

# Finance Act 2019 Vs Finance Bill 2019

## – A Comparison of Income Tax Provisions

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The National Assembly accorded formal approval to the Federal Budget for FY 2019-20 thereby approving the Finance Bill 2019 to give effect to the financial proposals of the government. Subsequently, a Gazette notification No. F. 22(19)/2019-Legis dated June 30, 2019 was issued by the Government, notifying the promulgation of the Finance Act 2019.

The Research and Publications Department has made an attempt to compare the Finance Act (FA) 2019 with the Finance Bill (FB) 2019 to identify the modifications made specifically in the income tax provisions through amendments in the Income Tax Ordinance (ITO), 2001. The outcome of this exercise is presented in the following lines for the information of members and readers.

### Additions made in the Finance Act 2019

There are some additions in the FA 2019 which were not mentioned in the FB 2019. Four additions have made in Section 15A; Section 56A; Section 130 and Section 222, respectively of the ITO, 2001 whereas four additions have been made in the Second Schedule; Seventh Schedule and Tenth Schedule, respectively to the ITO 2001. These additions are briefly explained as under:

#### Section 15A

Section 15A relates to 'Deductions in computing income chargeable under the head 'Income from Property'. Different expenditures and allowances have been provided in Section 15A for computing the income of a company chargeable to tax under 'Income from Property' for a tax year.

FA 2019 has proposed the addition of a new sub-section (7) as under, after sub-section (6) of Section 15A:

“(7) Notwithstanding sub-section (6) of section 15, the provisions of this section shall apply to an individual or an association of persons deriving income exceeding Rs. 4 million under section 15, who opts to pay tax at the rate specified in Division I of Part I of the First Schedule;”;

#### Section 56A

The FA 2019 has proposed to make few changes in Section 56A which is related

to set off of losses of companies operating hotels. The changes proposed in Section 56A are as under:

“(10) in section 56A,

(A) after the word 'Pakistan', wherever occurring, the expression 'Gilgit-Baltistan' shall be inserted; and

(B) for the word 'company', the words 'public company as defined in the Companies Act, 2017 and' shall be substituted;”

After making the above changes, Section 56A shall read as under:

**[56A. Set off of losses of companies operating hotels. –** Subject to sections 56 and 57, where a **public company as defined in the Companies Act, 2017** and registered in Pakistan, **Gilgit-Baltistan** or Azad Jammu and Kashmir (AJ&K), operating hotels in Pakistan, **Gilgit-Baltistan** or AJ&K, sustains a loss in Pakistan, **Gilgit-Baltistan** or AJ&K for any tax year under the head “income from business” shall be entitled to have the amount of the loss set off against the company's income in Pakistan, **Gilgit-Baltistan** or AJ&K, as the case may be, from the tax year 2007 4[onward].

#### Section 130

Section 130 relates to 'Appointment of the Appellate'. FA 2019 has proposed to replace sub-sections (1) and (2) of Section 130 by rephrasing both these sub-sections and including the term of Inland Revenue Appellate Tribunal as under [the modified phrases are highlighted in red]:

| Addition in Section 130 (1) & (2) through FA 2019   | Existing sub-sections (1) & (2) of Section 130  |
|---|---|
| <b>Sub-section (1)</b><br>1) There shall be established an Appellate Tribunal <b>to be called the Appellate Tribunal Inland Revenue</b> to exercise <b>the powers and perform</b> the functions conferred on the <b>Appellate Inland Revenue</b> tribunal by this Ordinance | <b>Sub-section (1)</b><br>1) There shall be established an Appellate Tribunal to exercise the functions conferred on the Tribunal by this Ordinance.  |
| <b>Sub-section (2)</b><br>(2) The <b>Inland Revenue</b> Appellate Tribunal shall consist of a <b>chairman</b> and such other judicial and accountant members as are appointed <b>in such numbers and in the manner as the Prime Minister may prescribe by the rules.</b>    | <b>Sub-section (2)</b><br>2) The Appellate Tribunal shall consist of a chairperson and such other judicial and accountant members as are appointed by the Federal Government having regard to the needs of the Tribunal |

## Section 222

FA 2019 has proposed the addition of a new sub-section 222A after the Section 222 of ITO 2001. The new section 222A provides for the levy of fee and service charges for valuation.

The existing Section 222 and new sub-section 222A are reproduced below:

**“222. Appointment of expert.** – The Commissioner may appoint any expert as the Commissioner considers necessary for the purposes of this Ordinance, including for the purposes of audit or valuation.

**222A. Fee and service charges.** – The Federal Government may, by notification in the official Gazette, and subject to such

## Seventh Schedule

FB 2019 had proposed that in the Seventh Schedule, after the omitted Rule 6B, a new Rule (6C) shall be inserted on enhanced rate of tax on taxable income from Federal Government securities. However, in the FB 2019 there is just one rephrasing in the definition of 'Additional investments' as under:

**“6C. Enhanced rate of tax on taxable income from Federal Government securities ...**

(5) “Additional investments” means average investment made in Federal Government securities by the bank during the tax year, in addition to the average investments held during the tax year 2019.

| Rule 6C (4) in FA 2019  | Rule 6C (4) in FB 2019   |
|---|--|
| <b>(6C)</b><br>(4) Additional income earned” <b>means mark-up income earned from additional investment</b> in Federal Government securities by the bank for the tax year. | <b>(6C)</b><br>(4) Additional income earned" means any average earned in addition to average amount of such income earned from investment in Federal Government securities by the bank for the tax year. |

conditions, limitations or restrictions as it may deem fit to impose, levy fee and service charges for valuation or in respect of any other service or control mechanism provided by any formation under the control of the Board, including ventures of public-private partnership at such rates as may be specified in the notification.”;

## Second Schedule

FA 2019 has proposed that under Part II on 'Reduction in Tax Rates' of Second Schedule [Exemptions and Tax Concessions under Section 53 of ITO 2001], the following new clauses (24C) and (24D), respectively, shall be inserted after the omitted clause (24B). Both these additions are related to defining the rate of minimum tax to be charged on dealers and sub-dealers of sugar, cement and edible oil.

**“(24C) The rate of tax under clause (a) of sub-section (1) of section 153 in case of dealers and sub-dealers of sugar, cement and edible oil, as recipient of the payment, shall be 0.25% of the gross amount of payments.**

**(24D) The rate of minimum tax under sub-section (1) of section 113 in case of dealers and sub-dealers of sugar, cement and edible oil shall be 0.25% subject to the condition that the names of such dealers and sub-dealers are appearing on the active taxpayers' lists issued under the provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001 (XLIX of 2001).”**

## Second Schedule

FA 2019 has proposed that under Part IV on 'Exemption from Specific Provisions' of Second Schedule of ITO 2001, the following new clause (60E) shall be inserted with regard to the non-applicability of the provisions of Section 148 [Imports] on mobile phone brought in personal baggage:

**“(60E) The provisions of section 148 shall not apply on mobile phones brought in personal baggage under the Baggage Rules, 2006.”;**

## Tenth Schedule

Through the FB 2019, a new Tenth Schedule [Section 100BA] on 'Rules for persons not appearing in the Active Taxpayers' List' was proposed to be added after the Ninth Schedule to ITO, 2001.

In the FA 2019, the Tenth Schedule has been retained, however, just one addition of a proviso and explanation has been made in Rule # 3(2) as under:

**“(2) In making the provisional assessment under sub-rule (1), the Commissioner shall impute taxable income on the amount of tax deducted or collected under rule 1 by treating the imputed income as concealed income for the purposes of clause (d) of sub-section (1) of section 111:**

**“Provided that the provision of section 111 shall be applicable on unexplained income, asset or expenditure in excess of imputed income treated as concealed income under this rule.”**

**“Explanation.** For the removal of doubt it is clarified that the imputable income so calculated or concealed income so determined shall not absolve the person so assessed, from requirement of filing of wealth statement under sub-section (1) of section 116, the nature and source of amounts subject to deduction or collection of tax under section 111, selection of audit under section 177 or 214C or subsequent amendment of assessment as provided in rule 8 and all the provisions of the Ordinance shall apply.”

## Amendment proposed in FB 2019 but excluded from FA 2019

In the FB 2019, it was proposed to insert a new sub-section (6A) after sub-section (6) of Section 175 of ITO, 2001 with regard to Power (of Commissioner) to enter and search premises. The new sub-section (6A) which reads as under, provided undue powers to the Commissioner to raid any premises and confiscate the undeclared gold, bearer security or foreign currency:



“(6A) The Commissioner shall, subject to the condition as may be prescribed, raid any premises where there is reliable information of undeclared gold, bearer security or foreign currency and confiscate the same in order to enforce any provision of this Ordinance.”;

The above proposal for empowering the Commissioner was rejected by the trade and industry and it also received criticism from the Senate Standing Committee on Finance and Revenue. The Senate Committee opposed the idea of FBR to give such a power to the Income Tax Commissioner as it feared that such powers could be misused for ulterior objectives/extortion to enter offices and residences of accountants, medical service providers and others for political reasons. The Senate felt that the crux of this proposal is draconian and against the spirit of the Constitution that protect the privacy and integrity of citizens

(A) in sub-section (1A), for the words “arising on the disposal of immovable property”, the expression “under sub-sections (3A) and (3B)” shall be substituted;

Further, through FB 2019, it was proposed to insert two new sub-sections viz. (3A) and (3B) in Section 37 with regard to computing the amount of any gain arising on disposal of immovable property being an open plot (3A) and being a constructed property (3B). In the FA 2019, these insertions of 3A and 3B have been retained, however, the following slight changes have been made in the computation table:

- For holding of open plot, the duration has been reduced from ten years to eight years
- For holding of constructed property, the duration has been reduced from five years to four years

| Finance Act 2019 |   |         | Finance Bill 2019 |   |         |
|------------------|---|---------|-------------------|---|---------|
| (3A)             |   |         | (3A)              |   |         |
| TABLE S.No.      | Holding Period  | Gain    | TABLE S.No.       | Holding Period  | Gain    |
| (1)              | (2)   | (3)     | (1)               | (2)   | (3)     |
| 1.               | Where the holding period of open plot does not exceed one year  | A       | 1.                | Where the holding period of open plot does not exceed one year  | A       |
| 2.               | Where the holding period of open plot exceeds one year but does not exceed <b>eight years</b>           | A x 3/4 | 2.                | Where the holding period of open plot exceeds one year but does not exceed <b>ten years</b>             | A x 3/4 |
| 3.               | Where the holding period of open plot exceeds <b>eight years</b>  | 0       | 3.                | Where the holding period of open plot exceeds <b>ten years</b>  | 0       |
| (3B)             |   |         | (3B)              |   |         |
| TABLE S.No.      | Holding Period  | Gain    | TABLE S.No.       | Holding Period  | Gain    |
| (1)              | (2)   | (3)     | (1)               | (2)   | (3)     |
| 1.               | Where the holding period of constructed property does not exceed one year                               | A       | 1.                | Where the holding period of constructed property does not exceed one year                               | A       |
| 2.               | Where the holding period of constructed property exceeds one year but does not exceed <b>four years</b> | A x 3/4 | 2.                | Where the holding period of constructed property exceeds one year but does not exceed <b>five years</b> | A x 3/4 |
| 3.               | Where the holding period of constructed property exceeds <b>four years</b>                              | 0       | 3.                | Where the holding period of constructed property exceeds <b>five years</b>                              | 0       |

and the dignity of human life under Article 14 of the Constitution.

Hence, on the above strong resistance from all the quarters, especially from the Senate Standing Committee on Finance & Revenue, the FBR withdrew the proposal and accordingly excluded the insertion of sub-section (6A) from the promulgated FA 2019.

## Other Changes made in the FA 2019

A comparison of FB 2019 and FA 2019 reveals that there are some changes in phrases/texts of various provisions of income tax as well as in the rates and other details. Some of the changes made in FB 2019 and promulgated through FA 2019 are provided as under:

### Section 37

In the FB 2019 it was proposed to omit sub-section (1A) of Section 37 of ITO 2019. However, through FA 2019, it is proposed that the following slight change be made in Section 37:

“(7) in section 37, —

### Section 39

Through the FB 2019, it was proposed to insert the following new clause (1a) in Section 39:

“(1a) subject to sub-section (3), any amount or fair market value of any property received without consideration or received as gift, other than gift received from grandparents, parents, spouse, **real brother, real sister**, son or a daughter.”;

In the FA 2019, the word 'real' from both 'real brother' and 'real sister' have been omitted.

### Section 82

Through the FB 2019, it was proposed to insert the following new clause (ab) in Section 82 of ITO, 2001 which relates to the 'Resident Individual':

“(ab) is present in Pakistan for a period of, or periods amounting in aggregate to, **ninety days or more** in the tax year and who, in the four years preceding the tax year, has been in Pakistan for a period of, or periods amounting in aggregate to, three hundred and sixty-five days or more; or”;

In the FA 2019, the duration of stay of a 'Resident Individual' under Section 82 of ITO 2001, has been increased from 90 days or more [as proposed in FB 2019] to 120 days or more in the FA 2019.

### New Section 192B

Through the FB 2019, it was proposed to insert the following new section (192B) after Section (192A) with regard to 'Prosecution for false statement in verification':

### First Schedule Part I Division VIII

Through the FB 2019, it was proposed to omit 'Division VIII' in Part I of First Schedule to ITO, 2001, related to 'Tax on Capital Gains on disposal of Immovable Property'. However, in the FA 2019 it is now proposed to substitute 'Division VIII' with the following table:

(g) for Division VIII, the following shall be substituted, namely: —

| <b>"Division VIII</b><br><b>Tax on Capital Gains on disposal of Immovable Property</b>                  |  |                    |
|---|--|--------------------|
| The rate of tax to be paid under sub-section (1A) of section 37 shall be as follows: —<br><b>S. No.</b> | <b>Amount of gain</b>  | <b>Rate of tax</b> |
| (1)   | (2)  | (3)                |
| 1.  | Where the gain does not exceed Rs. 5 million                             | 5%                 |
| 2.  | Where the gain exceeds Rs. 5 million but does not exceed Rs. 10 million  | 10%                |
| 3.  | Where the gain exceeds Rs. 10 million but does not exceed Rs. 15 million | 15%                |
| 4.  | Where the gain exceeds Rs. 15 million                                    | 20%"; and          |

### "192B. Prosecution for concealment of an offshore asset. —

(1) Any person who fails to declare an offshore asset to the Commissioner or furnishes inaccurate particulars of an offshore asset and revenue impact of such concealment or furnishing of inaccurate particulars is **one hundred thousand rupees or more** shall commit an offence punishable on conviction with **imprisonment up to seven years** or with a **fine up to two hundred percent of the amount of tax evaded** or both.”;

In the FA 2019, the following changes have been made in the proposed Section 192B:

- The amount of revenue impact of concealment has been raised substantially from Rs. 100,000 or more to Rs. 10 million or more.
- The duration of imprisonment has been reduced from 7 years to 3 years
- The amount of fine has been changed from 200% of amount of tax evaded to Rs. 500,000.

### New Section 195A

Through the FB 2019, it was proposed to insert the following new section (195A) after Section (195) with regard to 'Prosecution for non-compliance with notice under section 116A:

**"195A. Prosecution for non-compliance with notice under section 116A. —** Any person who, without reasonable excuse, fails to comply with a notice under sub-section (2) of section 116A; shall commit an offence punishable on conviction with **imprisonment up to two years** or with a **fine up to a penalty of two percent of the offshore asset not declared** or both.”

In the FA 2019, the following changes have been made in the proposed Section 195A:

- The duration of imprisonment has been reduced from 2 years to 1 year.
- The amount of fine has been changed from 2% of offshore asset not declared to Rs. 50,000.

### First Schedule Part III Division III

Through the FB 2019, it was proposed to substitute Clause (2) in Division III of Part III of First Schedule.

Clause (2) mentions the rate of tax to be deducted from a payment for the rendering of or providing of services [except where payment is less than Rs. 30,000 in aggregate, during a financial year] as referred to in clause (b) of sub-section (1) of Section 153 on 'Payment of goods, services and contracts [in full or part including a payment by way of advance to a resident person].

In the FB 2019, the rate of tax on such services was mentioned as '4% of the gross amount payable', however in the FA 2019, the rate of tax has been reduced to '3% of the gross amount payable'.

“(2) The rate of tax to be deducted from a payment referred to in clause (b) of sub-section (1) of section 153 shall be

(i) **3%** of the gross amount payable, in the cases of transport services, freight forwarding services, air cargo services, courier services, manpower outsourcing services, hotel services, security guard services, software development services, IT services and IT enabled services as defined in clause (133) of Part I of the Second Schedule, tracking services, advertising services (other than by print or electronic media), share registrar services, engineering services, car rental services, building maintenance services, services rendered by Pakistan Stock Exchange Limited and Pakistan Mercantile Exchange Limited inspection, certification, testing and training services”.

### Second Schedule Part I

The Second Schedule deals with 'Exemptions and Tax Concessions' under Section 53 of ITO 2001. In the FB 2019, it was proposed that the income derived by two institutions namely (1) Akhuwat and (2) Audit Oversight Board, shall be included in the Second Schedule (Part I) by inserting clauses (lxvi) and (lxvii).

In the FA 2019, there is addition of one more institution viz. 'Patient's Aid Foundation' by proposing insertion of clause (lxviii) in the Second Schedule (Part I).