RELEVANT TO ACCA QUALIFICATION PAPER F6 (PKN)

Amendments to the Finance Act 2012

This article is relevant to those of you taking Paper F6 (PKN) in either the June or December 2013 sittings, and is based on tax legislation as it applies to the Finance Act 2012.

In Pakistan, like most other democracies, a tax can be levied only by, or under, the authority of an Act of the Parliament. While taxation of income (other than agricultural income) is governed by the Income Tax Ordinance 2001 as amended from time to time, the Sales Tax Act 1990 deals with sales tax at Federal level. Sales tax on services is a provincial subject and not examinable in Paper F6 (PKN). According to the guidelines issued by ACCA, relevant regulations issued and legislation passed on or before 30 September 2012 will be assessed for the first time in the June 2013 sitting of Paper F6 (PKN).

The Finance Act 2012 is operative from 1 July 2012 and is therefore examinable in the June and December 2013 sittings of Paper F6 (PKN). The candidates are advised to go through these amendments carefully so that they can solve the papers correctly. It may be noted that references to different provisions of the Income Tax Ordinance 2001 and the Sales Tax Act 1990 are for additional knowledge of the candidates and not required in the paper.

The examinable amendments are explained below:

CHANGES IN THE INCOME TAX ORDINANCE 2001

1. **Change in the basic threshold of individual taxpayers**
   With effect from tax year 2013, an individual taxpayer (salaried and non-salaried) shall not pay any tax if taxable income of the tax payer for the year does not exceed Rs.400,000. Tax rates for salaried and non-salaried individuals have been revised.
   [Para (1) and (1A) of Pt. I of the First Schedule]
   Tax rates are given in the paper and the candidates are not expected to memorise them.

2. **Change in tax rate of an association of person**
   With effect from the tax year 2013, an association of persons (AOP) shall be taxed at the same rates as are applicable to non-salaried individuals. It also means that an AOP having income not exceeding Rs.400,000 shall pay no tax. Previously, an AOP was taxed at 25% of its taxable income. [Para (1) of Pt. I of the First Schedule]

3. Taxation of capital gains on immovable property

For the first time, capital gain on immovable property has been brought to tax. For this purpose, the following changes have been made in the Ordinance:

(a) Definition of capital asset has been amended to the effect that an immovable property is now included in it. [S37(5)]

(b) Advance tax shall be collected at 0.5% of the consideration received by sellers/transferors of the immovable property. [S236C]

(c) The advance tax collected in the manner mentioned above shall be adjustable against tax to be paid on capital gains from disposal of immovable property as below:

Where holding period of immovable property is up to one year	10%
Where holding period of immovable property is more than one year but not more than two years	5%

(d) Where the holding period of immovable property is more than two years, there will still be no tax on any capital gain arising from disposal of such immovable property.

The above amendments are expected to bring a number of new persons, including agriculturists, into the taxpayers' community.

4. Perquisite on account of concessional loans to employees

Any amount of loan provided by an employer with a profit rate being below the benchmark rate was treated as perquisite taxed as salary of the beneficiary employee. Two important changes introduced with effect from the tax year 2013 are explained below:

(a) No amount on account of concessional loan shall be treated as taxable perquisite provided that such a loan amount does not exceed Rs.500,000.

(b) Previously, the benchmark rate was calculated at 5% plus 1% for every successive tax year after tax year 2003. Thus, in the tax year 2012, the benchmark rate was 14%. However, with effect from the tax year 2013, the upper limit of the benchmark has been fixed at 10%. [S13(14)(a)]

5. Normal tax regime (NTR) option for commercial importers, traders and exporters

Under the normal tax regime (NTR), income is taxed on a net basis – ie after allowing admissible deductions and expenditures incurred to earn such income. Under the final tax regime (FTR), tax collected on different taxable transactions is treated as final tax on such transactions, irrespective of whether a taxpayer earns net income or makes a loss from such transactions. Relevant changes brought about in the Finance Act 2012 are discussed below:

(a) Prior to the Finance Act 2012, tax collected on the commercial import of goods was treated as final tax. From the tax year 2013 onwards, taxpayers are given the option to be assessed under NTR provided that their tax liability under NTR is not less than 60% of the tax collected at the import stage. [Cl. (41A) of Pt. IV of 2nd Sch.]

(b) Tax collected at the time of realisation of export proceeds, indenting commission and other allied activities as provided under the law [S154] was treated under FTR. From the tax year 2013 onwards, taxpayers deriving income from these activities can opt to be assessed under NTR provided that their tax liability under NTR is not less than 50% of the amount of tax collected at source [u/S154]. [Cl. (41AA) of Pt. IV of 2nd Sch.]

(c) Tax collected by the prescribed persons on making payment for sale of goods made to them is covered under FTR. Starting from the tax year 2013, sellers of such goods can opt for assessment under NTR provided that their tax liability under NTR is not less than 70% of the tax deducted at source. [Cl. (41AAA) of Pt. IV of 2nd Sch.]

6. Additional payment for delayed refunds

A taxpayer is entitled to compensation if refunds due to them are not paid in the prescribed period of time. Taxability of such compensation was disputable. A new clause has been inserted by virtue of which such compensation shall be taxable under the head ‘Income from Other Sources’ [S39]

7. Changes in the tax credits allowable under the Income Tax Ordinance 2011

A. Tax credit for investment in shares [S62]

Under Section 62, tax credit is available on investment in eligible shares and life insurance premium paid, subject to certain conditions given therein. Changes made during the Finance Act 2012 are as below:

(a) The amount invested in the acquisition of shares or the premium paid to a life insurance company eligible for tax credit will be the lesser of the following:

(i) Total cost of acquiring the shares or the amount of premium paid
(ii) **20%** of the person's taxable income for the year
(iii) **One million** rupees.

(b) If a person had been allowed a tax credit for investment in shares as discussed above, and later on disposed of these shares within 36 months of the acquisition of these shares, the tax liability of the year of disposal was to be increased by the amount of tax credit allowed earlier. Now this limit of **36 months** has been reduced to **24 months**.

B. Tax credit for investment [S65B]
Tax credit is available to a company equal to 10% of the amount invested in the purchase of plant and machinery for the purposes of balancing, modernisation and replacement (BMR) of the plant and machinery already installed in an industrial undertaking. The Finance Act 2012 has extended availability of this credit to plant and machinery for extension and expansion of an industrial undertaking.

Where a company, set up in Pakistan before 1 July 2011, makes investment, during 1 July 2011 and 30 June 2016, through 100% equity, for the purposes of BMR of the plant and machinery already installed in the company's industrial undertaking, the admissible tax credit shall be 20% of the amount so invested.

Note: It has been explained that the tax credit is also allowable against minimum tax and final taxes payable under the Ordinance.

C. Tax credit for newly established industrial undertakings [S65D]
A tax credit equal to 100% of tax payable is given to a company on its income from a new industrial undertaking [set up with 100% equity] in the tax year in which it is set up and the following four years, subject to certain conditions.

Amendments/clarifications made in the Finance Act 2012 are summarised below:
(a) Corporate dairy farming has also been made eligible for the tax credit.
(b) It has been clarified that an industrial undertaking shall be considered to have been set up when it starts its production, whether on trial or on a commercial basis.
(c) It has further been clarified that the mode of 100% equity shall

be through issuance of shares against cash. However, short-term financing obtained from banking companies or non-banking financial institutions for meeting the working capital requirements shall not disqualify the taxpayer from claiming the tax credit.
(d) It has been explained that the tax credit is also allowable against minimum tax and final taxes payable under the Ordinance.

D. Tax credit for industrial undertakings established before the first day of July 2011 [S65E]
The tax credit admissible to industrial undertakings established before the first day of July 2011 has been extended to new projects undertaken by these undertakings. Further, the period of the tax credit has been enhanced to five years instead of the previous four years. The tax credit admissible to the eligible industrial undertakings shall be computed as equal to:

(New equity/total equity including new equity) x tax payable

It has further been explained that the tax credit is also allowable against minimum tax and final taxes payable under the Ordinance.

8. Procedure for tax collection on capital gains on securities
Special provisions relating to taxation of capital gains arising from disposal of securities have now been provided (in Section 100B and the Eighth Schedule to the Ordinance). National Clearing Company of Pakistan (NCCPL) will be responsible for computing and collecting the capital gain tax on disposal of securities on the basis of data collected from Central Depository Company (CDC). However, taxpayers can opt out from payment of tax under the Eighth Schedule with the approval of the Commissioner Inland Revenue. Some specialised companies (not examinable in Paper F6 (PKN)) are also outside the scope of these newly legislated provisions.

It has further been provided that no enquiries shall be made for the nature and source of the amount invested until 30 June 2014 in the shares of the companies listed on the stock exchange, subject to the following conditions that:
(a) the amounts remain invested for at least 120 days
(b) tax on capital gains is duly paid in the prescribed manner
(c) a statement of investments is filed with the return of total income/wealth statement.

9. Inter-corporate dividend and profit on debt
Inter-corporate dividend and profit on debt within the group

companies, entitled to group taxation under Section 59AA and 59B have been exempted from deduction of tax at source. [Cl.(103A) & (103B) of Pt. I of the 2nd Sch.]

Note: While such profit on debt is taxable under normal law, inter-corporate dividend of such companies is not taxable.

10. Minimum tax
The rate of minimum tax computed on the basis of turnover (under Section 113) has been reduced from 1% to 0.5% with effect from the tax year 2013.

11. Additional condition for revision of return
In addition to the existing conditions, the Finance Act 2012 has prescribed a new condition for revising the return according to which a taxpayer can only revise a return of income if the revised return contains more taxable income or less loss than the taxable income or loss as determined by the department (under Sections 121, 122, 122A, 122C, 129, 132, 133 or 221). Candidates may note that returns filed by the taxpayers are treated as assessment order under Section 120 of the Ordinance and it is not included in the list of sections hit by the new condition. (S114)

12. Time limitation of assessment (S120)
If a return of income is filed incomplete, the Commissioner can issue a notice of deficiency within 180 days after the end of the financial year in which the incomplete return was filed. Previously, such a notice could have been issued only by the end of the financial year in which such a return was filed.

13. Default surcharge [S205]
The default surcharge rate shall be 18% per annum with effect from 1 July 2012. Previously, it was payable at Karachi Interbank Offered Rate (KIBOR) plus 3% per quarter.

By virtue of another amendment, if a taxpayer opts to make payment of the tax due on the basis of an appellate order passed by the Commissioner (Appeals) and does not file an appeal to the Appellate Tribunal, no default surcharge shall be payable by him for the period beginning from the due date of payment as given in the order appealed against to the date of payment given in the appeal effect order.

14. Amendment of assessment [S122]
By virtue of amendment in the Finance Act 2012, provisional

assessments (under Section 122C) have also been made liable to amendment, subject to the same conditions as are applicable for amendment of any other category of assessment order.

15. Relief by the Commissioner (Appeals) [SS128 & 129]
Prior to the Finance Act, 2012, if the Commissioner (Appeals) failed to pass order on the grounds of appeal of a taxpayer, the law, subject to certain conditions, deemed that the grounds of appeal were accepted by the Commissioner (Appeals). The provisions relating to such automatic grant of relief have been deleted in the Finance Act 2012.

The Finance Act 2012 has, however, empowered the Commissioner (Appeals) to stay recovery of tax demands in the order appealed against for a maximum period of 30 days.

16. Stay of demand by Appellate Tribunal [S132]
According to the amended provision, the Appellate Tribunal can now grant stay of recovery of a tax demand for a period not exceeding 180 days after providing an opportunity of being heard to the relevant commissioner. This period of 180 days shall be computed by excluding the period for which the recovery was stayed by a High Court.

17. Advance tax on cash withdrawal from a bank [S231A]
Through the Finance Act 2012, aggregated daily cash withdrawal limit without subjecting it to collection of tax at source has been enhanced to Rs.50,000 from Rs.25,000. Rate of tax collection remains the same (0.2% of cash withdrawn).

Note: **FBR has also explained amendments in the Finance Act 2012 through its Circular No. 02 of 2012, dated 27 July 2012, which can be accessed at www.fbr.gov.pk**

AMENDMENTS TO THE SALES TAX ACT 1990

In the Finance Act 2012, a number of supplies which were earlier exempt have now been made zero-rated, and vice versa. Candidates are advised to consult Fifth and Sixth Schedules to the Sales Tax Act 1990 to update their knowledge.

Written by a member of the Paper F6 examining team