

# SENATE OF PAKISTAN

REPORT NO.24 OF 2020



*House of the Federation*

## REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE AND ECONOMIC AFFAIRS

ON

THE TAX LAWS (SECOND AMENDMENT) ORDINANCE/BILL, 2020,  
AS TRANSMITTED BY THE NATIONAL ASSEMBLY

PRESENTED BY:

**SENATOR FAROOQ HAMID NAEK**

## **SENATE SECRETARIAT**

### **REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE, AND ECONOMIC AFFAIRS ON THE TAX LAWS (SECOND AMENDMENT) BILL, 2020**

I, Senator Farooq Hamid Naek, Chairman, Standing Committee on Finance, Revenue and Economic Affairs, have the honour to present, on behalf of the Committee, this report on Ordinance/Bill further to amend certain tax laws, [The Tax Laws (Second Amendment) Ordinance 2019] transmitted to the House on 4<sup>th</sup> February, 2020, under proviso to Article 73 of the Constitution for making recommendations, if any, thereon to the National Assembly and referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee is given as under: -

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Syed Shibili Faraz	Member
(3)	Senator Ayesha Raza Farooq	Member
(4)	Senator Mushahid Ullah Khan	Member
(5)	Senator Musadik Masood Malik	Member
(6)	Senator Dilawar Khan	Member
(7)	Senator Muhammad Akram	Member
(8)	Senator Muhammad Talha Mahmood	Member
(9)	Senator Imam-ud-Din Shouqeen	Member
(10)	Senator Mohsin Aziz	Member
(11)	Senator Mian Muhammad Ateeq Shaikh	Member
(12)	Senator Anwar ul Haq Kakar	Member
(13)	Senator Sherry Rehman	Member
(14)	Advisor the Prime Minister for Finance and Revenue	Ex-Officio Member



3. The Committee considered the said Ordinance/Bill in its meeting held on 12<sup>th</sup> February, 2020, at Parliament House, Islamabad. The meeting of the Committee was attended by the following Senators:-

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Syed Shibili Faraz	Member
(3)	Senator Ayesha Raza Farooq	Member
(4)	Senator Mian Muhammad Ateeq Shaikh	Member
(5)	Senator Imam-ud-Din Shouqeen	Member
(6)	Senator Muhammad Akram	Member
(7)	Senator Sherry Rehman	Member

4. The Committee expressed its displeasure to the absence of Advisor to the Prime Minister on Finance and Revenue Affairs as well as Secretary Finance and observed non-serious attitude of the concerned department.

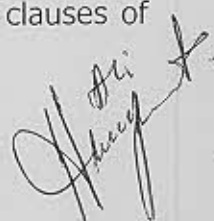
5. The Chairman Committee briefed the participants of the meetings regarding the provisions of Article 70 of the Constitution of Pakistan which deals with ordinary legislation with respect to any matter in the Federal Legislative List as well as Article 73 of the Constitution of Pakistan which deals with procedure with respect to Money Bills and lays down conditions as to when a Bill shall be deemed to be a Money Bill and when a Bill shall not be deemed to be a Money Bill as provided in Article 73 (2) and Article 73 (3) respectively of the Constitution of Pakistan 1973. He also cited a judgment reported in **PLD 2017 SC 28** (Workers Welfare Funds versus East Pak Chrome Tannery Pvt. Ltd). In para 22 on page 50 – 51 of this judgment it has been held that:

*"merely inserting amendments, albeit relating to finance but which had no nexus to tax in a Finance Act did not mean that such Act was a Money Bill as defined in Art.73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Art. 70 of the Constitution by resorting to Art.73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution."*

6. The Members FBR and Customs apprised the Committee that these amendments were necessitated by the FATF which has stated that the current penalties are insufficient and penalties and fines are necessary to be increased. According to them penalties and fines along with the procedure and related matters fall within the ambit of imposition of tax and regulation of tax and as such The Tax Laws (Second Amendment Ordinance) 2019 may be recommended as Money Bill as defined in Article 73 (2) (a) of the Constitution of Pakistan.

7. The Legislative Advisor of Ministry of Law and Justice was of the view that the imposition of penalties and fine do not fall within the ambit and purview of the Money Bill as defined in Article 73 (2) (a) but fall within the ambit of Article 73 (3) (a) of the Constitution of Pakistan 1973.

8. After going through the clauses of The Tax Laws (Second Amendment) Ordinance 2019 the Committee was of the view that more than 90% of clauses of



the said Bill comprised of imposition of penalties or fines and procedure and other matters which do not pertain to the imposition, abolition, deletion, alteration and regulation of any tax. The question arises as to whether Doctrine of Severability can be applied in the instant case to preserve the operation of the clauses which deals with the imposition or reduction of tax. Taking guidance from the case reported in **PLD 2012 SC 923** (Baz Muhammad Kakkar V Federation of Pakistan) the Committee was of the view that the said Doctrine cannot be applied to sever the unconstitutional portion of a partially unconstitutional Bill (in this case major portion of the Bill under consideration is unconstitutional) in order to preserve the operation of the valid remainder as it is so closely mixed up with the invalid portion that it cannot be separated without leaving an incomplete or more a less mixed remainder.

9. After discussion and deliberation and hearing all stakeholders, through voting with three Members in favour namely Messers Senators Sherry Rehman, Imam-ud-Din Shouqeen and Muhammad Akram and two against namely Messers Senators Shibli Faraz and Mian Muhammad Ateeq Shaikh decided that the Bill does not deal with the imposition, abolition, remission, alteration or regulation of any tax, therefore, does not fall within the purview of Article 73 (2) of the Constitution of Pakistan. **The Committee therefore recommends by majority to the National Assembly that the Tax Laws (Second Amendment) Ordinance 2019, does not fall within the purview of Article 73 (2) of the Constitution, therefore,**



the said Bill may be withdrawn by Government and the same be brought under Article 70 of the Constitution of Pakistan 1973.

10. The Ordinance/Bill as transmitted to the Senate is annexed



**(HYDER ALI)**

JS/Secretary (Committee)



**(SENATOR FAROOQ HAMID NAEK)**

Chairman (Committee)

Islamabad, the  
14<sup>th</sup> February, 2020

[Published in the Gazette of Pakistan, Extraordinary, Part-I,  
dated the 28<sup>th</sup> December, 2019]

ORDINANCE NO.XXVI OF 2019

AN

ORDINANCE

*further to amend certain tax laws*

WHEREAS it is expedient further to amend certain tax laws  
for the purposes hereinafter appearing;

AND WHEREAS, the Senate and the National Assembly are  
not in session and the President of the Islamic Republic of  
Pakistan is satisfied that circumstances exist which render it  
necessary to take immediate action;



NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Tax Laws (Second Amendment) Ordinance, 2019.

(2) It shall come into force at once.

2. **Amendments in the Customs Act, 1969 (IV of 1969).**—In the Customs Act, 1969 (IV of 1969), the following further amendments shall be made, namely:—

(1) after section 3CC, the following new section shall be inserted, namely:—

“3CCA. **Directorate General of Law and Prosecution.**— The Directorate General of Law and Prosecution shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors, Special Public Prosecutors and such other officers as Board may, by notification in the official Gazette, appoint.”;

(2) in section 6, in sub-section (1), after the word “Banks”, the expression “in accordance with the legal framework notified by the Board” shall be inserted;

(3) in section 7, after full stop at the end, the expression “The provision of assistance so requested shall be binding.”, shall be added;

(4) in section 139, the existing provision thereof shall be re-numbered as sub-section (1) thereof and after the proviso to the re-numbered sub-section (1), the following new sub-section shall be added, namely:—

“(2) In case of recovery or seizure subsequent to false declaration or failure to declare under sub-section (1) of the items notified under clause(s) of section 2, offence shall be treated at par with clause(s) of section 2.”;

(5) in section 156, in sub-section (1), in the Table, in column zero,—



- (a) in serial 8, after sub-serial (ii) and entries relating thereto in columns (1), (2) and (3), the following new serials shall be inserted, namely:—

“(iii)	if the smuggled or prohibited goods comprise currency of all types.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to;	General
	(a) if the amount of the currency over and above the permissible limit is upto US dollars 10,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the excess amount of the currency;	
	(b) if the amount of the currency over and above the permissible limit is US dollars 10,001/- to 20,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times the value of the excess amount of the currency;	
	(c) if the amount of the currency over and above the permissible limit is US dollars 20,001/- to 50,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding two years;	
	(d) if the amount of the currency over and above the permissible limit is US dollars 50,001/- to 100,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding seven years;	
	(e) if the amount of the currency over and above the permissible limit is US dollars 100,001/- to 200,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to	

		imprisonment for a term not exceeding ten years:  Provided further that the sentence of the imprisonment shall not be less than three years.	
	(f) if the amount of the currency over and above the permissible limit exceeds US dollars 200,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years:  Provided further that the sentence of the imprisonment shall not be less than five years.	
(iv)	If the smuggled/prohibited goods comprise of gold, silver, platinum or precious stones in any form;	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to;	General
	(a) if the quantity of such goods is up to 15 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the goods;	
	(b) if the quantity of such goods is from 16-30 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times the value of the currency;	
	(c) if the quantity of such goods is from 31-50 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding one year;	
	(d) if the quantity of such goods is from 51-100 tola gold	such goods shall be liable to confiscation and any person	

	or equivalent in value (silver or platinum) etc.	concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding three years;	
	(e) if the quantity of such goods is from 101-200 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding five years;	
	(f) if the quantity of such goods is from 201-500 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding ten years:  Provided further that the sentence of the imprisonment shall not be less than three years.	
	(g) if the quantity of such goods exceeds 500 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years:  Provided further that the sentence of the imprisonment shall not be less than five years.”;	

- (b) against serial 47A, in entry related thereto in column (2), in the proviso, for the full stop at the end, a colon shall be substituted and thereafter the following second proviso shall be added, namely:—

“Provided further that the aforesaid penalty shall not apply in cases where goods are imported or received as gift by individuals without NTN or STRN through courier or air cargo, diplomatic cargo and imports made by the Federal Government or Provincial Government or Local Government.”; and

- (c) for serial 70 and entries relating thereto in column (1), (2) and (3), the following shall be substituted, namely:—

"70		if the owner of any baggage fails to declare or makes a false declaration with respect to his baggage or refuses to answer any questions put to him by the appropriate officer with respect to his baggage or any of its contents including articles carried with him or fails to produce baggage or any such article for examination, and if such goods are:		
	(i)	Other than currency, gold, silver & platinum and precious stones in any form	Such owner shall be liable to a penalty not exceeding three times the value of the goods; and such goods shall also be liable to confiscation.	139 (1)
	(ii)	Currency of all types.		139(2)
		(a) if the amount of the currency over and above the permissible limit is upto US dollars 10,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the excess amount of the currency;	
		(b) if the amount of the currency over and above the permissible	such currency shall be liable to confiscation and any person concerned in	

		limit is US dollars 10,001/- to 20,000/- or equivalent in value (currency of other denomination) etc.	the offence shall be liable to a penalty not exceeding two times the value of the excess amount of the currency;	
		(c) if the amount of the currency over and above the permissible limit is US dollars 20,001/- to 50,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding two years;	
		(d) if the amount of the currency over and above the permissible limit is US dollars 50,001/- to 100,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding seven years;	
		(e) if the amount of the currency over and above the permissible limit is US dollars 100,001/- to 200,000/- or equivalent in value (currency of other denomination) etc.	Such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding ten years:  Provided further that the sentence of the imprisonment shall not be less than three years.	
		(f) if the amount of the currency over and above the permissible	such currency shall be liable to confiscation and any person concerned in	



		limit exceeds US dollars 200,000/- or equivalent in value (currency of other denomination) etc.	<p>the offence shall be liable to a penalty not exceeding ten times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years:</p> <p>Provided further that the sentence of the imprisonment shall not be less than five years.</p>	
	(iii)	gold, silver, platinum and precious stones in any form;		139(2)
		(a) if the quantity of such goods is up to 15 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the goods;	
		(b) if the quantity of such goods is from 16-30 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times the value of the currency;	
		(c) if the quantity of such goods is from 31-50 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding one year;	
		(d) if the quantity of such goods is from 51-100 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon	



			conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding three years;	
		(e) if the quantity of such goods is from 101-200 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding five years;	
		(f) if the quantity of such goods is from 201-500 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding ten years:  Provided further that the sentence of the imprisonment shall not be less than three years.	
		(g) if the quantity of such goods exceeds 500 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years:  Provided further that the sentence of the imprisonment shall not be less than five years.	

- (6) in section 164, after sub-section (2), the following new sub-section shall be added, namely:—

“(3) For the execution of the above, the officers or officials shall be empowered to use all necessary force including use of firearms subject to section 97 of the Pakistan Penal Code, 1860 (Act XLV of 1860) in the line of duty.”;

- (7) in section 169, in sub-section (4), for the full stop at the end, a colon shall be substituted and thereafter the following provisos shall be added, namely:—

“Provided that where the seized goods liable to confiscation are produced during any inquiry or trial before the court of Special Judge Customs and if such goods are subject to speedy or natural decay, the court may on an application after recording evidence, as it thinks necessary, order the goods to be sold or otherwise dispose of in terms of this section:

Provided further that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic or psychotropic substance seized or taken into custody, the Court may, either on an application or of its own motion and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other court and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf:

Provided also that such samples shall be deemed to be whole of the property in an inquiry or proceedings in relation to such offence before any authority or court.”;

- (8) in section 185A, in sub-section (2), for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that such cases shall be disposed of within six months of the receipt of report or within such extended period as the Special Judge may, for reasons to be recorded in writing, fix.”;

- (9) for section 194, the following shall be substituted, namely:—

“194. **Appellate Tribunal.**—(1) There shall be established an Appellate Tribunal to be called the Customs Appellate Tribunal to exercise the powers and perform the functions conferred on the Customs Appellate Tribunal by this Act.

- (2) The Customs Appellate Tribunal shall consist of a chairman and such other judicial and technical members who shall be appointed in such numbers and in such manner as the Prime Minister may prescribe by rules, which may be made and shall take effect notwithstanding anything contained in section 219 or any other law or rules for the time being in force.
- (3) No person shall be appointed as judicial member of a Customs Appellate Tribunal unless he—
- (a) has been a Judge of a High Court;
  - (b) is or has been a District Judge; or
  - (c) is an advocate of a High Court with a standing of not less than ten years; or
  - (d) possesses such other qualification as may be prescribed under sub-section (2) of this section.
- (4) No person shall be appointed as a technical member of a Customs Appellate Tribunal unless he—
- (a) is an officer of the Pakistan Customs Service equivalent in rank to that of member of the Board or Chief Collector of Customs or Director General; or
  - (b) is a Collector or Director or Chief of the Board having not less than three years experience in that position.
- (5) The constitution, functioning of benches and procedure of the Customs Appellate Tribunal shall be regulated by rules which the Prime Minister may prescribe.
- (6) The rules in respect of the matters covered under this section made prior to commencement of the Tax Laws (Second Amendment) Ordinance, 2019 shall continue in force unless amended or repealed.”;
- (10) in section 196, in sub-section (5), for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that the reference filed under sub-section (1) shall be decided within six months of filing the application or within such extended period as the High Court may, for reasons to be recorded in writing, fix.”.

3. **Amendments in the Sales Tax Act, 1990.**—In the Sales Tax Act, 1990, the following further amendments shall be made, namely:—

(1) in section 2,—

(a) after clause (12), the following new clause shall be inserted, namely:—

“(12A) “greenfield industry”, in relation to the entry at serial number 150 of the Table-1 of the Sixth Schedule, means—

(a) a new industrial undertaking which is—

- (i) setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work;
- (ii) built, without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
- (iii) not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project;
- (iv) using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and

(b) is approved by the Commissioner on an application made in the prescribed form and manner, accompanied by the prescribed documents and, such other documents as may be required by the Commissioner:

Provided that this definition shall be applicable from the 1st July, 2019 and onwards.”.

(b) in clause (43A),—

- (i) for the expression "Tier-1 retailers means,—", the expression "'Tier-1 retailer" means a retailer falling in any one or more of the following categories, namely:—" shall be substituted;
- (ii) in sub-clause (c), for the word "six", the word "twelve" shall be substituted;
- (iii) in sub-clause (d), the word "and" at the end shall be omitted; and
- (iv) in sub-clause (e), for the full stop at the end, the expression "; and" shall be substituted and thereafter the following new sub-clause shall be added, namely:—  
 "(f) any other person or class of persons as prescribed by the Board."

- (2) in section 33, in the Table, in column (1), after serial 23 and entries relating thereto in columns (2) and (3), the following new serial numbers and entries relating thereto shall be added, namely:—

<p>"24. Any person, who is integrated for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, conducts such transactions in a manner so as to avoid monitoring, tracking, reporting or recording of such transactions, or issues an invoice which does not carry the prescribed invoice number or barcode or bears duplicate invoice number or counterfeit barcode, or any person who abets commissioning of such offence.</p>	<p>Such person shall pay a penalty of five hundred thousand rupees or two hundred per cent of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to two years, or with additional fine which may extend to two million rupees, or with both.</p> <p>Any person who abets commissioning of such offence, shall be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to one year, or with additional fine which may extend to two hundred thousand rupees, or with both.</p>	<p>sub-section (9A) of section 3 and section 40C.</p>
<p>25. Any person, who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law.</p>	<p>Such person shall be liable to pay a penalty up to one million rupees, and if continues to commit the same offence after a period of six months after imposition of penalty as aforesaid, his business premises shall be sealed and an embargo shall be placed on his sales.</p>	<p>sub-section (9A) of section 3 and section 40C.</p>



26. Any person, being a manufacturer or importer of an item which is subject to tax on the basis of retail price, who fails to print the retail price in the manner as stipulated under the Act.	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher:  Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of the total retail price of such goods.	sub-section (27) of section 2 and clause (a) of sub-section (2) of section 3.
27. Any person, being owner of the goods, which are brought to Pakistan in violation of section 40D.	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher:  Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of value, or retail price in case of items falling in the Third Schedule, of such goods.	section 40D*:

- (3) after section 40C, the following new section shall be inserted, namely:—

“40D. **Provisions relating to goods supplied from tax-exempt areas.**— (1) The conveyances carrying goods supplied from the tax exempt areas, shall be accompanied by such documents in respect of the goods carried as may be prescribed under rules.

- (2) The Regional Tax Office having jurisdiction may establish check-posts on the routes originating from tax-exempt areas for the purpose of examining the goods carried and the documents related thereto. An officer not below the rank of Inspector, Inland Revenue, as authorized by the Commissioner, Inland Revenue, and assigned to such check-posts, may stop vehicles on such routes as coming from tax-exempt areas and examine documents for ascertaining their validity and conformity to the goods carried.
- (3) In the absence of the prescribed documents or any discrepancy in such documents, the goods so carried shall be seized along with the vehicle carrying the goods by the officer as aforesaid under proper acknowledgment.



- (4) The notices to the owner of the goods and the vehicle to show cause against imposition of penalty shall be issued within fifteen days of the seizure as aforesaid.
- (5) For the purposes of this section, the expression "tax-exempt areas" means Azad Jammu and Kashmir, Gilgit-Baltistan, Tribal Areas as defined in Article 246 of the Constitution of the Islamic Republic of Pakistan and such other areas as may be prescribed."
- (4) in section 73, after sub-section (3) and explanation thereunder, the following new sub-section shall be added, namely:—
- "(4) A registered manufacturer shall make all taxable supplies to a person who has obtained registration under this Act excluding supplies not exceeding a value of one hundred million Rupees in a financial year and ten million Rupees in a month, failing which the supplier shall not be entitled to claim credit adjustment or deduction of input tax as attributable to such excess supplies to unregistered person."
- (5) in section 76, for the words "Federal Government", the expression "Board with approval of the Federal Minister-in-charge" shall be substituted.
- (6) in the Sixth Schedule, in Table-I, in column (1),—
- (i) against serial number 24, in column (2), in the Explanation, for the word "to", the expression "on local supplies made by importers," shall be substituted;
- (ii) against serial number 82, in column (2), after the word "offal", the expression ", excluding those sold in retail packing under a brand name or a trademark" shall be added; and
- (iii) against serial number 83, in column (2), after the word "fish", the expression ", excluding those sold in retail packing under a brand name or a trademark" shall be added.
- (7) in the Eighth Schedule, in Table-1, in column (1),—
- (2) against serial number 5, in column (4), for the expression "5%", the expression "10%" shall be substituted;

- (b) against serial number 68, in column (5), the expression "If sold in retail packing under a brand name or trademark" shall be inserted; and
  - (c) against serial number 69, in column (5), the expression "If sold in retail packing under a brand name or trade mark" shall be inserted.
- (8) in the Ninth Schedule, in Table, in column (1), against serial number 2,—
  - (a) against sub-serial A, in column (3) and (4), for the expression "Rs. 135", the expression "Rs. 130" shall be substituted respectively;
  - (b) against sub-serial B, in column (3) and (4), for the expression "Rs. 1320", the expression "Rs. 200" shall be substituted respectively;
- (9) in the Tenth Schedule,—
  - (a) for the PCT heading "6901.1000", the PCT heading "6901.0000" shall be substituted; and
  - (b) the expression "on monthly return," shall be omitted;
- (10) in the Twelfth Schedule, under the heading "Procedure and conditions",—
  - (a) in clause (2),—
    - (i) in sub-clause (viii), the word "and" at the end shall be omitted; and
    - (ii) in clause (ix), for full stop at the end, the expression "; and" shall be substituted and thereafter the following new clause shall be added, namely:—
      - "(x) plant, machinery and equipment falling in Chapters 84 and 85 of the First Schedule to the Customs Act, 1969 (IV of 1969), as are imported by a manufacturer for in-house installation or use."; and
  - (b) for clause (4), the following shall be substituted, namely:—
    - "(4) The refund of excess input tax over output tax, which is attributable to tax paid under this Schedule, shall not be

refunded to a registered person in any case, except that as used for making of zero-rated supplies.”.

**4. Amendments in the Income Tax Ordinance, 2001 (Ordinance XLIX of 2001).—** In the Income Tax Ordinance, 2001 (XLIX of 2001),—

- (1) in section 2, after clause (27), the following new clause shall be inserted, namely:—

“(27A) “greenfield industrial undertaking” means—

(a) a new industrial undertaking which is—

- (i) setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work;
- (ii) built without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
- (iii) not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project;
- (iv) using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and

(b) is approved by the Commissioner on an application made in the prescribed form and manner, accompanied by the prescribed documents and, such other documents as may be required by the Commissioner:

Provided that this definition shall be applicable from the 1st July, 2019 and onwards.”.

- (2) for section 130, the following shall be substituted, namely,—

“130. **Appellate Tribunal.**— (1) There shall be established an Appellate Tribunal to be called the Appellate Tribunal Inland Revenue to exercise the powers and perform the functions conferred on the Appellate Tribunal Inland Revenue by this Act.

- (2) The Appellate Tribunal Inland Revenue shall consist of a chairman and such other judicial and accountant members who shall be appointed in such numbers and in such manner as the Prime Minister may prescribe by rules, which may be made and shall take effect notwithstanding anything contained in section 237 or any other law or rules for the time being in force.
- (3) No person shall be appointed as judicial member of an Appellate Tribunal Inland Revenue unless he—
- (a) has been a Judge of a High Court;
  - (b) is or has been a District Judge; or
  - (c) is an advocate of a High Court with a standing of not less than ten years; or
  - (d) possesses such other qualification as may be prescribed under sub-section (2) of this section.
- (4) No person shall be appointed as an accountant member of a Appellate Tribunal Inland Revenue unless he—
- (a) is an officer of the Inland Revenue Service equivalent in rank to that of Regional Commissioner;
  - (b) is a Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) having not less than three years experience as Commissioner or Collector;
  - (c) has for a period of not less than ten years practiced professionally as a chartered accountant within the meaning of the Chartered Accountants' Ordinance, 1961 (X of 1961); or
  - (d) has for a period of not less than ten years practiced professionally as a cost and management accountant within the meaning of the Cost and Management Accountants' Act, 1966 (XIV of 1966).
- (5) The constitution, functioning of benches and procedure of the Appellate Tribunal Inland Revenue shall be regulated by rules which the Prime Minister may prescribe.
- (6) The rules in respect of the matters covered under this section made prior to commencement of the Tax Laws (Second

Amendment) Ordinance, 2019 shall continue in force unless amended or repealed.”;

- (3) in section 152, after sub-section (1C), the following two new sub-sections shall be inserted, namely:—

“(1D) Every banking company or a financial institution maintaining special convertible rupee account (SCRA) of a non-resident company having no permanent establishment in Pakistan shall deduct tax from capital gain arising on the disposal of debt instruments and Government securities including treasury bills and Pakistan investment bonds invested through SCRA at the rate specified in Division II of Part III of the First Schedule.

(1E) The tax deductible under sub-section (1D) shall be a final tax on the income of the non-resident company arising out of such capital gain.”;

- (4) in section 181D,—

(i) the existing provision of that section shall be re-numbered as sub-section (1) thereof;

(ii) after sub-section (1), re-numbered as aforesaid, the following new sub-sections shall be added, namely:—

“(2) Where a person fails to obtain business licence under sub-section (1), the Commissioner may, in addition to and not in derogation of any punishment to which the person may be liable under this Ordinance or any other law, impose a fine of—

(a) twenty thousand Rupees, in case of a taxpayer deriving income chargeable to tax under this Ordinance; or

(b) five thousand Rupees, in all other cases.

(3) The Commissioner may, by an order in writing, cancel a business licence issued under sub-section (1) after providing an opportunity of being heard to the person, if—

(a) such person fails to notify any change in particulars within thirty days of such change; or



(b) such person is convicted of any offence under any federal tax law.”;

(5) in section 214E,—

(i) the existing provisions of that section shall be re-numbered as sub-section (1) thereof;

(ii) after sub-section (1), re-numbered as aforesaid, the following new sub-sections shall be added, namely:—

“(2) Notwithstanding anything contained in sub-section (1), the Board may prescribe procedure for conclusion of audit of income tax affairs of a person automatically selected for audit under omitted section 214D.

(3) The prescribed procedure under sub-section (2) may include acceptance of declared income of a taxpayer for a tax year subject to conditions specified therein.”.

(6) in section 216, in sub-section (3), in clause (r), for full stop at the end, a semi colon and the word “or” shall be substituted and after clause (r), amended as aforesaid, the following new clause shall be added, namely:—

“(s) to the Financial Monitoring Unit (FMU) for the purposes of performing functions as laid down in the Anti-Money Laundering Act, 2010 (VII of 2010).”;

(7) in section 222A, for the words “Federal Government”, the expression “Board with the approval of Federal Minister-in-charge” shall be substituted;

(8) in section 230E, after sub-section (4), the following new sub-sections shall be inserted;

“(5) Transfer pricing audit of cases selected under clause (d) of sub-section (3) shall be conducted as per procedure given in section 177 and all the provisions of the Ordinance, except the first proviso to sub-section (1), sub-sections (6A), (10) and (14) of section 177, shall apply accordingly.

(6) Nothing contained in this section shall prevent the Commissioner from determination of transfer price at arm’s length in transactions between associates while conducting audit of income tax affairs of a taxpayer under section 177 or 214C or during proceedings under section 122.”;



(9) in the First Schedule,—

- (a) in Part-I, in Division III, in paragraph (a), for the word "Purchasers", the word "Producers" shall be substituted; and
- (b) in Part-II, in clause (b), in the proviso, in the Table, in column (1), against serial number 2, in column (3), for the figure "730", the figure "100" shall be substituted;
- (c) in Part-III,—
  - (i) in Division I, in paragraph (a), for the word "Purchasers", the word "Producers" shall be substituted; and
  - (ii) in Division II, after clause (3), the following new clause shall be inserted, namely:—

"(3A) The rate of tax to be deducted under sub-section (1D) of section 152 shall be 10% of the amount of capital gain.";

(10) in the Second Schedule,—

- (A) in Part-I, in clause (103C), after the expression "59B", the expression "computed according to the following formula

$$A \times B / C$$

Where

A is the amount of dividend;

B is the shareholding of the company receiving the dividend in the company distributing the dividend; and

C is the total ordinary share capital of the company distributing the dividend" shall be omitted;

- (B) in Part-II, after clause (280), the following new clauses shall be inserted, namely:—

"(28D) The rate of minimum tax under section 113 for tax year 2020 shall be 0.5% in the case of a trader having turnover upto one hundred million Rupees:

Provided that the tax liability of traders for tax year 2019 and 2020 in case of traders who filed return of income for tax year 2018 shall not be less than the tax paid for the tax year 2018.

*Explanation.*—For the purpose of this clause, ‘trader’ shall mean an individual engaged in business of buying and selling of goods in the same state including a retailer and a wholesaler but shall not include a distributor.

(28E) The rate of minimum tax under section 113 for tax year 2020 shall be 0.5% in case of a trader of yarn being an individual.”;

(C) in Part-III, in clause (9A), for the full stop at the end, a semi colon shall be substituted, and thereafter the following new proviso shall be inserted, namely:—

“Provided that for capital gains arising after completion of three years from the date of acquisition of immovable property the amount of tax payable shall be reduced by seventy-five percent.”;

(D) in Part IV,—

(a) in clause (45A),—

(i) in sub-clause (a), for the proviso, the following new proviso shall be substituted, namely:—

“Provided that the rate of deduction of withholding tax under clauses (a) and (b) of sub-section (1) of section 153 shall be 0.5% on local sales, supplies and services made by traders of yarn to the above mentioned categories of taxpayers.”;

(ii) in sub-clause (b), for the expression “; and” at the end, a full stop shall be substituted; and

(iii) sub-clause (c) shall be omitted.

(b) in clause (66), the words “who fall under the zero rated regime of sales tax and” shall be omitted;

(c) in clause (72B),—

- (i) after the word "paid", the words "in the manner as may be prescribed" shall be inserted;
- (ii) after the first proviso, the following new provisos shall be inserted, namely:

"Provided further that the Commissioner shall be deemed to have issued the exemption certificate in cases where the certificate is automatically processed and issued by IRIS upon expiry of prescribed time period:

Provided also that the Commissioner may modify or cancel the certificate issued automatically by IRIS on the basis of reasons to be recorded in writing after providing an opportunity of being heard.";

- (d) after clause (111), the following new clauses shall be added, namely:—

"(112) The provision of section 236P shall not apply to special convertible rupee account (SCRA) of a non resident company having no permanent establishment in Pakistan.

(113) The provision of sub-section (5B) of sections 147 shall not apply in respect of capital gains arising to a non-resident company having no permanent establishment in Pakistan from investment in debt instruments and Government securities including treasury bills and Pakistan investment bonds through special convertible rupee account (SCRA) maintained with a banking company or financial institution in Pakistan.

(114) The provisions of section 115(4) and 181 shall not apply to a non-resident company having no permanent establishment in Pakistan solely by reason of capital gain or profit on debt earned from investments in debt securities and Government securities including treasury bills and Pakistan investment bonds through special convertible rupee

account maintained with a banking company or financial institution in Pakistan.

- (115) The provisions of section 153 shall not apply to traders being individuals having turnover upto one hundred million Rupees as a prescribed person.

*Explanation.*—Trader in this clause shall have the meaning as provided in clause (28D) of Part II of the Second Schedule.”; and

- (11) in the Tenth Schedule, in rule 10, after clause (b), the following shall be inserted, namely:—

“(ba) Tax deducted under clause (5A) of Part II of the Second Schedule read with sub-section (2) of section 152.”.

5. **Amendments in the Federal Excise Act, 2005.**—In the Federal Excise Act, 2005, in section 49, for the words “Federal Government”, the expression “Board with the approval of Federal Minister-in-charge” shall be substituted.

### STATEMENT OF OBJECTS AND REASONS

The purpose of this bill is to lay the Tax Laws (Second Amendment) Ordinance, 2019 (XXVI of 2019) in the National Assembly under sub-paragraph (i) of paragraph (a) of clause (2) of Article 73 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The amendments are being introduced with immediate effect through promulgation of Ordinance in order to augment efforts towards economic stability and ensure expeditious implementation of tax policies envisaging documentation of the economy, broadening of the tax base, compliance with international obligations, promotion of foreign investment in the local debt market, anti-smuggling measures, removal of anomalies and mitigation of the genuine hardships of taxpayers.

3. The Ordinance seeks to amend the Customs Act, 1969, Sales Tax Act, 1990, Income Tax Ordinance, 2001 and the Federal Excise Act, 2005.

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