Amendments are effective 01.07.2013 unless stated otherwise.

INCOME TAX

2013-14

BRIEF COMMENTARY ON MAJOR PROPOSED AMENDMENTS

Salary Income Taxation:

1. The rates of tax for salaried individuals are proposed to be revised. Salaried income will henceforth be taxed under 12 slabs, instead of 6. There is an overall increase in the tax payable for higher income earners and the highest salary tax slab has been changed to 30% from 20% earlier. *Please see attached tax slab and tax calculator.*

Business (non-salaried) Income Taxation:

2. The rates of tax for business individuals (non-salaried) are proposed to be revised. Tax slabs for income of individuals and AOPs have been increased from five slabs to seven slabs. The highest slab has also been increased from 25% to 35%, i.e. highest income earners will pay e.g. 1,322,500 *plus* 35% of the amount exceeding Rs 6 million. *Please see attached simplified tax slab.*

Property Income Taxation:

3. The existing three slabs for property income to be increased to six slabs. Tax rates on higher rental income from property are proposed to be increased through fresh slabs i.e. rental income beyond Rs 4 million will be taxed at Rs 432,500 (Rs 440,000 if recipient is a company) *plus* 17.5% on the amount in excess Rs 4 million. *Please see attached tax slab.* Also, the following new persons have been added to the definition of the prescribed persons:

    a. *charitable institutions.*
    b. *- private educational institutions, boutiques, beauty parlours, hospitals, clinics or maternity homes.*
    c. *- individual or AOPs paying gross rent of Rs 1,500,000 and above in a year.*

Minimum Tax on Cigarette distributors:

4. With regards to the changes made vide reduction in minimum turnover tax by 80% for Individuals and AOPs doing business as distributors of cigarettes; it is beyond understanding as to why such a step has been taken. Reason being that an SRO 1086 (I)/2010 is already in place that gives advantage of reduced rate in turnover tax to all the distributors of consumer goods and thus cigarette distributors were already given the benefit. Instead of the budget wording being ‘to remove discrimination’ the correct wordings should have been ‘to remove confusion’.

Taxation on Hajj Group Operators:

5. Very important and much awaited amendment has been made to facilitate Hajj Operators. It is worth noting that this amendment was proposed two years ago (through official minutes of the meeting). Eventually through this Finance Bill it has been proposed to apply for tax year 2013 and 2014. Conditions of payment through cheque, etc (please read clause l of section 21 for detail), turnover tax (see section 113) and withholding tax on payments to non-residents (see section 152) will not apply for Hajj Group Operators; as long as the conditions in the amendment are met. The text of the amendment is pasted below for ease of understanding:

   The provisions of clause (l) of section 21, sections 113 and 152 shall not apply in case of a Hajj Group Operator in respect of Hajj operations provided that the tax has been paid at the rate of Rs.3,500 per Hajji for the tax year 2013 and Rs.5,000 per Hajji for the tax year 2014 in respect of income from Hajj operations.

Incentives on Hybrid Vehicles:

6. To encourage Hybrid vehicles for conservation of fuel withholding tax on import of Hybrid cars with engine capacity upto 1200CC has been exempted from all taxes. Likewise withholding tax upto 1800CC has been reduced by 50% and 25% for vehicle upto 2500CC.

Re-introduction of exemption certificate for manufacturers (imports):

7. To assist the manufacturing sector, facility of exemption certificate on import of raw material is being reintroduced subject to the payment of tax liability determined for any of the previous two tax years. For ease of understanding the actual clause is being reproduced:

   'the provisions of section 148 shall not apply to an industrial undertaking if the tax liability for the current tax year, on the basis of determined tax liability for any of the preceding two tax years, whichever is the higher, has been paid and a certificate to this effect is issued by the concerned Commissioner'.

Relief to corporate sector:

8. To provide relief to the corporate sector, the rate of tax for non banking companies is being reduced from 35% to 34%.

Advance tax on functions and gatherings:

9. In order to tap the lavish unrecorded spending and to promote documentation of economy an adjustable withholding income tax is being introduced which shall be collected by the Hotels/Clubs/Marriage Halls/Restaurants/commercial lawns/clubs/community halls/ or any other place used for that purpose, from persons arranging functions. The rate of advance/adjustable income tax has been defined at 10% of the billed amount.

Income support levy on net moveable wealth:

10. Income Support Levy Act 2013 has been proposed to be imposed @ 0.5%, from the tax year 2013, on all net **moveable** assets in excess of Rs 1 million. A lot of questions are being raised with regards to its applicability and legality (retrospectively) of its implementation from the tax year 2013 instead of the tax year 2014. Also whether net movable assets are to include foreign currency bank accounts, Motor Vehicles, Fixed Deposits that are not allowed to be **moved,** etc. Although the FBR has confirmed the definition of 'net moveable assets' but the definition of 'moveable' is still a question to be asked.

Dividend taxation for companies:

11. Withholding income tax on dividend income for companies is to be considered as final tax. Previously if 10% was withheld, a company was required to pay an extra 25% (15% for small companies) at the time of filing of income tax return.

Advance tax on imports, supplies and services:

12. Advance tax rates on imports, and withholding taxes in the case of goods and services are proposed to be increased, for other than companies. The relevant portion is pasted below for ease of understanding:

    In the case of sale of goods,-

    (i) 3.5% of the gross amount payable in the case of companies; and
    (ii) 4% of the gross amount payable in the case of other taxpayers.

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In the case of rendering of or providing of services,-

(a) 6% of the gross amount payable in the case of companies; and
(b) 7% of the gross amount payable in the case of other taxpayers.

At the time of import of goods:-

(a) 5% of the value of goods in the case of industrial undertakings;
(b) 5% in all other cases of companies; and
(c) 5.5% in case of all taxpayers other than those covered at (a) and (b) above.";

The rate of tax to be deducted from a payment referred to in clause (c) of sub-section (1) of section 153 (on the execution of a contract) shall be:

(i) 6% of the gross amount payable in the case of companies; and
(ii) 6.5% of the gross amount payable in the case of other taxpayers'.

Withholding tax on cash withdrawals:

13. Withholding tax on cash withdrawals from banks has been reverted to 0.3% from 0.2%. The maximum daily limit being exempt remains intact at Rs. 50,000.

Withholding tax on sales:

14. Section 153A (withholding on sales to distributors, dealers & wholesalers) has been omitted and instead the following two new sections have been introduced. The text of relevant Finance Bill are pasted below for ease of understanding

    a. ***236G. Advance tax on sales to distributors, dealers and wholesalers.-*** *Every manufacturer or commercial importer of electronics, sugar, cement, iron and steel products, fertilizer, motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam sector, at the time of sale to distributors, dealers and wholesalers, shall collect advance tax from the aforesaid person to whom such sales have been made.* The rate of collection of tax shall be 0.1% of the gross amount of sales.

    b. ***236H. Advance tax on sales to retailers.-*** *Every manufacturer, distributor, dealer, wholesaler or commercial importer of electronics, sugar, cement, iron and steel products, fertilizer, motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam sector, at the time of sale to retailers, shall collect advance tax from the aforesaid person to whom such sales have been made*. The rate of collection of tax shall be 0.5% of the gross amount of sales.

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No immunity on disclosure by banks:

15. Very importantly, from now onward banks will no more be immune to disclose information to the FBR. The following arrangements are being proposed:

> *(a) online access to its central database containing details of its account holders and all transactions made in their accounts;*
>
> *(b) a list containing particulars of deposits aggregating rupees one million or more made during the preceding calendar month;*
>
> *(c) a list of payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to rupees one hundred thousand or more during the preceding calendar month;*
>
> *(d) a consolidated list of loans written off exceeding rupees one million during a calendar year; and*
>
> *(e) a copy of each Currency Transactions Report and Suspicious Transactions Report generated and submitted by it to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010).*

Minimum turnover tax:

16. The rate of minimum turnover tax that was reduced from 1% to 0.5% through Finance Act 2012 is being proposed to be reverted back to 1%. Certain reductions and exemptions will apply.

Withholding tax on films/dramas/plays:

17. An adjustable withholding tax on foreign-produced films, TV serials and plays etc to be collected by the authority responsible for their censoring/certification at the rate of Rs. 1 Million for films and Rs. 100,000 per episode for TV plays.

Deletion of various exemptions:

18. The following exemptions that were available in the Second Schedule to the Income Tax Ordinance 2001 are being proposed to be withdrawn:

    (i) Exemption to dividend in specie;

    (ii) Free/concessional passage provided by transporters including airlines to its employees by virtue of their Employment;

    (iii) Taxation at reduced rate of 2.5% on flying allowance and submarine allowance;

    (iv) 75% reduction in the tax payable by a full time teacher or a researcher.

    (v) Any income of any university or other educational institution established solely for educational purposes and not for purposes of profit.

SALES TAX & FEDERAL EXCISE

2013-14

BRIEF COMMENTARY ON MAJOR PROPOSED/ENACTED AMENDMENTS

Stay on demands:

1. Commissioner (Appeals) has been given power through amendments in the Sales Tax Act, 1990 and Federal Excise Act, 2005 to allow stay of demands for 30 days in case he/she is satisfied with the taxpayer's hardship. Please note that a proper procedure needs to be followed and an application will have to be made to the Commissioner (Appeals) and only after a hearing opportunity is offered to both parties will the Commissioner (Appeals) be allowed to grant a stay. Also the aggregate number of days is limited to 30 days only.

Rectification of orders:

2. The Commissioner, the Commissioner (Appeals) or the Appellate Tribunal has been given right to rectify any mistake apparent from the record (suo moto or any mistake brought to his/her knowledge). Those who are aware of section 221 of the Income Tax Ordinance, 2001 would agree that this amendment in the Sales Tax Act 1990 was long due.

Enhancement of rate of GST:

3. Effective 13.06.2013, enhancement in the standard rate of sales tax from 16% to 17% has occurred. Also a change in GST rate for zero/reduced-rating regime has also taken effect. Wherever applicable the rate that was being charged at 16% has now been increased to 17%. While a massive increase of 15% in the rate (from 2% to 17%) for the following taxpayers have been decided: (please relate to SRO 1125 (I)/2011 and S.R.O. 504(I)/2013):

   (i) Finished articles of leather and artificial leather

   (ii) Finished articles of textiles and textile made-ups including;
   (a) mono-filament of more than 67 decitex;
   (b) sun shading;
   (c) fishing net of nylon or other material;
   (d) rope of polyethylene or nylon; and
   (e) tyre cord fabric

   (iii) Finished Carpets

   (iv) Sports goods in finished condition

   (v) Surgical goods in finished condition

The reason behind the major change in the reduced rate sector regime is due to the fact that the basic foundation of the reduced rate (previously zero rate regime) was to facilitate the export oriented sector. Thus, it is clear from the above list that the finished goods' import and/or supply to the general public does not help the export sector per se.

Extra sales tax on sales to unregistered persons:

4. Effective 13.06.2013, further sales tax at 2% (i.e. 19% instead of 17%) will be charged at the time of supplies if made to a person who has not obtained a registration number. Therefore effective rate of 19% will be charged if sold to unregistered persons. Certain exemptions are to be notified. Also the definition of registration number too is warranted due to the fact that STRNs have been replaced by NTNs through a previously enacted SRO. Therefore the registration number by law should mean an NTN instead of an STRN. Further clarification is required.

Further charge of sales tax on electric/gas:

5. Effective 13.06.2013, further charge of sales tax @ 5% will be levied, in addition to the standard rate of 17% on non-registered commercial and industrial consumers of electricity and gas having monthly bill in access of Rs. 15,000.

More powers to CREST:

6. Effective from 13.06.2013, disallowance of input tax adjustment will take place in cases where discrepancies are indicated by CREST or if input tax on purchases is not verifiable in the supply chain. Very important to note that the Lahore High Court, just 3 days ago, has granted an interim stay against recovery notices issued by the FBR to recover the amount of sales tax from taxpayers falling under zero-rated regime (now reduced rate regime). What is worth noting that pre-13.06.2013 though CREST has been defined under Rule 2 of the Sales Tax Rules, 2006 but there was no trace of its legality or validity in the Sales Tax Act, 1990 or the rules? Quite possibly the FBR is order to cater to legal cases has actually given more power to the system of CREST.

Increase in the Third Schedule goods:

7. Effective from 13.06.2013, expansion in the list of items has occurred, which are chargeable to sales tax on retail price basis. Necessary changes have been made in the Third Schedule of the Sales Tax Act 1990.

Deletion on area specific concessions:

8. Effective 13.06.2013 through S.R.O. 500(I)/2013 and S.R.O. 503(I)/2013, the concessions available to thirteen districts of Khyber Pakhtunkhwa, FATA and PATA has been withdrawn. This is in line with the already withdrawn exemptions in the Income Tax Ordinance, 2001

Withholding tax on purchases from unregistered persons:

9. Effective 13.06.2013 through SRO 504 (I)/2013, the scope of withholding regime has been expanded i.e. withholding agents will now withhold the whole sales tax on purchases made from unregistered persons.

Conversion of 'Zero-rating regime' to 'exemption regime':

10. Effective 13.06.2013 through S.R.O. 501(I)/2013 and S.R.O. 502(I)/2013, substitution of zero-rating with exemption has occurred on the items of non export oriented sectors. The zero rating facility available in S.R.O. 549(I)/2008 have been substituted with exemptions. Therefore, now all such products under zero rating will not be able to reclaim input tax adjustment and/or sales tax refunds. Also an increase in the cost of production might be suffered. Some of the important items affected are stated below:

    a) Uncooked poultry meat
    b) Milk
    c) Yogurt
    d) Butter
    e) Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry meat and fish
    f) Writing, drawing and marking inks
    g) Exercise books
    h) Dedicated CNG buses and all other buses meant for transportation of forty or more passengers whether in CBU or CKD condition
    i) Wheelchair compartment with folding ramp

    Please refer to SRO 549 (I)/2008 for a complete list. The important point to note and worth repeating is that the products in question have been converted from zero-rated regime to being exempt. Although the FBR may argue that the products are still exempt and thus costs won't go up but as input tax adjustment and sales tax refunds are no more applicable therefore the cost of doing business for that sector would still rise. A very simple example would be that of an exercise book manufacturer i.e. paper (one of the raw materials) is bought either locally or imported and 17% GST is charged on the purchases by a manufacturer of exercise book. Previously this would either be adjusted or refunded. Due to the current changes in the law the manufacturer will not be allowed to take the input tax and/or sales tax refund of the 17% GST paid at the time of purchases. Where would the manufacturer of an exercise book add the cost of paying 17% extra? I believe the question itself answers the points noted above.

Powers to manually select cases for audit:

11. Explanation added to sections 25, 38, 38A, 38B and 45A of Sales Tax Act, 1990 and sections 35, 45 and 46 of Federal Excise Act, 2005 to specify that the power under these sections are independent of the powers under section 72B and 42B respectively. It is very important to note that the recent decisions of the Apex Courts restricted the commissioner to manually select cases for audit and eventually directed the FBR to only select cases through balloting from tax year 2011 onward. This has now been reversed by the FBR through an amendment. The explanation is quoted below for ease of understanding:

> *'For the purpose of sections 35, 45 and 46 and for removal of doubt, it is declared that the powers of the Board, Commissioner or officer of Inland Revenue under these sections are independent of the powers of the Board under section 42B and nothing contained in section 42B restricts the powers of the Board, Commissioner or officer of Inland Revenue under these sections or to conduct audit under these sections'.*

Please note that corresponding changes have also been made in the Income Tax Ordinance, 2001

FED on Motor Vehicles and Financial Services:

12. Effective 13.06.2013, 10% ad-valeram FED to be charged on motor vehicles of capacity of 1800cc and above and the scope of chargeability of FED on financial services is expanded by making all kinds of financial services to be chargeable to FED at 16%.

DISCLAIMER

This document consists of comments in relation to major taxation measures. The comments are solely for interpretation of the legislation. It is recommended to refer to the actual Finance Bill and related laws for a detailed understanding.

All opinions, recommendations and suggestions expressed in this document are based on the input from the Taxation subcommittee of the ACCA Pakistan – Members Network Panel.