

The Tax Laws (Amendment) Ordinance No.1 of 2020

Copy of The Tax Laws (Amendment) Ordinance No.1 of 2020, which has received the assent of the President, provided by the Law and Justice Division vide letter F. No.2(1)/2020-Pub, dated 19.04.2020 is being made available online for information and guidance.

Gazetted copy of the same shall be made available once received from Printing Corporation of Pakistan.

Government of Pakistan
Ministry of Law and Justice

No. F. 2(1)/2020-Pub.

Islamabad, the 19th April, 2020

The following Ordinance promulgated on 17th April, 2020 by the President is hereby published for general information:-

Ordinance No. 1 of 2020

An

ORDINANCE

further to amend certain tax laws

WHEREAS, the COVID-19 pandemic has created a worldwide crisis due to which industries, businesses, offices, services have been shut down in Pakistan and economic activity is at a stand-still;

And WHEREAS, the said situation has adversely affected Pakistan's economy and all segments of its society and population are suffering economic hardship;

And WHEREAS, in the existing circumstances, the poor and most vulnerable segments of the population, including the daily wagers in Pakistan are at most risk of suffering and facing danger to their livelihood;

And WHEREAS, in order to protect and revive the economy of Pakistan, it is essential and critical to give incentives for revival of the construction industry with certain conditions as provided for in this Ordinance;

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

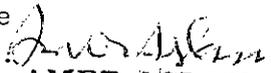
And WHEREAS, the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

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 (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

2. **Amendment in the Finance Act, 1989.**— In the Finance Act, 1989 (V of 1989), in section 7, after sub-section (10), the following new sub-section shall be inserted, namely:—


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Islamabad

"(11) Sub-section (1) shall cease to apply from the date of commencement of the Tax Laws (Amendment) Ordinance, 2020."

3. **Amendments in the Income Tax Ordinance, 2001 (Ordinance XLIX of 2001).**—In the Income Tax Ordinance, 2001 (XLIX of 2001), the following further amendments shall be made, namely:—

- (1) in section 2, in clause (29C),—
 - (a) in sub-clause (a), in para (iv), the word "and" shall be omitted; and
 - (b) after sub-clause (a), amended as aforesaid, the following new sub-clause shall be inserted, namely,—

"(aa) from the 1st day of May, 2020, a person 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, subject to such conditions as may be notified by the Board; and";
- (2) after section 100C, the following new section shall be inserted, namely:—

"100D.- Special provisions relating to builders and developers.— (1) For tax year 2020 and onwards, the tax payable by a builder or a developer, as defined in sub-section (9), who opts to pay tax under this section shall be computed and paid in accordance with the rules in the Eleventh Schedule on a project by project basis on the income, profits and gains derived from the sale of buildings or sale of plots, as the case may be, from—

- (a) a new project to be completed by the 30th day of September, 2022; or
- (b) an incomplete existing project to be completed by the 30th day of September, 2022:

Provided that any income, profits and gains of a builder or developer of an incomplete existing project earned up to tax year 2019 shall be subject to the provisions of the Ordinance as were in force

prior to the commencement of the Tax Laws (Amendment) Ordinance, 2020:

Provided further that any income of a builder or developer other than income, profits and gains subject to this section shall be subject to tax as per the provisions of the Ordinance.

(2) Where sub-section (1) applies, —

- (a) the income shall not be chargeable to tax under any head of income in computing the taxable income of the person;
- (b) no deduction shall be allowed under the Ordinance for any expenditure incurred in deriving the income;
- (c) the amount of the income shall not be reduced by —
 - (i) any deductible allowance under Part IX of Chapter III; or
 - (ii) the set off of any loss;
- (d) no tax credit shall be allowed against the tax payable under sub-section (1) except credit for tax under section 236K collected from the builder or developer after the commencement of the Tax Laws (Amendment) Ordinance, 2020 on purchase of immovable property utilized in a project;
- (e) there shall be no refund of any tax collected or deducted under the Ordinance;
- (f) if the tax payable has not been paid or short paid, the said amount of tax may be recovered and all the provisions of the Ordinance shall apply accordingly; and
- (g) sections 113 and 113C shall not apply on the turnover, income, profits and gains of a builder or developer from a project.

(3) The provisions of section 111 shall not apply to capital investment made in a new project under clause (a) of sub-section (1) in the form of money or land, subject to the following conditions, namely:—

(a) if the investment is made by a builder or developer being an individual —

(i) in the form of money, such builder or developer shall open a new bank account and deposit such amount in it on or before the 31st day of December, 2020; or

(ii) in the form of land, such builder or developer shall have the ownership title of the land at the time of commencement of the Tax Laws (Amendment) Ordinance, 2020;

(b) if the investment is made by a person in a project through a company or an association of persons,—

(i) such company or association of person shall be a single object (builder or developer) company or association of persons registered under the Companies Act, 2017 (XIX of 2017) or the Partnership Act, 1932 (IX of 1932), as the case may be, after the date of commencement of the Tax Laws (Amendment) Ordinance, 2020 and on or before the 31st day of December, 2020; and

(ii) the person shall be a member or shareholder of such association of persons or company, as the case may be;

and if the capital investment is made,—

(i) in the form of money, such amount shall be invested through a crossed banking instrument deposited in the bank account of such association of persons or company, as the case may be, on or before the 31st day of December, 2020; or

(ii) in the form of land, such land shall be transferred to such association of persons or company, as the case may be, on or before the 31st day of December, 2020:

Provided that the person shall have the ownership title of the land at the time of commencement of the Tax Laws (Amendment) Ordinance, 2020;

- (c) a person making an investment under clause (a) or (b) shall submit a prescribed form on IRIS web portal;
 - (d) the money or land invested under clause (a) or (b) shall be wholly utilized in a project; and
 - (e) completion of the project shall be certified in the following manner, namely:-
 - (i) in case of a builder, the map approving authority or NESPAK shall certify that grey structure as per the approved map has been completed by the builder on or before the 30th day of September, 2022; and
 - (ii) in case of a developer,-
 - (A) the map approving authority or NESPAK shall certify that landscaping has been completed on or before the 30th day of September, 2022;
 - (B) a firm of chartered accountants having an ICAP QCR rating of 'satisfactory', notified by the Board for this purpose, shall certify that at least 50% of the plots have been booked for sale and at least 40% of the sale proceeds have been received by the 30th day of September, 2022; and
 - (C) at least 50% of the roads have been laid up to sub-grade level as certified by the approving authority or NESPAK.
- (4) The provisions of section 111 shall also not apply to.-
- (a) the first purchaser of a building or a unit of the building purchased from the builder in respect of purchase price of the building or unit of the building subject to the following conditions, namely:-
 - (i) full payment is made through a crossed banking instrument to the builder during a period starting from the

date of registration of the project with the Board under this section and ending on the 30th day of September, 2022, in case the purchase is from a new project; and

- (ii) full or balance amount of payment is made through a crossed banking instrument to the builder during a period starting from the date of registration of the project with the Board under this section and ending on the 30th day of September, 2022, in case the purchase is from an existing incomplete project; and

(b) the purchaser of a plot who intends to construct a building thereon, if –

- (i) the purchase is made on or before the 31st day of December, 2020;

- (ii) the full payment is made on or before the 31st day of December, 2020 through a crossed banking instrument;

- (iii) construction on such plot is commenced on or before the 31st day of December, 2020;

- (iv) such construction is completed on or before the 30th day of September, 2022; and

- (v) the person registers himself with the Board on the online IRIS web portal.

(5) Where sub-section (3) or (4) apply, the value or price of land or building, as the case may be, shall be the higher of clause (a) or (b) below:–

- (a) 130% of the fair market value as determined by the Board under sub-section (4) of section 68; or

- (b) at the option of the person making investment, the lower of the values as determined by at least two independent valuers from the list of valuers approved by the State Bank of Pakistan.

(6) Sub-sections (3) and (4) shall not apply to –

- (a) holder of any public office as defined in the Voluntary Declaration of Domestic Assets Act, 2018 or his benamidar

as defined in the Benami Transactions (Prohibition) Act, 2017 (V of 2017) or his spouse or dependents;

- (b) a public listed company, a real estate investment trust or a company whose income is exempt under any provision of the Ordinance; or
- (c) any proceeds derived from the commission of a criminal offence including the crimes of money laundering, extortion or terror financing but excluding the offences under the Ordinance.

(7) Dividend income paid to a person by a builder or developer being a company out of the profits and gains derived from a project shall be exempt from tax.

(8) Notwithstanding anything contained in this section or the Eleventh Schedule, where a return or declaration has been made through misrepresentation or suppression of facts, such return or declaration shall be void and all the provisions of the Ordinance shall apply:

Provided that no action under this sub-section shall be taken if such misrepresentation has been made on account of a bona fide mistake:

Provided further that no action under this sub-section shall be taken without providing an opportunity of being heard and without prior approval of the Board.

(9) In this section,—

- (a) "builder" means a person who is registered as a builder with the Board and is engaged in the construction and disposal of residential or commercial buildings;
- (b) "capital investment" means investment as equity resources and does not include borrowed funds;
- (c) "developer" means a person who is registered as a developer with the Board and is engaged in the

development of land in the form of plots of any kind either for itself or otherwise;

- (d) "existing project" means a construction or development project, which –
- (i) has commenced before the date of commencement of the Tax Laws (Amendment) Ordinance, 2020;
 - (ii) is incomplete;
 - (iii) is completed on or before the 30th day of September, 2022; and
 - (iv) a declaration is provided in the registration form under Eleventh Schedule to the effect of percentage of the project completed up to the last day of the accounting period pertaining to tax year 2019;
- (e) "first purchaser" means a person who purchases a building or a unit, as the case may be, directly from the builder and does not include a subsequent or a substituted purchaser;
- (f) "new project" means a construction or development project, which –
- (i) is commenced during the period starting from the date of commencement of the Tax Laws (Amendment) Ordinance, 2020 and ending on the 31st day of December, 2020; and
 - (ii) is completed on or before the 30th day of September, 2022;
- (g) "project" means a project for construction of a building with the object of disposal, or a project for development of land into plots with the object of disposal or otherwise;
- (h) "registered with the Board" means registered after submission of form on project-by-project basis on the online IRIS web portal;

(10) The provisions of the Ordinance not specifically dealt with in this section or the rules made thereunder shall apply *mutatis mutandis* to builders and developers in so far as they are not inconsistent with this section or the rules made thereunder.”;

- (3) In the First Schedule, in Part IV, in Division VIII, for full stop at the end a colon shall be substituted; and thereafter the following proviso shall be added, namely:-

“Provided that in case of immovable property sold by auction, the rate of collection of tax under this section shall be 5% of the gross sale price.”;

- (4) In the Second Schedule, -

- (a) in Part I, after the omitted clause (114A), the following new clause shall be inserted, namely:-

“(114AA) Any income chargeable under the head “capital gains” derived by a resident individual from the sale of constructed residential property:

Provided that exemption under this clause shall only apply, if -

- (a) at the time of sale, the residential property was being used for the purpose of personal accommodation by the resident individual, his spouse or dependents and for which any of the utility bills is issued in the name of such individual;
- (b) the 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; and
- (c) exemption under this clause has not previously been availed by the individual, his spouse or dependents.”; and
- (b) in Part III, after clause (9A), the following new clause shall be inserted, namely:-
- “(9B) The tax payable on the income, profits and gains of projects of ‘low cost housing’ developed or approved

by Naya Pakistan Housing and Development Authority (NAPHDA) or under the Ehsaas Programme shall be reduced by 90%.”;

(5) after the Tenth Schedule, the following new Schedule shall be inserted, namely:—

“ELEVENTH SCHEDULE

[See section 100D]

RULES FOR COMPUTATION OF PROFITS AND GAINS OF BUILDERS AND DEVELOPERS AND TAX PAYABLE THEREON

1. Eligibility.—These rules shall apply to projects undertaken by builders and developers under section 100D.

2. Scope and payment of tax.— (1) Income computed and tax payable thereon shall be on Project-by-Project basis which shall be computed and paid at the rates provided in rule 10.

(2) (a) The above-referred rates shall be applicable for computing tax liability for the project on annual basis. The annual tax liability shall be worked out as under:

Tax liability as per the rates in rule 10

Estimated project life in years

(b) The estimated project life for tax purposes shall not exceed two and a half years:

Provided that in case of existing incomplete projects, the estimated project life shall be treated as three years from tax year 2020 through tax year 2022, and the tax payable shall be reduced by the percentage of completion up to the last day of the accounting period pertaining to tax year 2019 as declared in registration form:

Provided further that tax liability of tax year 2020 shall be paid along with return.

(c) Year shall include fraction of a year, and

(d) The tax liability so calculated and paid shall be final tax.

3. Registration and filing of return.—(1) A builder or developer shall electronically register a project on IRIS through FBR website on or before the 31st day of December, 2020 through submission of —

(a) registration form as may be prescribed which shall include, *inter alia*, details of a member or shareholder of a builder or developer, as the case may be:

Provided that a developer who is also a builder in case of a project shall submit two separate forms for registration as a developer and as a builder; and

(b) an irrevocable option to be assessed under this Schedule in respect of each project.

(2) A builder or developer availing this scheme shall electronically file a return of income and wealth statement as may be prescribed accompanied with evidence of payment of due tax which shall be taken for all purposes of the Ordinance to be an assessment order issued to the taxpayer by the Commissioner to the extent of income computed under these rules.

4. Certification.— Every builder or developer shall be required to obtain and provide to the Board in the prescribed manner a certificate from approving authority or map approving authority or NESPAK, as the case may be, to the following effect, namely:-

- (a) 'total land area' in square yards;
- (b) 'covered area' in square feet;
- (c) 'saleable area' in square feet; and
- (d) type (commercial, residential or industrial) of saleable area or the total land area, as the case may be.

5. Advance tax.— A builder or developer falling under this scheme shall pay advance tax equal to one-fourth of the tax liability for the year as determined in accordance with sub-rule (1) of rule 2 in four equal installments in the manner laid down in section 147 of the Ordinance.

6. Incorporation of profits and gains for computation of income. — A builder or developer opting for taxation under section 100D shall not be

allowed to incorporate profits and gains accruing from such projects in excess of ten times of the tax paid under rule 2.

7. Exemption from withholding of tax under sections 150 and 153. –

(1) The provisions of section 153 shall not apply to builders and developers on

- (a) the purchase of building material except steel and cement;
- (b) services of plumbing, electrification, shuttering and other similar services other than those provided by companies.

(2) The provisions of section 150 shall not apply to payment of dividend exempt under sub-section (7) of section 100D.

8. Restriction on change in pattern of ownership of a builder or developer before completion of a project.– Where exemption from the provisions of section 111 has been claimed under sub-section (3) of section 100D, the following restrictions shall apply, namely:-

- (a) a shareholder or a partner of a builder or developer shall not be allowed a change in ownership of an incomplete project except where at least fifty percent of the total project cost, as certified by a firm of chartered accountants having an ICAP QCR rating of 'satisfactory', notified by the Board for this purpose, has been incurred up to the date of change of ownership;
- (b) The succession to legal heirs in case of deceased shareholder or a partner shall be allowed;
- (c) The additional partners or shareholders in a builder or developer after the 31st day of December, 2020 may join but additional partners or shareholders shall not be eligible for exemption provided under sub-section (3) of section 100D.

9. Definitions.– (1) In these rules, unless there is anything repugnant in the subject or context, –

- (a) "area" means
 - (i) in case of a builder, –
 - (a) in case of a commercial or a residential building excluding a house, the saleable area of the building; and
 - (b) in case of a house, the covered area of house;

- (ii) in case of a developer, the total land area of the project;
- (b) "**building**" means a residential or commercial building or unit thereof;
- (c) "**commercial building**" includes any building or part thereof which is to be used for commercial purposes in accordance with the relevant laws;
- (d) "**commencement of project**" means, -
 - (i) in case of a construction project, when layout plan is approved by the concerned authority; and
 - (ii) in case of a development project, when the development plan is approved by the concerned authority;

Provided that where the builder or developer has taken all actions and done all things which are required and necessary to procure any approvals but any such approval is delayed beyond a period of 30 days from date of relevant application and the cutoff date of 31st day of December, 2020 is not adhered to by the builder or developer, the Board may provisionally accept commencement of such project on a case to case basis;

- (e) "**completion of project**" means. -
 - (i) 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;
 - (ii) in the case of a developer, the date on which -
 - (A) at least 50% of the total plots have been booked in name of buyers;
 - (B) at least 40% of the sale proceeds have been received;
 - (C) landscaping has been completed; and
 - (D) at least 50% of the roads have been laid up to sub-grade level as certified by the approving authority or NESPAK;

- (f) 'low cost housing' means a housing scheme as developed or approved by NAPHDA or under the 'Ehsaas Programme';
- (g) "NAPHDA" means Naya Pakistan Housing and Development Authority;
- (h) "NESPAC" means National Engineering Services Pakistan (Private) Limited;
- (i) "residential building" means a building which is not a commercial building but does not include buildings used for industrial purposes;
- (j) "saleable area" in case of buildings, means saleable area as determined by the approving authority or map approving authority or NESPAC under the relevant laws;
- (k) "unit" means a self-contained or independent building or part thereof including houses, apartments, shops, offices, etc.

(2) All other expressions used but not defined in these rules shall have the same meaning as assigned to them under the Ordinance.

10. **Rate and computation of tax liability.**— (1) The rate of tax under section 100D shall be computed in accordance with the Table below, namely:-

TABLE

(1)	Rate in respect of		
	(2)	(3)	(4)
Area in	Karachi, Lahore and Islamabad	Hyderabad, Sukkur, Multan, Faisalabad, Rawalpindi, Gujranwala, Sahiwal, Peshawar, Mardan,	Urban Areas not specified in columns (2) and (3)

		Abbottabad, Quetta	
TAX ON BUILDERS			
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

- (2) In case of mixed use buildings having both commercial and residential areas, respective rates mentioned above shall apply.
- (3) In case of development of plots and constructing buildings on the same plots as one project, both rates shall apply:

Provided that in the case of 'low cost housing' and all projects developed by NAPHDA, the higher rates shall apply.

ATTESTED

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