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PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN
LAW AND JUSTICE DIVISION

Islamabad, the 3rd March, 2022

No. F. 2(1)/2022-Pub.—The following Ordinance Promulgated on 2nd March, 2022 by the President is hereby published for general information:—

ORDINANCE NO. IV OF 2022

AN

ORDINANCE

further to amend the Income Tax Ordinance, 2001

WHEREAS it is expedient further to amend the Income Tax Ordinance, 2001 (XLIX of 2001) 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;

(67)

Price : Rs. 20.00

[7394(2022)/Ex. Gaz.]

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 or 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 Income Tax (Amendment) Ordinance, 2022.

(2) It shall come into force at once.

2. **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) after section 59B, the following new section shall be inserted, namely:—

“59C. **Carry forward of business losses of sick industrial units.**—

(1) Subject to sub-section (2), where a company hereinafter referred to as acquiring company, acquires under a scheme of acquisition majority share capital of another company being a sick industrial unit, hereinafter referred to as acquired company, the acquiring company shall be entitled to adjust loss for the latest tax year and brought forward assessed business losses excluding capital loss of the acquired company subject to provisions of section 57 for a period of three years.

(2) Sub-section (1) shall apply subject to the following conditions, namely:—

(a) there is continued ownership for five years starting from the 30th June, 2023 and there is no change in share capital of the acquiring company;

(b) the assets of the acquired company shall not be sold upto the 30th June, 2026; and

(c) the acquired company continues the same business till the 30th June, 2026.

(3) Where the losses surrendered by the acquired company are not adjusted against income of the acquiring company in the said three tax years, the acquired company shall carry forward the un-adjusted losses in accordance with section 57.

- (4) The loss of the acquired company referred to in sub-section (1) shall be adjusted against income under the head “income from business” of the acquiring company as per following formula, namely:—

$$(A/100) \times B$$

Where—

- A is the percentage share capital held by the acquiring company of the acquired company; and
- B is the loss of the acquired company referred to in sub-section (1).
- (5) If the acquiring company fails to revive the acquired company by tax year 2026, the acquiring company shall, in tax year 2027 offer the amount of profit on which taxes have not been paid due to set off of losses surrendered by the acquired company.
- (6) For the removal of doubt, this section shall not apply to any scheme of amalgamation or merger.
- (7) For the purposes adds section, —
- (a) a sick industrial unit referred to as acquired company in sub-section (1), shall be deemed to be revived if the said company attains maximum production capacity that was obtained before the industrial unit went sick:

Provided that the acquired company produces a certificate to the effect that it stands revived, duly issued by Engineering Development Board, along-with the return of income filed for tax year 2026.

- (b) “sick industrial unit” means a company being an industrial undertaking, which —
- (i) has accumulated losses, for a continuous period of three years prior to the 1st July, 2022, equal to or exceeding its entire capital and reserves at the time of acquisition, as the case may be; or
- (ii) has defaulted towards repayment of outstanding debts owing to banking companies or non-banking financial institutions for a consecutive period of three years immediately before acquisition, as the case may be, or

- (iii) has been declared as such by the Federal Government in a notification published in the official Gazette.”;
- (2) after section 65G, the following new section shall be inserted, namely:—

“65H. Tax credit for foreign investment for industrial promotion.—(1) Where a taxpayer being —

- (a) a non-resident Pakistani citizen having continued non-residential status for more than five years; or
- (b) a resident individual having foreign assets declared in terms of section 116 or 116A by the 31st December, 2021,

invests in a company incorporated on or after the 1st March, 2022, to set up an industrial undertaking in Pakistan with equity, not less than fifty million rupees, with funds remitted into Pakistan through proper banking channel as per the procedure to be prescribed by the State Bank of Pakistan, at any time up to the 31st December, 2022, that company shall be entitled to a one-time tax credit equal to one hundred percent of the amount remitted and credited in rupees in the bank account of such company against tax liability for the tax year in which commercial production commences.

- (2) Where no tax is payable by the taxpayer in respect of the tax year in which the commercial production has commenced or where the tax payable is less than the amount of credit as aforesaid, the amount of the credit or so much of it as is in excess thereof, as the case may be, shall be carried forward and deducted from the tax payable by the taxpayer in respect of the following tax year and so on, but no such amount shall be carried forward for more than five tax years in the case of investment referred to in sub-section (1), however, the deduction made under this section shall not exceed in aggregate the limit specified in sub-section (1).
- (3) This section shall not apply to a company or an industrial undertaking established by splitting up or reconstitution of a company or an industrial undertaking already in existence or by transfer of machinery or plant from an industrial undertaking established at any time before the 1st March, 2022.

- (4) The provisions of sub-section (1) shall apply if commercial production commences by the 30th June, 2024.
- (5) 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, notwithstanding anything contained in this Ordinance, shall 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.”;
- (3) After section 100E, the following new section shall be inserted, namely:—

“100F. **Special provisions relating to investment for industrial promotion.**—(1) Any eligible person may file a statement by the 30th September, 2022, declaring therein the amount of funds (which have not been declared in any of the returns of income upto tax year 2021 filed by the 31st December, 2021) for investment in a new company formed for establishing and operating an industrial undertaking in accordance with this section:

Provided that the funds referred to in sub-section (1) shall be deposited in rupees in a dedicated bank account in Pakistan as equity of the newly formed company, incorporated under the Companies Act, 2017 (XIX of 2017), before the filing of the statement and such funds shall only be used for purchase or import of plant and machinery through letter of credit or for construction of building and structure for the industrial undertaking:

Provided further that the minimum amount which would qualify for the purposes of this section shall be fifty million rupees.

- (2) The provisions of section 111 shall not apply to the funds declared under sub-section (1) subject to fulfilment of conditions as laid down in this section and payment of an amount equal to five percent thereof along-with the statement filed under sub-section (1).

- (3) The new industrial undertaking in which such investment is made shall commence commercial production by the 30th June, 2024 and a certificate to that effect, duly issued by Engineering Development Board, is submitted to the Commissioner along-with the return filed for tax year 2024.
- (4) Any amount of tax paid under this section shall not be refundable or adjustable against any other tax liability of the declarant.
- (5) Where a declarant has paid tax under this section in respect of funds declared under sub-section (1), the declarant shall be entitled to incorporate the same in his wealth statement, financial statements or books of accounts, as the case may be.
- (6) For the purposes of this section, eligible person means all persons, except —
 - (a) holders of public office, their spouses and dependent children;
 - (b) a public company as defined in clause (47) of section 2 of this Ordinance;
 - (c) a person who has filed a declaration under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018, or the Assets Declaration Act, 2019;
 - (d) a person that has been declared a bank loan defaulter by a bank or a financial institution within the last three years; or
 - (e) a director of a company who has been declared a bank loan defaulter by a bank or a financial institution within the last three years.
- (7) The provisions of this section shall not apply to—
 - (a) any proceeds of crime, corruption, money laundering and terror financing;
 - (b) any amount which is subject of any departmental or court proceedings;

- (c) the investments made in following sectors, namely:—
- (i) arms and ammunitions;
 - (ii) explosives;
 - (iii) sugar;
 - (iv) cigarettes;
 - (v) acrated beverages;
 - (vi) flour mills;
 - (vii) vegetable ghee; and
 - (viii) cooking oil manufacturing excluding extraction units.
- (8) Notwithstanding the provisions of any other law for the time being in force including sub-section (3) of section 216 of this Ordinance excluding clauses (a) and (g) of sub-section (3) thereof, the National Accountability Ordinance, 1999 (XVIII of 1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017), particulars of any person making a statement under this section or any information received in any statement made under this section shall be confidential.
- (9) The statement filed under sub-section (1) shall not be valid, if—
- (a) the newly formed industrial undertaking company fails to prove commercial production in terms of sub-section (3);
 - (b) there is change in ownership of industrial undertaking company prior to the 30th June, 2026; or
 - (c) the newly formed industrial undertaking company disposes of any of its assets prior to the 30th June, 2026.
- (10) Notwithstanding anything contained in this section, where the provisions of sub-section (7) or (9) apply, or where the statement under sub-section (1) has been made by misrepresentation or suppression of facts, such statement shall be void as if it had never been made and all the provisions of this Ordinance shall apply accordingly:

Provided that the Commissioner shall not take any action under this section without providing the declarant an opportunity of being heard.

- (11) The statement filed under this section shall be made in the form and manner as specified by the Board through a notification in the official Gazette.
- (12) The provisions of this section shall apply, *mutatis mutandis*, to an existing company being an industrial undertaking, for investment in expansion and modernization from amount of funds (which have not been declared in any of the returns of income upto tax year 2021 filed by the 31st December, 2021):

Provided that such company opens a dedicated bank account to deposit the said funds before the filing of the statement and such funds shall only be used for expansion and modernization by way of purchase or import of plant and machinery including IT hardware through letter of credit, or software and IT services or for construction of building and structure for the manufacturing premises of the existing industrial undertaking:

Provided further that the expansion and modernization shall be completed by the 30th June, 2024, and a certificate to that effect, duly issued by the Engineering Development Board, is submitted to the Commissioner along-with the return filed for tax year 2024.

- (13) In this section, unless there is anything repugnant in the subject or context,—
 - (a) “declarant” means a person filing a statement under subsection (1);
 - (b) “holder of public office” means a person as defined in the Voluntary Declaration of Domestic Assets Act, 2018;
 - (c) “industrial undertaking” means a company being a new industrial undertaking setup for the purpose of this section and is not established by the splitting up or reconstruction or reconstitution of an undertaking already in existence or by transfer of machinery or plant from an existing industrial undertaking established in Pakistan;
 - (d) “investment” means investment in equity and does not include borrowed funds and investment in land; and

- (e) “modernization” includes acquisition or upgradation of IT hardware, software and IT services.”;
- (4) in section 216, for sub-section (2), the following shall be substituted, namely:—
- “(2) Notwithstanding anything contained in the *Qanun-e-Shahadat*, 1984 (P.O. Order No. 10 of 1984), the National Accountability Ordinance, 1999 (XVIII of 1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017), or any other law for the time being in force, no court or other authority shall, save as provided in this Ordinance, require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under this Ordinance, or declarations made under section 100F of this Ordinance or made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof.”.

DR. ARIF ALVI,
President.

RAJA NAEEM AKBAR,
Secretary.