



**The Institute of
Chartered Accountants
of Pakistan**

TAX LAWS

(AMENDMENT) ORDINANCE 2020

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EY

**Building a better
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INTRODUCTION

- Prime Minister of Pakistan announced an incentive package for the Construction Sector aimed to increase employment opportunities in the wake of the COVID-19 outbreak.
- In this connection, the 'Amendment Ordinance' has introduced section 100D alongwith 11th Schedule in the ITO' 2001, which provide for a separate tax regime for Builders & Developers.
- A similar fixed tax regime for builders & developers was also introduced through FA, 2016 whereby tax was payable on the basis of area (**S. 7C & 7D**). It was subsequently restricted through FA, 2017 to only such Projects, which were initiated and approved during tax year 2017.
- Tax Amnesty has been provided to the Funds invested in the projects covered under this scheme.

ELIGIBILITY CRITERIA

- Provision of S. 100D & 11th Sch. are applicable:
 - For TY 2020 and onwards
 - On such builders and developers, who opt to be assessed under S. 100D & 11th Schedule
 - To the eligible projects
- Eligible projects are:
 - A **new project** commenced between date of promulgation of Amendment Ordinance to 31 Dec. 2020 and to be completed by 30 Sep. 2022
 - An **incomplete existing project** to be completed by 30 Sep 2022. However, income earned up to TY 2019 from such projects will remain subject to other provisions of the ITO' 2001.
- Any income of the builder / developer other than income subject to S. 100D shall be subject to tax as per normal provisions of the ITO' 2001 (e.g. Profit on debt, business income from other ventures etc.)

EXISTING PROJECT / COMMENCEMENT OF PROJECT

- **Existing project** means a construction or development Project, which:
 - has commenced before the date of promulgation of Amendment Ordinance
 - is incomplete & will be completed **on or before the 30 Sep 2022**
 - A declaration is provided for percentage of completion of the project up to the last day of TY 2019;

- **Commencement of project** means
 - In case of a construction project, when layout plan is approved by the concerned authority
 - In case of a development project, when the development plan is approved by the concerned authority

- Where builders / developers have made all efforts to procure approval but the same is delayed and the cutoff date of 31 December 2020 is not adhered, FBR may provisionally accept commencement of such project

COMPLETION OF PROJECT

➤ Completion of project means:

- **In the case of a builder**, the date on which the grey structure is completed: Provided that such grey structure shall only be considered as completed when the roof of the top floor has been laid as per the approved plan

- **In the case of a developer**, the date on which:
 - (A) 50% of the total plots have been booked in the name of buyers
 - (B) 40% of the sale proceeds have been received
 - (C) landscaping has been completed
 - (D) 50% of the roads have been laid up to **subgrade level** as certified by the approving authority or NESPAK

TAX COMPUTATION

- Total tax liability of the project is computed as per the rates provided in schedule, which are based on the area of the Project and location.
- Annual tax liability for a project is to be computed by dividing the total tax liability by the estimated life of the project in years (**which shall not exceed 2.5 years**).
- For existing incomplete projects, estimated life of such projects is considered as **3 years** from tax year 2020 through tax year 2022.
- Tax payable in respect of existing incomplete projects will be reduced by the percentage of completion up to the last day of the TY 2019.
- In case of mixed use of buildings having both commercial and residential areas, respective rates will apply. In case of development of plots and constructing buildings on the same plots as one project, both the specified rates shall apply.

TAX COMPUTATION (Tax rates)

	Rate in respect of		
(1)	(2)	(3)	(4)
Area in	Karachi, Lahore and Islamabad	Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan, Abbottabad, Quetta	Urban Areas not specified in columns (2) and (3)
<u>TAX ON BUILDERS</u>			
FOR COMMERCIAL BUILDINGS			
Sq. Ft.	-	-	-
Any size	Rs.250 per Sq. ft	Rs.230 per Sq. ft	Rs.210 per Sq. ft
FOR RESIDENTIAL BUILDINGS			
Sq. Ft.	-	-	-
upto 3000	Rs.80 per Sq. ft	Rs.65 per Sq. ft	Rs.50 per Sq. ft
3000 and above	Rs.125 per Sq. ft	Rs.110 per Sq. ft	Rs.100 per Sq. ft
TAX ON DEVELOPERS (ENTIRE PROJECT)			
Sq. Yds.	-	-	-
Any size	Rs.150 per Sq. yd	Rs.130 per Sq. yd	Rs.100 per Sq. yd
FOR DEVELOPMENT OF INDUSTRIAL AREA			
Sq. Yds.	-	-	-
Any size	Rs.20 per Sq. yd	Rs.20 per Sq. yd	Rs.10 per Sq. yd

FINAL TAXATION

- Such income will not be chargeable to tax under any head of income.
- No deduction for any expenditure, deductible allowances or set-off of any loss will be allowed
- Tax credits are not allowed against tax payable; except for tax collected u/s 236K **after commencement of Amendment Ordinance** on purchase of immovable property utilized in eligible projects
- No refund of any taxes suffered is allowed.

OTHER INCENTIVES

- Provisions of S. 113 (minimum tax on annual turnover) and S. 113C (ACT applicable on accounting profits) will not apply.
- Builders / Developers will not be required to withhold tax u/s 153 on following payments:
 - Purchase of materials (except steel and cement); and
 - Services (plumbing, electrification, shuttering and other similar and allied services) which are provided by non-corporate service providers
- Dividend income paid out of the profits from eligible projects will be exempt. Specific exemption from withholding tax u/s 150 is also provided.

IMMUNITY FROM PROBE TO SOURCES - S. 111

- S. 111 empowers tax authorities to require any person to explain the sources of his investments or assets, etc.
- Newly inserted S. 100D provides immunity from the application of S. 111 in respect of capital investments to be made by a person in a **new project** subject to following conditions:
 - **Investment by Individual**
 - Investment in form of money: the builder / developer shall open a new bank account and deposit such amount in it by 31 Dec 2020
 - Investment in form of land: the builder / developer shall have the ownership of the land at the time of commencement of Amendment Ordinance.

IMMUNITY FROM S. 111 (Cont.)

➤ Investment by a person through AOP or Company

- Such company or AOP shall be a single object company / AOP (builder or developer)
- Such company or AOP shall be registered under the Companies Act, 2017 or the Partnership Act, 1932 between the date of commencement of the Amendment Ordinance and 31 Dec 2020
- Person making investment shall be member/shareholder of AOP/Company.
- Where investment is made in the form of money, such amount shall be invested through a crossed banking instrument in the bank account of the AOP / company by 31 Dec 2020.
- Where investment is made in the form of land, such land shall be transferred to the AOP / company by 31 Dec 2020, subject to the condition that the person making transfer shall have the ownership title of the land at the time of commencement of the Amendment Ordinance.

IMMUNITY FROM S. 111 (Cont.)

➤ Investment by a Individual, AOP or Company

- Person making an investment shall submit prescribed form on IRIS portal
- The money or land invested shall be wholly utilized in a project.
- In case of builder, the Map Approving Authority or NESPAK shall certify that grey structure as per approved map has been completed by 30 Sep 2022

➤ In case of developer, following certifications need to be obtained:

- Map Approving Authority or NESPAK shall certify that landscaping has been completed by 30 Sep 2022
- Firm of CAs shall certify that at least 50% of the plots have been booked for sale and at least 40% of sale proceeds have been received by 30 Sep 2022
- At least 50% of roads have been laid up to sub-grade level as certified by the approving authority or NESPAK

IMMUNITY FROM S. 111 (Cont.)

- The immunity as above is also available to the **1st purchaser** of a building / unit of building purchased from the builder **in respect of purchase price of the building / unit of the building**, subject to the following conditions:
 - In case the purchase is from a new project, full payment is made through a crossed banking instrument to the builder between the date of registration of the project with FBR and 30 Sep 2022
 - In case the purchase is from an existing incomplete project, full or balance amount of payment is made through a crossed banking instrument to the builder between the date of registration of the project with FBR and 30 September 2022
- 1st purchaser means a person who purchases a building or a unit directly from the builder and **does not include a subsequent or a substituted purchaser**

IMMUNITY FROM S. 111 (Cont.)

- The immunity is also available to a **purchaser of a plot who intends to construct a building thereon**, if
 - Purchase is made by 31 Dec 2020
 - Full payment is made by 31 Dec 2020 through a crossed banking instrument
 - Construction on such plot is commenced by 31 Dec 2020 and is completed before 30 Sep 2022
 - Person registers himself with FBR on IRIS web portal

- The value of a land, plot, building or a unit of a building subject to immunity **shall be higher of:**
 - 130% of FBR's notified FMV
 - At the option of the person making investment, lower of the values determined by 2 independent valuers approved by SBP.

- This means that the investors who are desirous of claiming immunity from S. 111 **may be allowed to incorporate their investments in the books or wealth statement** on the basis of the above valuation method

IMMUNITY FROM S. 111 (Cont.)

- Immunity from S. 111 will not be available to:
 - Public office holders or his benamidar or his spouse or dependents;
 - Public listed company
 - A real estate investment trust or a company whose income is exempt under any provision of the ITO' 2001
 - Any proceeds derived from the commission of a criminal offence including the crimes of money laundering, extortion or terror financing

IMMUNITY FROM S. 111 (Cont.)

- Where immunity from S. 111 is claimed in respect of capital investment made by an individual or a person through a Company or AOP; **change in pattern of ownership before project completion will be subject to the following restrictions:**
 - Shareholder or Partner will not be allowed a change in ownership of an incomplete project except where at least 50% of the total project cost has been incurred. This is to be certified by a firm of CAs.
 - Succession to legal heirs in case of deceased shareholder or a partner will be allowed.
 - Additional partners or shareholders can be admitted only after 31 Dec 2020, **however, they will not be eligible for immunity from section 111.**

REGISTRATION & FILING REQUIREMENT

➤ Registration & filing of an irrevocable option

- Builders and developers are required to get the projects registered with FBR by 31 Dec 2020.
- Such registration is to be made on the IRIS by providing the details of a member or shareholder of a builder or developer alongwith **an irrevocable option for the project to be assessed under this regime.**
- Two separate registration forms are required to be filed in case developer is also the builder for the project.
- Persons availing immunity from S. 111 are also required to be registered with FBR

REGISTRATION & FILING REQUIREMENT (Cont.)

- **Certification:** Builder / developer will be required to obtain and provide to FBR a certificate from approving authority or map approving authority or NESPAK, as the case may be, to the following effect:
 - 'total land area' in square yards
 - 'covered area' in square feet
 - 'saleable area' in square feet
 - type (commercial, residential or industrial) of saleable area or the total land area, as the case may be.

- **Incorporation of Profits & Gains:** Builders & Developers will not be allowed to incorporate their profits and gains in books of accounts (including wealth statements) **exceeding 10 times of the amount of tax paid under this regime.**

A person is shown in silhouette from the back, looking through binoculars. The background is a city skyline at sunset, with the sun low on the horizon, casting a warm orange and yellow glow. The sky is filled with soft, wispy clouds. The city buildings are silhouetted against the bright sky. A yellow banner with black text is overlaid on the lower part of the image.

Other Important Amendments

DEFINITION OF “INDUSTRIAL UNDERTAKING” S. 2(29C)

- Through the Amendment Ordinance, the definition of the term “Industrial Undertaking” has been expanded to also include persons directly involved in the construction of buildings, roads, bridges and other such structures or the development of land, **to the extent and for the purpose of import of plant and machinery to be utilized in such activity.**
- This amendment is effective from 01 May 2020 and is subject to conditions as may be notified by FBR.
- Consequently, tax paid on import of plant, machinery, equipment and parts for own use by the abovementioned persons will be treated as adjustable tax
- It appears that since builders and developers will be assessable under the FTR, they may be eligible to obtain exemption certificate for collection of tax at import stage. However, the present mechanism for obtaining exemption certificate does not cater to the above situation and accordingly, it is likely that FBR may prescribe the procedure

REDUCED RATE OF TAX COLLECTION ON AUCTION OF IMMOVABLE PROPERTY [S. 236A, Division VIII]

- Currently, the rate of collection of tax on sale through auction of any property or goods is 10%
- The Amendment Ordinance has **reduced such rate from 10% to 5% in case of sale of an immovable property through auction.**

EXEMPTION FROM CAPITAL GAIN TAX [New Cl. (114AA)]

- Gain on disposal of a constructed property is chargeable to tax under the head 'Capital gains' at the rates ranging from 5% to 20% depending on the period of holding not exceeding 4 years.
- Amendment Ordinance has introduced exemption from tax on capital gain arising from disposal of constructed property by a **resident individual**
- The exemption is subject to the following conditions -
 - Property was being used for personal accommodation by the individual, his spouse or dependents at the time of sale and for which any of the utility bills is issued in the name of such individual
 - Land area of the property does not exceed 500 square yards in case of a house and 4000 square feet in case of a flat
 - Exemption has not previously been availed by the individual, his spouse or dependents under this Clause.

CAPITAL VALUE TAX (CVT), STAMP DUTY & PROVINCIAL SALES TAX

- Through the Amendment Ordinance, S. 7(1) of the Finance Act, 1989, CVT imposed on certain assets through S. 7 of the FA, 1989, has been ceased to have any effect. This means that the CVT is no more payable to the Federal Government. However, CVT as payable to provinces under the respective laws would continue to apply.
- Rate of Stamp Duty applicable on transfer of immovable property has been reduced to 1% against previous applicable rate of 5%. The Stamp (Amendment) Ordinance, 2020 issued by Govt. of Punjab vide Notification dated 20 April 2020.
- Construction services have been subjected to Punjab Sales Tax at the rate of Zero Percent without input tax adjustment through amendment made in the Second Schedule of the Punjab Sales Tax on Services Act, 2012 vide Notification No. SO(TAX)1-110/2020 dated 02 April 2020. Further, all construction and allied services rendered in Khyber Pakhtunkhwa have been exempted from levy of by sales tax by KPRA vide notification No. 709-11 dated 07 April 2020.

Question &
Answers
Sessions