

MOORE STEPHENS

Shekha & Mufti
Chartered Accountants



Budget & Tax Memorandum 2012

S. No.	Table of Contents	Page
1	Introduction	3
2	Income Tax Ordinance, 2001	4-18
A-	Taxation of Salary Income	4-5
B-	Taxation in Business Individual and Firms	6
C-	Taxation of Capital Gains on Property	6-7
D-	Taxation of Companies	7-8
E-	Taxation of Capital Gain on Shares	9-11
F-	Taxation of Importers, Exporters & Manufacturers	11-12
G-	Taxation of Non Resident	12-13
H-	Taxation of Withholding Provisions	13-14
I-	Assessment and Reassessment	14-15
J-	Income Tax Appeals & Stay	15-17
K-	Other Important Changes	17
3	Indirect Taxes - Significant Duty / Tax Measures at a Glance	18-19
4	Sales Tax Act, 1990	20-26
5	Federal Excise Act, 2005	27-29
6	Customs Act, 1969	30-33

Introduction

The Federal Budget for the year 2012 - 2013 has proposed considerable amendments in the Income Tax, Sales Tax, Customs and Federal Excise Laws which have been made applicable from 01 July 2012 unless otherwise indicated. We have prepared a budget and tax memorandum on the proposed amendments for the purpose of general guidance of our valued clients.

The proposals introduced in the Bill have to be approved by the National Assembly before they become effective. The budget and tax memorandum is focused on the important amendments in concise format and carries our interpretation and comments and therefore should not be presumed as a specific professional advice.

The budget and tax memorandum can also be accessed on our web site www.shekhamufti.com

01 June 2012

Shekha & Mufti is an independent member firm of Moore Stephens International Limited - members in principal cities throughout the world

INCOME TAX ORDINANCE, 2001

A- CHANGES IN TAXATION OF SALARY INCOME

Interest free Employee Loan

Section 13(7)

Where a loan is given to any employee by the employer without interest or with rate of interest lower than the prescribed rate, the difference becomes part of his taxable salary and is called as notional interest income.

It is proposed that the tax implication of the interest free loan or the concessional loan should be done away with the small amount of loan i.e. up to Rupees 500,000/-.

The proposal promises a very significant respite to all those employees whom loan amount will not be more than 500k.

Moreover, the benchmark rate for loans which kept rising up till last year at a constant rate of 1% every year has now also been arrested at 10%.

The effective date of the above changes is July 01, 2012.

This implies that beneficial amendment will not be available either to old loans which have come down to Rupees 500k or either to old loans which were originally lesser than or up to Rupees 500k.

We understand that it needs to be clarified that if the loan is for more than Rupees 500k, will the implication of tax follow on the whole of the amount of loan or only on the excess of Rupees 500k.

Tax Credits for Investment in Life Insurance or Investment in Shares

Section 62

Major amendments have been proposed for tax credits to individuals and firms.

Firstly, the upper limit for claiming the tax credit either for investment in shares or for premium of life insurance policy has been proposed to be increased from Rupees 500,000/- to Rupees 1,000,000/-.

Secondly, the limit for investment in shares or premium has been proposed to be increased from current 15% to 20% of the taxable income for the purpose of rebate.

Lastly, the holding period of shares has been reduced from three (03) years to two (02) years. The taxpayers is now bound to hold the shares only for two (02) years from the date of buying failing which the tax rebate will have to be given back in the year of disposal.

It needs a mention that there appears to be a conflict between the Finance bill and Salient Features as the period for holding of shares is one (01) year in the Salient Features instead of two (02) years.

As it appears from a plain reading of the provision that limit of 1M is not separately available and will be available only for one of the two investments i.e. either for Shares or Insurance, a change, however, needs to be brought into that even if investment is made by the taxpayer both in shares and life Insurance and which is within the limit of 1M and has not crossed, the rebates should be allowed in both the cases. Lastly it would be desirable to allow the amendment to be effective in current tax year.

Taxable Salary Limit increased
1st Schedule

The maximum income limit for tax exemption has been proposed to be increased to Rupees 400,000/- from Rupees 350,000/- per annum both for male and female employees.

It would mean that in both cases of male employee and female employee, a monthly salary up to Rupees 33,333/- pm would remain below taxable limit.

Corresponding to above increase, the Slabs of income tax rates has also been re-introduced and has been reduced from 17 slabs to 5 slabs.

The proposed Slab is under;

Slab	Taxable Income	Rate of Tax
1	Up to 400,000	NIL
2	400,001 to 750,000	5% of the amount exceeding 400,000/-
3	750,001 to 1,500,000	17,500/- plus 10 % of the amount exceeding 750,000/-
4	1,500,001 to 2,500,000	92,500/- plus 15 % of the amount exceeding 1,500,000/-
5	2,500,001 and above	242,500/- plus 20 % of the amount exceeding 2,500,000/-

The concept of Marginal Relief has been dispensed away with after new slab is in place.

The comparison of tax working from Last slab to new slab is tabulated as under;

Slab	Taxable Income	Old Tax	New Tax	Tax Saving
1	750,000	45,000	17,500	27,500
2	1,500,000	179,500	92,500	87,000
3	2,500,000	400,000	242,500	157,500
4	4,800,000	960,000	702,500	257,500

Exemption to Voluntary Pension Schemes

2nd Schedule [Clause 23B, 23C]

Monthly installment from an income payment plan invested for 10 years into a pension fund, annuity or individual pension accounts is proposed to be exempted from income tax.

Moreover it is also proposed that 100% tax free withdrawal should be allowed from the Pension Fund which would consist of the Provident Fund money transferred by the employee and that the rule of limit of 50% exempt and 50% taxable will not be followed.

The above can be explained through the tabulation as under;

Slab No.	Total Pension Fund Account	Transfer from Provident Fund	Pension Fund	50% Taxable of Pension Fund
1	100,000/-	70,000	30,000/-	15,000/-

B- CHANGES IN TAXATION IN BUSINESS INDIVIDUAL AND FIRMS

Taxable limit for Business Individuals and Firms

1st Schedule

The slab rates are proposed to be re introduced for Associations of Persons (AOPs) instead of fixed rate at 25%.

The maximum income limit for tax exemption has been proposed to be increased to Rupees 400,000/- from Rupees 350,000/- per annum in case of both male and female business Individuals. Corresponding to the increase in the threshold the Slab of income tax rates has also been re-introduced.

The proposed Slab as would be applicable both for business Individuals and firms is as under;

The comparison of tax working for business individuals from Last to the new slab in tabulated as under;

Slab	Taxable Income	Rate of Tax
1	Up to 400,000	NIL
2	400,001 to 750,000	10% of the amount exceeding 400,000/-
3	750,001 to 1,500,000	35,000/- plus 15 % of the amount exceeding 750,000/-
4	1,500,001 to 2,500,000	147,500/- plus 20 % of the amount exceeding 1,500,000/-
5	2,500,001 and above	347,500/- plus 25 % of the amount exceeding. 2,500,000/-

Slab	Taxable Income	Old Tax	New Tax	Tax Saving
1	750,000	75,000	35,000	40,000
2	1,500,000	300,000	147,500	152,500
3	2,500,000	625,000	347,500	277,500
4	4,800,000	1,200,000	922,500	277,500

C- CHANGES IN TAXATION OF CAPITAL GAINS ON PROPERTY

Capital Gains on Property

Section 37 (1A)

Gain from disposal of all kind of Immoveable Property as to whether Agricultural, Industrial, Commercial or Residential is proposed to be taxed as Capital Gains.

This has been made possible after the 18th amendment was made in the Constitution of Pakistan, 1973, otherwise the Federal Government did not have the power to tax gain on immovable property.

Consequential amendment is proposed wherein the definition of Capital Asset is amended by including Immoveable Property within the definition of Capital Asset.

It is understood that immoveable property would include self occupied House, vacant house, Land, garden, orchard, Shop, Warehouse, Flat, apartment, Building, etc.

Business assets, however, which are subject to tax depreciation, are excluded from the definition of Capital Asset being depreciable assets and therefore any gain thereupon will be business gain and not capital gain.

We understand that Builder and Developers remain outside the ambit of above change as sale and purchase of the immovable property in their case is already chargeable to tax as 'business income' instead of capital gain.

Gain on disposal is to be calculated by using the following formula as given under Section 37(2) of the Ordinance:

Gain on disposal = A – B

A = Consideration received from disposal

B = Cost of Asset.

A corresponding amendment has been made whereby FBR is now empowered to make rules for determination of cost of asset and consideration (sale value) received for Asset under Sections 76 and 77 of the Ordinance.

We apprehend that the cost or sale value may not be considered as would be determined for Stamp Duty Purposes or for CVT purpose. Instead, the Fair Market Value will be considered for determining the Gain.

Gain arising from immovable property is classifiable as follows:

1- Long Term Gain (where holding period is more than 2 Years)

Long term gains remain exempt from income tax.

2- Short Term Gain (where holding period is up to two years).

Short term gains are chargeable to tax as follows:

S. No. Holding Period Tax Rate

- a) Up to One Year 10%
- b) Up to Two Years 5%

D- CHANGES IN TAXATION OF COMPANIES

Tax Credits on Investment

Section 65B

As per Finance Act 2010 Companies making investment in the Balancing, Modernization and Replacement (BMR) of Plant and Machinery (P&M) are allowed tax credit equal to 10% of the amount of investment made during July 1st 2010 to June 2015.

The Tax credit is proposed to be significantly enhanced as follows:

- a) The tax credit is increased to 20%
- b) The period of investment is extended for one more year up to June 2016
- c) The tax credit is allowable / adjustable against Final Tax as well as Minimum Tax for the very first time. However consequential changes are not made in Sections 113 and 169 so as make the same in line with the above changes.
- d) In case the tax credit is not fully utilized / adjusted, the unutilized credit can be carried forward for five (05) years. Earlier the excess credit can be carried forward for two (02) years only.

Tax Credit for newly Established Industrial Undertakings

Section 65D

As per Finance Act 2011, newly incorporated Companies operating a new industrial undertaking for manufacturing during the periods from July 1st 2011 to June 30th 2016 are given tax credit equal to 100% of tax payable on the taxable income. The Tax credit is proposed to be enhanced as follows:

- a) Corporate Dairy Farms are also allowed to avail the above credit
- b) 100% tax credit is available for Final and Minimum Taxes as well. However consequential changes are not made in Sections 113 and 169 so as make the same in line with the above changes.
- c) Finances obtained for meeting working capital requirement do not disqualify for claiming the above tax credit.

It is further clarified that industrial undertaking is set up from equity raised through issuance of new shares for cash consideration.

Tax Credit for Industrial Undertakings established before July 1st 2011

Section 65E

The tax credit available under the captioned section is altogether changed. The bill proposed tax credit for Companies incorporated before July 1st 2011, which invests any amount for expansion or for new projects from July 1st 2011 to June 30th 2016 with 100% new equity raised through issuance of new shares.

The tax credit will be for five (05) years from the date of setting up or commercial production which ever is earlier.

Tax credit equal to 100% of tax payable along with Final as well as Minimum taxes will be available to the Companies provided separate accounts are maintained for the expansion or new projects.

In case separate accounts are not maintained tax credit will be calculated in proportion to new equity to total equity.

It is further clarified that the finances obtained for meeting working capital requirement do not disqualify a company for claiming the above tax credit.

Tax withholding exemption for inter corporate dividend payments

Clauses 11A, Part IV, Second Schedule

Income derived from inter corporate dividend within the group companies entitled for group taxation are already exempted from tax.

The bill seeks to allow exemption from withholding as well whereby inter corporate dividend payments are subject to tax withholding.

Tax withholding exemption for inter corporate payment of profit on debts

Clauses 11B, Part IV, Second Schedule

The bill proposes exemption from tax withholding for inter corporate payment of profit on debt within the group companies entitled for group taxation.

However the Income derived from inter corporate profit on debts remain taxable.

E- CHANGES IN TAXATION OF CAPITAL GAIN ON SHARES**Capital gain on sale of securities***Section 37A*

It has been clarified by the Finance Bill that the disposal of securities held for a period of less than a year [12 months] shall be chargeable to tax other than a gain that is exempt from the tax under the Ordinance.

Moreover, after Section 37A, a new sub Section 1A has been proposed to be introduced, whereby the gain arising on the disposal of a security shall be computed with the following formula;

A - B

Whereas;

A = Amount of the disposal of a Security

B = Cost of acquisition of the Security

Special Provision of Capital Gain Tax*Section 100B*

The new Section 100B has been proposed to be introduced, wherein it has been clarified that the tax liability shall be computed as per the newly introduced 8th Schedule.

Moreover, the computation method of 8th Schedule shall not be applied on the following;

- (a) Mutual fund
- (b) Banking Company, non Banking finance Company, and an Insurance Company
- (c) Modaraba
- (d) Foreign Institutional investors
- (e) Any other person notified by the Board

Eighth Schedule

A new Schedule has been introduced by the Finance Bill regarding the Rules for the computation of capital gain on listed Securities.

The capital gain on disposal of listed securities shall be computed and determined as per 8th Schedule and the tax thereon shall be collected and deposited by NCCPL.

The whole text of the eighth schedule is as follows;

1. Manner and basis of computation of capital gains and tax thereon.-

(1) Capital gains on disposal of listed securities, subject to tax under section 37A, and to which section 100B apply, shall be computed and determined under this Schedule and tax thereon shall be collected and deposited on behalf of taxpayers by NCCPL in the manner prescribed.

(2) For the purpose of sub-rule (1), NCCPL shall develop an automated system.

(3) Central Depository Company of Pakistan Limited shall furnish information as required by NCCPL for discharging obligations under this Schedule.

(4) NCCPL shall issue an annual certificate to the taxpayer on the prescribed form in respect of capital gains subject to tax under this Schedule for a financial year:

Provided that on the request of a taxpayer or if required by the Commissioner, NCCPL shall issue a certificate for a shorter period within a financial year.

(5) Every taxpayer shall file the certificate referred to in sub-rule (4) along with the return of income and such certificate shall

be conclusive evidence in respect of the income under this Schedule.

(6) NCCPL shall furnish to the Board within thirty days of the end of each quarter, a statement of capital gains and tax computed thereon in that quarter in the prescribed manner and format.

(7) Capital gains computed under this Schedule shall be chargeable to tax at the rate applicable in Division VII of Part I of the First Schedule.

2. Sources of Investment.-

(1) Where a person has made any investment in the listed securities, enquiries as to the nature and source of the amount invested shall not be made for any investment made prior to the introduction of this Schedule, provided that –

(a) a statement of investments is filed with the Commissioner along with the return of income and wealth statement for tax year 2012 within the due date as provided in section 118 of this Ordinance and on the manners prescribed; and

(b) that the amount remains invested for a period of forty-five days upto 30th of June 2012, in the manner as may be prescribed.

(2) Where a person has made any investment in the shares of a public company traded at a registered stock exchange in Pakistan from the date of coming into force of this Schedule till June 30, 2014 enquiries as to the nature and sources of amount invested shall not be made provided that –

(a) the amount remains invested for a period of one hundred and twenty days in the manner as may be prescribed ;

(b) tax on capital gains, if any, has duly been discharged in the manner laid down in this Schedule; and

(c) a statement of investments is filed with the Commissioner along with the return of income and wealth statement for the relevant tax year within the due date as provided in section 118 of this Ordinance and in the manner prescribed.

(3) For the purpose of this rule, amount of investment shall be calculated in the prescribed manner, excluding market value of net open sale position in futures and derivatives, if such sale is in a security that constitutes the said investment.

3. Certain provisions of this Ordinance not to apply.-

The respective provisions for collection and recovery of tax, advance tax and deduction of tax at source laid down in the Parts IV and V of Chapter X shall not apply on the income from capital gains subject to tax under this Schedule and these provisions shall apply in the manner as laid down in the rules made under this Ordinance, except where the recovery of tax is referred by NCCPL to the Board in terms of rule 6(3).

4. Payment of tax collected by NCCPL to the Board-

The amount collected by NCCPL on behalf of the Board as computed in the manner laid down under this Schedule shall be deposited in a separate bank account with National Bank of Pakistan and the said amount shall be paid to the Board along with interest accrued thereon on yearly basis by July 31st next following the financial year in which the amount was collected.

5. Persons to whom this Schedule shall not apply

If a person intends not to opt for determination and payment of tax as laid down in this Schedule, he shall file an irrevocable option to NCCPL after obtaining prior approval of the Commissioner in the manner prescribed. In such case the provisions of rule 2 shall not apply.

6. Responsibility and obligation of NCCPL-

(1) Pakistan Revenue Automation Limited (PRAL), a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984) or any other company or firm approved by the Board and any authority appointed under section 209 of this Ordinance, not below the level of an Additional Commissioner Inland Revenue, shall conduct regular system and procedural audits of NCCPL on quarterly basis to verify the implementation of this Schedule and rules made under this Ordinance.

(2) NCCPL shall implement the recommendations, if any, of the audit report under sub-rule (1), as approved by the Commissioner, and make adjustments for short or excessive deductions. However, no penal action shall be taken against NCCPL on account of any error, omission or mistake that has occurred from application of the system as audited under sub-rule (1).

(3) NCCPL shall be empowered to refer a particular case for recovery of tax to the Board in case NCCPL is unable to recover the amount of tax.

7. Transitional Provisions

In respect of tax year 2012, for the period commencing from coming into force of this Schedule till June 30, 2012, the certificate issued by NCCPL under rule 1(4) shall be

the basis of capital gains and tax thereon for that period.

Changes in 1st Schedule

The slab rates of holding the securities within six months and more than six months have been revised.

Tax Years	Holding Period of Less than 6 months		Holding Period of more than 6 months	
	Old	New	Old	New
2011	10	10	7.5	7.5
2012	10	10	8	8
2013	12.5	10	8.5	8
2014	15	10	9	8
2015	17.5	17.5	9.5	9.5
2016			10	10

F- CHANGES IN TAXATION OF IMPORTERS, EXPORTERS & MANUFACTURERS

*Section 148 / Clause 41A / 2nd Schedule
Section 154 / Clause 41AA / 2nd Schedule
Section 153 (1) (a) / Clause 41AAA / 2nd Schedule*

The amendment has been brought in the back drop of the efforts on the part of FBR to discourage Presumptive Tax Regime/ Final Tax Regime. An option has been forwarded to tax payers of the Final Tax Regime in case they wish to opt out of FTR to Normal Tax Regime. The amendments can be summarized as follows;

- 1- Commercial Importers;
Subject to the condition that the tax

payable under NTR shall not be less than 60% of Final tax so collected.

Exp; Tax on Import
(5% * 60% = 3%)

2- Exporters:

Subject to the Condition that the tax payable under NTR shall not be less than 50% of Final tax deducted

Exp; Tax on Export
(1% * 50% = 0.5%)

3- Manufacturers (Individual / AOP)

Subject to the Condition that the tax payable under NTR shall not be less than 70% of Final tax deducted

Exp; Tax on goods
(3.5% * 70% = 2.4%)

However, there are certain procedures, which need to be clarified:

- Whether or not the above option is revocable or irrevocable
- Whether or not the above persons can change opt of filing under FTR to NTR
- Whether or not the above persons can change opt of filing under NTR to FTR

Moreover, on the perusal of the amendment it appears that the tax payer is left with no other option except to wait for the whole of the year ending June 2013 before he can opt for NTR. There has to have some scheme in place as to whereby the tax payer could be able to file a kind of declaration for NTR and accordingly based on their undertaking the Commissioner should be empowered to issue them reduced rate certificate from withholding. The reduced rate certificate will be issued based on the 60%, 50% and 70% minimum tax. This way the cash flow can also be saved of the importer and of the exporter and might make the whole of the effort of the FBR worthwhile for the tax payer.

Clause 9A / Part-II of 2nd Schedule

Manufacturers are currently enjoying the lower rate of tax withholding at import stage @ 3% as compared to 5% as applicable to Commercial Importers.

The bill suggests clamping the above facility as available to manufacturers where after they will now be required to apply for the lower rate certificate otherwise they will also be subjected to tax @ 5% at import stage.

We understand that this will cause hardship to the genuine industrial undertakings. It can be considered that old and bona fide tax payer who is registered as manufacture and have industrial undertaking should be absolved from this unnecessary exercise.

G- CHANGE IN TAXATION OF NON RESIDENT

Section 101

Through the Finance Bill, the profit paid by a Branch Office to its Foreign Company has now been covered under the head of Geographical Source of income and deems to be dividend by inserting the Sub clause (b) in Section 101(6).

Payment to the Non Resident Media

Section 152(1AAA)

A new sub Section 152(1AAA) is proposed to be inserted after Sub Section (1AA) of 152, where by every person is liable to deduct tax @ 10% while making payment for advertisement services to a non resident media outside the Pakistan.

The above section is being realigned so as to put together all the provisions for Non resident Taxation in a single Section.

Payment of the Insurance / Re-insurance Premium

Section 152(2A)

It is proposed by the Finance Bill that the payment of Insurance Premium or re-insurance premium to a non resident having a permanent establishment in Pakistan will not be deducted tax @ 5% as specified in Division II of Part III of the First Schedule.

The above exemption will be availed after a written approval by the Commissioner for that payment.

Payment of Good / Transportation / Services

Section 152

The payment to a Permanent establishment in Pakistan of a non resident company regarding the good, transportation or any other case have been omitted from the 153 Section and now have been covered under the Section 152, so as to put together all the provisions for a Permanent establishment in Pakistan of a non resident company under a single Section.

The rate of tax to be deducted at the time of the payment regarding the goods shall be 3.5% as per the sub clause 4 of division II of Part III of First Schedule.

The rate of tax to be deducted at the time of the payment regarding the Transportation services shall be 2% as per the sub clause (i) of clause 5 of Division II of Part III of First Schedule.

The rate of tax to be deducted at the time of the payment regarding the services shall be 6% as per the sub clause (ii) of clause 5 of Division II of Part III of First Schedule.

H- CHANGES IN WITHHOLDING PROVISIONS

Withholding on Goods services & Contracts

Section 153(1)

This section is related to withholding of tax on payment of Goods, Services & Contracts made to Resident & Non Resident person (with permanent office in Pakistan). After the amendment the provision of this Section are now confined to withholding on payment exclusively to Resident person.

Payment to Traders and Distributors

Section 153A

The existing Section 153A has been proposed to be substituted with a new section 153A. It has its own unique mechanism to collect income tax @ 1% which applies on sales made by every manufacture to its distributors, dealers and wholesaler. However, the process of collection and documentation are yet to be notified as these need more clarification.

The apparent objective of this new clause is to bring in the new distributors and dealers which are still outside the tax net. This has been made possible by making the manufacturer as their withholding agent.

We understand that the provision should be made applicable only to those distributors who do not have any NTN as those who already have NTN will be subjected to unnecessary withholding which would adversely effect their cash flow requirement.

It may be proposed that in order to tap those dealers, the withholding can be restricted to some notional percentage instead 1% on the gross value of sales.

Withholding on Cash Withdrawals

Section 231A

It is proposed that the banks shall deduct advance tax on cash withdrawals where such withdrawals exceeds 50,000/- in a day instead of the previous limit of 25,000/- per day. We understand that the limit of 50,000/- does not actually signify any meaning as this amendment will not serve any better purpose. Instead there should granted exemption to the companies and to those who are National Tax Number holders.

Collection of Tax by a Stock Exchange Registered In Pakistan

Section 233A

The brokerage house is liable to deduct tax 0.01% in case of trading of listed securities by the taxpayers.

The above tax was advance tax and adjustable against the tax liabilities. Now through the finance bill it has been proposed that the clauses (c) and (d) of sub section 1 of 233A shall be omitted.

Collection of tax by NCCPL

Section 233AA

This new section is proposed in finance bill. Previously, stock exchanges were deducting taxes for margining financing (Badla). But now the same function is being performed by NCCPL. It is therefore proposed to make corresponding change in the Ordinance.

Exemption from withholding Provision

Clause (16A) of Part IV of 2nd Schedule

The payment made to all type of media (Electronic and Print) media in respect of advertisement services has been exempted from withholding under section 153(1) (b).

Previously such exemption was available only for payment made to news print media in respect of advertisement services.

Resultantly, payments made in respect to advertisements services on magazine, digest, TV, Radio and Websites are not subject to tax withholding @ 6%.

Advance Tax on Motor vehicles

Section 231B

It has been proposed in finance bill that the rate of income tax on purchase of motor vehicle of 1600 CC alone is to be enhanced to Rupees 25,000 from Rupees 16,875;

The tabulation is being reproduced hereunder;

Engine Capacity	Amount of Tax
Upto 850cc	Rs. 7,500
851cc to 1000cc	Rs. 10,500
1001c to 1300cc	Rs. 16,875
1301cc to 1600cc	Rs. 25,000
1601cc to 1800cc	Rs. 22,500
1801cc to 2000cc	Rs. 16,875
Above 2000cc	Rs. 50,000

I- CHANGES IN PROVISION OF ASSESSMENT AND REASSESSMENT

Revised Return

Section 114(6)

A taxpayer could revise his tax return at any time and up to any extent. He merely had to do the same by submitting his revised accounts alongwith the reasons for his revision. Now the noose around the rule for his revision has been tightened and now he cannot revise his return unless he declares at least the same level of revised income and revised loss as has been assessed in his case whether at the level of

Commissioner, Tribunal or High Court.

This has perhaps been done to discourage the tax payer to manipulate around the simple provisions of return revision.

It has further been clamped with that whether the above conditions are not met the attempted revision will be held invalid.

Notice for Incomplete Return

Section 120(6)

The department has been given an additional time limit of 180 days (half year) for issuing notices for short comings in the return. Originally it could ask till the end of the financial year in which the return was originally filed and now it can evenly ask the same even after the lapse of half year starting from the end of the financial year.

This is certainly purposeful to cover the weakness merely at one end and would mean that any return would remain exposed for at least one full (01) year.

Best Judgement Assessment

Section 121(1)

A rectifying amendment is being provided for whereby after the ex-parte assessment is made, the deemed assessment under the self assessment scheme either on the basis on the original return or the revised return will lose their locus stand.

Amending the Assessment

Sections 122 (1) & (5A)

A provisional assessment has also been brought in the list of the kind and types of orders which the Commissioner can amend.

The Commissioner has also been empowered to ask for details and to place his enquiries before he decides to amend any assessment order in cases where he

thinks that the earlier assessment order was wrong and inflicted the interest of Tax Revenue. This provision appears to harmonise the law with the already prevalent practice in such cases.

Provisional Assessment

Sections 122 C

A provisional assessment becomes final assessment after lapse of sixty (60) days. Once the provisional assessment becomes final then all the consequences under the Ordinance follows. An Individual taxpayer and a firm can avoid the above situation in case they file their wealth statement and its reconciliation statement. It has now been provided that a company can also skip the same where it e-files its return along with its Audited Accounts within the above 60 days.

Assessment and Recovery of Final Tax shortly paid

Section 162 and 169

Under number of withholding provisions where the deductions are made on actual basis and accordingly the claim for deduction are made on the basis of actual deductions, the actual tax deduction is suggested to be replaced with tax deductible. This would remain indifferent as to whether tax deduction or deductible pertains to final tax or normal tax. Meaning thereby that any short fall will have to be made good by the tax payer himself as the commissioner can asks for the same.

J- CHANGES IN PROVISIONS OF INCOME TAX APPEALS & STAY

Commissioner of Appeals-Stay of Demand

Section 128(1A)

The Commissioner Appeals did not have

the power to stay the tax demand under the Income Tax Ordinance. It has always been drawing its power from a decision of Sindh High Court as an inherited power of an appellate authority. The power has now been expressly given to stay tax demand but for not more than 30 days.

It may be noted that the restricted power in terms of limited number of 30 days will prove prejudice to the taxpayers as the tax payer will not be able to apply for stay for the 2nd time in the event the 1st stay expires and the appeal order is not finalized.

Moreover it has been provided that the Commissioner Appeals will not grant the 30 days stay unless he has conducted the hearing with the Commissioner against whom the appeal has been filed. Earlier the Commissioner Appeals could grant the stay based on the merits of the appeal case.

We understand that the aforesaid provision can be always be challenged in the court so as to drive the fundamental right and enjoys the judicious disposition of his appeal.

No Time Limit for Commissioner Appeals to decide the appeals

Section 129 (5) (6) (7)

The Commissioner Appeals was bound to decide the appeal within 04 months otherwise the relief asked for in the appeals would be deemed to be given to the tax payer. There was a procedure available to the tax payer to get his appeal finalized in four months.

It has now been provided that provisions binding the Commissioner Appeals to decide the appeal in 04 months are to be done away with. Needless to mention that this is a clear manifestation of the upcoming fact that the filing of appeal with the Commissioner Appeals will do no good to the tax payer especially when he would

not allow stay for more than 30 days and will not be confined to any time limit to pass the order any more.

Appointment of Accountant Member in Tribunal

Section 130(4) (a)

In complete contrast to what has always been asked for not to appoint FBR employees as one of the Judge in the Tribunal, the Budget amendment has altogether relaxed the condition of 05 years of experience of the Commissioner to 03 years.

This will only result in even greater influence of the FBR in the Tribunal and thus gradually making this judicious forum eventually ineffective.

It goes without saying that no respite could then be expected by the appellant from the forum which would be marred by the biased judges and resultantly everything will be ebbing to the High Courts.

Appointment of Chairman Tribunal

Section 130(5)

This is yet another example as to how the sanctity of the Tribunal will be infested. The bill seeks to withdraw the restriction of judicial member as chairman of Tribunal. At present the chairperson of the Tribunal will always be a judicial member unless in special circumstances.

However, now in line with the proposed deletion in the provisions relating to appointment of a chairperson an accountant member (FBR Employee) can even be Chairperson.

Appellant Tribunal- Stay of Demand

Section 131(5)

It is proposed to substitute the whole three

provisos (first, second and third) of sub section (5) of section 131.

By substituting the said provisos the Tribunal can now grant stay of tax demand for a period not exceeding one hundred and eighty (180) days in aggregate.

K- OTHER IMPORTANT CHANGES

Default Surcharge; Section 205

The bill seeks to propose the rate of default surcharge at 18% per annum. Earlier it was linked with the Karachi Inter Bank Offer Rate (KIBOR) plus three (03) percent per quarter.

On the other hand the percentage of compensation for delayed refunds has been fixed at 15% per annum.

A relief has been proposed from the payment of default surcharge if the principal tax is paid after the 1st appeal and the 2nd appeal in the Tribunal is not filed.

Income from Other Sources; Section 39

The Budget introduces a new clause in Section 39 to include compensation paid under any law on delayed refunds as "Income from Other Sources" and taxed thereon, accordingly.

Minimum tax; Section 113A, 113

The rate of minimum tax is proposed to be reduced from 1% to 0.5% of turnover for a retailer (Individual or an AOP) provided that it annual turnover is not more than 5 Million.

It is notable that despite being covered in the Budget Speech the 1% minimum tax under Section 113 has not been reduced.

Tax Depreciation; Section 23

The Finance Bill proposes to reduce initial depreciation on Buildings from 50% to 25%. The rate of normal depreciation of 10% remains unchanged.

INDIRECT TAXATION - SIGNIFICANT TAX & DUTY MEASURES AT A GLANCE***Sales Tax***

- Adoption of single rate of tax across the board; elimination of multiple taxes
- Grant of exemption to waste paper to enhance collection as well as restrict inadmissible input tax adjustments
- Increase in the rate of sales tax on steel sector from Rs. 6 Kwh to Rs. 8 Kwh
- Substitution of zero-rating with exemption on supplies against international tender
- Shifting of cotton seed oil from exemption to zero-rating regime
- Substitution of zero-rating with exemption on certain items
- Black Tea now subject to reduced rate of 5% both at import and supply stage

Federal Excise Duty

- Federal Excise Duty on cement reduced from Rs. 500 PMT to Rs. 400 PMT
- Federal Excise Duty withdrawn on 10 major items
- Enhancing tax incidence on cigarettes by revising upward price tiers
- Duty exempted on live stock insurance
- Services rendered by Asset Management Companies exempted from duty w.e.f. 01 July 2007
- Duty increased on foreign travel
- Duty exempted on air travel originated from abroad and terminating in Pakistan

Customs Duty

- Maximum tariff slab reduced from 35% to 30%; Number of duty slabs reduced from 8 to 7
- Customs duty on raw materials and components for printing and stationery sector reduced
- Customs duty on 88 pharmaceutical raw materials and other input goods reduced from 10% to 5%
- Customs duty on self-copy papers and self-adhesive papers reduced from 25% & 20% to 10%
- Simplification of SROs 565, 567 and 575 which provide exemptions and concessions on import of plant and machinery for setting up of industries and import of raw materials
- Industrial raw materials included in concessionary regime
- Customs duty on scrap of rubber / shredded tyres reduced from 20% to 10%
- Pakistan Customs Tariff classification structure aligned with WCO nomenclature
- Introduction of e-auction
- Explicit mechanism introduced for condoning delays in time-limits
- Rejection of refund is now appealable before the appellate authority

**CUSTOMS, EXCISE & SALES TAX
AMNESTY SCHEMES**

SRO 548(I)/2012 dated 22 May 2012

In terms of the powers conferred under Section 34A of Sales Tax Act 1990 and Section 16(2) of Federal Excise Act 2005, the Federal Government exempted default surcharge and penalties, if principal sum of sales tax or federal excise duty, payable on account of any audit observation, audit report, show cause notice, adjudication order or input tax wrongly claimed / adjusted is repaid to the Government exchequer by 31 May 2012.

The SRO further states that if the sum so paid into Government exchequer becomes refundable as a result of any court order, it would be repaid to the taxpayer. However, such amnesty scheme did not cover cases of fraudulent refunds or drawback or other tax frauds.

SRO 563(I)/2012 dated 25 May 2012

Apparently to overcome the menace of hundreds of cases involving civil and criminal prosecution over illegal input tax

adjustments and to recover over Rs. 80 billion tax involved therein, the Federal Board of Revenue issued another amnesty scheme vide SRO 563(I)/2012 dated 25 May 2012 whereby default surcharge and penalties would stand waived if illegal adjustment of input tax is re-paid to the Government by 25 June 2012.

The SRO further states that if the sum so paid into Government exchequer becomes refundable as a result of any court order, it would be repaid to the taxpayer.

SRO 522(I)/2012 dated 21 May 2012

The Federal Government provided relief to the business community by extending the warehouse period and waiving off the penal surcharge on overstayed goods, lying un-cleared in the Customs Bonded warehouses.

Such measure was taken to facilitate the importers who could not clear their goods in time on payment of duty and taxes, provided ex-bond clearance is made during the period from 21 May 2012 to 15 June 2012.

AMENDMENTS IN SALES TAX ACT, 1990**Assessment of Tax & Recovery of Tax***Section 11*

Aimed with the underlying purpose of bringing uniformity and clarity under the law, the Finance Bill proposes to combine Section 11 and Section 36 into a single provision, which would deal with assessment and recovery of tax not levied or short levied or erroneously refunded.

Under the proposed amendment, time limit for issuance of show cause notice, whether involving wilful default or otherwise, has been proposed to five years as compared to current terms of five years for wilful default and three years for non-wilful or inadvertent default.

Since the aforesaid provision of law pertains to primary stage of assessment and recovery of tax, the matters discussed regarding stay of demand and proceedings before Alternative Dispute Resolution Committee appear to be un-warranted and superfluous as both such stages arise when a dispute reaches the appellate stage and not before.

In view of the aforesaid re-alignment, Section 36 has been abolished.

International Tender

Fifth & Sixth Schedule, SRO 589(I)/2012 and SRO 595(I)/2012

Under the proposed amendment, zero rating of sales tax on supplies against international tender, appearing at Serial No. 4 of the Fifth Schedule to the Act, has been withdrawn w.e.f. 02 June 2012.

Instead, a new Serial No. 12 has been inserted in Table-II to the Sixth Schedule of the Act whereby exemption of sales tax has been granted on supplies made against

international tender. Corresponding amendments have also been proposed in Sales Tax Rules, 2006 through SRO 589(I)/2012 dated 01 June 2012 whereby procedure for sales tax exemption on international tender has been laid down.

SRO 551 has also been amended through SRO 595(I)/2012 dated 01 June 2012 whereby exemption of sales tax has been done away with on imported goods meant for manufacturing of goods to be supplied under international tender. This would effectively mean that goods to be supplied against international tender would be taxed at import stage, while no tax payable at sale stage. The supplier will not be entitled to claim said input tax and the tax component would be absorbed in cost, thus increasing the price of goods.

The substitution of zero rating with sales tax against international tender as enforced through Finance Bill seems to discourage refund claims as accrued on supplies so made against international tenders. The proposed amendment through Finance Bill comes into force at once on 02 June 2012.

Live Animals, Eggs, Edible Fruits, etc.

Sixth Schedule

The PCT Codes of live animals, eggs for hatching, edible fruits, red chillies and Holy Quran on any soft media mentioned at Serial No. 1, 11, 15, 16 and 31 of the Sixth Schedule of the Act have been changed to bring these in line with the revamped Customs Tariff. The proposed amendment comes into force at once on 02 June 2012.

Cotton Seed / Cotton Seed Oil

Sixth Schedule & SRO 602(I)/2012

Previously, sales tax exemption on locally crude oil was available if the same is

obtained from locally procured seeds irrespective of its gender. However, now Serial No. 2 of Table-II to the Sixth Schedule has been amended in a manner that exemption of sales tax on locally produced crude vegetable oil is available, provided such oil is extracted from locally produced seeds other than cotton seed.

On the other hand, amendment has been made in SRO 549(I)/2008 dated 11 June 2008 vide SRO 602(I)/2012 whereby zero rating has been allowed on import and supplies of cotton seed oil provided such oil has been supplied to registered manufacturer of ghee and cooking oil. The underlying object of granting zero rating on cotton seed oil appears to restrict zero rating facility to documented manufacturing sector.

AMENDMENTS IN SALES TAX RULES 2006 (effective from 01 July 2012)

Change in Particulars of Registration - Transfer of Jurisdiction

Rule 5(1)

A new proviso in Sub Rule 1 of Rule 5 of Sales Tax Rules 2006 (the Rules) has been inserted to enhance to powers of FBR to transfer the jurisdiction of any registered person to any of the following:

- registered office;
- place of business; or
- place where manufacturing facility is located

Presently, only corporate person has the option to transfer his jurisdiction from registered office to his place of business. However, it was not possible for an un-incorporated person to transfer his jurisdiction from place of manufacturing to place of business. Through the insertion of this proviso, now an un-incorporated person can also apply to FRB for transfer of his jurisdiction. This will provide benefit to those

small and un-incorporated manufacturers who have different business premises and manufacturing facilities.

Transfer and Change in nature of business

Rule 7(4)

A new Sub Rule 4 has been inserted in Rule 7 of the Rules whereby the mechanism for the transfer and change in nature of a business has been simplified. According to the newly inserted Sub Rule, the LRO after receipt of verification form the RTO may change the nature of business in the following cases:

- transfer of individual business from any person to his spouse or children;
- change in nature of business from individual to AOP; and
- change in nature of business from AOP to corporate entity

However, in case of change in nature of business from AOP to corporate entity, the members of the AOP prior to change are also required to be nominated as Directors of the corporate entity. In both cases of transfer or change in nature of business, new sales tax registration number will be allotted and issued.

We reckon this as one of the positive measures taken by the FBR to facilitate the taxpayers. Earlier, in the absence of an enabling Rule, the CRO did not possess the powers to change the nature of business. Hence, even in the case of change in nature of business, every registered person was required to apply for deregistration and had to undergo cumbersome audit in terms of Rule 11 of the Rules, before such change could be allowed. After the insertion of Sub Rule 4, the above impediments are expected to be removed. However, in case of transfer of business (with exception of individual business to a spouse), the

requirement of audit is intact.

Suspension and Blacklisting of Registered person

Rule 12

In terms of Rule 12 of the Rules, the Commissioner is empowered to suspend registration and initiate inquiry of the registered person if he has reasons to believe that a registered person is found to have committed tax fraud or evaded tax or has failed to deposit the tax due on his supplies despite having recovered it from the respective buyers or recipients of such supplies. It is further provided that the order of suspension or blacklisting can only be passed after the inquiry and where it is established that the registered person has committed the aforesaid offence.

We understand that Rule 12 was introduced to:

- stop eligibility of invoices issued during suspension of a registered person for the purposes of refund or input tax adjustment during the period of suspension; and
- cancel refund or input tax adjustment, in relation to all invoices issued by a blacklisted person prior to or after date of his blacklisting.

By virtue of amendments made in Rule 12, the corresponding Sub Rules 1-5 have been substituted. Instead, the Board and Commissioner have been given unwarranted and blanket powers to suspend or blacklist any registered person on mere suspicion or even otherwise without establishment / ascertainment of any tax evasion or tax fraud on his part.

We are of the view that such a provision is unlawful and would lead to both harassment and litigation between the taxpayers and the tax department.

Minimum value addition on supply of computer hardware and parts

SRO 590(I)/2012 dated 01 June 2012

Minimum value addition @ 10% on supply of computer hardware and parts (PCT Code 84.71 & 84.73) was fixed vide SRO 1020(I)/2006 dated 02 October 2006 for the person registered as commercial importer. This was primarily aimed to restrict importers' incorrect under declaration of their imports.

Through Finance Act 2007, Special Procedures for Payment of Sales Tax by Importers were introduced. Subsequently vide Finance Act 2008, minimum value addition tax of 2% at import stage was levied, which was afterwards increased to 3% vide Finance Act 2011. Thus, all importers of computer hardware and parts are already subject to value addition tax @ 3% at import stage. To rectify the dual check upon commercial importers of computer hardware and parts, the much awaited relief has been passed onto them and requirement for payment of minimum value addition of 10% on their supply has been done away with.

(Effective 2 June 2012)

Withdrawal of higher rate of sales tax

SRO 594(I)/2012 dated 01 June 2012

In order to harmonise the general rate of sales tax, the higher rate of sales tax of 19.5% and 22% levied through SRO 644(I)/2007 dated 27 June 2007 on import and supply of numerous items have been abolished. Such measure has been made effective through SRO 594(I)/2012 dated 01 June 2012 whereby SRO 644(I)/2008 has been rescinded.

We understand multiple rate of sales tax is a deviation of modern VAT theory. With single rate of tax, various items such as flavouring powder for preparation of food,

asbestos, carbonates, pigments, waste paring, scraps of plastics, mechanical and chemical wood pulp, certain ferrous products, copper foils, aluminium alloys and waste scrape and flat rolled iron products would now be subject to general rate of sales tax @ 16%. This will reduce the direct cost of product in which the above items are used as raw materials and may also provide desired fiscal space to the steel industry in lowering their selling prices.

Withdrawal of Adjudication Powers

SRO 594(I)/2012

Section 45 of Sales Tax Act 1990 was omitted by Finance Act 2010. The repealed Section 45 provided certain powers to Additional Collector, Deputy Collector, Assistant Collector, Superintendent and any Officer of Sales Tax for adjudication including assessment of tax, charging of default surcharge, imposition of penalty and recovery of erroneous refunds. Such provision also provided certain monetary limits for exercise of powers by the tax officers to make assessment of tax, imposition of penalty and default surcharge. Prior to insertion of Section 45 in the statute book in Year 2000, the adjudication was governed under Section 11 and 36 of the Act. In Year 2010, the monetary slab of adjudication was altogether withdrawn. Later on, Section 45 of the Act was also omitted through Finance Act 2010; while Section 36 is proposed to be omitted vide Finance Act 2012. Hence, SRO 555(I)/96 dated 01 July 1996, being redundant in the present state of law, has been rescinded vide SRO 594(I)/2012.

(Effective 2 June 2012)

Removal of fixed value on certain items

SRO 594(I)/2012 dated 01 June 2012

In exercise of its powers conferred under clause 46 of Section 2 of the Act, the FBR had fixed the value of following items:

Item	Minimum value	SRO No.
Sulphates of potash & Muriate of potash	Rs 4,160 per metric ton	103(I)/2005 dated 03 February 2004
Nitrogenous Fertilizers & Calcium ammonium nitrate	Rs 3,765 per metric ton	SRO 15(I)/2006 dated 06 January 2006

In order to bring above items in line with general rate of tax, the above notifications have been rescinded through SRO 594(I)/2012. As a result of such deletion, the items described above would become subject to general rate of sales @ 16% w.e.f 02 June 2012.

Exemption withdrawn on import of industrial raw material, etc

SRO 594(I)/2012

SRO 849(I)/1997 dated 25 September 1997 provides exemption of sales tax on import of raw material, components and sub components and goods with exception of consumer goods, consumer durables, steel products and raw material to manufactures which were paying turnover tax and does not involve in manufacture of taxable goods for use within the factory premises.

We understand the primary intention behind the issuance of aforesaid SRO was to provide incentive in the form of reduced cost of production / manufacture to those manufacturing units who were engaged in making non taxable supplies for use within the factory and, therefore, enjoying exemption from sales tax on import and purchase of raw material, components and sub component used in the manufacture of such non taxable goods. Since the turnover tax regime for manufacturer is no longer in field, hence, the SRO became redundant and accordingly rescinded.

(Effective 2 June 2012)

Grant of exemption and withdrawal of zero rating

In line with the fiscal measures to monitor illegal adjustments / claims of input taxes, avoid and deter the claim of bogus and fake invoices and to minimize the incidence of illegal refunds arising out of zero rating regimes, the Government had withdrawn zero rating on various items at import and supply stage and substituted it with sales tax exemption.

In this way, various taxpayers who were involved in filing monthly refunds under section 10 of the Sales Tax Act will no longer be required to file sales tax refunds. However, we feel that this would lead to problems of input tax apportionment and a new dilemma of litigation may begin with the tax department issuing notices whereby common input tax adjustment may be called for explanations and inquiry followed by creation of vicarious demands.

This may also lead to increase in price of the products due to the fact that all the raw materials that may be used in the manufacture or production of exempt supplies, may not be exempt from sales tax. Further, any sales tax which was paid on existing raw material / stocks as on 01 June 2012 has to be absorbed in the cost of product causing financial loss to various industries.

Manufacture of polyethylene and polypropylene

SRO 591(I)/2012 dated 02 June 2012

Zero Rating facility on import and supply stage to polyethylene and polypropylene (PCT Heading 3901.1000, 3901.2000 and 3902.1000) for the manufacture of monofilament yarn and net cloth for further supply of net cloth to green house farming was allowed under SRO 811(I)/2009 dated 19 September 2009. This zero rating facility

has been done away with and the same is replaced with exemption under Section 13 of the Sales Tax Act 1990 through SRO 591(I)/2012 dated 01 June 2012.

(Effective 2 June 2012)

Sprinkle and drip equipment, spray pumps and nozzles

SRO 602 (I)/2012 dated 01 June 2012

By virtue of SRO 602(I)/2012 dated 01 June 2012, supply of sprinkle equipment, drip equipment, spray pumps and nozzles which were enjoying zero rating under SRO 549(I)/2008 has been exempted from sales tax.

Previously, such exemption was available through SRO 542(I)/2006 which was rescinded last year through SRO 480(I)/2011 dated 03 June 2011. Now, the policy has again been changed within 1 year's time again

(Effective 2 June 2012)

Re-meltable scrap

SRO 595(I)/2012

Zero rating of Remeltable Scrape (PCT Heading 72.04) notified through SRO 549(I)/2008 dated 11 June 2008 has been withdrawn and shifted to exemption through insertion at Serial No. 31 of SRO 595(I)/2012.

Zero rating of remeltable scrap was introduced with the objective to collect sales tax effectively from steel melters/re-rollers through electricity bills. The Government apprehends that zero rating on re-meltable scrap was misused by some steel melters by charging sales tax only on processing charges. Apparently, to control such misuse, zero-rating on re-meltable scrap is substituted with sales tax exemption.

(Effective 2 June 2012)

Exemption on waste paper

SRO 595(I)/2012

Sales tax exemption on the local supply of waste paper has been awarded through SRO 595(I)/2012.

Such step has been taken due to the reported misuse of input tax adjustments. Through the exemption of local supply of waste paper, the Government aims to contain loss of revenue on account of illegal input tax adjustments.

(Effective 2 June 2012)

Black Tea Charged o Tax @ 5%

SRO 608(I)/2012

The Government has awarded a major relief to Black Tea which shall be charged to reduced rate of tax @ 5% both at import and supply stage.

We expect that following the reduction in incidence of tax, prices of tea would be drastically reduced which would help the common man.

(Effective 2 June 2012)

Textiles - Amendment in SRO 1125(I)/2011

SRO 593(I)/2012

There are certain textile related items which were excluded from the benefit of reduced taxation or zero rating under SRO 1125(I)/2011. One such item includes monofilament. Through the amendment, monofilament of less than 67 decitax has been notified which would be entitled to avail the benefit of SRO 1125. *(Effective 2 June 2012)*

Reduction in rate of sales tax on soyabean seed, etc.

SRO 604(I)/2012 & 605(I)/2012

- The rate of sales tax on import of soyabean seed by solvent extraction

industries as laid down SRO 313(I)/2006 dated March 31 2006 has been reduced from 7% to 6%.

- The rate of sales tax on import rapeseed, sunflower seed and canola seed envisaged through SRO 69(I)/2006 dated 28 January 2006 has been reduced from 15% to 14%.

(Effective 2 June 2012)

Audit of Commercial Importer

SRO 592(I)/2012

Sales tax audit immunity granted to commercial importers has been withdrawn vide notification 592(I)/2012 dated 01 June 2012.

Commercial importers were enjoying immunity from audit in all cases where value addition tax is paid at import stage without claiming any excess refund of input tax. This immunity was provided in Rule 58E of the Special Procedure for Payment of Sales Tax by Importers. With the omission of Rule 58E, it would mean that commercial importers, whether or not claiming excess refund of input tax, shall be subject to sales tax audit in line with all other classes of taxpayers.

We are of the view that this is one of the positive steps taken by the FBR to bring uniformity and equity in the tax laws. However, we are afraid that trade and industry is likely to resist such a move and will try to undo it in near future.

(Effective 2 June 2012)

Sales Tax by steel melters, re rollers and ship breakers

SRO 592(I)/2012

Rules 58F-58MB has been substituted by a set of new sub-Rules. The major amendments are described as under:

Steel melters, Steel re- rollers and composite units

- Fixed rate of sales tax on per unit of electricity consumed increased from six to eight rupees on production of steel billets, ingots, and mild steel except stainless steel
- Steel melters and re-rollers intending to operate on self generation basis are required to take prior approval for the concerned Chief Commissioner, to pay sales tax on the basis of gas bill. Such permission by the Chief Commissioner is also subject to the approval from gas distribution companies or the Oil and Gas Regulatory Authority for production of electricity through gas generators
- The amount of sales tax payable by steel melters on the basis of gas bills has been increased from Rs. 1,392 to Rs. 1,900 per hundred cubic meter of gas
- The amount of sales tax payable by re-rollers on the basis of mill size has been increased from Rs. 38,964 to Rs. 51,822 per inch of mill.
- No input tax adjustment, on account of diesel paid for generation of electricity, is admissible
- Where the steel melters or re roller opts to pay sale tax on ad valorem basis, he may inform the Commissioner Inland Revenue. However, restriction for the option to remain in force till the end of the financial year has been deleted
- Under the option for payment of sales tax on ad valorem basis, previously, the Commissioner was required to coordinate with the electricity distribution companies for non inclusion of sales tax in the electricity bill. This requirement

has been removed and any sales tax paid on electricity bill is adjustable against sales tax liability determined at ad valorem basis

- If option is exercised, records maintained by registered person shall be subject to audit

Ship breakers

- The rate of tax on per metric ton of re rollable scrap increased from Rs. 4,840 to Rs. 6,000
- Requirement for the submission of post dated cheques has been inserted
- No clearance of goods declaration for ship breaking by the Collectorate until certificate of post dated cheque is received from concerned RTO or LTU
- Upward revision on value of billets supplied Pakistan Steel Mills, Peoples Steel Mills and Heavy Mechanical Complex
- Exclusion of the amount of sales tax from electricity would only be available to steel unit exporting more than 50% of production

(Effective 2 June 2012)

AMENDMENTS IN FEDERAL EXCISE ACT 2005

Duty Exemption

1st Schedule of Federal Excise Act, 2005

In order to provide relief to taxpayers, numerous goods have been excluded from the ambit of Federal Excise Act, 2005 with effect from 02 June 2012.

Detail of such exemptions is as follows:

S. No	Description of goods	Previous Rate of duty
1	Lubricating oil in packs not exceeding 10 liters	10% of retail price
2	Lubricating oil in packs exceeding 10 liters	-do-
3	Lubricating oil in bulk (vessels, bouzers, lorries)	Rs. 7.5 per liter
4	Base lube oil	-do-
5	Lubricating oil manufactured from reclaimed oils or sludge or sediment, subject to condition if sold in retail packing or under brand names the words manufactured from reclaimed oil or sludge or sediment should be clearly printed	Rs.2 / liter
6	Filter rods for cigarettes	20% Ad val.
7	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.	10% of retail price if packed in retail packing, else 10% Ad val.
8	Preparations for use on the hair excluding herbal hair oil and kali mehndi	-do-

9	Perfume and toilet waters	-do-
10	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties (excluding agarbatti and other odoriferous preparations which operate by burning).	-do-
11	Live stock insurance (w.e.f. 01 July 2012)	16%

In view of the above exemptions, certain ancillary notifications have also become redundant. Therefore, the Federal Government has rescinded SRO 807(I)/2005 dated 12 August 2005, SRO 671(I)/2006 dated 29 June 2006 and has omitted the Entries No. 3, 4, 5 & 6 of SRO649(I)/2005 dated 07 July 2005.

Asset Management Companies

1st Schedule of Federal Excise Act 2005

By virtue of an amendment in Table-II of Third Schedule to the Federal Excise Act, 2005, the Federal Government has exempted FED on services provided by Asset Management Companies (AMCs) with retrospective effect from 01 July 2007.

It is pertinent to mention that services rendered by AMCs were never expressly covered under the ambit of Federal Excise Act 2005. However, due to an apparent anomaly in the definition of NBFC, as provided in Federal Excise Rules 2005, the

tax department had framed huge demand of duty upon AMCs. In order to put such litigation to rest, FED on AMCs has been exempted with retrospective effect.

Cement

1st Schedule of Federal Excise Act, 2005

To boost the construction and allied industry, rate of Federal Excise Duty on Portland Cement, Aluminous Cements, Super Sulphate Cements, whether or not coloured or in the form of clinkers, has been reduced from Rs.500 / MT to Rs. 400/MT.

Such concession will be effective from 01 July 2012.

Cigarettes

1st Schedule of Federal Excise Act, 2005

In order to increase the revenue base, it has been proposed to increase rates of duty on certain goods with effect from 02 June 2012. The following are the details:

S. No	Description of goods	Rate of duty	
		Current Rate	Proposed Rate
1	Locally produced cigarette having retail price upto Rs.13.36* (Previously Rs.11.50)	Rs. 6.04*	Rs. 7.02*
2	Locally produced cigarette having retail price of Rs.13.36 to Rs.22.86* (Previously Rs.11.50 to Rs.21)	Rs. 6.04* plus 70% of additional rupee.	Rs. 7.02* plus 70% of additional rupee.

3	Locally produced cigarette having retail price above Rs.22.86* (Previously Rs.21)	65% of the retail price	65% of the retail price
---	--	-------------------------	-------------------------

*Per Ten Cigarette

However, no manufacturer or importer of cigarette can introduce or sell a new cigarette brand, which is a variant of the same existing brand family, at a price lower than the lowest actual price of the existing variant of the same brand family. For the purposes of this restriction, current minimum price variant of existing brand means the lowest price of a brand variant on the 1st day of June 2012.

Minimum Price of New Brands

It has been proposed to fix the minimum value of any new brand of cigarette being introduced in the market. Therefore, any new brand shall not be priced and sold lower than 5% below the price of the Most Popular Price Category (MPPC). MPPC is defined as the price point at which the highest numbers of excise tax paid cigarettes are sold in the previous fiscal year.

International Travel by Air

SRO 600(I)/2012 dated 01 June 2012

Presently, services provided or rendered in respect of travel of passengers by air embarking to and from Pakistan on international journey are subject to levy of Federal Excise Duty. However, due to practical impossibility, it has always been a difficult proposition to charge and collect FED on tickets being issued by international agent outside the territorial jurisdiction of Pakistan.

Nevertheless, the tax offices across the country have framed huge liabilities on account of tickets issued outside Pakistan by foreign airlines, operating in Pakistan. The entire airline industry had approached the FBR to relax the condition of charging and collecting FED on international incoming traffic. Keeping in view such representations, services provided or rendered in respect of travel of passengers by air, embarking from outside Pakistan into Pakistan, have been excluded from the ambit of Federal Excise Duty through amendment in Entry No. 3 of Table-II of First Schedule to the Federal Excise Act, 2005.

In this regard, Rule 41A of the Federal Excise Rules, 2005 has been amended vide SRO 600(I)/2012 dated 01 June 2012, in order to streamline the effect of exemption granted on services provided or rendered in respect of travel of passengers by airon international journey embarking from outside Pakistan to Pakistan.

Rule 41A(7) of Federal Excise Rules, 2005 has also been substituted whereby an airline operating in Pakistan, which uplifts passengers from Pakistan for another airline, has been held liable to charge, collect and pay Federal Excise Duty on entire value of the tickets issued to such passengers.

We understand the proposed measure would be effective w.e.f. 01 July 2012. Accordingly, we feel another notification would need to be issued by the FBR to waive off the past liabilities for which notices have already been issued to the airlines.

The Federal Government has also done away with Territorial Duty Slab for SAARC Region, UAE (Middle East), Saudi Arabia, Africa, Afghanistan and rest of the world and proposed a uniform but enhanced duty for Economy & Economy Plus Class and Club, Business and First Class travel as follows:

Category	FED (till 30 June 2012)	FED (from 01 July 2012)
Economy & Economy Plus	Rs.3,340 (for SAARC region category) & Rs.4,340 (for rest of the world)	Rs.3,840
Club, Business and First Class	Rs.4,340 (for SAARC region category) & Rs.5,840 (for rest of the world)	Rs.6,840

The aforesaid table suggests that the Federal Excise Duty on international air travel has been increased by Rs. 500 to Rs. 2,500, except for travel in economy and economy plus class for travel to countries others then SAARC region, UAE (Middle East), Saudi Arabia, Africa, Afghanistan, which has been reduced by Rs.500.

Rescinded Notifications

In consequence of recent and past amendments in the law, below mentioned notifications have become redundant and have accordingly been rescinded by the Federal Government;

- SRO 1229/2007 dated 18 December 2007*
- SRO 777(I)/2006 dated 01 August 2006*
- SRO 949(I)/2006 dated 06 September 2006*
- SRO 47(I)/2012 dated 20 January 2012*

AMENDMENTS IN CUSTOMS ACT 1969

Smuggle

Section 2(s)

Theft of transit goods is now also included in the definition of 'smuggle'.

New Departments / Directorates to be set up in Customs

Section 3AA / 3BB / 3BBB / 3CC

The following new Directorates are proposed to be set up under the Customs to separate the administrative functions:

- Directorate General of Transit Trade
- Directorate General of Reform and Automation
- Directorate General of Risk Management
- Directorate General of Intellectual Property Rights Enforcement

Power of Adjudication

Section 179

Presently, the powers of adjudication are vested with Additional Collector, Deputy Collector and Assistant Collector of Customs. However, henceforth, such powers have been redefined.

Appeals to Collector (Appeals)

Section 193

A beneficial amendment has been introduced whereby any aggrieved person including an officer of customs, now also has the right to appeal before the Collector (Appeals) in the matter of refunds filed by him under Section 33.

The same could be filed within 30 days from the date of order passed by an officer below the rank of Additional Collector.

Pakistan Customs Tariff

Section 18E

Previously, the Board has no power to make any change or rectify any statistical error. However, this new section empowers the Board to make, by way of a notification in the official Gazette, changes in the Pakistan Customs Tariff only purposes of statistical suffix.

Punishment for Offences

Section 156

An amendment has been proposed at Serial No. 64 whereby persons involved in any contravention in respect of transport of goods or transit of goods across Pakistan through foreign country could be liable for a maximum conviction of 5 years.

Penal provision is also extended towards the custodian as well as the carrier of the incoming cargo.

Appeals to the Appellate Tribunal

Section 194-A

A clause is proposed to be added in Section 194-A whereby any order passed by an officer of customs under Section 179 could be directly appealable before the Customs Tribunal. However, in such cases, the taxpayer would lose the first stage of appeal, i.e., before Collector (Appeals), otherwise available under Section 193 of Customs Act 1969.

The above provision was previously available till Year 2005 whereby any appeal could be directly made to the Appellate Tribunal against the order passed by the adjudicating officer.

Sale of goods

Section 201A

The Finance Bill proposes a facility to electronically auction the goods for sale. Such sales could be made effective against any provision available under the law, other than confiscation.

Reward to Customs Officers

Section 202B

To provide incentive and to motivate the Customs officials / informers, it is proposed to provide cash rewards in cases where duties or goods are recovered as a result of such information passed on by the informers.

Maintenance of record

Section 211

To curb smuggling through Afghan Transit Trade (ATT) transactions, the applications of record keeping is now extended to transport operators and tracking companies engaged in transit trade.

Customs Tariff

Fist Schedule to the Customs Act 1969

To bring harmony with the World Customs Organization (WCO), a number of PCT Codes have been introduced in the Customs Tariff. Such an amendment has been proposed to mitigate the hardship of both exporters and importers. This change is applicable w.e.f. 2nd June 2012.

SIGNIFICANT CUSTOMS SROs

01 June 2012

Concessionary Customs Duty

SRO 573(I)/2012

By virtue of SRO 565(I)/2006, dated 5th June 2006, any importer-cum-manufacturer having suitable in-house manufacturing

facility may avail the benefit of concessionary customs duty on imported raw material / items of specified goods for the purpose of manufacturing, subject to fulfillment of specified conditions.

An amendment has been made in the said SRO whereby an importer-cum-manufacturer is required to obtain approval for exemption / concession of customs duty from Collector of Customs instead of Commissioner of Inland Revenue. By virtue of said SRO, facility of customs duty has also been extended on raw materials, whereas exemptions on certain items have been done away with on certain industrial commodities.

Duty Exemption

SRO 574(I)/2012

Amendments have been made in SRO 567(I)/2006 dated 5th June 2006 through SRO 574(I)/2012. SRO 567 grants conditional exemptions / concession in customs duty to various industrial segments subject to fulfillment of newly introduced conditions as specified under:

- Exemptions / concession of duty on pharmaceutical sectors have been linked with prior approval from Drug Regulatory Agency of Pakistan. Previously, the same concessions were granted by Ministry of Health, Government of Pakistan.
- Reduced duty rate of 10% on import of shredded tyre scrap is allowed to cement manufacturers only.
- Exemption of customs duty at imports stage on aircraft engines, aero planes and other aircrafts is now only available for those airlines which are registered in Pakistan. Previously, all commercial airlines were eligible to claim the above exemption.

In addition to above, additional 87 items have been included in the aforesaid SRO for the purpose of concessionary rates of duty for Pharma sector.

Concession in customs duty has been granted to the printing industry by adding new Serial No. 44A thereto.

Another amendment has been made by inserting Serial No. 21A in the category of packing materials whereby pharmaceutical grade paper core for surgical tape would be assessed to duty @ 5%.

Additional Customs Duty

SRO 577(I)/2012

Amendments have been made in SRO 482(I)/2009 dated 13 June 2009 which levies regulatory duty on imports of certain goods mentioned therein. By way of aforesaid amendments, smoking tobacco, whether or not containing tobacco substitutes in any proportion has been brought under regulatory duty regime.

Regulatory Customs Duty on Exports

SRO 578(I)/2012

Exports of goods mentioned in the SRO 594(I)/2009 dated 25 June 2009 attracts regulatory duty @ 25%. However, such duty was exempted on exports of goods made out of the material imported under DTRE Scheme in terms of Sub-Chapter 7 of Chapter XII of Customs Rules 2001 or the scheme of Manufacturing Bonds as licensed under the said Rules. Due to such SRO, local industry specifically battery manufacturers felt discouraged due to shortage of lead.

In order to facilitate the local battery manufacturers, the said SRO has been amended vide SRO 578(I)/2012. Consequently, regulatory duty shall be

imposed on the prescribed goods at the time of exports.

Harmonization of PCT Codes

SRO 579(I)/2012, dated 01 June 2012

SRO 580(I)/2012, dated 01 June 2012

SRO 581(I)/2012, dated 01 June 2012

SRO 209(I)/2009, SRO 210(I)/2009, 212(I)/2009 dated 5 March 2009 deal vis-à-vis repayment of customs duties paid by the manufacturer-cum-exporter on importation of raw materials to be used in the manufacture / production of goods to be exported by such persons.

All the foregoing 3 notifications have been amended vide SROs 579(I)/2012, 580(I)/2012 & 581(I)/2012 dated 01 June 2012 whereby PCT Codes of specified goods to be imported by manufacturer-cum-exporter has been changed to bring in line with revamped Customs Tariff.

Accordingly, such specified goods may be imported with new designated PCT Codes.

SRO 582(I)/2012 & SRO 583(I)/2012 dated 01 June 2012

SRO 659(I)/2007 dated 30 June 2007 & SRO 1261(I)/2007 dated 31 December 2007 deal in exemption of customs duty on specified goods to be imported from China and Malaysia respectively into Pakistan.

Amendments have been made in the aforesaid SROs vide SRO 582(I)/2012 & SRO 583(I)/2012 dated 01 June 2012 wherein PCT Codes of specified goods as provided vide SRO 659 & SRO 1261 have been changed to bring these in line with newly introduced Customs Tariff.

Accordingly, the importers are required to import specified goods under aforesaid notifications with new designated PCT Codes as set therein.

SRO 584(I)/2012 dated 01 June 2012

Under SRO 1296(I)/2005 dated 31 December 2005, specified goods imported from China into Pakistan, in conformity with the Rules of Origin for the Pakistan-China Free Trade Area as notified by Ministry of Commerce, enjoy exemption of customs duty subject to fulfillment of conditions as notified therein.

An amendment has been made under SRO 1296 whereby nomenclature of certain goods and rates of customs duty on specified items have been revised. Further, PCT Codes of specified items, as provided under SRO 1296, have been changed to bring these in line with newly introduced Customs Tariff.

Similarly, description and rate of customs duty has been revised and PCT codes on

specified items have been modified in line with newly introduced Customs Tariff under SRO 585(I)/2012, SRO 586(I)/2012, SRO 587(I)/2012 & SRO 588(I)/2012 dated 01 June 2012.

Customs Rules, 2001

SRO 601(I)/2012 dated 01 June 2012

DTRE Rules as embodied under Sub-Chapter-7 of the Customs Rules have been amended in a manner that facility of DTRE is restricted to those exporters whose value addition is not less than 15% on exported goods.

Through another amendment made in Rule 305 of aforesaid Rules, time limit for consumption on input goods has been reduced from 24 months to 12 months.

Principal Office

C-253, P.E.C.H.S., Block 6
Off Shahrah-e-Faisal
Karachi. Pakistan

P + 92 21 34392484 | + 92 21 34392485

F + 92 21 34544766

E info@shekhamufti.com

Branch Office

33, Jinnah Block
Awan Town, Multan Road
Lahore. Pakistan

P + 92 42 3 5961566

F + 92 42 3 5961560

E info@shekhamufti.com