continues its campaign to track down the offshore bank accounts of Pakistanis, amid a global effort to improve tax transparency. Increased international cooperation means the net is closing in on tax evaders around the world. In recent years, information sharing between countries has increased significantly. Banking data is being exchanged routinely especially after the introduction of FATCA in order to promote global tax transparency. Even countries previously thought of as tax havens, such as Switzerland and the Cayman Islands, are working with tax authorities around the world to increase financial transparency.

This is yet another opportunity for eligible individuals, association of persons and companies who have been engaged in previously unreported financial activities to get their tax affairs in order.

1.1 Eligible person

For the purpose of amnesty eligible person means all persons, except:

(a) holders of public office, their spouses and dependent children;

- (b) a public company as defined in clause (47) of section 2 of this Ordinance;
- (c) 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;
- (d) a person that has been declared a bank loan defaulter by a bank or a financial institution within the last three years; or
- (e) a director of a company who has been declared a bank loan defaulter by a bank or a financial institution within the last three years.

1.2 Exclusions

The amnesty is not available to:

- (a) any proceeds of crime, corruption, money laundering and terror financing;
- (b) any amount which is subject of any departmental or court proceedings;
- (c) the investments made in following sectors, namely:-
 - (i) arms and ammunitions;
 - (ii) explosives;
 - (iii) sugar;
 - (iv) cigarettes;
 - (v) aerated beverages;
 - (vi) flour mills;
 - (vii) vegetable ghee; and
 - (viii) cooking oil manufacturing excluding extraction units.

1.3 Procedure to avail amnesty

 Any eligible person is to file a statement in the form and manner as specified by the Board through a notification in the official Gazette by the 30th September, 2022, declaring therein the amount of funds for investment in a new company formed for establishing and operating an industrial undertaking.

- Such funds must have not been declared in any of the returns of income upto tax year 2021 filed by the 31st December, 2021.
- The funds are to be deposited in rupees in a dedicated bank account in Pakistan as equity of the newly formed company, before the filing of the statement.
- Such funds shall only be used for purchase or import of plant and machinery through letter of credit or for construction of building and structure for the industrial undertaking.
- Minimum amount which would qualify for the purposes of this amnesty is 50 million.
- The eligible person shall be able to avail amnesty by payment of an amount equal to 5% of funds declared in the statement.
- Any amount of tax paid under this section shall not be refundable or adjustable against any other tax liability of the declarant.

1.4 Additional Conditions to avail the amnesty

- The new industrial undertaking in which such investment is made for claiming amnesty, shall commence commercial production by June 30, 2024; and
- a certificate to that effect, duly issued by Engineering Development Board, is to be

submitted to the Commissioner alongwith the return filed for tax year 2024.

1.5 Invalid declaration

Statement filed under this section, to avail amnesty, shall not be valid, if:

- (a) the newly formed industrial undertaking company fails to prove commercial production as per the criteria mentioned in the section;
- (b) there is change in ownership of industrial undertaking company prior to the 30th June, 2026; or
- (c) the newly formed industrial undertaking company disposes of any of its assets prior to June 30, 2026.

Where the statement has been made by misrepresentation or suppression of facts, such statement shall be void as if it had never been made.

The Commissioner is empowered to take any action under this section only after providing the declarant an opportunity of being heard.

1.6 Applicability on existing industrial undertaking

An existing company being an industrial undertaking is also eligible, for investment in expansion and modernization from amount of funds (which have not been declared in any of the returns of income upto tax year 2021 filed by December 31, 2021).

Such existing company is required to open a dedicated bank account to deposit the said funds before the filing of the statement and such funds shall only be used for expansion and modernization by way of:

- Purchase or import of plant and machinery including IT hardware through letter of credit, or
- Software and IT services or
- for construction of building and structure for the manufacturing premises of the existing industrial undertaking.

The expansion and modernization is to be completed by the 30th June, 2024, and a certificate to that effect, duly issued by the Engineering Development Board, is to be submitted to the Commissioner along with the return filed for tax year 2024.

1.7 No scrutiny under section 111 and confidentiality of information declared

The provisions of section 111 regarding unexplained income or assets, shall not apply to the funds declared under the amnesty to the 5% tax paid. Where a declarant has paid tax under this section in respect of funds declared, the declarant shall be entitled to incorporate the same in his wealth statement, financial statements or books of accounts, as the case may be.

The particulars of any person making a statement under this section or any information received in any statement made under this section shall remain confidential, notwithstanding the provisions of any other law for the time being in force including sub-section (3) of section 216 of this Ordinance excluding clauses (a) and (g) of sub-section (3) thereof, the National Accountability Ordinance, 1999 (XVIII of 1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017).

It is further provided that notwithstanding anything contained in

the Qanun-e-Shahadat, 1984 (P.O. Order No. 10 of 1984), the National Accountability Ordinance, 1999 (XVIII of 1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017), or any other law for the time being in force, no court or other authority shall, save as provided in this Ordinance, require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under this Ordinance, or declarations made under section 100F of this Ordinance or made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof.

1.8 Some Important terms defined under section 100F

- (a) "declarant" means a person filing a statement under sub- section (1);
- (b) "holder of public office" means a person as defined in the Voluntary Declaration of Domestic Assets Act, 2018;
- (c) "industrial undertaking" means a company being a new industrial undertaking setup for the purpose of this section and is not established by the splitting up or reconstruction or reconstitution of an undertaking already in existence or by transfer of machinery or plant from an existing industrial undertaking established in Pakistan;
- (d) "investment" means investment in equity and does not include borrowed funds and investment in land; and

 (e) "modernization" includes acquisition or upgradation of IT hardware, software and IT services.";

2. Carry forward of business losses of sick industrial units [Sections 59C]

2.1 Applicability

In order to encourage investment in and revival of sick units, a new section 59C is introduced to provide benefit of adjusting tax losses to a company acquiring majority share capital of another company, being a sick industrial unit.

"**sick industrial unit**" means a company being an industrial undertaking, which –

- has accumulated losses, for a continuous period of three years prior to the July 1, 2022, equal to or exceeding its entire capital and reserves at the time of acquisition, as the case may be; or
- (ii) has defaulted towards repayment of outstanding debts owing to banking companies or non-banking financial institutions for a consecutive period of three years immediately before acquisition, as the case may be, or
- (iii) has been declared as such by the Federal Government in a notification published in the official Gazette.

It has been clarified that this section shall not apply to any scheme of amalgamation or merger.

2.2 Timing and limits of loss adjustment

The acquiring company shall be entitled to adjust loss for the latest tax year and brought forward assessed business losses, excluding capital loss, of the acquired company for a period of 3 years, subject to provisions of section 57 of the Ordinance.

Where the losses surrendered by the acquired company are not adjusted against income of the acquiring company in the said 3 tax years, the acquired company shall carry forward the unadjusted losses in accordance with section 57.

The loss of the acquired company shall be adjusted against income under the head "income from business" of the acquiring company as per following formula:

(A/100) x B where—

- A is the percentage share capital held by the acquiring company of the acquired company; and
- B is the loss of the acquired company.

2.3 Conditions to avail adjustment of losses

In order to avail the above relief, following conditions are to be fulfilled:

- there is continued ownership for 5 years starting from June 30, 2023 and there is no change in share capital of the acquiring company;
- (b) the assets of the acquired company shall not be sold upto the June 30, 2026; and
- (c) the acquired company continues the same business till June 30, 2026.

If the acquiring company fails to revive the acquired company by tax year 2026, the acquiring company shall, in tax year 2027 offer the amount of profit on which taxes have not been paid due to set off of losses surrendered by the acquired company.

A sick industrial unit shall be deemed to be revived if the said company attains maximum production capacity that was obtained before the industrial unit went sick.

Provided that the acquired company produces a certificate to the effect that it stands revived, duly issued by Engineering Development Board, along with the return of income filed for tax year 2026.

3. Tax credit for foreign investment for industrial promotion [Section 65H]

3.1 Eligible persons

In order to promote foreign investment in new industrial undertakings, a onetime tax credit is introduced for the following persons:

- (a) a non-resident Pakistani citizen having continued non-residential status for more than five years; or
- (b) a resident individual having foreign assets declared in terms of section 116 or 116A by the 31st December, 2021.

3.2 Timing and limits for tax credit

For an investment made by eligible persons in a company incorporated on or

after March 1, 2022, to set up an industrial undertaking in Pakistan with equity, not less than Rs 50 million, with funds remitted into Pakistan through proper banking channel, at any time up to December 31, 2022, that company shall be entitled to a one-time tax credit equal to 100% of the amount remitted and credited in rupees in the bank account of such company against tax liability for the tax year in which commercial production commences. For availing tax credit under this section, commercial production must commence by June 30, 2024.

The Company is allowed to carry forward such tax credit to subsequent five tax years.

3.3 Investment not subject to tax credit

Tax credit under this section shall not apply to:

- a company or an industrial undertaking established by splitting up or reconstitution of a company; or
- (ii) an industrial undertaking already in existence; or
- (iii) by transfer of machinery or plant from an industrial undertaking established at any time before the 1st March, 2022.

It has been clarified that if any credit is allowed under this section and subsequently it is discovered by the Commissioner Inland Revenue that any one or more of the conditions specified in this section was or were not fulfilled, as the case may be, the credit originally allowed shall be deemed to have been wrongly allowed and the Commissioner, shall re-compute the tax payable by the taxpayer for the relevant year.

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