



MEMORANDUM ON FINANCE (SUPPLEMENTARY) BILL, 2023

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PROLOGUE:

A document has been circulating in social media termed “**The Finance (Supplementary) Bill, 2023**” (“the Bill”). The Bill proposes amendments to Income Tax Ordinance, 2001 (“ITO”), Sales Tax Act, 1990 (“STA”), and Federal Excise Act, 2005 (“FEA”).

The Preamble to the Bill provides that it shall come into force at once unless otherwise specified. However, the Statement of Object and Reasons are given in the Bill state that the Bill shall come into force on the next day of assent given to this act by the President of Islamic Republic of Pakistan.

The interpretations of the amendments are based on our understanding of tax law and past practices. These comments are provided for general use by public and should not be used for any specific transaction. We do not guarantee that these interpretations will be acceptable to the tax department. The comments are prepared for general business understanding of the masses. This document is not and shall not be construed to be a legal opinion, legal assistance, a legal advice, or a financial advice for, inter-alia, investing, managing taxes, incorporating any legal entities. AJ Sid does not assume, nor does it bear any responsibility, financial or otherwise, that can or may arise out of the use of this document by any individual or entity. Moreover, the laws (including Rules, Regulations, Acts and Ordinances) covered in this document are subject to changes, hence, it is recommended that the reader must refer to the actual text of the law being referred to in this document, and the actual text of any supplementary legislation (including any rules, by-laws, regulations, cross-referenced Acts or Ordinances) thereto which may not have been mentioned in the document. AJ Sid also bears no responsibility to update this document for events and circumstances occurring on or after the date of this document.

Furthermore, we do not extend any sort of guarantee or indemnity, financial or otherwise, for the acceptance of the comments mentioned in this document by any statutory or non-statutory authority.

Please feel free to provide your feedback for further improvements in the document. Should you have any queries in relation to this document, do not hesitate in contacting us.

Warm Regards,

AJ Sid

Thursday, 16 February 2023

INCOME TAX

ADVANCE TAX ON DISPOSAL OF CERTAIN CATEGORIES OF SHARES (SECTION 37(6))

Through the Finance (Supplementary) Bill, 2023 (“the Bill”) a new Section, namely Section 37(6) has been inserted in the Income Tax Ordinance 2001 wherein a person acquiring a capital asset, being shares of a company, shall deduct an **advance adjustable tax** from the **gross amount paid** as consideration at **10% of the Fair Market Value (FMV)** to the Commissioner within 15 days of payment.

It has also been made clear, through insertion of Section 37(7) of the ITO vide the Bill, that the value shall be the FMV. Moreover, as per the newly inserted Section 37(8) of the ITO vide the Bill, a person intending to dispose of the shares shall apply to the Commissioner, who shall then allow making payment after deducting tax at 0% or deducting tax at a reduced rate.

Furthermore, as per the newly inserted Section 37(10) of the ITO vide the Bill, the person disposing off the capital asset (being shares of a company) shall furnish prescribed information/ documents to the Commissioner within 30 days of the disposal transaction in a prescribed statement. A proviso was also inserted wherein it stated that the Commissioner (in writing) may require the person to furnish information/ documents within a period of not less than 30 days as specified in the notice.

This amendment shall be applicable to disposal of shares of private limited and unlisted public companies.

CAPITAL GAIN ON DISPOSAL OF SECURITIES SECTION 37A

A proviso was inserted for Capital Gain on Securities (Section 37A) vide the Finance (Supplementary) Bill wherein the above provisions shall also be applicable on disposal of securities made otherwise than through a registered stock exchange, not settled through NCCPL.

ADVANCE TAX ON FUNCTIONS AND GATHERINGS- SECTION 236CB

An adjustable advance tax of 10% has been levied on functions and gatherings on the total amount of the bill from a person arranging/holding a function in the following premises:

- Marriage hall;
- Marquee;

- Hotel;
- Restaurant;
- Commercial lawn;
- Club;
- Community place; or
- Any other place used for such purpose.

Furthermore, a 10% advance tax shall also be paid by the prescribed person on the payment of food, service, or facility, where food, service or any other facility is provided.

The following shall also be included in the definition of functions:

- Any wedding-related event;
- Seminar;
- Workshop;
- Session;
- Exhibition;
- Concert;
- Show;
- Party;
- Or other gatherings held for such purpose.

“Prescribed persons” includes the following:

- Owner;
- Lease-holder;
- Operator;
- Manager of a marriage hall;
- Marquee;
- Hotel;
- Restaurant;
- Commercial lawn;
- Club;
- A community place;
- Or any other place used for such purpose.

SALES TAX

STANDARD SALES TAX RATE

The standard rate of sales tax has been increased from 17% to 18% through SRO 179(I)/2023 dated February 14, 2023. The amendment through SRO 179 is not applicable on goods subject to sales tax at retail price as specified in the Third Schedule to the Sales Tax Act, 1990. The SRO is dated February 14, 2023, in view of which it seems that enhanced rate is applicable from February 14, 2023. However, in view of the fact that the SRO was made public on February 15, 2023, keeping in view the principles laid down by the Hon'ble Supreme Court of Pakistan in its judgement reported as 2022 PTD 232, the applicability of SRO from February 14, 2023 can be questioned. Furthermore, the legitimacy of increase of rate through SRO can also be questioned in view of various judgments which have ruled that power to levy tax remains with the Parliament.

The Finance (Supplementary) Bill, 2023 besides incorporating the effect of SRO 179, has also proposed to increase sales tax rate from 17% to 18% for the goods specified under the Third Schedule which will be effective from the date on which the Act takes into effect.

It has further been proposed that Federal Government may by notification in the Official Gazette, charge sales tax, on goods specified in Third Schedule, on such higher rates as may be specified. It is expected that a separate notification in this respect will be issued later for certain goods specified in Third Schedule.

THIRD SCHEDULE ITEMS

A proviso has been inserted, vide the Bill wherein the Federal Government has been empowered to impose higher rates of taxes on the retail price through a notification in the official Gazette, for the goods mentioned in the 3rd Schedule to the STA.

EIGHTH SCHEDULE ITEMS

Sales tax rates on the following items have been raised as under:

Sr.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Locally produced coal	Higher of Rs 700 per metric ton or 17% ad valorem	Higher of Rs 700 per metric ton or 18% ad valorem
2	Potassium Chlorate (KClO ₃)	17% along with Rs 90/kg	18% along with Rs 90/kg

NINTH SCHEDULE ITEMS

Sales tax rates on the following items have been raised as under:

Sr.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Cellular mobile phones or satellite phones are to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:		
	E-Exceeding USD \$ 200 but not USD \$350	17% ad valorem	18% ad valorem
	F- Exceeding USD \$ 350 but not USD\$ 500	17% ad valorem	18% ad valorem
	G- Exceeding USD \$ 500	17% ad valorem	25% ad valorem

FEDERAL EXCISE ACT

FED RATES OF THE FOLLOWING ITEMS HAVE BEEN RAISED AS UNDER:

Sr.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Aerated waters	13% of retail price	20% of retail price
2	Aerated waters, containing added sugar or other sweetening matter or flavored	13% of retail price	20% of retail price
3	Aerated waters 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	13% of retail price	20% of retail price
4	Locally produced cigarettes if their on-pack printed retail price exceeds Rs 6,660 (Changed to Rs 9,000) per thousand cigarettes	Rs 6,500 per thousand cigarettes	Rs 16,500 per thousand cigarettes
5	Locally produced cigarettes if their on-pack printed retail price does not exceed Rs 6,660 (Changed to Rs 9,000) per thousand cigarettes	Rs 2,050 per thousand cigarettes	Rs 5,050 per thousand cigarettes
6	Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether colored or in the form of clinkers.	Rs 1.50/kg	Rs 2.00/kg
7	Sugary fruit juices, syrups, squashes, waters whether containing added sugar/artificial sweeteners excluding mineral and aerated waters	-	10% of retail price

MINIMUM PRICE OF CIGARETTES

Earlier, locally produced cigarettes having their on-pack retail price exceeding Rs 6,660 were not permitted to sell at retail prices lower than 45% of the retail prices mentioned in the FEA, now, the on-pack rate has increased to Rs 9,000 and the minimum retail price percentage has risen to 60%.

FED ON AIR TRAVEL

Sr.	Description	Existing	Vide the Finance (Supplementary) Bill
1	Travel by air as a passenger for international journey from Pakistan availing the club, business and first class. (Applicable from the date of commencement of the Finance (Supplementary) Bill	Rs 50,000/-	Higher of 20% of the gross amount of ticket or Rs 50,000/-