



Budget Briefing 2010

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BUDGET BRIEFING 2010

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Budget Briefing

This Memorandum has been prepared as a general guide for the benefit of our clients and is available to other interested persons upon request. This should not be published in any manner without the Firm's consent. This is not an exhaustive treatise as it sets out interpretation of only the significant amendments proposed by the Finance Bill, 2010 (the Bill) in the Income Tax Ordinance, 2001 (the Ordinance), the Sales Tax Act, 1990 (the ST Act), the Customs Act, 1969 (the Customs Act) and the Federal Excise Act, 2005 (the FE Act) in a concise form sufficient enough to amplify the important aspects of the changes proposed to be made. The Repealed Ordinance means the Income Tax Ordinance, 1979 since repealed. The Board means the Federal Board of Revenue, Government of Pakistan.

Changes of consequential, administrative, procedural or editorial in nature have either been excluded from these comments or otherwise dealt with briefly.

The amendments proposed by the Bill after having been enacted as the Finance Act, 2010, shall, with or without modification, become effective from the tax year 2011, unless otherwise indicated.

It is suggested that the text of the Bill and the relevant laws and notifications, where applicable, be referred to in considering the interpretation of any provision. Since these are only general comments, no decision on any issue be taken without further consideration and specific professional advice should be sought before any action is taken.

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KARACHI: 06 June 2010

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Income Tax

- Capital gain on sale of securities are sought to be made liable to tax. Capital gain on sale of securities which were held for less than six months is sought to be taxable at the rate of 10% for the tax year 2011. Similarly, capital gain on securities which were held for more than six months but less than twelve months is proposed to be taxable at the rate of 8% for the tax year 2011.
- With the proposal of tax on capital gain on sale of securities, a tax payer is sought to be required to pay on a quarterly basis an advance tax on such capital gain.
- The new provision seeks to provide to a tax payer being a company, a tax credit of 10% of the tax payable for a tax year in which the cost is incurred on purchase and installation of plant and machinery at any time between 01 July 2010 and 30 June 2015.
- A tax credit of 5% of the tax payable is proposed to be allowed to a company which seeks to enlist itself on stock exchange in Pakistan.
- An individual and AOP are sought to be made liable to minimum tax pursuant to Section 113 of the Ordinance. Concurrently, the rate of minimum tax is proposed to be raised to 1% from the current rate of 0.5% for all classes of tax payers.
- A new Section has been proposed whereby payments made through any mode of banking transaction are to be liable to advance tax of 0.3% if the aggregate of payments on account of such transactions exceed Rs.25,000/- in a day.
- The Bill seeks to extend the application of collection of tax under Section 236 to sale of units through any electronic medium of communication and obliges the service provider to collect advance tax at the prescribed rate.
- The Bill proposes to insert an explanation to sub-section (3) of Section 169 of the Ordinance to the effect that an assessment by the Commissioner shall be deemed to be an assessment of income for that tax year and the tax due thereon equivalent to the various amounts declared in the Statement under sub-section (4) of Section 115 of the Ordinance.
- A new provision is sought to be introduced whereby advance tax at the rate of 5% shall be collected at the time of purchase on gross amount of domestic air ticket.
- The mandatory record retention period is sought to be raised from five to six years.
- In the event of bankruptcy of a tax payer, the liability under the Ordinance is sought to be passed on to the estate in bankruptcy and is required to be paid before the claims preferred by other creditors are settled.
- The penal provisions of the Ordinance are currently spelt out in Sections 182 through 190. With the object of harmonizing the three legislations vis-à-vis the ST Act, the FE Act and the Ordinance under the scheme of Inland Revenue, the Bill seeks to streamline these provisions under a single section 182.
- Transitional provisions proposed in the Seventh Schedule dealing with liability of prior year bad debts and carry forward of unabsorbed tax depreciation of lease assets.
- Cap on allowability provision for bad debts on consumer and SME financing enhanced from 1% to 5%.
- Section 177 re: Tax Audit proposed to be substituted doing away with criteria available to the Commissioner to select a case for tax audit and empowering the Commissioner to select the case on the basis of reasoning to be given in the notice.
- FBR authorized to conduct random or parametric balloting for selection of cases for tax audit.
- Taxation authorities re-designated in the wake of creation of Inland Revenue.
- Upward revision of return specified with conditions of payment of taxes and penalties etc.
- Commissioner empowered to frame provisional assessment in addition to making a best judgment assessment.
- Threshold of filing of wealth statement in FTR cases enhanced from Rs.20,000 to Rs.35,000.
- Filing dates for e-filing of return by salaried individual and statement of final taxation proposed to be 31 August.
- FBR authorized to institute list of active taxpayers.
- Interest waived by employer no more taxable in the hands of employee.
- Unexplained assets, investment or expenditure liable to tax in the tax year to which it relates.
- Amendment of assessment under section 122 (5A) permissible for issues which have not been the subject matter of appeal.
- AOPs liable to pay advance tax in the same manner as applies to companies.
- Minimum threshold enhanced to Rs.500,000 for individuals liable to pay advance tax.
- Due dates for payment of advance tax instalment for companies and AOPs changed.
- Advance tax deducted on profit on debt arising from government securities subject to final taxation.
- Individuals made withholding agent for the purpose of section 153.
- Monthly and annual withholding tax statements done away with. Only quarterly statements are required to be filed within 20 days from the end of each quarter.
- Directorate General of Training and Research introduced.
- Tax collected by Stock Exchange from its members on purchase and sale of shares is no more minimum tax.
- The minimum threshold for charge of income tax has been raised for salaried taxpayers from Rs.200,000/- and for non-salaried taxpayers from Rs.100,000/- to Rs.300,000/-.

- AOPs are now liable to pay income tax at a flat rate of 25%.
- Tax on bonus of corporate employees receiving salary income of Rs.1 million or more will not be applicable beyond tax year 2010.
- The monetary limit of taxable income for senior citizens is proposed to be increased from Rs.750,000/- to Rs.1,000,000/-.
- Tax rates for retailers having turnover of less than Rs.5 million has been enhanced from 0.5% to 1% of turnover.
- The tax rate for a small company is proposed to be increased from the existing 20% to 25% effective tax year 2011.
- The rate of advance tax on electricity consumption bill of Rs.20,000/- or more is proposed to be reduced from 10% to 5%.
- Advance tax @5% is proposed to be collected on domestic air tickets from 01 July 2010.
- The withholding tax rate on imports is proposed to be increased from 4% to 5%.
- Exemption to non-resident persons in respect of profit on debt utilized for industrial investment in Pakistan has been proposed.
- Decommissioning cost allowed as agreed in the MoU between FBR and PPEPCA.
- Provision for advances for consumer and small and medium enterprises would be allowed at 5% of the total advance instead of the present 1%.
- Transitional provision introduced in the seventh schedule.

Sales Tax

- Sales Tax to continue - Value Added Tax deferred.
- Harmonization of tax laws under jurisdiction of Inland Revenue.
- Standard rate of sales tax enhanced to 17%.
- Higher rate for specified goods enhanced to 19.5% and 22%.
- Rate of sales tax on imports of soyabean, sun flower and canola seeds enhanced by 1%.
- Rate of sales tax for supply of Natural Gas to CNG stations enhanced by 1%.
- Period for retention of records and documents enhanced to 6 years.
- Process of adjudication replaced by assessment
- Transfer pricing on supplies between associates on fair value basis.
- Condition of notification for appointment for special audit removed.
- Commissioner empowered to authorize officers to have access to premises and records.
- Scope of service of notices and orders expanded.
- Board authorized to select cases for audit through computer ballot.
- Exemption on import of certain plant, machinery and equipment.

Customs

- Changes in definition clauses.
- Substitution of export duty by regulatory duty for determination of value of exported goods.
- Application of value determined until such valuation is revised or rescinded by the competent authority.
- Provision of thirty days time limit for filing review application before the Director General Valuation and making such order appealable before the Appellate Tribunal.
- Restriction on levy of duty as applicable to mutilated or scrap goods as notified by the Board.
- Increase in scope of relevant date for the purpose of issuance of notices in cases of false statements or errors.
- Increase in scope of offence covered under fiscal fraud by inclusion of declaring false information regarding payment of revenue through self assessment.
- Restriction of facility of inspection of goods before making declaration by importers only to used goods.
- Reduction in time limit for finalization of liability in case of provisional assessment from six to three months.
- Increase in penalties for offences.

Federal Excise

- Harmonization of tax laws under jurisdiction of Inland Revenue.
- Rate of Federal Excise Duty on cigarettes enhanced.
- 10% Federal Excise Duty on air-conditioners and deep freezers.
- Rate of 16% Federal Excise Duty on supply of goods or services in Sales Tax mode unchanged.
- Rates of Federal Excise Duty on natural gas and petroleum gas enhanced.
- Input tax on flavours and concentrates are adjustable.
- Period for retention of records and documents enhanced to 6 years.
- Process of adjudication replaced by assessment.
- Board authorized to select cases for audit through computer ballot.
- Scope of service of notices and orders expanded.

INCOME TAX

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1. Capital gain on sale of securities

Section 37
Section 37A

After a long gap of over three decades, capital gains on sale of securities are sought to be made liable to tax. For the first time, the Finance Act, 1974 suspended the applicability of the relevant provisions for taxation of such capital gain. The exemption, since then, continued to be extended for two to five years over this long period.

The Bill proposes to introduce this new Section whereby capital gain on the sale of security shall be chargeable to tax as a separate block of income.

It may also be noted that, Clause (110) of Part I of the Second Schedule to the Ordinance dealing with exemption of capital gains was operative upto tax year ending 30 June 2010 and is now proposed to be omitted by the Bill.

This would, therefore, mean that any capital gain made on sale of securities beginning from 01 July 2009 to 30 June 2010 shall not be exposed to this new imposition. However, reference to the tax rate for tax year 2010 in Division VII of Part I of the First Schedule to the Ordinance creates ambiguity which needs to be clarified.

In terms of Division VII of Part I of the First Schedule to the Ordinance, the Bill proposes the rate of tax on capital gains when the securities were held for less than six months at 10%, 12.5%, 15%, and 17.5% for the tax year 2011, 2012, 2013 and 2014 respectively,

Similarly, for capital gains on securities which were held for more than six months but less than twelve months, the tax rate proposed to be applicable is 8%, 8.5%, 9%, 9.5% and 10% for the tax year 2011, 2012, 2013, 2014 and 2015 respectively.

Accordingly, under a proviso to this proposed Section, capital gains arising on sale of securities held for a period of more than twelve months shall, by implication, not be chargeable to tax.

The proposed Section shall not apply to a banking company as the capital gain arising to a banking company on sale of securities is chargeable to tax in the manner as described under Schedule VII to the Ordinance dealing with taxation of banking companies.

For the purpose of this Section, the term "securities" has been defined to mean shares of public company, vouchers of Pakistan Telecommunication Corporation,

Modaraba Certificates or instruments of redeemable capital. The term, redeemable capital shall have the same meaning as assigned thereto in Clause (30A) of Section 2 of the Companies Ordinance, 1984.

The definition of the term "shares" in Clause (58) of Section 2 of the Ordinance includes units of a mutual fund. Accordingly, therefore, capital gain on disposal of such units shall be taxable in the same manner as explained above.

The Bill also proposes certain consequential amendments in Section 37 whereby stocks and shares are excluded from the term "capital assets" as defined in sub-section (5) of Section 37 of the Ordinance.

It may be pertinent to note that provisions for taxation of capital gains on disposal of shares of unquoted companies remain unchanged.

2. Advance tax on capital gain on sale of securities

Section 147, sub-section (5B)

With the proposed introduction of tax on capital gain on sale of securities, a new sub-section (5B) is sought to be inserted whereby a tax payer shall be required to pay on a quarterly basis, advance tax on such capital gains as detailed below:

	Rate of advance tax
(a) where security is sold after a holding period of six months	2%
(b) where security is sold after a holding period of six months but less than twelve months	1.5%

The advance tax aforesaid shall be payable within seven days of the close of each quarter.

3. Tax credit for investment in plant and machinery

Section 65B

Recent years have registered a decline in investment and retardation of economic activities. The Bill, therefore, proposes to provide a fiscal incentive with the avowed objective to encourage investment by industrial undertakings in plant and machinery for the purposes of balancing, modernization and replacement. This term "industrial undertaking" has been defined in Clause (29C) of Section 2 of the Ordinance, which substantially remains unchanged as before.

The proposed provision aims to provide to a tax payer being a company, a tax credit of 10% of the tax payable by such tax payer in a tax year in which the

cost is incurred on purchase and installation of plant and machinery at any time between 01 July 2010 and 30 June 2015.

It may, however, be noted that in sub-section (1) of this proposed Section, instead of reference to sub-section (2), the Bill inadvertently refers to sub-section (1) itself which should be rectified.

It may be recalled that a scheme of tax credit was available under the repealed Income Tax Ordinance, 1979 which continued to be in force for several years until the said Ordinance was replaced by the current Ordinance which did not contain any such tax credit scheme. It may also be worthwhile to note that the Bill proposes to provide tax credit of 10% of the tax payable as opposed to the provisions of the repealed Ordinance contained in Section 107AA under which tax credit was computed on the amount invested in plant and machinery. In comparative terms therefore, the tax credit scheme now proposed by the Bill seems less attractive as a fiscal incentive compared to the provisions of the repealed Ordinance. Consequently, the effect of potential tax benefit would only be known in due course of time.

Since one of the conditions of the proposed provision is that the tax payer being a company should be the owner of plant and machinery so as to be entitled to tax credit, such assets on being acquired under a leasing arrangement shall not qualify for the tax credit as was the situation under Section 107 of the repealed Ordinance.

Sub-section (3) of this Section proposes to provide that if any of the conditions prescribed is subsequently discovered by the Commissioner Inland Revenue not to have been fulfilled, the tax credit originally allowed shall be deemed to have been wrongly allowed with the consequential effect of tax payable to be recomputed in the relevant year and all the provisions of the Ordinance, as may become applicable, shall be invoked.

4. Tax credit for enlistment Section 65C

This is a new provision sought to be introduced by the Bill to encourage companies not listed on stock exchange (s) in Pakistan to get them listed. This is however, a feeble measure as only a tax credit of 5% shall be allowed for the tax year in which a company seeks enlistment on stock exchange in Pakistan.

It may be recalled that the corporate tax rate on listed companies and unlisted companies was brought at par since the tax year 2007 at the rate of 35%. This has

been a contentious issue why listed companies should not be conferred the benefit of a lower tax rate compared to unlisted companies. The apparent benefit which the new Section is seeking to provide may not be strong enough to encourage companies to get listed since the tax credit benefit shall be available to new companies only in the tax year in which they are enlisted. This aspect of corporate taxation, in our view, deserves to be given due consideration to provide fiscal incentive to companies to go public and broad base corporate ownership.

5. Minimum tax payable extended to individuals and Association of Persons (AOPs) Section 113, sub-section (1)

For the last several years, a resident company is liable to pay minimum tax computed with reference to its turnover as defined in sub-section (3) of this Section. The Bill now seeks to expand the scope of this Section to include an individual and an AOP, subject to the prescribed threshold of turnover. Accordingly, the Bills proposes that an individual whose turnover was Rs. 50 million or above in the tax year 2009 or in any subsequent year shall, from the tax year 2011, be liable to minimum tax pursuant to this Section. Similarly, an AOP whose turnover was Rs. 50 million or above in the tax year 2007 or in any subsequent tax year shall come within the ambit of minimum tax from the tax year 2011.

The rate of minimum tax which was hitherto 0.5% of turnover is proposed to be raised to 1% thereof from the tax year 2011.

6. Advance tax on banking transaction Section 231AA

The Finance Act, 2005, for the first time, attempted to curb cash transactions whereby cash withdrawal from a bank exceeding Rs.25,000/- in a day was subject to advance tax at the rate of 0.1%, which was subsequently raised and is currently applicable at 0.3%. This measure seemed plausible as one of the attempts to encourage documentation of the economy and expanding the tax base. The Bill now proposes a yet another provision whereby apart from cash withdrawals, all banking transactions are now proposed to be subject to advance tax at the rate of 0.3%. Accordingly, the new Section proposes to subject payments made through any mode of banking transaction including Demand Draft, Payment Order, Online Transfer, Telegraphic Transfer, TDR, STDR, RTC to an advance tax of 0.3% if the aggregate of payments on account of such transactions exceed Rs.25,000/- in a day.

While some justification may be advanced in support of tax on cash withdrawal from the bank, the extension of this provision to all banking transactions across the board, which would include payment by crossed cheque as well, is totally devoid of any sound principles of taxation or justification for resource mobilization or even meeting the objectives of documentation. These provisions, it is apprehended, would tend to encourage a culture of staying away from routing the transactions through the banking system and would prove to be counter productive. Since, the modes of payment identified in the new provision are inherently documented transactions, the imposition of charging advance tax thereon would be found highly offensive by a large number of tax payers including those carrying out their business affairs in the corporate sector. It is hoped that the new provision would be reconsidered for elimination, as the same fails to provide even a modicum of rational justification.

The aforesaid provision shall not be applicable to payments made by the Federal Government, a Provincial Government, a foreign diplomat or a diplomatic mission in Pakistan or a person who produces a certificate from the Commissioner that his income during the tax year is exempt.

7. Scope of advance tax expanded to include electronic forms of communication

Section 236, sub-sections (1) and (3A)

Under the provisions of Section 236 of the Ordinance, advance tax at the prescribed rate is collected on the amount of telephone bill and prepaid card for telephone. With advancement in technology and the introduction of various forms of communication, the Bill seeks to extend the application of this Section to sale of units through any electronic medium or whatever form of communication and obliges the service provider to collect advance tax thereon at the prescribed rate of 10%. Such advance tax is to be collected at the time of issuance or sale of units by the service provider.

Under the existing provisions of sub-section (4) of this Section, no such advance tax shall be collected from Government, or foreign diplomat, a diplomatic mission in Pakistan or a person who produces a certificate from the Commissioner to the effect that his income during the tax year is exempt from tax.

8. "Assessment" in terms of Section 169 clarified
Section 169, sub-section (3), Explanation

The Ordinance envisages pursuant to the various provisions thereof tax collected or deducted as final

tax and the tax payer is not required to file a return of income and instead, permits him to file a prescribed Statement. Sub-section (3) of this Section treats such Statement on being filed as "assessment" by the Commissioner under Section 120 of the Ordinance. However, while referring to the Statement and deeming the same as "assessment" upon filing, the determination of income and tax thereon although implied does not find a specific reference. An explanation is now sought to be inserted to clarify this apparent deficiency and the Bill proposes to insert in sub-section (3) of this Section an explanation to the effect that an assessment by the Commissioner shall be deemed to be an assessment of income for that tax year and the tax due thereon equivalent to the various amounts declared in the return or statement under sub-section (4) of Section 115. In order to remove doubt, the explanation further amplifies that the return or the statement as aforesaid shall be deemed to be an assessment order for all purposes of the Ordinance.

9. Advance tax on purchase of air ticket
Section 236B

This is a yet another addition to the long list of advance tax and withholding taxes on various transactions. The Bills proposes to introduce a new provision whereby advance tax at the rate of 5% shall be collected at the time of purchase on gross amount of domestic air ticket. The tax shall be collected by the person preparing the air ticket.

10. Record retention period
Section 174, sub-section (3)

In view of the Finance (Amendment) Ordinance, 2010 having lapsed pursuant to the provisions of the Constitution of the Islamic Republic of Pakistan, this is a re-enactment of the amendments made by the said Amendment Ordinance. The mandatory record retention period was raised by the said Amendment Ordinance from five to six years and the same requirement is sought to be re-enacted by the Bill. Similarly, the proviso and explanation inserted by the said Amendment Ordinance is also now proposed to be included in the Bill. Accordingly, the tax payer is obliged to maintain the record till the final decision is made in any proceedings pending before any authority or court. Through an explanation, assessment or amendment of assessment, appeal, revision, reference, petition or prosecution and any proceedings before an Alternative Dispute Resolution Committee are included in the meaning of the expression "pending proceedings".

11. Tax liability in bankruptcy to have prior claim Section 138B

This is a new provision which the Bill proposes to enact to safeguard the interest of the state. Under the proposed provision in the event of bankruptcy of a tax payer, the tax liability under the Ordinance shall pass on to the estate in bankruptcy as a consequence of which such tax liability shall be required to be paid before the claims preferred by other creditors are settled.

12. Penalties Sections 182-190

The penal provisions of the Ordinance are currently spelt out in Sections 182 through 190. With the object of harmonizing the three legislations vis-à-vis the ST Act, the FE Act and the Ordinance under the scheme of Inland Revenue, the Bill seeks to streamline these provisions under a single section 182. Accordingly, the provisions contained in section 183 to 190 are proposed to be deleted. Consequentially, references to Sections 183 to 190 elsewhere are also proposed to be deleted and only a reference to Section 182 has been made.

The following table, in summary, lists down the various penalties that the Bill proposes to levy on the non-compliance of the various provisions of the Ordinance.

Sections	Description of non-compliance	Penalty
114, 115, 116 and 165	Failure to file (i) return of income; (ii) statement in respect of income governed under Final Tax Regime; (iii) wealth statement; (iv) wealth reconciliation; or (v) withholding tax statement	0.1% of the tax payable for each day of default, subject to a minimum penalty of Rs.5,000 and a maximum penalty of 25% of the tax payable
174	Failure to issue cash memo or invoice or receipt as required under the law	Rs.5,000 or 3% of the amount of tax involved, whichever is higher
181	Failure to file an application for registration	Rs.5,000

Sections	Description of non-compliance	Penalty
181	Failed to notify material changes in the particulars of registration	Rs.5,000
137	Fails to deposit the amount of tax due or any part thereof in the time or manner as provided under the law	5% of the amount of tax in default. For the second default, an additional penalty of 25% of the amount of tax in default. For the third and subsequent default, an additional penalty of 50% of the amount of tax in default
137	Repeats erroneous calculation in the return of income for more than one year to reduce its tax liability from the actual tax payable under the Ordinance	Rs.5,000 or 3% of the amount of tax involved, whichever is higher
174 and Chapter VII of the Rules	Fails to maintain the records under the Ordinance or the Rules made thereunder	Rs.10,000 or 5% of the amount of tax on income, whichever is higher
177	Fails to produce the record or documents on receipt of first notice	Rs.5,000
177	Fails to produce the record or documents on receipt of second notice	Rs.10,000

Sections	Description of non-compliance	Penalty
177	Fails to produce the record or documents on receipt of third notice	Rs.50,000
176	Fails to furnish the information required or to comply with any other term of the notice served	Rs.5,000 for the first default and Rs.10,000 for each subsequent default
114, 115, 116, 174, 176, 177 and General	Makes a false or misleading statement to an Inland Revenue Authority	Rs.25,000 or 100% of the amount of tax shortfall, whichever is higher. However, no penalty is imposed in the case of deemed assessment order where the taxpayer has reasonable arguments for his case
114, 115, 116, 174, 176, 177 and General	Furnishes a false or misleading information or document or statement to an Inland Revenue Authority	Rs.25,000 or 100% of the amount of tax shortfall, whichever is higher. However, no penalty is imposed in the case of deemed assessment order where the taxpayer has reasonable arguments for his case
114, 115, 116, 174, 176, 177 and General	Omits to furnish an information in a statement to any income tax authority without which the statement or the information is false or misleading in a material particular	Rs.25,000 or 100% of the amount of tax shortfall, whichever is higher. However, no penalty is imposed in the case of deemed assessment order where

Sections	Description of non-compliance	Penalty
		the taxpayer has reasonable arguments for his case
175 and 177	Denies or obstructs access of the income tax authority to the premises, place, accounts, documents, computers or stocks	Rs.25,000 or 100% of the amount of tax involved, whichever is higher
20, 111 and General	Concealment of income or furnishing of inaccurate particulars of income, claiming of any deduction for any expenditure not actually incurred or failure to explain any income or assets	Rs.25,000 or an amount equal to the tax sought to be evaded, whichever is higher. However, penalty is only imposed where there is a willful default
209, 210 and General	Obstructs any income tax authority in the performance of his official duties	Rs.25,000
General	Contravention of any provision of the law for which no specific penalty has been specified	Rs.5,000 or 3% of the amount of tax involved, whichever is higher
148, 149, 150, 151, 152, 153, 153A, 154, 155, 156, 156A, 156B, 158, 160, 231A, 231B, 233, 233A, 234, 234A, 235, 236 and 236A	Fails to collect or deduct tax as required under any provision of the Ordinance or fails to pay the tax collected or deducted as required under the Ordinance	Rs.25,000 or 10% of the amount of tax, whichever is higher

It would be noted that the penalty proposed for failure to file a withholding statement is co-related with the amount of tax payable. Under the existing provisions, the same is provided at Rs.2,000. Levying a penalty on the basis of the amount of tax payable appears erroneous as there is no tax payable in respect of filing of withholding tax statements.

Further, it is also noted that the penalty for non-serving of notice for discontinuance of business, as currently available under section 188, has not been included in the proposed amendments.

Exemption from penalty and default surcharge *Section 183*

Whereas the penalty as contained in the existing section 183 is proposed to be merged in the proposed section 182, the existing section 183 is being replaced whereby new powers are being proposed to be vested in the Federal Government and the Federal Board of Revenue to exempt any person or class of persons from payment of the whole or part of the penalty or default surcharge payable under the Ordinance. For such waiver, the Federal Government or the Federal Board of Revenue is required to notify or pass an order, as the case may be, by assigning specific reasons.

13. Waiver of interest on employee loan by employer *Section 13, sub-section (7)*

The benefit arising to an employee on account of an interest free or concessional loan provided by the employer is treated as salary and where no markup is charged the bench mark rate prescribed under the Ordinance for each tax year is treated as the benefit received by the employee and is taxed notionally in the hands of the employee. Similarly, where the employer provides the loan at a markup that is less than the prescribed bench mark rate then the difference between the bench mark rate and the rate at which the employer has provided the loan is treated as benefit and taxed notionally in the hands of employee.

The Bill now seeks to provide that if the markup is waived off by the employer, then the aforesaid notional taxation of markup would not apply.

14. Unexplained income or assets *Section 111*

This section seeks to tax any assets, investment or expenditure incurred by a person for which he is unable to provide an explanation about the nature and source of the amount or investment or expenditure. Under this section, such unexplained amounts are

deemed to be the income of the person in the tax year immediately preceding the financial year in which they are discovered by the Commissioner.

The Bill seeks to bring in a substantial change in the manner of taxation of such discovered amounts and proposes that such amounts should be taxed in the tax year to which they relate. As a result of this amendment, it is our view that any unexplained amount discovered by the Commissioner that relates to any period that is beyond the period of limitation of assessment, would not suffer any tax due to the expiry of the statute of limitation period.

15. Amendment of assessment *Section 122*

Sub-section (5B) of section 122 provides the time limit within which the Commissioner is empowered to amend or further amend an assessment order if he considers that the assessment order is erroneous in so far that it is prejudicial to the interest of revenue. The time limitation provided in sub-section (5B) refers to the limitation specified in sub-section (4) for limitation of amended assessment.

The Bill seeks to insert the reference of sub-section (5A) in sub-section (4) itself which provides the actual limitation. However, sub-section (5B) has not been omitted. As the result of this amendment, there is a direct as well as indirect reference to the limitation provided in sub-section (4).

The Bill also seeks to insert sub-section (5AA) which seeks to assert that the Commissioner is deemed to have always had the powers to amend or further amend the assessment order on any point or issue on which neither an appeal has been filed or decided against the order of the Commissioner. This amendment is a replica of a similar proviso in section 66A of repealed Income Tax Ordinance, 1979 which also permitted the Additional Commissioner to amend an assessment on an issue that has not undergone an appeal before the appellate forums. After the 1979 Ordinance had been repealed, the Department initiated several amended assessment proceedings. In the absence of the clarificatory amendment now being proposed by the Bill, it was decided by the Income Tax Appellate Tribunal in certain cases that the amended order of the Commissioner having merged with order of the Commissioner (Appeals) cannot be further amended on any point or issue. In the light of the above decisions it is now been proposed to bring in a clarificatory amendment.

16. Assessment giving effect to an order
Section 124

Certain editorial changes have been suggested in this section to omit the reference to the Commissioner (Appeals) and his powers to set-aside the assessments as such powers have been withdrawn by the Finance Act, 2005.

17. Advance tax
Section 147

Under the present scheme of advance tax, individuals and Association of Persons (AOPs) are required to pay advance tax in four equal instalments. Further, the advance tax is not required to be paid by such individuals and AOPs whose latest assessed taxable income is less than Rs.200,000. On the other hand, a company is required to pay tax on the basis of its turnover without any minimum threshold of income subject to tax.

It is now proposed that AOPs shall also pay advance tax on turnover basis in a similar manner as is paid by a company. It is further proposed to enhance the minimum threshold of income of individuals to Rs.500,000 from the present limit of Rs.200,000.

It is also proposed that the payment dates for quarterly advance tax payments in respect of a company and AOPs shall be changed from the present 15th of October, January and April to the 25th day of the previous months. The due date for payment for the June quarter is proposed to remain the same i.e. 15th June.

18. Imports
Section 148

Through Finance Act, 2009 the tax collected from a person on the import of edible oil and packing material was treated as minimum tax. However, consequential amendment was not made in sub-section (7) of the same section that treats the tax collected as a final tax on the income of a commercial importer.

The Bill seeks to incorporate the consequential amendment to oust the import of edible oil and packing material from the final tax regime.

19. Profit on debt
Section 151

Under the present scheme of section 151, tax withheld from payment of profit on debt on an account or deposit; yield on an account or deposit under the national savings scheme or post office savings

scheme; profit on any bond, certificate, debenture, security or instrument of any kind other than a loan agreement is regarded as a final tax on the profit received by a taxpayer other than a company.

The Bill now seeks to provide that tax deducted on profit on debt on debt instruments, government securities including treasury bills and Pakistan Investment Bonds shall be final tax. The amendment is proposed in the Bill through an independent sub-section that does not state whether the finality of taxation would apply to all taxpayers. It appears that the finality of taxation is for all taxpayers including the corporate sector. Further the term "debt instrument" used in the proposed sub-section is ambiguous as the particular term has not been used in any provision of section 151.

20. Scope of prescribed persons responsible for withholding tax from payments for goods and services
Section 153

Through the Finance Act, 2008 an AOP having turnover of Rs.50 million or more in tax year 2007 and onwards was required to withhold tax from payments under section 153 on account of supply of goods, rendering of service and execution of contract.

It is now proposed that individuals having turnover of Rs.50 million or above in the tax year 2009 or in any subsequent tax year would also be required to withhold tax under this section.

21. Income from property
Section 155

The tax on rent from immovable property is withheld at the same rates as is chargeable on income from rental of immovable property. Accordingly, the tax so withheld equals the tax that is chargeable on such income of the recipient. It was, therefore, a view that the tax withheld from rental income cannot be treated as tax under the Final Tax Regime rather it is a tax that is adjustable against the tax liability as per the charging provisions under section 15.

It is therefore proposed to omit sub-section (2) which treated the tax withheld as final tax. Consequential amendments have also been introduced in section 169 which treats the tax collected or deducted under various withholding sections as a final tax to replace the reference to section 155 with the reference of section 15 which is the charging section.

22. Filing of prescribed statements*Section 165*

This section requires every person collecting tax to furnish an annual statement and a monthly statement in a prescribed format. The Bill seeks to undo the requirement of filing of annual and monthly statements and proposes that persons collecting or deducting tax at source under various withholding provisions may file quarterly statement within 20 days of the end of each quarter. This is a welcome step and would ease the burden of filing of monthly reporting by prescribed persons who would now be only required to file quarterly statements.

A proviso has also been added to the effect that a prescribed person not file a statement even if no tax has been collected or withheld in that period.

23. Directorate General of Training and Research*Section 229*

A new Directorate General is proposed to be established consisting of a Director General, Additional Director General, Directors, Additional Directors, Deputy Directors, Assistant Directors and other officers that the Board may appoint to exercise such powers as may be assigned to the Directorate by the Board.

24. Inquiry against any officer by government agency*Section 227*

This section at present provides protection to any officer against any suit or legal proceeding brought against him in any Civil Court for any order passed by him under the Ordinance, if the action has been taken in good faith. It is now proposed that no proceedings of inquiry against any officer by any government agency would be allowed without the prior approval of the Board.

25. Tax on Stock Exchange transaction*Section 233A*

Through Finance Act, 2008, the tax collected from Stock Exchange members on purchase and sale of shares in lieu of tax on commission earned by them was declared as minimum tax. Similarly, the tax collected from investors on sale of securities was also treated as minimum tax. This policy of treating the tax withheld on stock exchange transactions as minimum tax was adopted due to reports of excessive refunds claimed and assessed on account of such taxes withheld.

The Stock Exchanges agitated this treatment of the tax withheld as minimum tax and had demanded that this tax may be allowed to be offset against the final tax liability based on profits of each member of the Stock Exchange or the investors. It has, therefore, been proposed through the Bill that the tax withheld from members of Stock Exchanges in lieu of their commission and from investors on sale of securities may be treated as advance tax that would be adjustable against their ultimate tax liability.

26. Tax audit*Section 177**Section 120, sub-section (1A)*

The scheme embodied in the Ordinance places emphasis on the concept of self assessment posing reliance on the declared income of taxpayers whereby a complete return filed is treated to be a deemed assessment in terms of section 120 of the Ordinance. The Ordinance however, empowers the taxation authorities to amend the deemed assessment inter alia, by way of conducting audits of taxpayers under section 177 of the Ordinance.

Section 177 empowers the FBR to lay down criteria for selecting a person's case for tax audit. In addition to the criteria specified by the FBR, the Commissioner is also authorized to select a person for tax audit on the basis of certain parameters given in section 177.

It has been witnessed that cases are selected for audit on grounds that are general in nature, thereby negating the letter and spirit with which the scope of audit has been provided for in the Ordinance.

Notices issued by the Commissioners for selection of a case for a tax audit on the basis of the exercise of their power were challenged by way of Constitution Petitions (CPs) filed before various High Courts. As a result, the audit proceedings witnessed suspension and, in a number of cases, still remain halted.

The Bill now proposes to do away with the existing criteria for selection of a case for a tax audit and to empower the Commissioner to conduct tax audit of any person by calling for any record or document from him including books of account maintained in any form. The newly proposed provisions require the Commissioner to inform the taxpayer (in writing) the reasons on the basis of which he has issued the notice to the taxpayer calling for information for conducting a tax audit.

In line with the amendments proposed in section 174, the Commissioner cannot call for record or documents from the taxpayer after expiry of six years from the end of the tax year for which they relate.

It is pertinent to note that in the event the person upon whom a notice under section 177 has been served fails to provide the Commissioner with the documents or records maintained under section 174, the Commissioner may proceed to frame a best judgment assessment under section 121 of the Ordinance.

Consequential amendment is also been proposed in section 120(1A) of the Ordinance. Under the existing provisions the Commissioner was empowered to select the case of a person for tax audit. Since the criteria for selection a taxpayer for tax audit is now proposed to rest with the FBR, it is proposed that the Commissioner may be authorized to conduct audit of the Income-tax affairs of a person which is in accordance with the proposed provisions of section 177 of the Ordinance.

27. Selection for audit by the FBR
Section 214C

As a result of a number of objections raised by the taxpayers through Constitutional Petitions filed with High Court against selection of cases for tax audit, the FBR through random computer balloting selected cases of corporate tax payers for tax audit for the tax year 2008. It was stated in the media and the press that no further cases would be selected for tax audit under section 177 of the Ordinance. However, it is pertinent to note that the Ordinance does not provide for selection of cases through computer ballot.

It appears that witnessing the smooth transition of selection for tax audit through computer balloting, a new section viz. section 214C has been proposed to be inserted in the Ordinance. The proposed provision authorizes the FBR to select persons or classes of persons for tax audit through computer ballot which may be random or parametric as the FBR deems fit. The above powers have been proposed to be made retrospective perhaps to give legal cover to selection of cases for the tax year 2008 as discussed above.

In addition to the above, the FBR also decided to appoint firms of chartered accountants and cost & management accountants for conducting tax audits of taxpayers. In this connection certain amendments have been proposed authorizing the Commissioner in addition to the FBR to appoint the abovementioned firms for purposes of conducting tax audits.

28. Creation of Inland Revenue and corresponding amendments

In January 2009, the FBR through an internal notification created "Inland Revenue Wing" integrating its Income Tax, Sales Tax and Federal Excise wings in order to provide one window facility to the taxpayers. This has been done as part of the Tax Reforms Project funded by the World Bank. However, the creation of Inland Revenue Wing was challenged by the Customs and Excise wing of the FBR in Higher Courts but ultimately the Courts ruled in favor of the creation of Inland Revenue. In October 2009, the Finance (Amendment) Ordinance, 2009 was promulgated aiming to expedite the reforms process and to harmonize the three fiscal laws viz. Income tax, Sales tax and Federal excise duty. Some substantive amendments were also introduced which are being discussed in the ensuing paragraphs. In terms of Article 89 of the Constitution of Pakistan, an Ordinance requires parliamentary approval within four months of its promulgation. However, the Finance (Amendment) Ordinance, 2009 having failed to be approved by the parliament was re-enacted in February 2010. It again did not get the required approval from the Parliament and as such the various proposed amendments brought in through the said Ordinance have now been made part of the Finance Bill, 2010 and have been made effective from 05 June 2010.

29. Taxation authorities re-designated
Sections 2, 122A, 207 - 211, 215, 217 and 239B

In line with similar amendments introduced in the Sales Tax Act, 1990, the Customs Act, 1969 and the Federal Excise Act, 2005 the posts of taxation and appellate authorities have been re-designated. Accordingly, taxation authorities as defined under the various provisions of the Ordinance have been re-designated as under -

Designations		
	Before amendments	After amendments
(a)	Board	Board
(b)	Regional Commissioner of Income Tax	Chief Commissioner Inland Revenue
(c)	Commissioner of Income Tax	Commissioner Inland Revenue
(d)	Commissioner of Income Tax (Appeals)	Commissioner Inland Revenue (Appeals)

Designations	
Before amendments	After amendments
(e) Taxation Officer	Additional Commissioner Inland Revenue; Deputy Commissioner Inland Revenue; Assistant Commissioner Inland Revenue; Inland Revenue Officer/ Officer of Inland Revenue; Inland Revenue Audit Officer; Superintendent Inland Revenue; Inspector Inland Revenue; and Auditor Inland Revenue

As a corollary the Income Tax Appellate Tribunal is now called the Appellate Tribunal Inland Revenue, the appeals relating to Sales Tax and Federal Excise matters are also being adjudicated by it.

Before the creation of the Inland Revenue only Officers from the Income Tax Group were eligible to be appointed as Members of the Tribunal. It is now proposed that a Collector having at least 5 years of experience as a Collector shall also be eligible for such an appointment.

30. Default surcharge

Sections 119, 146B, 161, 162, 202, 205, 205A, 237 and 239

The term "additional tax" appearing in the various provisions of the Ordinance has been substituted with the term "default surcharge", which is in accordance with the similar amendments brought in the Sales Tax Act, 1990, the Customs Act, 1969 and the Federal Excise Act, 2005.

31. Revision of return

Section 114, sub-section (6)

The Finance Act, 2009 substituted the provisions of Section 114(6) of the Ordinance whereby certain conditions were specified for revising the return of income. Particularly, the return could not be revised once the Commissioner had issued a notice for amendment of assessment.

The Bill proposes to substitute the existing sub-section (6) laying down the following conditions for revising the return of income -

- a) the revised return is accompanied by the revised accounts or revised audited accounts, as the case may be; and
- b) the reasons for revision of return, in writing, duly signed by the taxpayer are filed with the return.

It is further provided that if a taxpayer wishes to file a revised return voluntarily and pays the tax due alongwith the applicable default surcharge before a notice of tax audit or amendment in assessment is received by him, no penalty will be levied.

In the event that the taxpayer wishes to revise the return and pay the tax as pointed out by the Commissioner during tax audit proceedings or before the issuance of notice for amended assessment, the taxpayer shall deposit the amount of tax as pointed out by the Commissioner together with default surcharge and 25% of the penalties leviable. In case the return is revised after the issuance of show cause notice for amendment in assessment, the taxpayer will be required to pay the tax alongwith default surcharge and 50% of the amount of penalties following which the show cause notice will be withdrawn.

32. Provisional assessment

Sections 122C and 116 sub-section (2A)

The provision of Section 121 of the Ordinance authorizes a Commissioner to frame a best judgment assessment where a taxpayer fails to furnish the return of income as required by the Commissioner in terms of Sections 114, 143, 144 or a wealth statement under Section 116 or statement of final taxation under Section 115 or to produce before the Commissioner, or before a firm of Chartered Accountants under section 177, accounts, documents and records required to be maintained under section 174, or any other relevant document or evidence that may be required by him for the purpose of making the person's assessment, based on the available information and to the best of the Commissioner's judgment.

The Bill while it proposes to delete clause (a) of sub-section (1) of Section 121 above dealing with the Commissioner's powers to frame a best judgment assessment upon the failure of the person to file the return of income, it also proposes to insert Section 122C in the Ordinance. The proposed Section 122C authorizes the Commissioner to frame a provisional assessment in case where the person fails to furnish the return of income in response to his notice calling for the return of income. The provisional assessment will become final after the expiry of 60 days of the receipt of the provisional assessment order if the person fails to file the return alongwith wealth

statement and wealth reconciliation statement. A new sub-section (2A) is also proposed to be inserted in Section 116 according to which filing of wealth statement together with wealth reconciliation statement will also be mandatory where a provisional assessment has been made under Section 122C and the person after receipt of the provisional assessment intends to file the return of income. It is pertinent to point out that tax demand as a consequence of the provisional assessment will be payable after 60 days of the receipt of provisional assessment order i.e. after it becomes final.

It appears that the provisions of Section 122C of the Ordinance will only apply to Individuals and AOPs since mandatory filing of wealth statement and wealth reconciliation statement is not meant for corporate taxpayers. However, a cumulative reading of Section 121 and 122C shows that in case of corporate taxpayers who do not file the return of income as required by the Commissioner, best judgment assessment or provisional assessment cannot be made. This is for the reason that by omitting clause (a) of sub-section (1) of Section 121 which deals with framing of best judgment assessment for non-filing the return of income, the Commissioner is no more authorized to frame a best judgment assessment. Moreover, Section 122C only caters to failure of filing of certain statements other than the return of income.

33. Wealth statement in FTR cases Section 116

The provisions of Section 116 of the Ordinance requires a person to file wealth statement and wealth reconciliation statement alongwith the return of income where the declared income is Rs.500,000 or more. However, in cases where a statement of final taxation under Section 115(4) of the Ordinance is filed the requirement of filing wealth statement and wealth reconciliation statement in terms of Section 115(4B) was where the taxpayer (other than a Company) had paid tax amounting to Rs.20,000 or more.

The Bill proposes to enhance the above limit to Rs.35,000 by virtue of an amendment in Section 116 of the Ordinance

34. Method of furnishing returns Section 118

The existing provisions of Section 118(3) of the Ordinance provides the timeline for filing the returns of income and/ or statement of final taxation for

Individuals and Association of Persons which is 30 September following the end of the relevant tax year.

The Bill proposes to change the above timeline as under -

- a) For annual statement of tax deduction from employees' salaries, electronic filing of return of income by salaried persons or a statement of final taxation under Section 115(4) of the Ordinance - by 31 August following the end of the relevant tax year.
- b) For returns of income manually filed - by 30 September following the end of the relevant tax year.

35. Active taxpayers' list Section 181A

The FBR without any legal authority has propagated in the media and through its web site about active taxpayers. The criteria as to how a taxpayer is regarded as an active taxpayer was also not known. Accordingly, objections were raised about the authority of the FBR to declare a taxpayer as active or otherwise.

The Bill proposes to authorize the FBR to institute "Active Taxpayers' List" which shall be regulated as per the Rules to be prescribed.

36. Trial by special judge Section 203

The Ordinance proposes to amend the provisions of section 203 to provide appointment of Special Judge by the Federal Government to try offences punishable under the Ordinance. Prior to the proposed amendment such appointments could only be made in pursuance to provisions of Pakistan Criminal Law (Amendment) Act, 1958. Now, only a notification in the official gazette will be required for appointment or transfer of a special judge whose court will be deemed as court of a sessions judge.

37. Collection of tax at the time of sale by auction Section 236A

Through the Finance Act, 2009 a person making sale by auction of any property or goods confiscated or attached that belong to the government, local government, any authority, company etc. was required to collect tax @ 5% from such sale. The Bill seeks to enhance the scope of collection to not only confiscated or attached property but also to all other property or goods. Accordingly, it is proposed that tax @ 5% may be collected from every sale of property or goods including confiscated or attached property or goods.

THE FIRST SCHEDULE

38. Rates of tax for individuals and AOPs

The basic threshold for charge of income tax for salaried taxpayers is proposed to be raised from the existing Rs.200,000/- to Rs.300,000/- and for non-salaried taxpayers from the existing Rs.100,000/- to Rs.300,000/- and accordingly, the rates of tax chargeable for the tax year 2011 (corresponding to the income year ending at any time between 01 July 2010 to 30 June 2011) have been rationalized as under.

INDIVIDUALS

Salaried Taxpayers

Taxable Income	Rate (%)	Taxable Income	Rate (%)
Upto Rs.300,000	Nil	Rs. 1,050,001 - 1,200,000	10.00
Rs. 300,001 - 350,000	0.75	Rs.1,200,001 - 1,450,000	11.00
Rs. 350,001 - 400,000	1.50	Rs. 1,450,001 - 1,700,000	12.50
Rs. 400,001 - 450,000	2.50	Rs. 1,700,001 - 1,950,000	14.00
Rs. 450,001 - 550,000	3.50	Rs. 1,950,001 - 2,250,000	15.00
Rs. 550,001 - 650,000	4.50	Rs. 2,250,001 - 2,850,000	16.00
Rs. 650,001 - 750,000	6.00	Rs. 2,850,001 - 3,550,000	17.50
Rs. 750,001 - 900,000	7.50	Rs. 3,550,001 - 4,550,000	18.50
Rs. 900,001 - 1,050,000	9.00	Over Rs.4,550,000	20.00

Non Salaried Taxpayers

Taxable Income	Rate (%)
Upto Rs.300,000	Nil
Rs. 300,001 - 400,000	7.50
Rs. 400,001 - 500,000	10.00
Rs. 500,001 - 600,000	12.50
Rs. 600,001 - 800,000	15.00
Rs. 800,001 - 1,000,000	17.50
Rs.1,000,001 - 1,300,000	21.00
Over Rs.1,300,000	25.00

ASSOCIATION OF PERSONS

The rate card of the non-salaried taxpayers which was also applicable to an association of persons is now no longer so applicable and instead a flat rate of tax of 25 percent is now leviable on its taxable income from the tax year 2010 and onwards. The exemption to taxable income upto Rs.100,000/- presently available has also been withdrawn.

39. Exemption to women taxpayers

In the case of a woman taxpayer, no tax is levied if the taxable income is within the threshold mentioned below.

Category	Threshold
Non-salaried taxpayer	Rs.125,000
Salaried taxpayer	Existing Rs.260,000 proposed to be deleted

These threshold may be revised in view of the amendments proposed raising the general basic threshold to Rs.300,000/- from the existing threshold of Rs.200,000/- and Rs.100,000/- applicable to salaried and non-salaried taxpayers respectively.

40. Marginal relief

For a salaried taxpayer, marginal tax relief continues to be available. The relief works in the following manner.

Total income does not exceed	Increase in tax not to exceed tax payable on the maximum of the relevant slab Plus
Rs.550,000	20%
Rs.1,050,000	30%
Rs.2,250,000	40%
Rs.4,550,000	50%
Over Rs.4,550,000	60%

41. Internally Displaced Persons Tax (IDPT)

Income tax designated as IDPT which was levied on individuals and AOPs for the tax year 2009 at 5% of the tax payable where the taxable income is one million rupees or more has not been extended.

Similarly tax on bonus paid or payable to a corporate employee receiving salary income of one million rupee or more has also not been extended beyond the tax year 2010.

42. Tax year

"Tax Year" means a period of twelve months ending on 30 June and corresponds to the period to which the income of the taxpayer relates.

43. Salaried taxpayer

"Salaried taxpayer" is a person having salary income in excess of 50% of his/her taxable income.

44. Reduction in tax liability

A senior citizen of Pakistan, being a taxpayer, aged sixty years or more on the first day of the relevant tax year, is allowed a rebate of 50% of the tax payable if his/her taxable income in that tax year is less than Rs.750,000/-. The said rebate continues with the increased threshold of Rs.1,000,000/- in place of the existing Rs.750,000/-. Another significant amendment which has been proposed is that in determining the threshold as above, income under fixed tax regime shall be excluded.

The provision to reduce the income tax liability of a full time teacher or a researcher employed in a non-profit educational or research institution duly recognized by a Board of Education or a University or the Higher Education Commission and to a teacher and researcher of Government training and research institution also continues to be available but at a reduced rate. The tax liability in such cases is reduced by an amount equal to 75% of the tax payable on his / her income from salary.

45. Rates of tax on retailers

The rate of tax applicable on a retailer effective from the tax year 2011 has been enhanced from the existing 0.50% to 1.00% of the turnover in case his declared turnover is less than 5 million.

46. Rates of tax for companies

- For public, private and banking companies, the rate of tax remains unchanged at 35% for tax year 2011.
- A Co-operative and finance society is taxed at the income tax rate applicable to a company.
- The rate of tax for a "small company" effective from the tax year 2011 has been enhanced from the existing 20% to 25%.

47. Rate of tax on dividend income

The rate of tax on dividend received by all taxpayers continues at 10%.

48. Rate of tax on capital gains on securities

The rates of tax on capital gains arising on sale of securities as referred to in Section 37A of the Ordinance have been enacted prospectively and are as under:

Tax Year	Holding period of a Security	
	Less than six months (%)	More than six months but less than 12 months (%)
2010	10	7.5
2011	10	8
2012	12.5	8.5
2013	15	9
2014	17.5	9.5
2015		10

49. Income from property

The rates of tax to be paid in respect of income from property for the tax year 2011 (corresponding to the income year ending at any time between 01 July 2010 to 30 June 2011) has remained unchanged and are as under:

i) Individuals and Association of Persons

Gross amount of rent	Rate of Tax
Upto Rs.150,000	Nil
Rs.150,001 - Rs.400,000	5% of the amount exceeding Rs.150,000
Rs.400,001 - Rs.1,000,000	Rs.12,500 + 7.5% of the amount exceeding Rs.400,000
Over Rs.1,000,000	Rs.57,500 + 10% of the amount exceeding Rs.1,000,000

ii) Company

Gross amount of rent	Rate of Tax
Upto Rs.400,000	5%
Rs.400,001 - Rs.1,000,000	Rs.20,000 + 7.5% of the amount exceeding Rs.400,000
Over Rs.1,000,000	Rs.65,000 + 10% of the amount exceeding Rs.1,000,000

50. Advance income tax on private motor vehicles

Advance income tax payable at the time of paying annual motor vehicle tax, in the case of private motor vehicles continues as under:

Engine capacity	Amount of Tax
Upto 1000 cc	Rs.750
1001 cc - 1199 cc	Rs.1,250
1200 cc - 1299 cc	Rs.1,750
1300 cc - 1599 cc	Rs.3,000
1600 cc - 1999 cc	Rs.4,000
Over 1999 cc	Rs.8,000

51. Advance tax on registration of private motor vehicles

The rate of collection of advance tax by manufacturers or authorized dealers of motor vehicles continues and is as follows:

Engine capacity	Amount of final tax (Rs.)
Upto 850 cc	Rs. 7,500
851 cc - 1000 cc	Rs.10,500
1001 cc - 1300 cc	Rs.16,875
1301 cc - 1600 cc	Rs.16,875
1601 cc - 1800 cc	Rs.22,500
1801 cc - 2000 cc	Rs.16,875
Over 2000 cc	Rs.50,000

52. Advance tax on goods transport vehicle

The existing slab rate card based on registered laden weight for the purpose of collection of advance tax is proposed to be substituted for a tax of one rupee per kilo gram of the laden weight. However, for goods transport vehicle with laden weight of 8120 kilo gram or more, advance tax after a period of 10 years from the date of first registration in Pakistan would continue to be collected at Rs. 1,200/- per annum.

53. Advance tax on electricity consumption

The rate of collection of advance tax on electricity consumption which is 10% on electricity bill exceeding Rs.20,000/- is proposed to be reduced to 5%.

54. Advance tax on purchase of air ticket

It is proposed to collect advance tax at the rate of 5% of the gross amount of domestic air ticket effective 01 July 2010.

55. Advance tax at the time of sale by auction

The rate of collection of tax by a person making sale by public auction of any property or goods to which Section 236A applies continues to be 5% of the gross sale price of such property or goods.

56. Withholding tax rates

Type of Payment	Rate %		Whether under final tax regime
	Existing	Proposed	
Collection of tax at imports			
Value of goods inclusive of customs duty and sales tax	4	5	Yes, subject to certain exclusions
Profit on debt			
a) Yield on a National Savings Deposit Certificate including a Defence Savings Certificate under the National Savings Scheme;	10	No change	Yes
b) Profit on a debt, being an account or deposit maintained with a banking company or a financial institution;	10	No change	Yes
c) Profit on any bond, certificate, debenture, security or instrument of any kind (excluding loan agreement between a borrower and a banking company or a development finance institution) issued by a banking company, a financial institution, company as defined in the Companies Ordinance, 1984 and a body corporate formed by or under any law for the time being in force, to any person other than a financial institution.	10	No change	Yes
d) Profit on any security issued by the Federal Government, a Provincial government or a local authority to any person other than a financial institution	10	No change	Yes

Type of Payment	Rate %		Whether under final tax regime
	Existing	Proposed	
Goods and services			
a) Sale of rice, cotton seed or edible oils	1.5	No change	Yes
b) Sale of cigarettes and pharmaceutical products by distributors of such goods	1	No change	Yes
c) Sale of any other goods	3.5	No change	Yes
d) For passenger transport services	2	No change	No
e) For other services	6	No change	No
f) Execution of a contract	6	No change	Yes
g) For news print media services	6	No change	No
CNG Station - Refer to Section 234A	4	No change	Yes
Exports			
Export proceeds Proceeds from sale of goods to an exporter under an inland back-to-back letter of credit or any other arrangement Export of goods by an industrial undertaking located in an Export Processing Zone	1 of export proceeds -	No change	Yes
Collection by collector of customs at the time of clearing of goods exported	1	No change	Yes
Indenting commission	5	No change	Yes

Type of Payment	Rate %		Whether under final tax regime
	Existing	Proposed	
Income from property			
Annual rent of immovable property including rent of furniture and fixtures and amounts for services relating to such property.	At varying slab rates of 5 to 10 for individual, AOPs and company	No change	No
Prizes and winnings			
a) Amount of prize bond or CROSS-WORD puzzle.	10	No change	Yes
b) Amount of raffle/lottery winning or prize on winning a quiz prize offered by companies for promotion of sales	20	No change	Yes
Telephone users			
Telephone subscriber (other than mobile phone)	10 of amount exceeding Rs.1,000	No change	No
Amount of bill of mobile telephone, sale price of prepaid telephone card or sale of units through ANY ELECTRIC MEDIUM (FOR CD) or whatever form	10	No change	No
BANKING TRANSACTIONS			
Amount exceeding Rs.25,000	0.3 of the amount withdrawn	No change	No
Commission or discount allowed on sale of petroleum products by a petrol pump operator			
Amount of commission or discount	10	No change	Yes
Commission income of indenting commission agents and yarn agents			
Amount of payment	10	No change	Yes

Type of Payment	Rate %		Whether under final tax regime
	Existing	Proposed	
Commission income of advertising agents			
Amount of payment	5	No change	Yes
Commission income of others			
Amount of payment	10	No change	Yes
Collection of tax by stock exchange			
Purchase of shares	0.01 of purchase value	No change	No
Sale of shares	0.01 of sale value	No change	No
Trading of shares	0.01 of traded value	No change	No
Financing of COT	10 of the carry over charge	No change	No

57. Rates of tax for non-resident taxpayers

The applicable withholding tax for Tax Year 2011 on certain payments to non-residents is as under:

Type of payment	Rate (%)	
	Existing	Proposed
Dividends from:		
- a company engaged in power generation project	7.5	No change
- others	10	No change
Branch profit remittance tax (other than branch offices of E&P companies)	10	No change
Technical services fee	15	No change
Insurance premium / re-insurance premium	5	No change
Advertisement services to a media person relaying from outside Pakistan	10	No change
Royalty	15	No change
Shipping income	08	No change
Air transport income	03	No change
Profit on debt	30	20
Profit on debt where non-resident does not have a PE in Pakistan	10	No change

Type of payment	Rate (%)	
	Existing	Proposed
Others (excluding those specifically mentioned herein)	30	20
Execution of a contract		
- contract or sub-contract under a construction, assembly or installation project in Pakistan, including a contract for the supply of supervisory activities in relation to such project	6	No change
- contract for construction or services rendered relating thereto	6	No change
- a contract for advertisement services rendered by TV satellite channels	6	No change

The taxes withheld in all the above cases except "Others" constitute full and final settlement of the non-resident's tax liability in Pakistan in respect of such income.

A non-resident contractor earning income from "execution of contract" can opt for the final tax regime, which means that the taxes withheld would be construed as its full and final settlement of tax liability. The option must be exercised within three months of the commencement of the tax year and shall remain irrevocable for three years. In case the option has not been exercised by the non-resident person, the taxable income shall be assessed on the basis of his net business profits and the taxes withheld would be treated as advance tax adjustable against his eventual tax liability.

THE SECOND SCHEDULE

PART-I

58. Exemption of profit on debt payable to a non-resident person reinstated*Clause 72 (iii)*

It is proposed to provide exemption to a non-resident person in respect of profit on debt on a foreign loan as is utilized for industrial investment in Pakistan, the agreement for which was concluded on or after 01 February 1991 and the same is duly registered with the State Bank of Pakistan. This exemption was withdrawn by the Finance Act, 2008 and is now proposed to be reinstated.

59. Income of university and educational institution establishment in Khyber Pakhtunkhwa, FATA and PATA*Clause (92A)*

Income of university or any other educational institution established in the most affected and moderately affected areas of Khyber Pakhtunkhwa, FATA and PATA is proposed to be exempted for a period of two years ending on 30 June 2011. As to what would constitute most affected and moderately affected areas has been spelt out as follows:

- (a) most affected areas means district Peshawar, Malakand Agency, and districts of Swat, Buner, Shangla, Upper Dir, Lower Dir, Hangu, Bannu, Tank, Kohat and Chitral; and
- (b) moderately affected areas means districts of Charsadda, Nowshera, DI Khan, Batagram, Lakki Marwat, Swabi and Mardan.

60. Clauses proposed to be deleted by the Bill

The following clauses are proposed to be deleted:

Clause No.	Description and reason for deletion
102	Exemption to ICP on dividend received from any other company. Deleted since ICP has been merged with Industrial Development Bank of Pakistan.
110	Capital gain on sale of securities. Deleted since exemption withdrawn.
110A	Gain on transfer of capital asset as a consequence of corporatization of an existing stock exchange. Deleted since withdrawn.

61. Exemption to taxpayers of Khyber Pakhtunkhwa, FATA and PATA*Clause (126F)*

It is proposed to exempt from tax the profits and gains derived by a taxpayer, other than one involved in manufacturing and supplying cement, sugar, beverages and cigarettes, located in the most affected and moderately affected areas of Khyber Pakhtunkhwa, FATA and PATA for a period of three years beginning from tax year 2010. As to what would constitute most affected and moderately affected has been spelt out and is reproduced in Clause 92A above.

PART-II

62. Withholding tax on distributors*Clause (24A)*

The withholding tax on proceeds of sales of cigarettes and pharmaceuticals products by a distributor of such products is at a reduced rate of 1% as opposed to 3.5% generally applicable. The facility of reduced rate is now proposed to be extended to a large distribution house which:

- (i) has a paid-up capital exceeding Rs.250 million;
- (ii) has imports exceeding Rs.500 million during the tax year;
- (iii) owns total assets exceeding Rs.350 million at the close of the tax year;
- (iv) maintains computerized records of Imports and sale of goods;
- (v) maintains a system for issuance of 100% cash receipts on sales;
- (vi) presents accounts for tax audit every year;
- (vii) is registered with the Sales Tax Department; and
- (viii) makes sales of industrial raw material of manufacturer registered for sales tax purposes.

PART-III

63. Senior citizen allowance*Clause (1A)*

Presently, a senior citizen of Pakistan, being a tax payer, aged sixty years or more on the first day of the relevant tax year, is allowed a rebate of 50 percent of the tax payable if his/her incomes in that tax year is less than Rs.750,000/-. The Bill seeks to enhance the monetary limit of Rs.750,000/- to Rs.1,000,000/-. Another significant amendment is that in determining the benchmark as above income under final tax regime shall be excluded.

PART-IV

64. Rehabilitation of economy of Khyber Pakhtunkhwa, FATA AND PATA
Clause (10A)

The Bill seeks to introduce the following provisions in order to rehabilitate the economy of most effected and moderately affected areas of Khyber Pakhtunkhwa, FATA and PATA as spelt out and reproduced above in Clause (92A) of Part-I.

- i) Waiver of the entire amount of penalty and default surcharge as leviable under sub-section (1) of Section 182 and Clause (9) of sub-section (1) of Section 205 of the Ordinance provided the principal amount is paid by 30 June 2010.
- ii) Exemption from collection of advance tax applicable under Section 235 of the Ordinance by commercial and industrial consumers of electricity for tax years 2010 and 2011.
- iii) Exemption from withholding tax on export of goods by exporters based in the above locations.
- iv) Exemption from collection of tax on import of plant and machinery for establishment of businesses in the above locations. This concession is, however, not proposed for manufacturers and suppliers of cement, sugar, beverages and cigarettes.

65. Income of foreign experts
Clause (73)

The Bill seeks to exempt the income of a foreign expert whose services have been acquired with the prior approval of the Ministry of textile industry.

THE THIRD SCHEDULE

66. Addition in category of assets eligible for depreciation
Part I (sub-clause V)

The Bill proposes to add the following asset and the rate of depreciation applicable thereon.

Category of asset	Rate of depreciation (%)
A ramp built to provide access to persons with disabilities not exceeding Rs.250,000/- each	100

THE FIFTH SCHEDULE

67. Decommission cost
Part I, Rule 4A

The petroleum exploration and production (E&P) companies carry on their business in Pakistan under Petroleum Concession Agreements (PCAs) signed with the Federal Government. Due to different interpretations by the FBR officials on the PCAs certain tax disputes have arisen between the E&P companies and the FBR including the dispute of allowability of decommissioning cost. E&P companies claim the provision for decommissioning cost as an expense for the year treating it as an ascertained liability while the FBR holds the view that this being a mere provision is not allowable under the Ordinance unless the relevant expenditure is incurred. In order to amicably resolve the disputed issues, Pakistan Petroleum Production and Exploration Companies Association (PPEPCA) entered into a Memorandum of Understanding (MoU) with the FBR in March 2010. It was inter alia agreed that provisions dealing with allowability of decommissioning cost would be enacted through the Finance Bill 2010 which would be effective from the tax year 2010.

In line with the above MoU, the Bill proposes to insert Rule 4A in Part I of the Fifth Schedule providing for allowability of decommissioning cost as certified by a Chartered Accountant or a Cost Accountant from the tax year 2010 over a period of 10 years or the remaining life of the development and production or mining lease whichever is less starting from the year of commencement of commercial production. Where the commercial production has already commenced prior to 01 July 2010 the decommissioning cost will be allowed from the tax year 2010 over a period of 10 years or the remaining life of the development and production or mining lease whichever is less.

THE SEVENTH SCHEDULE

68. Classified advances and off balance sheet items- allowed subject to maximum threshold *Rule 1(c)*

The Seventh Schedule was introduced through the Finance Act, 2007; however, it was made applicable from the tax year 2009 (financial year beginning 1 January 2008). The rationale behind introducing this specific Schedule was to provide special provisions for taxation of income of banking companies like those available to companies involved in the business of insurance and petroleum exploration. The original version of the Seventh Schedule when enacted carried the following provisions for the tax treatment of non-performing loans, which in the past had always given rise to contentious issues between the tax department and the banking companies. The said provisions contained in Rule 1 of the Schedule were to the following effect:

- (a) provisions for classified advances and off balance sheet items claimed in the accounts are allowable on the basis of a certificate from the external auditors to the effect that such provisions are in accordance with the Prudential Regulations issued by the State Bank of Pakistan (SBP);
- (b) irrecoverable debt, classified as 'substandard' in accordance with the Prudential Regulations is not to be allowed;
- (c) a 'substandard' irrecoverable debt is eligible for deduction upon its subsequent classification as 'doubtful' or 'loss' under the Prudential Regulations; and
- (d) an item classified as 'substandard' and having been taxed in a previous tax year is subsequently reclassified as 'recoverable', also qualifies for deduction.

The above provisions laid to rest the major issue faced by banking companies for claiming their doubtful debts as an allowable deduction primarily on account of the fact that it was based on the SBP's Prudential Regulations. However, certain issues of transitional provisions like unabsorbed depreciation on assets given on lease by banks, and bad debts of prior years remained unresolved and, hence, were required to be addressed by appropriate amendments in the said Schedule.

Through the Finance Act, 2008 the provisions regarding allowability of non-performing loans was reversed and banks were asked to claim bad-debts in accordance with section 29 and 29A of the Ordinance.

The Finance Act, 2009 partially came to the rescue of the Banking Companies whereby the claim of bad debts as per the Prudential Regulation was restored. However, such restoration was with the restriction in the form of a cap on the allowable provision for bad-debt @ 1% of total advances.

Further, issues of prior year bad debts reclaim and carry forward of unabsorbed depreciation of leased assets that pertain to tax years 2008 and earlier were not addressed.

The Bill now seeks to partially address the issue of restriction of claim of bad debts as well as introducing the necessary transitional provisions. It is now proposed that apart from the 1% cap on allowability of provisions for advances, provisions for advances for consumer and small and medium enterprises (SMES) would be allowed at 5% of total advances for consumers and SMES.

69. Transitional provisions *Rule 8A*

Further transitional provisions for allowability of reclaim of prior year bad debts for tax years upto 2008 have been proposed. Any recovery and consequent write back in the tax year 2009 and thereafter in any tax year which is credited to the profit and loss account would be excluded in computing the income of that tax year. Further assets given on finance lease upto tax year 2008 would be allowed in a manner as if the seventh schedule has not come into force. Accordingly, unabsorbed depreciation in respect of such assets shall be allowed to be set-off against the corresponding lease rental income.

Although most of the issues encountered by the banking industry have substantially been addressed by the Bill, the issue of capping for purposes of deductibility, the overall provision for non-performing loans at 1 percent of total advances, other than consumers and SMEs, remain unresolved. In view of the facilitating inclination of the Board towards resolution of significant tax issues faced by the banking companies, particularly in the wake of global and domestic economic upheaval, it would not be unreasonable to expect that the aforesaid issue will also be settled in right earnestness with due appreciation of the ground realities and the business imperatives of the banking companies who have sought the capping at 2 percent.

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SALES TAX

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1. Continuation of Sales Tax Law

It was the intention of the Government to introduce the Value Added Tax Act, 2010 (VAT) in place of the existing Sales Tax Act, 1990 with effect from 1 July 2010. This action has been deferred for the time being and it is anticipated that the change will take place with effect from 1 October 2010. Consequently, the Sales Tax Act, 1990 continues to remain in force until such time it is replaced by the VAT law.

2. Harmonization of tax laws

As part of the restructuring of the Federal Board of Revenue, the jurisdiction of the Sales Tax and Federal Excise laws was shifted from the Customs group and merged with the Income tax group. As a result, Income tax, Sales Tax and Federal Excise were merged under the newly formed Inland Revenue. As a consequence, the Finance (Amendment) Ordinance, 2009 was promulgated on 28 October 2009 and sought to harmonize the above three taxes under the jurisdiction of Inland Revenue. The Finance (Amendment) Ordinance, 2009 has apparently lapsed and the changes sought through this Ordinance have now been incorporated in the Finance Bill 2010. Basically the changes seek to harmonize the nomenclature of the three tax laws. Hence it seeks to replace terminologies in the following manner:

Old Terminology	New Terminology
Officer of sales tax	Officer of Inland Revenue
Local sales tax office	Local Inland Revenue office
Collector of sales tax	Commissioner Inland Revenue
Additional Collector	Additional Commissioner
Deputy Collector	Deputy Commissioner
Customs, Excise and Sales Tax Appellate Tribunal	Appellate Tribunal Inland Revenue

3. Rate of sales tax Section 3

The standard rate of sales tax has been enhanced from 16% to 17% with effect from 1 July 2010. Additionally, the varied rates of sales tax provided through certain SROs have also been enhanced with effect from 01 July 2010.

The SROs enhancing the sales tax rates are summarized as follows:

Amending SRO	Original SRO	Goods	Effect
395 (I)/2010 dated 05 June 2010	644 (I)/2007 dated 27 June 2007	Various specified goods	From 18.5% to 19.5% and From 21% to 22%
396 (I)/2010 dated 05 June 2010	313 (I)/2006 dated 31 March 2006	The import of soya bean seed by solvent extraction industries	From 6% to 7%
397 (I)/2010 dated 05 June 2010	69 (I)/2006 dated 28 January 2006	The imports of rapeseed, sunflower seed and canola seed by solvent extraction industries	From 14% to 15%
398 (I)/2010 dated 05 June 2010	480 (I)/2007 dated 09 June 2007	Supply of natural gas to CNG stations by the gas transmission and distribution companies	From 25% to 26%. (This rate includes 17% sales tax along with 9% value addition)

It is interesting to note that rates of Federal Excise Duty in sales tax mode mainly on services have not been enhanced and continue to remain at 16% (19.5% in case of telecommunication services).

4. Retention of records and documents Section 24

Under this section a person was required to maintain any records and documents for a period of 5 years. This period has now been enhanced to 6 years. It is also proposed that the retention of records can be for such further period or till the final decision in any proceedings for assessment, appeal, revision, reference, petition and any proceeding before the Alternate Dispute Resolution Committee.

5. Access to records, documents, etc.*Section 25*

This section empowers the Inland Revenue to have access to records and documents and to conduct an audit. The scope of this section has been expanded to pass an order and impose any tax, default surcharge, penalty and recovery of any amount erroneously refunded as a result of the audit. This function is presently covered under section 45 as "Power of Adjudication" which is now proposed to be deleted.

6. Transaction between associates*Section 25AA*

A new section has been introduced whereby the Inland Revenue has the power to determine the transfer price of taxable supplies between persons who are associates to reflect the fair market value of supplies in an arm's length transaction.

In this regard, the imposition of open market price has already been covered by the definition of value of supply. It would appear that the substantive provision has been introduced in support of the definition section to enable enforcement of the fair market value in case of transactions between associates.

7. Special audit by Chartered Accountants or Cost Accountants*Section 32A*

Special auditors could be appointed by the Board through a notification in the official gazette. This notification requirement has now been withdrawn and it would now be possible for the Board or the Commissioner to appoint Chartered Accountants or Cost Accountants for the purpose of a special audit.

8. Authorized officers to have access to premises, stocks, accounts and records*Section 38*

Under this section an officer had to be authorized by the Board in order to have access to premises, stocks, accounts and records of a taxpayer. It is proposed to grant this power to the Commissioner as well. It is interesting to note that such power was withdrawn from the Collector through the Finance Bill, 2009.

9. Appeals to Appellate Tribunal*Section 46*

In view of the transfer of jurisdiction to hear appeals pertaining to Sales Tax and Federal Excise to Appellate Tribunal Inland Revenue, reference to Customs Act, 1969 and the Customs, Excise and Sales Tax Appellate Tribunal has been replaced with that falling under the Income Tax Ordinance, 2001. Hence the Appellate Tribunal Inland Revenue established under section 130 of the Income Tax Ordinance, 2001 would be the appellate authority for sales tax issues.

10. Service of orders, decisions, etc.*Section 56*

This section has been redrafted and lays down the procedure for service of orders, decision, etc. It stipulates that any notice, order or requisition would be treated as properly served if personally served or through an authorized representative, sent by registered post or courier service or service of a summons under Code of Civil Procedure, 1908.

In case of dissolved association of persons, the service may be on any person who was the principal officer or member of the association immediately before such dissolution.

In case of discontinued business, it may be served on a person or his representative at the time of discontinuance.

This section further stipulates that the validity of any notice or its service thereof shall not be called into question after the notice has been complied with in any manner.

It appears that explicit provisions have been laid out to prevent persons from challenging on the grounds that no notice has been served.

11. Selection for audit by the Board*Section 72B*

A new section has been introduced whereby the Board has the power to select persons or classes of persons for audit of tax affairs through computer balloting which may be random or parametric.

This is in line with the parameters set under the income tax law.

12. Exemption from Sales Tax

Section 13

SRO. 394 (I)/2010 dated 05 June 2010 inserted the following new items in SRO. 575(I)/2006 dated 05 June 2006 which exempt import of specified plant, machinery, equipment and apparatus, including capital goods from levy of sales tax, subject to certain specified conditions including that the imported goods are not listed in the locally manufactured items specified through a general order. This condition, however, would not be applicable in case of imported plant for setting up of new industrial units.

S. No.	Description	PCT Heading	Conditions
Agricultural Machinery			
1 (F) (5)	Rice whitener, rice polisher, rice flow meter and magnetic separator.	8437.8000 and respective headings	NIL
1 (G) (19)	Milk filters.	8421.3990	NIL
Items imported by the local assemblers of vehicles and companies having CNG licenses:			
5(5A)	LPG Dispensers imported by a company having LPG license	8413.1100	Only approved models or brands as approved by OGRA and notified by the FBR shall be entitled to this exemption. The importer shall also furnish quality certificate of the original manufacturer duly witnessed by the designated third party inspectors as notified by the authorized government agency regarding safety

S. No.	Description	PCT Heading	Conditions
			standards as laid down in LPG (Production and Distribution) Rules, 2001;
Goods imported by municipal authorities/local bodies/cantonment boards:-			
28(9)	Road sweeping lorries.	8705.9000	The goods shall not be sold or otherwise disposed of within a period of 5 years of their import without prior approval of the FBR and payment of customs duties and taxes leviable at the time of import.

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CUSTOMS

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1. Definitions

*Section 2, Clause (aaa),
Section 194
Appellate Tribunal*

The Bill seeks to omit the words "Excise and Sales Tax" from the definition of "Appellate Tribunal" to redefine "Appellate Tribunal" under the Customs Act. This amendment was necessary after the promulgation of Finance (Amendment) Ordinance, 2010, through which the appellate jurisdiction of Federal Excise and Sales Tax matters was transferred to newly re-designated "Appellate Tribunal Inland Revenue", while corresponding amendment in Section 2 (aaa) of the Customs Act was not made. This amendment has been proposed to reflect the correct jurisdiction of Customs Appellate Tribunal.

Further, the Bill also seeks to make corresponding amendment in Section 194 related to Appellate Tribunal by omitting the words "Excise and Sales Tax" after the words Customs.

*Clause (s)
Smuggled gold and precious items*

The Bill proposes to enhance the limit for taking cognizance of the smuggled gold and other precious items from Rs.50,000/- to Rs.150,000/-. This amendment appears to be reasonable by looking at the increase in prices of gold and other precious items internationally and change in the exchange rate of US dollar with Pak Rupee. It is pertinent to mention here that the present value of Rs. 50,000 was introduced vide Finance Act, 1998, as against the previous limit of Rs. 5,000.

2. Value of imported and exported goods

Section 25

The Bill seeks to substitute the words "including any export duty which may be chargeable" with the words "including any regulatory duty which may be chargeable under sub-section (3) of Section 18 of Customs Act" in clause (b) of sub-section (15) of Section 25.

Sub-section 15 of the Section 25 deals with the determination of Customs value of exported goods. The said section provides inclusion of export duty, if any, while computing the value of exported goods, whereas Section 18 restricts levy of export duty on goods exported outside Pakistan and only permits levy of regulatory duty under sub-section 3 of Section 18. The proposed amendment in clause (b) of the sub-section 15 of Section 25 intends to remove this anomaly and provides that regulatory duty, if any,

shall be included while computing the value of exported goods.

3. Power to determine the customs value

Section 25A

The Bill seeks to add new sub-section in Section 25A which deals with the power to determine the customs value under the Customs Act. The said section empowers the officials of the customs department to determine the customs value of any category of goods imported into or exported outside Pakistan after following the methods of valuation as laid down in Section 25. Further, in case of any conflict, such valuation may be carried out by the Director General of Customs Valuation. The new sub-section 4 is proposed to be added in Section 25A to give clarity regarding application of value so determined under the said section, until and unless it is revised or rescinded by the competent authority.

4. Review of the value determined and appeal before Appellate Tribunal

Sections 25D, 194A

The Bill seeks to substitute Section 25D relating to review of the value determined.

Originally this Section was introduced vide Finance Act, 2007, in order to end disputes between persons paying duty and the customs authorities, by virtue of which a person was given the facility to file a review application to the Director General of Valuation. However, this section did not provide any time limit for filing of the review application.

The Bill seeks to provide a time limit of thirty days for filing a review application before the Director General of Valuation against the value determined by the Collector of Customs or Director of Valuation.

Further, the Bill seeks to add clause (e) in sub-section 1 of Section 194A through which the order passed by the Director General Customs Valuation under Section 25D shall be appealable before the Special Bench of the Appellate Tribunal, consisting of a judicial and technical member.

5. Allowing mutilation or scrapping of certain goods

Section 27A

The Bill seeks to substitute Section 27A relating to mutilation or scrapping of certain goods and levy of customs duty thereon.

Previously, the section was inserted vide Finance Act, 2005 through which the duty on goods found denatured or mutilated was chargeable at the rates, as were applicable to denatured, mutilated or scrap goods on the request of the owner. It was then envisaged that undue advantage may be obtained by unscrupulous person under the provisions of this section by falsely declaring goods to be denatured, mutilated or scrapped.

In order to curb the misuse, the proposed amendment seeks to limit the permission for levy of duty as applicable to mutilated or scrapped goods. The said allowance of levying duty as applicable to mutilated or scrapped goods shall only be valid for goods notified by the Board in this regard.

6. False statement, error, etc.
Section 32

Section 32 deals with the cases of declaration of false statement and occurrence of error etc.

The Section provides certain time limits for service of notice in cases where duty or charge has not been levied or short-levied or erroneously refunded. The time limits are linked with the relevant dates which are also defined in sub-section 5. The said relevant dates include date of clearance of goods, date of final assessment of duty after provisional assessment, date of making erroneous refunds etc. as the case may be.

The present amendment seeks to increase the scope of the relevant dates and proposes to add clause (e) in sub-section 5 by inserting reference to the date of detection by post clearance audit in case of clearance of goods through Customs Computerized System, on self assessment or electronic assessment.

7. Fiscal fraud
Section 32A

This Section deals with the cases wherein any person may be treated as guilty of an offence of fiscal fraud. The Bill seeks to increase the scope of the said section by inserting the words payment of revenue through self-assessment in clause (c) of sub-section 1, whereby any person declaring false information regarding payment of revenue through self assessment shall also be treated as guilty of offence of fiscal fraud under this section. This amendment has been proposed to curb the practice of deliberate wrong self assessments.

8. Fiscal fraud declaration and assessment for home consumption or warehousing
Section 79

Sub-section 1 of the Section 79 provides an opportunity to the importer of goods for making declaration of goods after carrying out inspection of such goods. However, such inspection is subject to filing of request by the importer to an officer not below the rank of Assistant Collector.

The Bill seeks to add the words "in case of used goods" in the first proviso to sub-section 1 of the Section 79. This proposed amendment in the proviso envisages providing this facility to persons importing used goods only. Consequently, the facility of carrying out inspection before declaration of goods, shall not be available to persons importing unused goods.

Further the amendment seeks to transfer the jurisdiction from Assistant Collector to Additional Collector for making request for inspection of used goods for the purpose of declaration.

9. Provisional determination of liability
Section 81

Section 81 deals with making provisional determination of liability in cases where the customs department is unable to make final determination of liability and requires certain tests or inquiry for finalization of assessment. The Bill seeks to reduce the time limit for finalization of provisional assessment from six to three months from the date of provisional assessment. This amendment has been proposed to avoid delay in finalization of provisional assessment.

However, through addition of proviso in sub-section 2, the time period due to adjournment of proceedings on account of stay order or for want of clarification from the Board or extension in time obtained by the importer, shall not be accounted for while calculating the period for finalizing the provisional assessment under this section.

Further, the Bill seeks to insert a new sub-section 5, whereby the relevant officer of the Customs Authority will be required to issue an order for adjustment, refund or recovery of amount secured as a result of final determination of assessment.

10. Punishment for offences
Section 156

The Bill seeks to make changes in the penalties for offences enlisted in S.No. 1 and 64 in the Table mentioned in sub-section 1 of Section 156, as follows:

1. If any person contravenes any provision of this Act or any rule made thereunder, or abets any such contravention or fails to comply with any provision of this Act or any such rule which was his duty to comply where no express penalty has been provided elsewhere for such contravention or failure.	
Existing	Proposed
Penalty not exceeding twenty five thousand rupees.	Penalty not exceeding fifty thousand rupees.
64. If any person contravenes any rule or condition relating to Section 128 or Section 129	
Existing	Proposed
Penalty not exceeding twenty five thousand Rupees; and any goods in respect of which such offence has been committed shall also be liable to confiscation.	Penalty not less than twice the value of the goods in respect of which such offence has been committed. In addition, the goods shall also be liable to confiscation.

11. First Schedule

A number of changes have been proposed in the First Schedule, affecting a large number of items for which reference may be made to the substituted schedule of Customs Tariff.

12. Customs Notifications

Certain amendments have been made in the existing notifications issued in previous years and amended from time to time, a summary of which is as under:

SRO 391 (I)/2010

This SRO has amended the SRO 567 (I)/2006 dated 05 June 2006 and is effective from 06 June 2010. By virtue of this notification, the following new raw materials are added in the list of concessional customs duty of 5% which are used by the pharmaceutical industry.

- a) Protacine (Proglumet, Dimaleate)
- b) Celecoxib
- c) Sodium Casinate
- d) Activated Glucuronate
- e) Tasigna (Nilotinib)

SRO 392 (I)/2010

This SRO is effective from 06 June 2010 and has amended SRO 565 (I)/2006 dated 05 June 2006 which provides exemption on import of raw materials, sub-components, components, sub-assemblies and assemblies, for the manufacture of goods specified therein. By virtue of this notification, the following significant amendments/ insertions have been made:

- a) The rate of customs duty is increased from 0% to 5% on copper & aluminum tubes and electro galvanized steel sheets if imported by manufacturers of evaporators, condensers and washing machines.
- b) "Coconut Acid Oil" is added in the list of concessional customs duty of 10% as a raw material for the manufacturing of laundry soap.
- c) To encourage the local manufacturing of LED TV, 5% concessional customs duty is provided on import of Light Emitting Diode (LED) panel sets.
- d) Certain raw materials for the manufacturing of energy saving lamps are included in the list of concessional customs duty of 0%.
- e) To reduce the cost of manufacturing of tin plates, 15% concessional duty is provided on import of secondary quality tin mill black plates.
- f) 10% concessional rate of customs duty on Sodium sulphate is provided if imported by glass manufacturers and detergent industry.
- g) To reduce the cost of leather and tanning industry, 15% concessional customs duty is provided on import of shavings/ fleshing, splitting blades and stamping foils.

SRO 393 (I)/2010

This SRO amends the earlier SRO 1261 (I)/2007 dated 31 December 2007 which governs Free Trade Agreement with Malaysia. By virtue of this amendment, the rate of customs duty on import of crude oil is reduced from Rs.7,650/MT to Rs.6,800/MT during the period from 06 June 2010 to 31 December 2014.

SRO 394(I)/2010

This SRO amends SRO 575(I)/2006 dated 05 June 2006 and is effective from 06 June 2010. The significant amendments/ additions are as follows:

- a) Zero percent duty is provided on import of rice whitener, rice polisher, rice flow meter and magnetic separator.
- b) Zero percent duty is provided on import of milk filters for dairy industry.
- c) 5% concessionary rate of customs duty is provided on import of approved models of LPG dispensers by a company having LPG license subject to fulfillment of certain conditions provided therein.
- d) 5% concessionary rate of customs duty is provided on import of sweeping lorries, pyranometers and accessories for solar data collection, solar chargers for charging electronic devices, remote control for solar charge controller and wind water pump.

FEDERAL EXCISE

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1. Records*Section 17, Sub-section (1)*

Section 17 provides a time period of five years for retention of the records and documents required to be maintained under the FE Act. It is proposed to amend to the later of six years or till the final decision in any proceedings including proceedings for assessment, appeal, revision, reference, petition and any proceedings before the Alternate Dispute Resolution Committee.

2. Appointment of Federal Excise officers and delegation*Section 29, Sub-section (1), (1A), (1B) & (1C)*

Section 29 empowers the Board to appoint officers to perform various functions under the FE Act. In wake of introduction of the concept of "Inland Revenue" aimed to designate a unified name for all the revenue collection departments of the Board, designation of officers have been redefined and is proposed to be replaced with the existing designations provided under the FE Act.

The Bill proposes to insert new sub-sections providing hierarchy of the officers. In terms of sub-section (1A) the Chief Commissioners Inland Revenue and Commissioners Inland Revenue (Appeals) shall be subordinate to the Board whereas Commissioners Inland Revenue shall be subordinate to the Chief Commissioners Inland Revenue. Other officers shall be subordinate to the Commissioners Inland Revenue.

3. Power of adjudication*Section 31*

Section 31 provides the adjudication powers of different Federal Excise officers. Since adjudication is now made a part of the audit proceedings, separate powers of adjudication being superfluous are no longer required. In view of this, the provisions of section 31 are proposed to be omitted.

4. Reference to the High Court*Section 34A*

The Bill seeks to insert a new section 34A dealing with filing of reference to the High Court against the order passed by the Commissioner. The application for filing of reference is to be filed within 90 days of the communication of the order of the Appellate Tribunal. The application is to be filed in the prescribed form alongwith the statement of the case, stating any question of law arising out of impugned order.

Where upon filing of reference application, the High Court is satisfied that a question of law arises out of the impugned order, the court may proceed to hear the case. Reference application is to be heard by a bench comprising of at least two judges of the High Court. In conducting the reference applications the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply. The High Court shall decide the question of law raised by the reference and pass judgment accordingly specifying the grounds on which such judgment is based. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.

The filing of reference application shall not give automatic stay of demand payable arising out of the order of the Appellate Tribunal.

Where the amount of tax is reduced as a result of the judgment in the reference by the High Court and the amount of tax is refundable, the High Court may, on the application filed by the Commissioner within 30 days of the receipt of the judgment, direct to postpone the refund. This application can only be entertained in the event the Commissioner intends to prefer petition for leave to appeal to the Supreme Court. In such case the refund may be postponed until the disposal of the appeal by the Supreme Court.

Where recovery of tax is stayed by the High Court, the stay order issued in such case shall have the validity for a period of six months unless the appeal is decided or such order is withdrawn by the High Court earlier.

5. Selection for audit by the Board*Section 42B*

The Bill seeks to introduce a new section 42B empowering the Board to select persons or classes of persons for audit of records and documents through computer ballot on the basis as deemed fit by the Board. The audit shall be conducted in accordance with the procedures laid down in section 46 of the FE Act and all other provisions of the FE Act, shall apply accordingly.

6. Departmental audit*Section 46, sub-section 2A*

Section 46 provides the modus operandi in conducting audits under the FE Act. In view of deletion of section 31 which deals with the power of adjudication of various Federal Excise Officers, the Bill seeks to insert a new sub-section 2A. In terms thereof the officer of the Inland Revenue upon completion of the audit under this section, if considered necessary shall pass an order under section 14 of the FE Act. It is provided

that in passing the order the officer may impose the amount of duty as per law, charge default surcharge, and impose penalty and recovery of any amount erroneously refunded.

7. Service of notices and other documents Section 47

This section has been redrafted and lays down the procedure for service of orders, decision, etc. It stipulates that any notice, order or requisition would be treated as properly served if personally served or through an authorized representative, sent by registered post or courier service or service of a summons under Code of Civil Procedure, 1908.

In case of dissolved association of persons, the service may be on any person who was the principal officer or member of the association immediately before such dissolution.

In case of discontinued business, it may be served on a person or his representative at the time of discontinuance.

This section further stipulates that the validity of any notice or its service thereof shall not be called into question after the notice has been complied with in any manner.

It appears that explicit provisions have been laid out to prevent persons from challenging on the grounds that no notice has been served.

8. Harmonization of tax laws

As part of the restructuring of the Board, the jurisdiction of the Sales Tax and Federal Excise laws was shifted from the Customs group and merged with the Income tax group. As a result Income tax, Sales Tax and Federal Excise were merged under the newly formed Inland Revenue. As a consequence, the Finance (Amendment) Ordinance, 2009 was promulgated on 28 October 2009 and sought to harmonize the three taxes under the jurisdiction of Inland Revenue. The Finance (Amendment) Ordinance, 2009 has apparently lapsed and the changes sought through this Ordinance have now been incorporated in the Finance Bill 2010. Basically the changes seek to harmonize the nomenclature of the three tax laws. Hence it seeks to replace terminologies like the following:

Old Terminology	New Terminology
Collector of Federal Excise	Commissioner Inland Revenue
Collector	Commissioner
Additional Collector of Federal Excise	Additional Commissioner Inland Revenue
Deputy Collector of Federal Excise	Deputy Commissioner Inland Revenue
Assistant Collector of Federal Excise	Assistant Commissioner Inland Revenue
Officer of Federal Excise	Officer of Inland Revenue
Superintendent	Superintendent Inland Revenue
Customs, Excise and Sales Tax Appellate Tribunal	Appellate Tribunal Inland Revenue

9. Rates of Federal Excise Duty

9.1 The following goods are proposed to be brought under the purview of excisable goods by including the same in Table I of the First Schedule to the FE Act:

S. No	Nature of Services	Rate of Duty
1.	Filter rods for cigarettes (Entry No.50)	One rupee per filter rod
2.	Air-conditioners (Entry No.51)	10% ad val
3.	Deep Freezers (Entry No.52)	10% ad val

9.2 The rates of duty in respect of the following goods are proposed to be changed:

S. No	Relevant entry in Table 1	Nature of Goods	Existing Rate of Duty	Proposed Rate of Duty
1.	8	Cigars, Cheroots, Cigarillos and cigarettes, of tobacco or of tobacco substitutes	64% of retail price	65% of retail price
2.	9	Locally produced cigarettes if their retail price exceeds nineteen rupees and fifty paise per ten cigarettes	64% of retail price	65% of retail price

S. No	Relevant entry in Table I	Nature of Goods	Existing Rate of Duty	Proposed Rate of Duty
3.	10	Locally produced cigarettes if their retail price exceeds ten rupees per ten cigarettes but does not exceed nineteen rupees and fifty paise per ten cigarettes	Four rupees and seventy five paise per ten cigarettes plus 70% per incremental rupee or part thereof	Five rupees and twenty five paise per ten cigarettes plus 70% per incremental rupee or part thereof
4.	11	Locally produced cigarettes if their retail price does not exceed ten rupees per ten cigarettes.	Four rupees and seventy five paise per ten cigarettes	Five rupees and twenty five paise per ten cigarettes
5.	12	Cigarettes manufactured by a manufacturer who remains engaged on and after the 10 June, 1994, either directly or through any other arrangement, if the manufacture of any brand of cigarette in non-tariff areas.	64% of retail price	65% of retail price
6.	36	Natural gas in gaseous state.	Five rupees and nine paise per Million British Thermal Unit	Ten rupees per Million British Thermal Unit
7.	37	Other petroleum gases in gaseous state.	Five rupees and nine paise per Million British Thermal Unit	Ten rupees per Million British Thermal Unit

- 9.3 All the above changes in the rate of Federal Excise Duty, except natural gas in gaseous state (Entry No.36 of Table I) and other petroleum gases in gaseous state (Entry No.37 of Table I) shall take effect and shall be deemed to have taken effect from 05 June 2010. The new rate of entry No.36 and 37 will be effective from 01 July 2010.
- 9.4 The Bill seeks to enhance the general rate of sales tax from sixteen percent to seventeen percent, however, the Bill does not propose to enhance the rate of Federal Excise Duty of those goods and services which are subject to FED in sales tax mode.
- 9.5 The Finance Act, 2008 brought restriction in the interpretation clause as given in Table I of the First Schedule to the FE Act which provides that for the purpose of levy, collection and payment of duty at the prescribed rate in respect of locally produced cigarettes as mentioned in serial Nos.9, 10 and 11 of Table I of the First Schedule, no cigarette manufacturer shall reduce the price from the level adopted on the day of the announcement of the budget 2008-2009. The Finance Act, 2009 substituted the year 2008-2009 with 2009-2010. The Bill now seeks to substitute the year 2009-2010 with the year 2010-2011.

10. Federal Excise Notifications

In exercise of the power conferred by the FE Act, the Board has issued SRO 399(1)/2010 dated 05 June 2010 whereby SRO 650(1)/2005 dated 01 July 2005 issued by the Board has been rescinded. The said SRO disallows the adjustment of duty paid to the extent of 75% on the following goods which are used in manufacturing of Aerated Waters (falling under Headings 2201.1010 and 2202.1020):

- Concentrates in all forms including syrup form (falling under Heading 2106.9010)
- Flavours and concentrates (falling under Heading 3302.1010)

By virtue of SRO 399(1)/2010, the duty paid on the above goods would be fully adjustable with effect from 01 July 2010.



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