

**COMMENTS ON AMENDMENTS PROPOSED VIDE FINANCE BILL 2010 IN
THE INCOME TAX ORDINANCE, 2001****1. Capital gains on securities earned within a period of one year made taxable.
Sections 37, 37A, 147, 233A & the First Schedule**

- 1.1 Hitherto the capital gains on sale of shares of public companies including the vouchers of Pakistan Telecommunication Corporation, Modaraba certificates or any instruments of redeemable capital were exempt.

The issue has been debated since long and it has been desired by various quarters that it is unjust to continue exemption

The Bill now seeks to partly meet this demand and proposes to tax gain on sale of securities earned within a holding period of one year and six months respectively at 7.5% and 10% initially in the Tax year 2010 and increasing the rate year by year gradually to 17.5% and 10% in the year 2014 and 2015 respectively.

The aforesaid provisions do not apply in the case of banking companies as provisions with respect to a banking company already exist in the seventh schedule of the Income tax Ordinance which remained intact.

- 1.2 The Bill also seeks to enforce provision regarding payment of advance tax on account of these gains. The Bill proposes that the taxpayer shall pay advance tax on quarterly basis on capital gains on sale of securities as follows:-

Period	Rate of advance tax. Liability
Where holding period of a security is less than six months.	2%
Where holding period of a security is more than six months but less than twelve months.	1.5%

- 1.3 Advance tax shall be payable by the taxpayer within seven days after the close of each quarter.
- 1.4 The Bill defines the term “Securities” means shares of a public company, vouchers of Pakistan Telecommunication Corporation, Modaraba Certificates or instruments of redeemable capital.
- 1.5 The amount of gain under this section shall be treated as a separate block of income.

- 1.6 The Bill also proposes that the tax paid under section 233A as minimum tax to be substituted as adjustable against the liability under this regime. Since previously the tax withholding made under sub-section (1) clauses (a) and (b) of section 233A relates to the purchase and sale of shares made by the clients of the stock brokers and in view of withdrawal of exemption of capital gains, the investor community should be vigilant of such tax withholding for availing credit for such tax payments being adjustable as well, against proposed quarterly advance tax on capital gains. As a consequence of the proposed amendment, the tax withheld on purchase and sale of securities will be available to the taxpayer irrespective of capital gain or loss or income from any source.
- 1.7 It is learnt that there is an agreement to reckon the holding period in the 1st year which is to commence from 1st July, 2010, however problems are likely to arise in subsequent years when there will be purchases of previous years and current year's and taxpayers may link current years sale with last years' purchase while officers of the department may otherwise link it with current years purchase which needs to be resolved.
- 1.8 Moreover though separate block treatment ensures the sanctity of prescribed tax rate, however there will be issues relating to determination of capital gains and allocation of expenses under section 67 of the Income Tax Ordinance, 2001 where multi income environment exists which needs to be precisely clarified in order to avoid confusion or manipulation.
- 2. Tax Credit on plant & machinery installation, balancing, modernization and replacement by a company. Section 65B**
- 2.1 The Bill seeks to provide for tax credit on investment in purchase of plant & machinery for installation or for balancing, modernization & replacement purposes. This new provision provides that where a taxpayer being a company invests any amount in the purchase of a plant and machinery for installation, for the purposes of balancing, modernization and replacement in an industrial undertaking set up in Pakistan and owned by it, credit equal to **10% of the tax payable** shall be allowed for the tax year in which the said costs are incurred against the tax payable by the company.
- 2.2 These provisions are applicable if the plant and machinery is purchased and installed at any time between the first day of July, 2010, and the 30th day of June, 2015.

2.3 The Bill further provides that where any credit is allowed under this section and subsequently it is discovered by the Commissioner Inland Revenue that any one or more of the conditions specified in this section was, or were, not fulfilled, as the case may be, the credit originally allowed shall be deemed to have been wrongly allowed and the Commissioner Inland Revenue may, notwithstanding anything contained in this Ordinance, re-compute the tax payable by the taxpayer for the relevant year and the provisions of this Ordinance shall, so far as may be, apply accordingly.

2.4 From the plain reading of the Bill, it is noted that there is no mention of the quantum of investment whereas the tax credit is equal to the ten percent of the tax payable; and where no tax is payable, provisions of minimum tax will apply and no tax credit on minimum tax in this case is applicable.

It is important to note that in the year of addition initial depreciation and normal depreciation are usually available to such taxpayers and their tax liability under the normal regime works out at nil due to inflated depreciation allowance and provisions of minimum tax also applies in those cases. Thus this benefit will be negated as this is based on tax payable unlike in the past where tax credit was based on the amount so expended.

3. Tax credit to companies opting for enlistment.

Section 65C

The Bill seeks to provide a tax credit by way of reduction in tax rate of five percent to a company opting for enlistment in any registered stock exchange in Pakistan, to be allowed for the tax year in which the said company is enlisted.

In view of depressed situation of the stock markets, the provision of this tax credit would encourage the companies to enlist themselves. However this benefit will only be available to those companies who are in the normal taxation regime.

4. Scope of minimum tax extended to individual and AOPs having turnover of Rs. 50 million or more and rate of minimum tax increased from 0.5% to 1%. Section 113

4.1 The Bill proposes to broaden the applicability of the provisions of minimum tax to Individuals and AOPs, where their turnover is Rs.50 million or more in tax year 2009 and 2007 respectively or in any subsequent tax year.

4.2 The Bill also proposes to increase the rate of minimum tax from 0.5% to 1% which, despite the fact that this is applicable where a taxpayer has no tax liability on any grounds, has been doubled thus hitting these taxpayers extremely hard.



5. Advance Tax – Section 147

- (i) Association of Persons brought at par with a company for advance tax.*
- (ii) Threshold for individual for advance tax payment increased from Rs. 200,000 to Rs. 500,000.*
- (iii) Dates of payment of advance tax revised.*

5.1 The amendments proposed by the Bill were also proposed last year but were not enforced. The Bill proposes to bring association of persons at par with a company and AOPs are also required to calculate their quarterly advance tax liability on the same lines as being computed in the case of a company.

Consequently basic threshold, which was previously available to an AOP, has also been done away and the AOPs have to pay advance tax on the basis of their quarterly turnover.

5.2 The Bill proposes to increase the threshold for payment of advance tax by individuals from Rs 200,000 to Rs. 500,000. This amendment was long awaited as it was lastly increased to present level in the year 2003.

5.3 The Bill also seeks to amend the dates of payment of advance tax in the case of companies and AOPs, as follows:

Quarter ended	Date of payment
September 30 th	25 th day of September
December 31 st	25 th day of December
March 31 st	25 th day of March
June 30 th	15 th day of June

The dates of payment of advance tax in the case of individual will remain unchanged.

6. Individuals having turnover of Rs. 50 million or more made withholding tax agent. Section 153

6.1 The Bill proposes to make individuals having turnover of Rs. 50 million or more in the tax year 2009 or in subsequent year as withholding agents. Thus such persons are required to withhold tax from the payment of goods, services and execution of contracts, but also to deposit the same into the treasury within time specified; and also file quarterly statements, and are also subject to monitoring of taxes by the officer Inland Revenue.

- 6.2 The other amendment in this section relates to AOPs who were made withholding tax agents having turnover of Rs. 50 million or more in the tax year 2007 and onwards. Thus the test of turnover for tax year 2007 or in any subsequent year has been revisited
- 7. Final Taxation Regime applicable to “Income from Property” has been brought to normal tax regime. Sections 155 & 169**
- 7.1 The Bill proposes to discontinue the applicability of final tax regime in the case of taxpayers earning income from property. Consequently the total income from property shall be liable to tax at normal rates applicable to respective taxpayers and amount of tax deducted at source will be adjustable while determining the tax liability.
- 7.2 It is important to state here that deductions admissible under the omitted section 17 has not been restored which shows an intent that no deductions will be admissible; which in our opinion is unjust and the contents of omitted section 17 needs to be restored.
- 7.3 The amendments proposed by the Bill will change the mind set of landlords who had earlier accepted the taxability of their rental income at the nominal fixed tax rates and now they are likely to face difficulties of complicated taxation system, . However, we understand that this is a genuine amendment, being equitable and in-discriminatory subject to the restoration of omitted section 17 to allow expenditure against this income to be in line with basic principal of taxation laws.
- 7.4 The amendment proposed in section 169(3) with respect to insertion of section 15 (income from house property) provides that they are not required to furnish a return of income under section 114, which needs to be rectified, as such income is to be treated as a normal taxed income.

8. Tax withholding on banking transactions.**Section 231AA**

- 8.1 The Bill proposes to enlarge the tax withholding regime by making every banking company responsible to deduct tax on withdrawal through any mode of banking transactions including Demand Draft, Payment Order, Online Transfer, Telegraphic Transfer, CDR, STDR, RTC, if the payments in aggregate exceed twenty-five thousand rupees in a day.
- 8.2 However, the provisions of this section shall not be applicable to withdrawals made by:
- (a) the Federal Government or a Provincial Government;
 - (b) a foreign diplomat or a diplomatic mission in Pakistan; or
 - (c) a person who produces a certificate from the Commissioner that his income during the tax year is exempt
- 8.3 The provision of Collecting tax from a documented process is likely to result in preventing documentation to the extent permitted by the circumstances and though a catch has been provided yet in the case of taxpayer, exemption needs to be provided as even otherwise the taxpayer will its tax liability from quarterly payments however problem may arise in the cases of exporters and taxpayers to whom provisions of final tax regime are applicable and they have to complete the cumbersome process of obtaining refund of tax refund. Furthermore, the use of the word “including” before the identification of banking instruments on which the tax is to be collected in advance enlarged the scope and may endanger the inclusion of “crossed cheques” which needs to be clarified for the intended purpose of the proposed amendment.

9. Extension of withholding tax provision to air tickets and sale of units through electronic medium or whatever form.**Section 236 ,236B & First Schedule**

- 9.1 The Bill proposes to extend the withholding tax regime by bringing to its ambit the deduction of tax on purchase of air tickets and making responsible the person preparing air tickets to charge / collect advance tax @ 5% on the gross amount of domestic air tickets.
- 9.2 The Bill also proposes to extend the applicability of tax withholding to extend the applicability [in addition to (a) telephone bill of a subscriber and (b) prepaid cards for telephones] to sale of units through any electronic medium or whatever form; and makes the person issuing or selling such units through any electronic medium or whatever form to collect advance tax from the purchaser at the time of issuance or sale of units.

Amendment proposed in section 236A through the Bill proposes to enlarge the definition of property by public auction to “include property or goods confiscated or attached” whereas it was previously restricted to “property or goods confiscated or attached” only.

10. Rate card of Association of Persons separated. Section 4 & First Schedule

The Bill proposes to introduce separate rate card for AOPs for the tax year 2010 and onward at a fixed rate of 25% irrespective of any slab / scale of income. Presently AOPS are liable to tax at the same rate as is applicable in the case of individuals. Also refer to our comments given on page 32 below.

11. Interest on Soft loans to employees. Section 13

Presently deemed income on soft loans made to employees is liable to tax in the hands of employees irrespective of the fact whether the employee has an account with the employer where the employee has waived off interest thereon.

The Bill seeks to provide relief for these cases and provides that in these cases provision of section 13 (7) will not be applicable. Consequently this deeming provision will be inapplicable to such benefit arising to an employee due to waiver of interest by such employee on his account with the employer.

12. Deceased Individuals' Estate in bankruptcy. Sections 87 & 138B

12.1 The legal representative of a deceased individual shall be liable for taxes due to his interest as successor in interest. The Bill proposes to provide that these taxes shall be the first charge on the deceased's estate. Consequently the estate of deceased are first to be utilized towards taxes.

12.2 The Bill further proposes to insert a new section, whereby if a taxpayer is declared bankrupt, the tax liability shall pass on to the estate in bankruptcy and if tax liability is incurred by an estate in bankruptcy, the tax shall be deemed to be a current expenditure in the operations of the estate in bankruptcy and shall be paid before the claims preferred by other creditors are settled.

13. Unexplained income / expenditure or assets. Section 111

13.1 Presently where any unexplained income or assets or expenditures have been found, that amount is included as income of the person in the immediately preceding the financial year in which it was discovered.

The Bill proposes to include that income in the tax year to which it relates. This amendment rationalizes the taxability in the proper year instead of immediately preceding year.

- 13.2 Furthermore the provisions of this section were inapplicable in the case of unexplained income or expenditure or assets that related to a period beyond preceding five tax years or assessment years. The bill proposes to delete the said provision, consequently it will be a hanging sword as section 111 which itself is a charging section and thus enabling Officer Inland Revenue to proceed for digging out or making fishy enquiries for indefinite periods, which may cause great hardship and loss of trust of the taxpayers.

14. Increase in threshold for filing of wealth statement in the cases of FTR.

Section 115 & 116.

- 14.1 Presently every person other than a company who files statement under the final taxation regime and whose tax amounts to Rs. 20,000 or more is required to file wealth statement alongwith reconciliation of wealth.

- 14.2 The Bill proposes to enhance this limit from Rs. 20,000 to Rs. 35,000.

- 14.3 Furthermore this provision has been shifted to Section 116 from section 115.

15. Date of filing of non-corporate sector etc. changed.

Section 118

Presently a return of income for any person other than a company, an employer certificate of an individual or a statement of final taxation under section 115(4) is required to be furnished on or before 30th day of September next following the end of tax year to which it relates.

The Bill seeks to propose that a return of income for any person (other than a company), an Annual Statement of deduction of income tax from salary, filed by the employer of an individual or a statement required under sub-section (4) of section 115 shall be furnished as per the following schedule, namely:-

- (a) In the case of an Annual Statement of deduction of income tax from salary, filed by the employer of an individual, return of income through e-portal in the case of a salaried person or a statement required under sub-section (4) of section 115, on or before the 31st day of August next following the end of the tax year to which the return, Annual Statement of deduction of income tax from salary, filed by the employer or statement relates.
- (b) in the case of a return of income for any person (other than a company), as described under clause (a), on or before the 30th day of September next following the end of the tax year to which the return relates.

The amendment proposed in the other relevant sections prescribes for quarterly filing of statements whereas herein provision regarding annual filing of return has been provided.

16. Best Judgment assessment.**Section 121**

- 16.1 Amendment proposed in the Bill with respect to best judgment includes empowering the Commissioner to make assessment of income in addition to taxable income of the person and tax thereon.
- 16.2 Amendment also includes empowering the Commissioner to employ a firm of Cost and Management Accountants in addition to himself and any person employed by a firm of Chartered Accountants to produce before him any relevant document or evidence that may be required to proceed to pass an order on the basis of his judgment.

17. Amendment of Assessment.**Section 122**

- 17.1 The amendment proposed in sub-section (4) empowers the Commissioner to amend an original assessment under sub-section (5A) in addition to sub-sections (1) and (3) as many times as may be necessary within the period prescribed therein. The amendment proposed has retrospective application from 4th July 2003.
- 17.2 A new sub-section (5AA) has also been proposed in the Bill empowering Commissioner with further deeming powers. It provides that the Commissioner is deemed to have, and always had, the powers to amend or further amend an assessment order under sub-section (5A), where appeal has been filed or decided against the order of the Commissioner, in respect of any point or issue which was not the subject matter of such appeal.

18. Provisional assessment.**Section 122C**

Amendment proposed in the Bill with respect to provisional assessment includes empowering the Commissioner to make assessment of income in addition to taxable income of the person and tax thereon.

19. Appeal to the Commissioner Appeals.**Section 127**

- 19.1 Consequent upon clubbing of different penal provision in one section i.e. section 182, reference of sections 183 to 189 before the Appellate Commissioner has been proposed to be omitted.
- 19.2 Bill further proposes to fix the appeal fee at Rs.1,000 instead of Rs. 1,000 or ten percent of the amount of tax assessed, whichever is less.

20. Appointment of accountant member – qualification extended to Collector. Section 130

The Bill seeks to extend the eligibility criteria to become an accountant member of the Tribunal, by including a Collector in addition to a Commissioner.

21. Importers of edible oil and packing material. Section 148(7)

The Bill seeks to keep importers of edible oil and packing material outside the ambit of final tax regime and tax collected at import stage on these imports constitutes minimum tax and these importers are therefore required to file income tax returns in the normal course.

22. Extension of final tax to profit on debt from debt instruments, Government securities and Pakistan Investment Bonds. Section 151

The Bill seeks to extend final tax regime to tax deducted on profit on debt from Debt instruments, Government securities including Treasury Bills and Pakistan Investment Bonds both in the hands of corporate and non-corporate sector.

However, consequential amendment in section 169 has not been proposed by the Bill, which needs to be made.

23. Quarterly filing of withholding returns instead of Annual Filing. Section 165

23.1 The Bill seeks to provide for quarterly filing of return by withholding tax agents instead of annual returns.

23.2 It further prescribes that every prescribed person shall be required to file withholding statement even where no withholding tax is collected or deducted during the period.

23.3 The Bill proposes the dates of filing quarterly returns to be 20th of the month following the each respective quarter.

24. Audit. Sections 177&210

24.1 Section 177 deals with the provision with regard of conduct of audit of taxpayers record and empower the Commissioner to call for record or documents including books of account including access to record kept on electronic data or to the officer authorized by Commissioner.

The Bill proposes to prescribe that this power to be exercised upon fulfilment of the following:

- a) the Commissioner may, after recording reasons in writing call for record or documents including books of account of the taxpayer; and
- b) the reasons shall be communicated to the taxpayer while calling record or documents including books of account of the taxpayer.

24.2 Furthermore the power to appoint a firm of Chartered Accountants or a firm of Cost and Management Accountants for conduct of audit of income tax affairs of taxpayer presently vests with the Board. The Bill proposes to empower Commissioner as well to appoint them.

24.3 Consequential and appropriate amendment has also been made in section 210 (1B) with respect to delegation of powers to a firm of Chartered Accountants or a firm of Cost and Management Accountants.

25. Federal Government and Board empowered to provide Exemption from penalty and default surcharge. Section 183

The Bill proposes to insert new provision with respect to empowering Federal Government and the Board, for reasons to be recorded in writing, to exempt any person or class of persons from payment of the whole or part of the penalty and default surcharge payable under the Ordinance subject to such conditions and limitations as may be specified in such notification.

26. Redefining income tax authorities upon vesting authority to administer three domestic taxes. Sections 208 & 209

26.1 The Bill proposes to redefine appointment of tax authorities upon vesting of administration of three taxes to Inland Revenue. Presently Board is empowered to appoint Regional Commissioner, Commissioners and other executive or ministerial officer and staff as may be necessary.

The Bill empowers the Board to appoint as many Chief Commissioners Inland Revenue, Commissioners Inland Revenue, Commissioners Inland Revenue (Appeals), Additional Commissioners Inland Revenue, Deputy Commissioners Inland Revenue, Assistant Commissioners Inland Revenue, Inland Revenue Officers, Inland Revenue Audit Officers, Superintendents Inland Revenue, Inspectors Inland Revenue, Auditors Inland Revenue and such other executive or ministerial officers and staff as may be necessary.

26.2 Consequential and appropriate amendment has also been made in section 209 with respect to jurisdiction of these officers.

27. Selection of cases for audit through computer ballot. Section 214C

In view of the writ filed with respect to recent selection of cases for audit through computer ballot, the Bill seeks to enact enabling provision with respect to such ballot. The Bill proposes to empower the Board to select persons or classes of persons for audit of Income Tax affairs through computer ballot which may be random or parametric as the Board may deem fit. It further provides that audit of Income Tax affairs of persons selected 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) of section 177, shall apply accordingly.

The Bill further provide for the removal of doubt that Board shall be deemed always to have had the power to select any persons or classes of persons for audit of Income Tax affairs. Thus the Bill intends to have the application of this provision with retrospective effect.

28. Computation of limitation period. Section 226

Hitherto in computing limitation period, the following were excluded from limitation period:

- (a) in the case of an appeal or an application the day on which the order complained of was served and, if the taxpayer was not furnished with a copy of the order when the notice of the order was served on the taxpayer, the time requisite for obtaining copy of such order; and
- (b) in the case of assessment or other proceeding the period if any for which such proceedings were stayed by any Court Appellate Tribunal or any other authority.

The Bill proposes to insert another exclusion in the case of assessment or other proceeding for the tax year remained pending before Court, Appellate Tribunal or any other authority.

29. Bars of suits in Civil Courts. Section 227

The Bill proposes to insert new provision with respect to filing of suits against any officer or official by any governmental agency and provides that notwithstanding anything contained in any other law for the time being in force, no investigation or inquiry shall be undertaken or initiated by any governmental agency against any officer or official for anything done in his official capacity under this Ordinance, rules, instructions or direction made or issued there-under without the prior approval of the Board.

30. Reinstating income tax authority of Directorate General of Training and Research. Section 229

The Bill proposes to reinstate income tax authority of Directorate of Training and Research and provides that the Directorate General of Training and Research shall consist of a Director General, Additional Director General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors and such officers as the Board, may, by notification in the official Gazette, appoint. It further empowers the Board, by notification in the official Gazette, to specify the functions, jurisdiction and powers of the Directorate General of Training and Research and its officers.

31. Removal of difficulties. Section 240

Presently, the power of Federal Government for removal of difficulties was available upto June 30, 2004 with respect to giving effect to any of the provision of the Ordinance for making such order not in consistence with the provisions of the Ordinance as may appear to it to be necessary for the purposes of removing the difficulty.

The Bill proposes to omit provisions with respect to the date and as a result of which the Federal Government is empowered to issue order for removal of any such difficulty.

32. Clubbing of penal provisions. Section 182 to 190

The Bill proposes to club penal provisions with respect to offences and penalties into one place. It also proposes to threshold of minimum and maximum penalties besides reconstructions of texts. The reconstruction of text empowers the officers to impose huge penalties even on small default which includes late filing. It also includes new penalties for defaults such as issue of cash memos or invoices or receipts. These penalties need to be rationalized keeping in view the nature and type of default. The details of proposed amendments are as under:



182 Offences and penalties.—(1) Any person who commits any offence specified in column (2) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under this Ordinance or any other law, be liable to the penalty mentioned against that offence in column (3) thereof:—

TABLE

S.No.	Offences.	Penalties.	Section of the Ordinance to which offence has reference.
(1)	(2)	(3)	(4)
1.	Where any person fails to furnish a return of income or a statement as required under section 115 or wealth statement or wealth reconciliation statement or statement under section 165 within the due date.	Such person shall pay a penalty equal to 0.1 %of the tax payable for each day of default subject to a minimum penalty of five thousand rupees and a maximum penalty of 25% of the tax payable in respect of that tax year.	114, 115,116 and 165
2.	Any person who fails to issue cash memo or invoice or receipt when required under this Ordinance or the rules made there-under.	Such person shall pay a penalty of five thousand rupees or three per cent of the amount of the tax involved, whichever is higher.	174 and Chapter VII of the Income Tax Rules
3.	Any person who is required to apply for registration under this Ordinance but fails to make an application for registration.	Such person shall pay a penalty of five thousand rupees.	181
4.	Any person who fails to notify the changes of material nature in the particulars of registration.	Such person shall pay a penalty of five thousand rupees.	181
5.	Any person who fails to deposit the amount of tax due or any part thereof in the time or manner laid down under this Ordinance or rules made there-under.	Such person shall pay a penalty of five per cent of the amount of the tax in default. For the second default an additional penalty of 25% of the amount of tax in default. For the third and subsequent defaults an additional penalty of 50% of the amount of tax in default.	137
6.	Any person who repeats erroneous calculation in the return for more than one year whereby amount of tax less than the actual tax payable	Such person shall pay a penalty of five thousand rupees or three per cent of the amount of the tax involved, whichever is higher.	137



	under this Ordinance is paid.		
7.	Any person who fails to maintain records required under this Ordinance or the rules made there-under.	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax on income whichever is higher	174
8.	Where a taxpayer who, without any reasonable cause, in non compliance with the provisions of section 177— a) fails to produce the record or documents on receipt of first notice; b) fails to produce the record or documents on receipt of second notice; and c) fails to produce the record or documents on receipt of third notice.	Such person shall pay a penalty of five thousand rupees; such person shall pay a penalty of ten thousand rupees; and such person shall pay a penalty of fifty thousand rupees.	
9.	Any person who fails to furnish the information required or to comply with any other term of the notice served under section 176	Such person shall pay a penalty of five thousand rupees for the first default and ten thousand rupees for each subsequent default.	176
10.	Any person who- a) makes a false or misleading statement to an Inland Revenue Authority either in writing or orally or electronically including a statement in an application, certificate, declaration, notification, return, objection or other document including books of accounts made ,prepared, given, filed or furnished under this ordinance; b) furnishes or files a false or misleading information or document or statement to an Income tax Authority either in writing or orally or electronically; c) omits from a statement made	Such person shall pay a penalty of twenty five thousand rupees or 100% of the amount of tax shortfall whichever is higher: Provided that in case of an assessment order deemed under section 120, no penalty shall be imposed to the extent of the tax shortfall occurring as a result of the taxpayer taking a reasonably arguable position on the application of this Ordinance to the taxpayer’s position.	114,115,116,174,176, 177 and general.



	or information furnished to an Income tax Authority any matter or thing without which the statement or the information is false or misleading in a material particular.		
11.	Any person who denies or obstructs the access of the Commissioner or any officer authorized by the Commissioner to the premises, place, accounts, documents, computers or stocks.	Such person shall pay a penalty of twenty five thousand rupees or one hundred per cent of the amount of tax involved, whichever is higher.	175 and 177
12.	Where a person has concealed income or furnished inaccurate particulars of such income, including but not limited to the suppression of any income or amount chargeable to tax, the claiming of any deduction for any expenditure not actually incurred or any act referred to in sub-section (1) of section 111, in the course of any proceeding under this Ordinance before any Income tax authority or the appellate tribunal.	Such person shall pay a penalty of twenty five thousand rupees or an amount equal to the tax which the person sought to evade whichever is higher. However, no penalty shall be payable on mere disallowance of a claim of exemption from tax of any income or amount declared by a person or mere disallowance of any expenditure declared by a person to be deductible, unless it is proved that the person made the claim knowing it to be wrong.	20, 111 and General.
13.	Any person who obstructs any Income tax Authority in the performance of his official duties.	Such person shall pay a penalty of twenty five thousand rupees.	209, 210 and General.
14	Any person who contravenes any of the provision of this Ordinance for which no penalty has, specifically, been provided in this section.	Such person shall pay a penalty of five thousand rupees or three per cent of the amount of tax involved, whichever is higher.	General.
15.	Any person who fails to collect or deduct tax as required under any provision of this Ordinance or fails to pay the tax collected or deducted as required under section 160.	Such person shall pay a penalty of twenty five thousand rupees or the 10% of the amount of tax whichever is higher.	148,149,150,151,152, 153, 153A, 154, 155, 156, 156A, 156B, 158, 160, 231A, 231B, 233, 233A, 234, 234A, 235, 236, 236A.



The Bill further provides that:

- penalties specified shall be applied in a consistent manner and no penalty shall be payable unless an order in writing is passed by the Commissioner, Commissioner (Appeals) or the Appellate Tribunal after providing an opportunity of being heard.
- where a Commissioner (Appeals) or the Appellate Tribunal makes an order, the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall immediately serve a copy of the order on the Commissioner and thereupon all the provision of this Ordinance relating to the recovery of penalty shall apply as if the order was made by the Commissioner.
- where in consequence of any order under the Ordinance, the amount of tax in respect of which any penalty payable is reduced, the amount of penalty shall be reduced accordingly.

33. Active taxpayer list.

Section 181A

The Bill proposes to introduce new provision with respect to regulation of taxpayers list and empowers the Board to institute active taxpayers list.

34. Amendment already enacted and made through Finance (Amendment) Ordinance, 2009 w.e.f February 06, 2010.

Following is the list of major amendments which had already been made in the Income Tax Ordinance, 2001 through Finance (Amendment) Ordinance 2009 on February 06, 2010 but since the date of this ordinance has not been extended by President of Pakistan on June 05, 2010 therefore these amendments have lapsed. Accordingly the Bill seeks to insert these amendments to give them legal cover to remain effective even on or after June 05, 2010.

Sub-section /clause	Section	Brief description of amendments
2	2	Substitution – definition of Appellate Tribunal Inland Revenue
11B	2	New insertion - definition of Chief Commissioner
13	2	Substitution - definition of Commissioner
13A	2	Substitution - definition of Commissioner (Appeals)
29C	2	Substitution - definition industrial undertaking
38A	2	New insertion - definition of Officer of Inland Revenue
48A & 65	2	Omitted
6	114	Substitution - re: revised return
6A	114	New insertion – re: revised return
2A	116	New insertion – re: wealth statement
6	119	Substitution – re: default surcharge in place of additional tax
1(a)	121	Omitted

3	122	New insertion – re: section 6A is added
1	122A	Substitution – re: change of nomenclature
	122C	New insertion – re: provisional assessment
2	137	New insertion – re: additional proviso
6	137	Substitution – re: default surcharge in place of additional tax
1	146B	Substitution – re: default surcharge in place of additional tax
1B	161	Substitution – re: default surcharge in place of additional tax
2	162	Substitution – re: default surcharge in place of additional tax
3	174	Substitution – re: change of figure from five to six, with an addition proviso and an explanation.
1	177	Substitution of existing clause
2	177	Substitution of existing clause
3, 4 & 5	177	Omitted
6	177	Certain omissions of sub-sections (5) & (8)
7	177	Insertion of certain words and figures
10	177	Insertion re: conduct of audit and production of account, records, etc. before the Commissioner or the firms of Chartered Accountants or Cost & Management Accountants
	202	Substitution – re: default surcharge in place of additional tax
1	203	Substitution – re: appointment of special judges
1A & 1B	203	New insertion – re: appointment & conduct of proceedings by special judge
3 & 4	203	New insertion – re: appointment & conduct of proceedings by special judge
	205	Substitution – re: default surcharge in place of additional tax, including headings
	205A	Substitution – re: default surcharge in place of additional tax
	207	Substitution – re: income tax authorities
1, 1A & 1B	210	Substitution – re: change of nomenclature
	211	Substitution – re: change of nomenclature
1 & 2	215	Substitution – re: change of nomenclature
3	217	Substitution – re: change of nomenclature
2(d)	237	Substitution – re: default surcharge in place of additional tax
3 & 7	239	Substitution – re: default surcharge in place of additional tax
	239B	New insertion – re: reference to authorities

The Finance Bill 2010 has also proposed certain important changes in the Schedules to the Income Tax Ordinance, 2001, which are explained as under:

35 The First Schedule – Part I

Division - I (rate of tax for individuals)

- Hither-to-before that income tax rates were tabulated for two main categories only i.e. individuals & AOPs and companies. Now these rates have been proposed to be tabulated in three categories i.e. (1) Individuals (both salaried and non-salaried) (2) AOPs (3) Companies including small companies.
- The basic taxable limit for all types of individuals, including women has been proposed to be increased from Rs. 100,000 / Rs. 200,000 to Rs. 300,000. The



purpose of this increase is to give relief to the lower salaried class as well as small traders / proprietary businessman.

- The income tax rates tables for the tax year 2010 and tax year 2011 are given below to depict changes at a glance:

Table of tax slabs for non-salaried taxpayers

<u>2010-2011</u>		<u>2009-2010</u>	
Where taxable income does not exceed Rs. 300,000	0%	Where taxable income does not exceed Rs. 100,000	0%
Rs.300,000 to Rs.400,000	7.50%	Rs.100,000 to Rs.110,000	0.50%
Rs.400,000 to Rs.500,000	10.00%	Rs.110,000 to Rs.125,000	1.00%
Rs.500,000 to Rs. 600,000	12.50%	Rs.125,000 to Rs.150,000	2.00%
Rs.600,000 to Rs. 800,000	15.00%	Rs.150,000 to Rs.175,000	3.00%
Rs.800,000 to Rs.1,000,000	17.50%	Rs.175,000 to Rs.200,000	4.00%
Rs. 1,000,000 to Rs.1,300,000	21.00%	Rs.200,000 to Rs.300,000	5.00%
Rs.1,300,001 & above	25.00%	Rs.300,000 to Rs.400,000	7.50%
		Rs.400,000 to Rs.500,000	10.00%
		Rs.500,000 to Rs. 600,000	12.50%
		Rs.600,000 to Rs. 800,000	15.00%
		Rs.800,000 to Rs.1,000,000	17.50%
		Rs. 1,000,000 to Rs.1,300,000	21.00%
		Rs.1,300,001 & above	25.00%

- The basic taxable limit for women has also been proposed to be increased from Rs. 125,000 to Rs. 300,000, equivalent to men.

Table of tax slabs for salaries taxpayers

<u>2010-2011</u>		<u>2009-2010</u>	
Where taxable income does not exceed Rs. 300,000	0%	Where taxable income does not exceed Rs. 200,000	0%
Rs.300,000 to Rs.350,000	0.75%	Rs.200,000 to Rs.250,000	0.50%
Rs.350,000 to Rs.400,000	1.50%	Rs.250,000 to Rs.350,000	0.75%
Rs.400,000 to Rs.450,000	2.50%	Rs.350,000 to Rs.400,000	1.50%
Rs.450,000 to Rs.550,000	3.50%	Rs.400,000 to Rs.450,000	2.50%
Rs.550,000 to Rs.650,000	4.50%	Rs.450,000 to Rs.550,000	3.50%
Rs.650,000 to Rs.750,000	6.00%	Rs.550,000 to Rs.650,000	4.50%
Rs.750,000 to Rs.900,000	7.50%	Rs.650,000 to Rs.750,000	6.00%
Rs.900,000 to Rs.1,050,000	9.00%	Rs.750,000 to Rs.900,000	7.50%
Rs.1,050,000 to Rs.1,200,000	10.00%	Rs.900,000 to Rs.1,050,000	9.00%
Rs.1,200,000 to Rs.1,450,000	11.00%	Rs.1,050,000 to Rs.1,200,000	10.00%
Rs.1,450,000 to Rs.1,700,000	12.50%	Rs.1,200,000 to Rs.1,450,000	11.00%
Rs.1,700,000 to Rs.1,950,000	14.00%	Rs.1,450,000 to Rs.1,700,000	12.50%
Rs.1,950,000 to Rs.2,250,000	15.00%	Rs.1,700,000 to Rs.1,950,000	14.00%
Rs.2,250,000 to Rs.2,850,000	16.00%	Rs.1,950,000 to Rs.2,250,000	15.00%



Rs.2,850,000 to Rs.3,550,000	17.50%	Rs.2,250,000 to Rs.2,850,000	16.00%
Rs.3,550,000 to Rs.4,550,000	18.50%	Rs.2,850,000 to Rs.3,550,000	17.50%
Rs.4,550,000 & above	20.00%	Rs.3,550,000 to Rs.4,550,000	18.50%
		Rs.4,550,000 to Rs.8,650,000	19.00%
		Exceeds Rs.8,650,000	20.00%

- The provisos as regard to basic taxable income / exemption for women as well as Internally Displaced Persons Tax (IDPT) have also been proposed to be deleted, as no more applicable for the tax year 2011.

Division - IA (rate of tax on certain persons)

- There is a proposal to increase the turnover tax for retailers, under section 113A of the Income Tax Ordinance, 2001 from 0.5% to 1.00% of the turnover.

Division - IB (rates of tax for Association of Persons)

- There is also a proposal to add Division – IB relating to the rate of tax to be imposed on the taxable income of AOP for the tax year 2010 and onward, at a flat rate of 25%, with no apparent basic exemption. Accordingly additional tax liability has to be borne by AOPs this year i.e. tax year 2010 upto the income range of Rs. 1,300,000, as evident from the table given below:

<u>Assumed business income</u>	<u>Tax liability as per new flat rates</u>	<u>Tax liability as per previous slab rates</u>	<u>Excess tax liability of AOPs</u>
100,000	25,000	-	25,000
110,000	27,500	550	26,950
150,000	37,500	3,000	34,500
200,000	50,000	8,000	42,000
300,000	75,000	15,000	60,000
400,000	100,000	30,000	70,000
500,000	125,000	50,000	75,000
600,000	150,000	75,000	75,000
700,000	175,000	105,000	70,000
850,000	212,500	148,750	63,750
1,100,000	275,000	231,000	44,000
1,500,000	375,000	375,000	-
2,000,000	500,000	500,000	-



Division - II (rates for companies)

- Similarly there is a proposal that the rate of tax for a small company as defined in Section – 2 of the Income Tax Ordinance, 2001 shall be 25% instead of 20%.

Division - VII (capital gains on sale of securities)

- On the consistent demand from various quarters, the government has agreed to levy income tax on the capital gains on the sales of securities / stock. The proposed rates of tax on this head of income has been proposed as under:

	Period of holding	Tax Year.	Rate of tax.
1.	Where the security is held for less than six months.	2010 2011 2012 2013 2014	10.00% 10.00% 12.50% 15.00% 17.50%
2.	Where the security is held for more than six months but less than twelve months.	2010 2011 2012 2013 2014 2015	7.50% 8.00% 8.50% 9.00% 9.50% 10.00%
3.	Where the security is held for more than twelve months.		0%

The First Schedule – Part II

The rate of advance tax to be collected by the Collector of Customs u/s 148 is proposed to be enhanced by 1% of the value of imported goods, which would therefore now be collected @ of 5% of the value of such goods.

The First Schedule – Part III

Division – II (payments to non-residents)

An important amendment is being proposed to reduce the tax deduction rate from 30% to 20% from the payments made to a non-resident u/s 152(2) of the Ordinance. This reduction in tax rate in our opinion will encourage the foreign investment.

Division – VI (prizes and winnings)

Approval is also being sought through this finance bill to deduct tax @ 10% on the cross - word puzzle instead of 20%.

The First Schedule – Part IV

Division – III (tax on motor vehicles)

Different slabs of tax collection rate on the basis of weight in case of goods transport vehicles have been rationalized and increased by deleting these slabs and computing the tax collection rate @ Re. 1 per kg of the laden weight. The increase due to change in tax collection rate in the instant case is shown by the following table:

	<u>2010-2011</u>	<u>2009-2010</u>
Laden weight at 2,000 kgs	2,000	1,200
Laden weight at 8,000 kgs	8,000	7,200
Laden weight at 14,500 kgs	14,500	12,000
Laden weight at 29,500 kgs	29,500	18,200
Laden weight at 44,000 kgs	44,000	24,000
Laden weight at 55,000 kgs	55,000	30,000
Laden weight at 60,000 kgs	60,000	36,000

There thus appears to be substantial increase in the taxation on motor vehicle for transportation of goods.

Division – IV (electricity consumption)

The maximum rate of tax collection alongwith the electricity bills has been proposed to reduce from 10% to 5% of the amount of bill. This appears to be a good proposal so that tax may not be collected from those having BTL income, particularly when basic exemption has been increased upto Rs. 300,000.

Division – VIA (advance tax on transaction in bank)

Almost all the bank transactions made through any mode i.e. have been brought into the tax net, by virtue of deducting tax from such transactions @ 0.3%, if the aggregate of these transactions exceeds Rs. 25,000 in a day. A new section 231AA has also been incorporated explaining such transactions as well as exemption there-from.

Although this appears to be a harsh proposal / amendment, yet it is an adjustable tax; and the deduction can be avoided by producing a certificate from the Commissioner to the effect that his income during the year is exempt.

Division – IX (advance tax on purchase of air ticket)

There is a proposal that tax @ 5% of the gross amount of the ticket should be collected, in line with the newly inserted / proposed section 236A of the Ordinance.

36 The Second Schedule – Part I

- A new sub-clause – III of clause (72) is proposed to be inserted to provide exemption for profit on debt payable to non-residents in respect of foreign loan for industrial investment in Pakistan, provided that the agreement for such loan is

concluded on or after the 1st day of February 1991 and is duly registered with the State Bank of Pakistan.

- Certain exemptions / concessions have been proposed for the most affected and moderately affected areas of Khyber Pakhtunkhwa, FATA & PATA due to IDPs and war against terrorism. These may be briefly discussed as under:

Clause – 92A

Two year exemption is provided to the income of any university or any other educational institution established in the above said affected areas.

Clause – 126F

Three year exemption is provided to profit and gains derived by a taxpayer located in the above said affected areas. However such exemption is not provided to the manufacturers and suppliers of cement, sugar, beverages and cigarettes.

Clauses 102, 110 & 110A are proposed to be omitted, which in fact had become time barred and no more relevant.

The Second Schedule – Part II

By a proposed amendment in clause 24A, the deduction of tax at source from the payment on account of sale of goods has been sought @ 1% of the gross amount of the payment by the large distribution houses. Previously there was no requirement for deduction of such tax by the Large Distribution Houses.

The Second Schedule – Part III

The only amendment in this Part is in the existing clause 1A where two changes have been proposed, as under:

- Taxable income of a senior citizen means the income other than FTR income; and
- That income does not exceed Rs. 1,000,000. Previously this limit was Rs. 750,000.

If the above conditions are fulfilled, the senior citizen is entitled to a rebate of 50% of his normal tax liability on such income. This appears to be a very generous and genuine proposal, whereby a lot of retired but otherwise working senior citizens will be benefited.

The Second Schedule – Part IV

The proposed insertion of clause 10A in this part is related to and applicable to the persons and business located in the most effected and moderately affected areas of Khyber Pakhtunkhwa, FATA & PATA due to IDPs and war against terrorism, such as:

- Provision of section 182(1) i.e. various failure and defaults as detailed in this newly inserted section and clause (a) of section 205(1) i.e. default surcharge shall not apply to such persons / business, if the tax due is paid by June 30, 2010.

- Withholding tax on exports as per the provision of section 154 shall not be applicable until June 30, 2011.
- Provision of section 148 shall also not be applicable for such persons until June 30, 2011, other than the manufacturers and suppliers of cement, sugar, beverages and cigarettes.

Clause 52 of this Part is proposed to be omitted, which after the omission of clause (vi) of the notification no. SRO 593(1)/91 dated 30-06-1991 vide SRO 669(I)/2007 dated July 02, 2007 was appearing as a superfluous clause.

Another clause namely (72) is proposed to be added in this part stating that “income tax payable by a foreign expert shall be exempted provided that such expert is acquired with the prior approval of the Ministry of Textile Industry”. This exemption appears to be necessary one to reduce the cost of foreign support.

37 The Third Schedule – Part I

Only one change is proposed in this part of the schedule by inserting the following sub-clause:

“100% depreciation is allowed on a ramp built to provide access to person with disabilities not exceeding Rs. 250,000 each”.

38 The Fifth Schedule – Part I

There is a proposal to insert a new rule namely “4A. Decommissioning cost”, whereby such cost, duly certified by Chartered Accountants or Cost Accountants in the prescribed manner, shall be allowed as an admissible expenditure over a period of ten years or the remaining life of the development and production of mining lease, whichever is less, commencing from the tax year 2010.

In our opinion, it is an important amendment providing genuine relief to the concerned persons.

39 The Seventh Schedule

The proposed changes in this schedule represent the limit, allow-ability and treatment of provisions for advances and off balance sheet items, the texts of which are self explanatory and thus do not call for any further explanation.