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**SYNOPSIS ON TAX LAWS (SECOND AMENDMENT)
ORDINANCE, 2019.**

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PREAMBLE:

The synopsis gives an overview of the significant amendments made through the Tax Laws (Second Amendment) Ordinance, 2019 which has come in force at once i.e. on December 26, 2019.

These amendments are geared to further strengthening the tax base with little compromise for the sectors which have enjoyed tax avoidance practices in the past. Let us hope that the intended benefits are achieved.

These synopsis can also be viewed on our website www.rasgco.com - Publications

Sincerely yours

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Through the Tax Laws (Second Amendment) Ordinance, 2019 (the Ordinance), the following changes have been made in the Income Tax Ordinance, 2001(the Act):

Greenfield Industrial Undertaking Defined:

As you are aware that there existed an Exemption introduced through Finance Supplementary (Second Amendment) Act, 2019, exempting profits and gains of 'greenfield industrial undertaking' incorporated after July, 2019 from tax for a period of five years, however the term 'greenfield industrial undertaking' was not defined. Through this Ordinance, the definition is now being introduced to remove the ambiguity, where 'greenfield industrial undertaking' is an undertaking that is:

1. Setup on **land not previously** utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work.
2. Not built by modification of any sort in any existing structure, plant or facility.
3. Not formed by splitting up or reconstitution of an undertaking already in existence.
4. Not formed by transfer of machinery, plant or building from an existing undertaking or is an expansion project of an existing undertaking.
5. Where the technology used has not been previously used in Pakistan and is approved by the Engineering Development Board.

However, such status as a 'greenfield industrial undertaking' should be approved by the Commissioner as per prescribed procedure.

Appointment of Appellate Tribunal:

The Ordinance has substituted the previous procedure for appointment of Appellate Tribunal, with certain changes in the conditions for appointment of a Judicial Member, while conditions for appointment of Accountant Member remains unchanged.

Several conditions have been omitted including the power of the Federal Government to appoint a Member as Chairperson and the existing rules with respect to the Appellate Tribunal, unless amended or repealed have been rendered effective.

Relief to Non-Resident Companies:

The Ordinance has introduced many provisions to attract non-resident companies having no permanent establishment in Pakistan for making investment in debt instruments/Government Securities through Special Convertible Rupee Account (SCRA). The relief made available through the Ordinance are as follows:

1. Such companies earning only capital gain or profit on debt from the said investment will not be required to obtain National Tax Number and consequently file Statement of Final Taxation solely due to capital gain/profit on debt from above investments.
2. No tax under section 236P will be deducted on the banking transactions by these Companies due to not appearing on Active Taxpayers' List
3. No advance tax will be collected from such companies against the capital gain on such investments.
4. Capital Gain arising from such investments shall be subject to final tax @ 10% to be deducted by the banking company/financial institution irrespective of the Active Taxpayers' Status of such companies.

Business License Penalties:

Through Finance Act, 2019 the concept of business license was introduced for every business, where every business, profession and vocation are required to obtain and display the same. Now, through this ordinance penalties have been introduced for non-compliant persons:

1. Rs. 20,000 for a person having income chargeable to tax; and
2. Rs. 5,000 in all other cases

Further, Commissioner has been empowered to cancel such license in case the person fails to report any change in particulars within 30 days or is convicted of any offence under federal tax law.

Closure of Audit under Section 214D:

The concept of automatic selection for audit was introduced through section 214D, which later had to be omitted due to resistance from the tax payers and the capacity issue of FBR. Therefore, through Section 214E a simple procedure was introduced to close such cases. However, still many cases remained open despite a golden chance, now the Ordinance has amended Section 214E empowering FBR to design procedure for closure of remaining audits under Section 214D.

Sharing of Information with Financial Monitoring Unit:

Pakistan has faced with a lot of challenge to get it's out of the grey list of Financial Action Tax Force (FATF), for which various efforts are being made to comply with FATF regulations and implement Anti Money Laundering Act, 2010. Therefore, in order to achieve better compliance level, through this ordinance an amendment has been introduced to enable sharing of information with Financial Monitoring Unity i.e. the Unit responsible to analyze Suspicious Transactions Reports and disseminate the same to relevant authorities.

Transfer Pricing Audit Procedure:

The concept of Directorate General of International Tax has been existent in law to deal specially with transfer pricing issues and conduct transfer pricing audits. However, procedure was not defined to conduct such audits. Now, through this ordinance amendment has been made whereby such audits will be conducted in accordance with procedure laid in section 177.

Advance tax on import of mobile phones:

Advance tax on import of mobile phones valuing between USD 30 and USD 100 has been reduced from Rs. 730 to Rs. 100.

Dividend Income Exemption under Group Relief:

The companies that were availing group relief under section 59B were allowed proportionate exemption on dividend income based on the sharing holding of the parent in the subsidiary company. This Ordinance has now allowed 100% exemption to such companies under group relief irrespective of shareholding.

Relief for Traders:

Since the Enactment of Finance Act, 2019, discomfort was found with the traders to come into the tax net, with many deliberations were held between traders and FBR. However, now it seems that through this ordinance certain consensus is reached, with the following relief being provided to the traders:

1. The minimum tax on turnover for traders having turnover of up to Rs. 100 million has been reduced to 0.5% subject to the condition that tax liability of such traders for tax year 2019 and 2020 shall not be less than that of tax year 2018.

Where 'Trader' for the purpose of this clause has been defined as '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'.

2. Traders having turnover up to Rs. 100 million (i.e. as defined in 1 above) have also been exempted from acting as withholding agent for the purpose of section 153

Relief to Suppliers of Export Oriented Sectors:

The well-known export oriented sectors (i.e. Textile and articles, Carpets, Leather and articles including artificial leather footwear, Surgical goods and Sports goods) and related businesses have faced a lot of issues after the withdrawal of SRO 1125. Therefore, the ordinance has introduced certain concessions to these sectors and their suppliers listed as follows:

1. Traders of yarn making supplies and services to the said sector will now be subject to 0.5% withholding tax rather the current 0.1% tax on turnover to be paid on monthly basis.
2. To neutralize the above minimum tax on turnover under section 113 for traders of yarn has been reduced to 0.5% for tax year 2020.
3. Earlier the concessionary withholding tax rate and non-applicability of certain provisions of section 111 were only available to supplier and service providers to such sectors who have been registered up to June 30, 2011. However, now there is no date of registration limit to enjoy such benefits.
4. Due to the term 'zero-rated regime of sales tax' appearing in clause 66, even after the regime being abolished, these export oriented sectors were facing issues in claiming advantage of clause 66, whereby advance tax collection under section 235 (i.e. on electricity bills) is exempt for these sectors. Through this ordinance, this ambiguity has been removed by omitting the words 'zero rated regime of sales tax' from clause 66.

Automatic Approval of Exemption on Import of Raw Material:

Manufacturers have been facing hardship in getting exemption (under clause 72B) on tax on import of raw material under section 148. To facilitate the manufacturers and stream line the process, through this ordinance now such exemption will be approved automatically by IRIS on the completion of the prescribed time period, which shall be deemed to be issued by the Commissioner.

However, Commissioner will have the power to modify or cancel such exemption after providing the tax payer an opportunity of being heard.

Through the Tax Laws (Second Amendment) Ordinance, 2019 (the Ordinance), the following changes have been made in the Sales Tax Act, 1990 (the Act):

Addition of Section 2(12A) - Definition of “Greenfield Industry”:

Similarly as discussed above, in relation to exemption from sales tax vide Serial No. 150 of the Sixth Schedule of the Act on import of plant and machinery by “Greenfield Industries” for the purpose of usage in manufacturing, the Ordinance has inserted the definition of a “Greenfield Industry”. This has been a step towards limiting the eligibility criteria of the above referred exemption. As per the addition of the above referred provision, an industrial undertaking shall be classified as a **“Greenfield Industry”** which is:

- a) 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;
 - i. Built without demolishing revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
 - ii. 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;
 - iii. Using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and
 - iv. 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:
- b) Provided that this definition shall be applicable from the 1st July, 2019 and onwards.

From the above definition, it is interesting to note that all “Greenfield Industries” will now have to be approved by the Commissioner Inland Revenue upon application.

Amendment in Definition of Tier-1 Retailer under Section 2(43A) of the Act:

Through the Ordinance, the definition of Tier-1 Retailer under Section 2(43A) of the Act has been amended as follows:

- a) Prior to the amendment, for a person to be regarded as a Tier-1 Retailer, it had to meet all the conditions mentioned therein. However, now for a person to be regarded as a Tier-1 Retailer, a person should fulfill **any one or more** of the conditions mentioned in the afore-referred definition.
- b) Keeping in view of the increasing electricity tariffs, the maximum threshold of electricity bills for a period of twelve consecutive months has been increased from Rs. Six hundred thousand to Rs. Twelve hundred thousand for a person to meet the criteria of a Tier-1 Retailer.
- c) Another sub-clause has been inserted in the definition of a Tier-1 Retailer whereby any other person or class of persons as prescribed by the Board shall be classified as a Tier-1 Retailer.

Provisions relating to goods supplied from tax-exempt areas:

Through the provisions of the Ordinance, the Government of Pakistan has introduced certain regulatory controls/provisions with respect to goods supplied from **“tax-exempt areas”**. In a nutshell, these controls are as follows:

- a) Introduction of prescribed documentation to be accompanied while goods are being transported from tax-exempt areas;
- b) Authorization to Federal Board of Revenue officers to set up check posts for the purpose of examining the prescribed documentation and goods being transported from tax-exempt areas;
- c) Authorization to seize goods where any discrepancies arises during spot examination and
- d) Authorization to issue show-cause to the owner of the goods and the conveyance vehicle against imposition of penalty within fifteen days of the seizure of the goods.

Tax-exempt areas for the purpose of the above provisions means **Azad Jammu and Kashmir, Gilgit-Baltistan, Tribal Areas as defined in Article 246 of the Constitution of Islamic Republic of Pakistan and other such areas as may be prescribed.**

Limitations on supplies made to un-registered persons by a registered manufacturer:

Through the Ordinance, the Government of Pakistan has introduced limitations to the amount of taxable supplies which can be made to an un-registered person. As per the amendment provisions, a registered manufacturer has been encouraged to make all taxable supplies to a registered person. However, where taxable supplies to an un-registered person exceeds Rs. 10 Million per month and Rs. 100 Million in a financial year, the registered manufacturer making such supplies shall not be allowed input tax credit against such excess amount of taxable supplies.

Amendments in the Sixth Schedule:

Supplies of edible oils and vegetable ghee, including cooking oil, on which Federal Excise Duty is charged; as it were a levy of tax under the Act, by a registered manufacturer or importer were exempt. Through the amendment under the Ordinance, it is further clarified that such exemption shall not be available on local supplies made by importers, distributors, wholesalers or retailers.

Supplies of frozen, prepared or preserved sausages and similar products of poultry meat or meat offal were exempt under the Act. Through the amendments introduced, such exemption will now not be available for the aforementioned supplies sold in retail packing under a brand name or a trademark.

Supplies of Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry meat and fish were exempt under the Act. Through the amendments introduced such exemption will now not be available for the aforementioned supplies sold in retail packing, under a brand name of trademark.

Amendments in the Eight Schedule:

The rate of sales tax chargeable on import of Raw Cotton and Ginned Cotton has now been increased from 5% to 10%.

Through the amendments introduced, supplies of frozen prepared or preserved sausages and similar products of poultry meat or meat offal will be chargeable to sales tax under the Act at 8% if they are sold in retail packing under a brand name or trademark. If the afore-mentioned goods are supplied other than in a retail packing under a brand name or trademark, then such items will remain exempt.

Through the amendments introduced, Supplies of Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry meat and fish if sold in a retail packing under a brand name or trade mark shall be chargeable to tax under the Act at the rate of 8%. If the afore-mentioned goods are supplied other than in a retail packing under a brand name or trademark, then such items will remain exempt.

Amendments in the Ninth Schedule:

S.No.	Description of Goods	Sales tax on import or local supply (prior to amendment)	Sales tax on import or local supply (After amendment)
2.	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer at the rate as indicated against each category:-		
A	Not exceeding US\$ 30	Rs. 135	Rs. 130
B	Exceeding US\$ 30 but not exceeding US\$ 100	Rs. 1,320	Rs. 200

Amendments in the Tenth Schedule:

Through the amendments introduced, the PCT heading for bricks has been corrected from 6901.1000 to 6901.0000 and the requirement to pay through monthly return has been omitted.

Amendments in the Twelfth Schedule:

In the Twelfth Schedule, 3% ad valorem sales tax is chargeable on all imported goods. Through the amendments introduced, such 3% tax shall not be charged on import of 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.

Furthermore, the refund of excess input tax over output tax which is attributable to tax paid under the Twelfth Schedule shall not be refunded to a registered person in any case except that as used for making zero rated supplies.

Introduction of new penalties:

The Ordinance has amended Section 33 of the Act and introduced various penalties with respect to defaults committed by manufacturers/importers who fail to print retail price on goods chargeable to tax at retail price, goods brought into Pakistan in violation of Section 40D of the Act i.e. supply of goods from tax-exempt areas and a person who is liable to comply with the monitoring and tracking requirements as laid down in Section 40C of the Act and fails to do so. A more detailed description of the penalties introduced and amount of penalties has been provided in **Annexure – I** of this document.

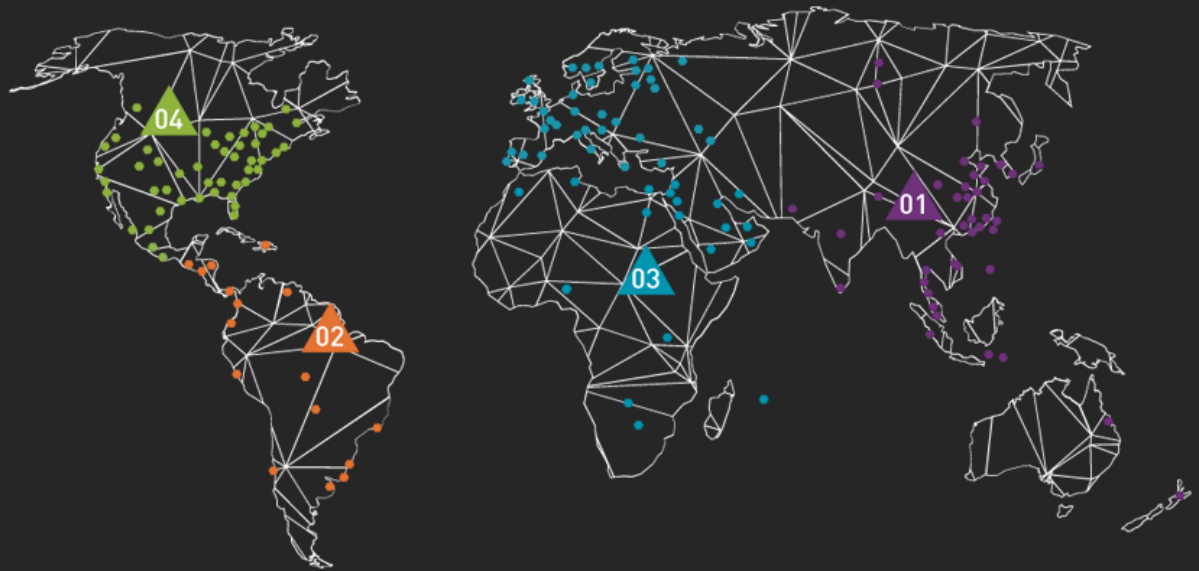
Amendments to Fee and Service Charges under Section 76 of the Act:

The Government of Pakistan through the Finance Act, 2019 had introduced a mechanism for approval of fee and service charges by the Federal Government for valuation. Now through the amendments introduced through the Ordinance, the Federal Board of Revenue with the approval of the Federal Minister In-charge would approve such fee and service charges.

Nature of Default	Amount of Penalty	Section of the Act
<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, 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>
<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.</p>	<p>Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher.</p> <p>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.</p>	<p>Sub-section (27) of section 2 and clause (a) of sub-section (2) of section 3.</p>
<p>27. Any person, being owner of</p>	<p>Such person shall pay a penalty</p>	<p>Section 40D.</p>

<p>the goods, which are brought to Pakistan in violation of section 40D.</p>	<p>of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher.</p> <p>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.</p>	
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