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TAX PAK

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TOLA ASSOCIATES

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EDITORIAL NOTE

Happy Anniversary Tax Pak. November 2018 issue successfully completes the first anniversary of Tax Pak. During past year, our e-subscription grew manifold due to help of our readers. We seek to further grow our readers list and spread our pro bono services to all over the world to increase Pakistani Tax Awareness.



We strive to keep our readers updated of the developments in tax laws in Pakistan and keep coming up with new and informative articles. Readers are also requested to send their suggested topics or articles to us at info@tolaassociates.com to be a part of Tax Pak in future.

Readers are requested to visit our website www.tolaassociates.com or download our mobile apps from below links to access previous issues and other publications and to stay updated of future notifications.

1. <https://goo.gl/QDM4ZM> (iOS)
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Readers are also requested to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Ashfaq Tola - FCA
Editor in Chief

Mr. Ashfaq Tola, President Tola Associates was invited as a speaker and presenter at seminars on Economy of Pakistan and Non-Resident Taxation abroad. Following is a pictorial glimpse of these events.



Addressed Seminar on “State of Pakistan’s Economy and Non-Residents’ Taxation in Pakistan” on November 17, 2018, which was attended by a large number of professionals. The seminar was organized by ICAP KSA Chapter in Riyadh.

Attending conference on “Blockchain Technology”, as a Chief Guest in Dubai.



Addressed Seminar on “State of Pakistan’s Economy and Non-Residents’ Taxation in Pakistan”. The seminar was organized in Abu Dhabi by ICAP UAE Chapter.



1. NOTIFICATIONS/ CIRCULARS

1. Jurisdiction and Powers of DG (I&I-IR)- Sales Tax - Amendment in SRO 1301(I)/2018 dated 29th October 2018

FBR had issued SRO 1301(1)/2018 dated 29th October 2018 in suppression of SRO 116((I)/2015 in which it specifies functions, powers and jurisdictions of Directorate General (I&I-IR) and its officers under Sales Tax Act, 1990. Now, it has made amendment in Supra through SRO 1355(I)/2018 dated 7th November 2018, whereby **Additional Directorate-1, I&I (IR), Lahore**, has been given jurisdiction under **Section 25A, 37 & 37A** of Sales Tax Act, 1990 also for all cases assigned to LTU Lahore, Corporate RTO Lahore and other persons not otherwise assigned but resident in area of LTU & Corporate RTO Lahore.

2. Alternate Dispute Resolution - Draft amendment in Rule 231 C of IT Rules 2002

The Income Tax Ordinance, 2001 has provided provision of Alternate Dispute Resolution under Section 134 A read with Rule 231C of Income Tax Rule 2002[ITR], for resolving disputes between the parties by out of court settlements of disputes through compromises to avoid delay in case conclusion.

The procedure of settlement of dispute through Alternative Dispute Resolution mechanism had been essentially recommendatory in nature. The Federal Board of Revenue was not mandatorily required to accept the recommendation of the ADRC. Consequently, the appellant was not necessarily required to withdraw the appeal filed before an appellate forum for seeking remedy under the ADRC.

Through FA 2018, the procedures for settlement of dispute had been revamped and the whole structure had been changed. Firstly, the option of

seeking remedy in ADRC shall only be available if the applicant waives his right of appeal in the appellate authorities. Secondly, the recommendations of ADRC will now consequently be binding on both the parties.

There had been certain procedural changes, which includes:

- a) Every ADRC shall include a retired Judge of High Court; and
- b) The Committee is required to decide the matter within 120 days failing which the appeal will be reinstated.

The FBR has issued SRO 1352(I)/ 2018 making draft amendments in Rule 231C of ITR to make it aligned with changes made in FA 2018. We understand that if draft amendments approved, ADR committee will transform into an independent decision-making forum on dispute resolutions rather than merely a recommending select committee of FBR.

3. Reporting by Banks - Amendments in Chapter VIIIA of Income Tax Rules, 2002

Section 165A of Income Tax Ordinance, 2001 requires every banking company to furnish such information to the FBR in the form and manner provided in Chapter VIIIA of Income Tax Rules, 2002.

FBR has proposed draft amendments in Income Tax Rules Chapter VIIIA vide SRO 1321 dated 02 November 2018 whereby following reports required by banks to FBR has been omitted:

- Written Off Loans Statements.
- Currency Transaction Report (**CTR**) and Suspicious Transaction Report (**STR**) made to Regulator under Anti Money Laundering Act, 2010 i.e. Financial Monitoring Unit (**FMU**).

Further, a new statement "Profit Debt Statement" is now required to be submitted by banks on FBR request.

4. ATIR Chairman Instructions - Appeal Order to be passed within 90 days

Section 132(2A) of Income Tax Ordinance, 2001[ITO] and Section 46(2) of the Sales Tax Act, 1990[STA] requires the Appellate Tribunal Inland Revenue [ATIR] to decide the appeal within six months of its filing. Further, Section 131(5) allows the ATIR to give stay against the recovery of tax levied under ITO & STA in aggregate upto 180 days. But the practice of completion of judgments within a reasonable time is not observed and ATIR usually provides stay beyond 180 days citing the provision of time limit provided under said sections is directory in nature and not mandatory. Through FA 2018 an amendment was made in Section 131(5) of ITO, whereby on completion of 180 days in aggregate of stay against tax recovery, Commissioner is empowered to recover tax levied irrespective of fact that stay beyond 180 days granted by ATIR against recovery of taxes.

Now, in light of amendment in FA 2018 and as per directions of Supreme Court of Pakistan[SCP] that “for proper enunciation of law, considerable research, brooding and pondering the reasonable time is 90 days which is adequate and good for completion of judgement”, the Chairman of ATIR vide Circular F.181-ATP/HQ/(Ad)/2018 dated 25 October 2018 has issued directions to Learned Members of ATIR to deliver judgments within reasonable time by following directions of SCP i.e. 90 days. Further, the orders of MA Stay heard cases must be issued on the same day or next working day.

5. Online Module to Check CPR Utilization status

FBR has now made available on FBR “Online Verification System”, a Computerized Payment Receipts [CPR] Utilization status for Taxpayers to verify utilization of their CPR and field officers to verify utilization of CPRs while making correction in CPRs or allowing the credit at any stage.

6. Further Extension in Filing of Income Tax Returns & Statements up to 15th December 2018

FBR vide Circular 8/2018 dated 30th November 2018, has further extended the date of filing of Income Tax Returns under section 114 and statements under section 115 to 15th December 2018 for the following:

- Companies with Special Tax Year
- Salaried persons
- Other Individuals
- Association of persons

7. Online Integration of Leather and Textile Sector

By virtue of SRO 1360(I)/2018, dated 12 November 2018, in line with the amendments made in SRO 1125 date 31 December 2011 through the Finance Act, 2018 the Federal Government has introduced **Chapter XIV-AA “Online Integration of Leather and Textile Sector”** in the Sales Tax Rules 2006.

By virtue of the said amendment and the rules prescribed thereunder the Federal Government intends to monitor the sales of finished fabric, locally manufactured finished articles of textile and textile made-up and leather and artificial leather, as covered in Table II of the SRO 1125(1) dated 31 December 2011. The tax payers registered with the online integration system will be able to charge reduced rate of 6% on its supplies.

In light of this SRO the registered person would be required to install the fiscal electronic device and software as approved by the Board which will be available on the Board website. The registered person would be required to install the device and software at all the outlets to avail the benefit of reduced rate. All the sales will be recorded through the device which will be connected with the POS terminal which would in turn send the sales data to the Board.

The integrated supplier is required to transfer the data of all sales invoices, debit notes and credit notes periodically to the Board's computerized system within seven days.

During the intervening period where the Board puts the operation of a system of accredited secure devices and real time communication of sale and other data as stipulated in the rules shall be considered to have been achieved.

The benefit of reduced rate will not be available after expiry of one month after the Board conveys the readiness of the integrated system to the leather and textile sector. If the registered person fails to install the and register itself on the integrated system after expiry of one month then it will be required to charge sales tax at rate of 9%.

8. Manual Post Refund Audit

By virtue of this SRO the Federal Government has amended the Rule 26A and 36 of the Sales Tax Rules, 2006 whereby if the Commissioner Inland Revenue has credible information against a registered person the refund claimed after 30th June 2014 was inadmissible then through an order in writing he may conduct manual post -refund scrutiny of such claim.

9. Carriage of Goods for intercity by rail or road- Reduction in rate of tax to 15% (adjustment of input tax)

Through the recent amendment made through the Punjab Finance Act, 2018 where the standard rate for transportation services was reduced to 15% which is coincidentally less than 16% which would attract inadmissibility of adjustment to both the service provider and service recipient in terms of 16B (1) (g) & (h) of the Punjab Sales Tax on Services Act, 2012. To address the legitimate concerns of the transporters, The Punjab Revenue Authority have suggested that they will issue

necessary amendments in section 16B so that the rate of tax becomes admissible for input tax for service provider and service recipient.

10. Exemption for Diامر Bhasha & Mohamand Dams-Funds

The Sindh Revenue Board and the Khyber Pakhtunkhwa Revenue Authority vide their respective notifications dated 11 September 2018 and 08 November 2018 have exempted the following services provided or rendered by registered persons in relation to donations and contributions made to Supreme Court of Pakistan Diامر-Bhasha and Mohamnd Dam funds:

1. Advertisement Services
2. Advertising Agents
3. Telecommunication
4. Banking

11. Establishment of Directorate General Immovable Properties [DG IMP]

In a drive to remove undocumented economy and close safe heaven to park untaxed money, the FA 2016 introduced the regime of valuation of immovable by empowering FBR to prescribe the valuations which were much higher than the decades old regime of DC rates. The taxation officers were required to accept such prescribed values. However, it has been observed that there was still difference between actual value and prescribed value which might be used as a protected place for parking untaxed funds. Through FA 2018, a new Directorate namely DG Immovable Properties-IR was established by inserting Section 236F in Income Tax Ordinance, 2001, by which the above valuation regime of immovable properties was completely revamped. The standard valuation method as described above has been replaced by actual transaction value method. Now, there will be no standard rate for the taxation authorities whilst

examining a case relating to acquisition of immovable property. The under-declaration if made the Federal Government has a right to purchase in the manner provided in the rules yet to be notified. The new regime shall come into force when notified by Federal Government which is yet to be notified.

The FBR has now issued Office Order letter number F.NO.1(01)/18-DG(BTB)/2018-19 dated 29th November 2018 whereby it has given an initial blueprint of DG IMP regarding its organizational structure, legal functions, Job description and operations prior to its formal launching. Till the time Directorate is fully functional, DG BTB and Commissioners BTB Islamabad, Lahore, and Karachi shall be assigned the additional charges of these newly offices and each Regional Directorate shall be housed at existing BTB Zones at Karachi, Lahore and Islamabad.

12. Change in Petroleum Rates – SRO 1461(I)/2018 dated 30th November 2018.

The Federal Government [FG] has decreased the rates of petroleum products by Rs 2 per liter for each petrol and high-speed diesel (HSD), by Rs 3 per liter for kerosene, and by Rs 5 for light diesel oil used in industry, for December 2018 amid decrease in international crude prices below \$50 per barrel. The OGRA had however recommended hike in Petroleum products by adding 17% general sales tax on petroleum products. Though government has increased rates of Sales Tax levied on petroleum products through SRO 1461(I)/2018 dated 30th November 2018 but less than recommendations of OGRA. The sales tax on petrol increased from 4.5% to 8%, HSD from 12% to 13%, LDO from 0% to 0.5%, Kerosene 1.5% to 2%. We understand that the new rate of Sales Tax on HSD of 13% which is lower than Standard Sales Tax rates under FBR & PRA may trigger inadmissibility of input tax by respective authorities.

A comparison of Sales Tax rates of petroleum products from August 2017 to November 2018 can be found below:

Date	SRO	Effective from	Products ST rate %				
			MS	HSD	LDO	HOBC	Kerosene
31/7/17	713	Aug 01 17	23.5	40	0	17	0
5/8/2017	757	Aug 06, 17	20.5	35.5	0	17	0
31/8/17	867	Aug 31, 17	17	30	0	17	0
30/9/17	984	Oct 01, 17	17	31	0	17	0
31/12/17	1331	Jan 01, 18	17	25.5	6	17	6
31/1/18	98	Feb 01, 18	17	25.5	7.5	17	7
28/2/18	265	Mar 01, 18	17	25.5	17	17	17
31/3/18	414	Apr 01, 18	21.5	27.5	16.5	17	17
30/4/18	560	May 01, 18	15	27.5	11.5	17	12
31/5/18	663	Jun 01, 18	7	17	1	17	7
11/6/18	729	Jun 12, 18	12	24	9	17	12
30/6/18	830	Jun 30, 18	17	31	17	17	17
1/8/18	993	Aug 01, 18	9.5	22	1	17	6
30/9/18	1167	Sep 30, 18	4.5	17.5	0	17	1.5
31/10/18	1308	Nov 01, 18	4.5	12	0	17	1.5
30/11/18	1461	Nov 30, 18	8	13	0.5	17	2

MS	=	Motor Spirit (Petrol)
HSD	=	High Speed Diesel
LDO	=	Light Diesel Oil
HOBC	=	High Octane Blending Component

2. INTERPRETATION OF SECTION 40B OF STA BY SC

Civil Appeal no 116 K of 2016 (Commissioner Inland Revenue vs Pakistan Beverage Limited) Section 40 B of the Sales Tax Act,1990

Section 40B “Posting of Inland Revenue Officer” gives Board or the Chief Commissioner power to post officers to the premises of the registered persons to monitor production, sales of taxable goods and stock position.

The Supreme Court of Pakistan in a recent judgment provided interpretation to Section 40B of the Sales Tax Act,1990 where by it was held that in case of Section 40

B the Board, Chief Commissioner and Commissioner has discretionary powers but the law does not recognize unfettered discretionary powers that as conferred by the statute must be exercised in terms of well-established demonstrative law. The monitoring under Section 40B of the Sales Tax Act, 1990 is not intended to be indefinite. However, once the purpose of has been served or object achieved, or the grounds stands exhausted the monitoring must come to an end. Currently the practice of the FBR officers is that they invoke Section 40B for an indefinite period and continue to monitor the activities of registered person.

The power conferred by Section 40B is time bound in the sense that some timeframe or period must be given in any order under the Section.

3. ECONOMIC INDICATORS

- The 3-month, 6-month and 1-year KIBOR rate for the month of October 2018 were 8.96%, 9.42% and 10.01%, respectively, which hiked in November 2018 to 9.33%, 9.87% and 10.52%, respectively.
- The 3-month and 6-month T-Bills rate for the month of October 2018 were 8.46% and 8.85%; respectively, which hiked in November 2018 to 8.92% and 9.46%, respectively. The rate for 1 year remained unchanged at 6.97% since October 2018.
- The PSE 100 index at the end of October was 41,649.36 points and at the end of November 2018 was 40,496.03 while the average index for the month of October 2018 was 39,149.46 points and for the month of November 2018 was 41,192.95 points posting a decline of 2.77%.
- The rate for Crude Oil in the OPEC basket at the end of October 2018 was \$ 75.51, whereas, at the end of November 2018 was \$ 58.33. The decrease in price was 22.75%
- The rate of Gold per troy ounce in the month of October 2018 was \$1,196.20 whereas in the month of November 2018 it increases to \$1222.73 per troy ounce by 2.22%
- The rate of Sugar at end of October 2018 was 0.3557 US\$/KG decreasing in the month of November 2018 to 0.3431 US\$/KG by 3.54%
- The rate of Palm Oil in the month of October 2018 was 480.19 US\$/MT which fell in the month of November 2018 to 452.07 US\$/MT by 5.85%.
- The US\$ parity to Chinese Yuan at the end of October 2018 was 6.98 whereas in the month of November it was 6.959 posting a decrease of 0.3%.
- The US\$ parity to Indian rupee at the end of October was 73.96 whereas in the month of November 2018 it was 69.64 posting a decrease of 5.84%.
- The US\$ parity to Bangladesh Takka at the end of October was 83.87 whereas at the end of November 2018 it was 81.02 posting an decline of 3.398%.
- The US\$ parity to Pakistan Rupee at the end of October 2018 was 132.50 which rose to 138.92 at end of November 2018 by 4.84%
- The volume of imports in November 2018 was 617,646 Million rupees (4,626 million \$) while the exports were 246,015 Million rupees (1,843 million \$). Exports in July to November 2018 rose by 1.29% to \$ 9,120 million while Imports in July to November 2018 decrease by -0.78% to \$23,633 million.
- The stock of currency in circulation was Rs. 4,388 billion as on June 30th, 2018 which increased by Rs. 204 billion up to November 24th, 2018 to Rs. 4,592 billion
- The Net Government Sector borrowings at end of June 30th, 2018 were Rs. 10,199 billion which increased by Rs. 165 billion up to November 24th, 2018 to Rs. 10,365 billion. The net government sector borrowings were used for the purpose of budgetary support (Rs. 9,621 billion) and commodity operations (Rs. 757 billion); and supported by others (Rs. -13 billion).

- The credit to private sector at end of June 30th, 2018 was Rs. 5,973 billion which rose by Rs. 342 billion up to November 23th, 2018 to Rs. 6,315 billion.
- Workers' remittances for the month of October 2018 and November were \$ 2,000 million and \$ 1,608.62 million respectively, decline by 19.57%.
- Foreign exchange balance at end of October 31st, 2018 (Provisional) and November 30th, 2018 were 14,016.4 million (SBP: \$7,602.2 million, Commercial Banks: \$6,414.2 million) and \$ 13,996.1 million (SBP: \$7,502.1 million, Commercial Banks: \$6,494.0 million) respectively showing a decline of 0.14%.

4. TOPIC OF THE MONTH

- SECTION 214D – A DEAD ELEPHANT FOR FBR

Finance Act, 2015 ("FA 15") introduced section 214D for automatic selection for audit. Section 214D was applied to persons who failed to file their income tax returns within due dates. Tens of thousands of taxpayers were selected for audit and issued notices under section 214D.

To reduce the work load of already burdened audit officers of Federal Board of Revenue ("FBR"), the infamous section 214D was deleted vide Finance Act, 2018 ("FA 18"), however, the fate of pending cases under audit was yet to be decided.

Later, through Finance Supplementary (Amendment) Act, 2018, section 214E was introduced and an 'option' to taxpayers was provided to conclude their pending proceedings under section 214D.

Section 214E provided that an audit selected under section 214D shall be deemed to be concluded if following conditions are fulfilled:

- i. The tax payer was selected for audit under section 214D;

- ii. Notice under section 122 has not been issued; and
- iii. The taxpayer has voluntarily revised return by 31st day of December 2018 along with payment of 25% higher tax than the tax paid with return or, where no tax is payable, 2% of turnover or, where no turnover is declared, penalty under section 182 has been paid voluntarily.

However, conditions of 25% higher tax or 2% of the turnover do not apply in case the income comprises of only salary or covered under FTR.

After the insertion of section 214E, during the month of November 2018, notices under section 214D were issued indiscriminately. Number of such issued notices skied to almost 1.2 million. All the notices referred to section 214E and directed the addressees to pay the amounts under section 214E and get their audits concluded.

It was perceived by both legal advisors and common taxpayers that section 214E has only been introduced as a window to conclude already pending audit cases, however, FBR used it as tool for revenue generation by issuing fresh notices, consequently further burdening themselves under plethora of pending cases, therefore, killing the very purpose of introduction of section 214E.

The notices were issued in cyclostyle format without any discrimination and without any application of mind to each individual case. Realizing their mistake, FBR issued a notification dated: November 27, 2018, whereby, persons declaring only income under the head "salary" with or without profit on debt and/or dividend income were exempted from payment of entire amount of penalty payable under section 214E for tax years 2015, 2016 and 2017.

There were four types of notice recipients as under:

1. Salaried individuals whose taxes had already been deducted even before their salaries are credited in their bank accounts, but somehow, they could not timely file their return of income.

2. Individuals who had only passive FTR incomes from profit on debt or dividend (e.g. retired citizens, housewives etc.) and did not file their returns timely.
3. Individuals who had nil income (e.g. housewives, retired citizens, non-resident Pakistanis earning foreign source incomes, etc.) but they filed their returns voluntarily so that they are included in Active Tax Payers List (“ATL”) and avoid paying additional taxes on their bank transactions, property transactions, etc.
4. Other business individuals who did not file their returns timely.

Way forward

Following may be possible action points for persons who have received notices under section 214D.

- Persons covered under point 1 were exempted vide notification dated: November 27th, 2018, therefore, they may respond to notices simply referring to the notification and request withdrawal of notice issued to them.
- Persons covered under point 2 may request the withdrawal of notices on below grounds:
 - That their due taxes had already been deducted at source and there is no loss of or even delay in payment of revenue; or
 - That they should also be treated at par with persons declaring only salary income and they should also be exempted; or
 - Levy of penalty is contingent to tax payable – 2010 PTR 73 (Trib) – Since there was no tax payable with return of income, provisions of section 182 is not applicable.
- Persons covered under point 3 may take grounds similar to grounds for persons covered under point 2. In addition, they may also take following grounds while requesting withdrawal of notice:
 - Section 182 only applies where a person, who was ‘required’ to file return of income, does not file the same within due date. Since the return

of income was not required to be filed due to the reason that income was below taxable limit, delay in filing of same does not attract provisions of section 182.

- Persons covered under point 4 may either opt for section 214E or may opt for audit of their affairs. In any case, penalty under section 182 would be required to be paid at least.

Audits under section 214D, or payment of taxes under section 214E, may also be avoided by placing reliance on a settled principle of law that ‘law applicable is that as on date of issuance of notice’. Therefore, notices issued under section 214D after FA 2018, i.e. after deletion of section 214D, are not valid as section 214D was not applicable on the date of issuance of notice.

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