TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

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TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES

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EDITORIAL NOTE

Another monthly issue of Tax Pak, for the month of May 2019 is in your hands due to blessings of Almighty Allah, support and appreciation of readers, and commitment and dedication of Tola Associates' team. This is the ninteenth continuous issue. We have covered the important topic of International taxation "Double Tax Treaties" in section of topic of the month.

Federal Government has presented budget 2019-20 on 12 June 2019 with major change in taxation regimes in both direct and indirect taxes. Our comments on Federal Budget 2019 can be accessed on the link https://bit.ly/2R98oO3.

The ICAP post budget conference is Scheduled to be held on 15th June 2019 with Dr Abdul Hafeez Sheikh (Advisor to Prime Minister on Finance, Revenue and Economic Affairs) being invited as Chief guest and Mr. Shabbar Zaidi-FCA (Chairman FBR) as Guest of Honour . The undersigned being Chairman Fiscal Law Committee will give MOC and vote of thanks.

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)
2. https://goo.gl/LFiWyx (Android)

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

1. NOTIFICATIONS/ CIRCULARS

1. Exemption of Life Insurance and Health Insurance from Sindh Sales Tax on Services, extended till 30th June 2019

The SRB vide Notification no SRB 3-4/5/2019 dated 8th May 2019, has extended exemption of Life Insurance (Tariff heading 9813.1500) and Health Insurance (Tariff heading 9813.1600) till 30th June 2019. However, the amount of sales tax already charged, received or collected by the Insurance Company shall be deposited by such company in Sindh government's account and not to be refunded to service recipient.

2. FBR Directives for Sales Tax Refund

The FBR has recently issued directives that Refund claimants who have opted for sales tax refund payments through bonds should open investor account with Central Depository Company [CDC], if they do not already have such accounts. If they have account, but not provided proper CDC account as per given format can update CDC accounts by visiting FBR website http://e.fbr.gov.pk. The contact detail for opening CDC accounts and proper format of CDC account is provided at FBR website.

3. PRA extends return filling date for telecom services

The PRA has extended the date for payment of taxes and filling of Return for Tax period April 2019 (in case of prepaid telephone service and other telecommunication services) and for tax period March 2019 (in case of post-paid telephone service) as follows:

- Deposit of amount of tax on or before 30th May 2019 (as against 21st May 2019) as per Rule 27 of Punjab Sales Tax on Services (Specific Provisions) Rules, 2012;
- File their tax returns/ revenue office-wise or service outlet-wise monthly statements on or before 30th May 2019 as per Rule 29 of Punjab Sales Tax on Services (Specific Provisions) Rules, 2012.

4. Increase in Petroleum Rate vide SRO 603(I)/2019 dated May 31, 2019

The Federal Government [FG] has now significantly increased prices on recommendations by OGRA by increasing Sales Tax rates on petroleum products vide SRO 603(I)/ 2019 dated 8th June 2019. OGRA had earlier recommended in its summary to Ministry of Finance, a hike of Rs. 8.99 per litre in diesel prices, Rs. 1.69 in kerosene oil, Rs. 8.53 in petrol and Rs. 1.68 in light speed diesel prices.

As per the latest SRO, the sales tax on petrol now stands at 13%, HSD at 13 %, LDO at 17 % and Kerosene at 17 %.

A comparison of Sales Tax rates of petroleum products from August 2017 to May 2019 can be found below:

Date	SRO	Effective from	Products ST rate %				
			MS	HSD	LDO	HOBC	Kerosene
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
31/12/18	1574	Dec 31, 18	17	17	17	17	17
30/04/19	499	May 01, 19	2	13	9	17	8
04/05/19	507	May 05, 19	12	17	17	17	17
31/05/19	603	June 01, 19	13	13	17	13	17

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

2. EXEMPTION AND TAX CREDIT ARE NOT ONE AND SAME THING - SUPREME COURT OF PAKISTAN ("SCP")

In H.M. Extraction Ghee & Oil Industries (Pvt) Ltd Vs FBR [CA 1262/18], the taxpayer was entitled to 100% tax credit u/s 65D at start of tax year , on basis of which it applied for tax exemption certificate u/s 159 to get exemption u/s 148 "Imports". The department refused to issue same on premise that taxpayers' entitlement to the tax credit could only be determined at the end of a tax year and after the return had been filed, and not at any time prior thereto. The taxpayer filed Constitutional Petition in Islamabad High Court[IHC] against this order, which upheld the department's decision and held that tax credit and tax exemption are not the same thing, hence there was no entitlement for exemption certificate and taxpayer had to pay advance income tax u/s 148. The taxpayer preferred an appeal in Supreme Court of Pakistan [SCP] based on reliance on Nishat Dairy (Pvt) Ltd. Vs CIR RTO VII, Lahore in W.P 31925, in which Lahore High Court had held that (a)tax exemption and tax credit work on opposite sides of the same equation, and at the end of day, both the incentives/ methodologies reduce and exempt the tax liability of the taxpayer, (b) in substance both tax credit and tax exemption reduce the tax liability of the taxpayer therefore, fall within the scope of the section 159(1), (c) therefore, the phrase "exempt from tax" in Section 159(1)(a) not only takes under its fold "tax exemption" under the Ordinance but also "tax credit" under the Ordinance(d) the petitioner is directed to approach the concerned Commissioner with a written request for the issuance of Exemption Certificate, which shall be issued to the petitioner, in accordance with law after the satisfaction of Commissioner concerned in terms of Section 159 of the Ordinance.

The SCP while upholding the IHC decision, held that:

- There are three stages in the imposition of tax: Tax levy or declaration of liability, tax payable or assessment and tax recoverable.
- It is well established that exemption fall in between first two stages, in other words, if there is an exemption in field then second stage may not be reached at all i.e. the tax may not be payable if exemption is whole. .
- A tax credit falls in between the second stage and third stages, in other words, the second stage must necessarily always be reached, it is only then the tax credit manifests itself by inserting between what is payable i.e. assessment and what is recoverable.
- Thus, the second stage of assessment cannot be the coin of which an exemption on the one hand and a tax credit on the other are the two sides.
- Hence, an exemption and a tax credit are not one and the same thing. They are conceptually distinct, hence conclusion drawn by LHC was not correct.

3. SRB AMNESTY & SUPREME COURT OF PAKISTAN [SCP] ORDER

A. The Sindh Revenue Board ("SRB") has issued Amnesty Scheme vide Notification no. 3-4/8/ dated 18 May 2019 whereby penalty is fully waived, while default surcharge [DS] will be partially waived based on voluntary payments of full principal amount (as outstanding on 21st May 2019) by taxpayers and withholding agents during periods mentioned below:

Payment between	Default Surcharge waived up to
21st May 2019 to 27th May 2019	95%
28st May 2019 to 03rd June 2019	90%
4th June 2019 to 10th June 2019	85%
11th June 2019 to 20th June 2019	80%
21st June 2019 to 30th June 2019	75%

The benefits of exemption of penalty and DS shall also be available in relation to arrears of the tax (as outstanding on 21st May 2019) to following:

- To persons liable to be registered under SRB but not registered, to get themselves registered from 20th May 2019 to 30th June 2019. In this case they are also required to e file there returns for all periods in which they were liable to be registered or e-Sign up (in case withholding agents) up to tax period May 2019.

- Persons who were registered but non-filers or null filers of their tax Return

- Persons who were late registered with SRB and they did not file all of their tax returns for the tax periods from the date of commencement of their economic activity of taxable services.

- Persons who withheld but not deposited tax

- Persons who have determine the arrears through self-detection and self-assessment

- Persons who have short paid any amount of tax as detected by SRB's scrutiny of Returns or in SRB's audit of taxpayers' record or assessed or adjudged/ confirmed or are under assessment /adjudication by an officer of SRB/Commissioner (Appeals) or Appellate Tribunal.

- Persons whose cases are under litigation in any court of law including the High Court or the Supreme Court.

- If Principal and default Surcharge is paid by persons above in this amnesty, and subsequently held by respective competent authorities/ appellate authorities as not payable. The officer of SRB (not below rank of Assistant Commissioner) shall allow tax adjustment/credit of the amount or, alternatively shall refund the amount so paid, within 90 days of filling of refund/credit adjustment application provided that incidence of tax has not been passed on services recipient.

- In our opinion the arrears of tax represent transactions prior to July 2011 i.e. promulgation of Sind Sales Tax on Services Act, 2011 which is discussed in Part B below.

The benefit also available to cases where a person has late paid principal amount of tax before 21st May 2019 but has not yet discharged liability of penalty, whether as per Act/Rules or as per Order, the amount of default surcharge and penalty will be as follows:

Payment between	Default Surcharge waived up to	Penalty Waived up to
21st May 2019 to 03rd June 2019	85%	95%
4th June 2019 to 20th June 2019	80%	90%
21st June 2019 to 30th June 2019	75%	85%

If any refund or adjustment of any amount of tax or default surcharge or penalty as has been paid or recovered on any date prior to the 21st May 2019, it cannot be adjusted in this amnesty.

B. In Case of M/s Independent Media Corporation (Pvt) Ltd [IMC Pakistan] vs CIR, Karachi and others [C.P.1069-K/18 & C.P. 1070-K & 1071-K/18] the taxpayer, providing media services, was adjudicated by department u/s 3 of Sindh Sales Tax Ordinance, 2000[SSTO] and penalty 100% u/s 34 of Sales Tax Act, 1990. Taxpayer preferred an appeal before Collector (Appeals) concluded that taxpayer was not chargeable to tax, however, since the taxpayer had charged the tax for period July, 2004 to July, 2006 and had not deposited the same with department, therefore IMC Pakistan was liable to tax, penalty and default surcharge[DS]. The taxpayer and department, both preferred second appeal with Appellate Tribunal which dismissed the taxpayer's plea while accepted the department's appeal. The taxpayer preferred third appeal in Sindh High Court [SHC] along with

Constitutional Petition challenging certain provisions of SSTO, Sales Tax Special Procedure Rules, 2006 and a number of Standing regulatory orders. Meanwhile, the taxpayer availed exemption/ amnesty issued by SRB by notification SRB-3-416/2014 dated 17th April 2014 [amnesty 2014] which exempted from payment of whole amount of penalty and 95% of DS by depositing principal and 5% DS, however it was deprived of availing amnesty and challenged by department in SHC. The SHC upheld the Tribunal decision, held IMC Pakistan liable to sales tax and also held that transactions prior to year 2011 were not covered in amnesty 2014. The taxpayer did not challenge the SHC and Tribunal order but sought benefits of amnesty 2014 before SCP for penalty and DS amounting to Rs 444,625,560/- with respect to period July 2004 to December 2006. The SRB argued in favor of taxpayer that the transactions pertaining to periods prior to 2011 also come within ambit of SRB while Federation and Sindh Government argued that amnesty 2014 does not cover exemption on payment of penalty and DS for periods prior to the 1st July 2011.

The SCP while setting aside the decision of SHC regarding restriction of amnesty 2014 to transaction on and after July 2011, held that Sindh Sales Tax on Service Act, 2011[Act] has repealed SSTO but by virtue of section 83 had saved certain matters accrued thereunder which had to be administered by the SRB including the power to issue notifications exempting the collection of sales tax on service, accrued penalties and DS. Hence the amnesty 2014 was available to taxpayer for period prior to July 2011.

In light of above SCP judgment, we are of the view that amnesty scheme 2019 also covers transactions pertaining to periods prior to July 2011.

3. ECONOMIC INDICATORS

- The 3-month, 6-month and 1-year KIBOR rate for the month of April 2019 was 11.12%, 11.25 % and 11.66%, respectively, which hiked in May 2019 to 11.92%, 12.09% and 12.55%, respectively.

- The 3-month T-Bills rate for the month of April 2019 was 11.05% which hiked to 11.55% in May 2019; The 6-month T-Bills rate for the month of April 2019 was 10.92% which rose to 11.39% in May 2019. The rate for 1 year remained unchanged at 6.97% since October 2018.

- The PSX 100 index at the end of April 2019 was 38,354 points and at the end of May 2019 was 35,031 points indicating a decrease of 8.66%.

- The rate for Crude Oil in the OPEC basket at the end of April 2019 was $ 70.57, whereas, at the end of May 2019 was $ 70.35. The decrease in price was 0.31%

- The rate of Gold per troy ounce in the month of April 2019 was $1288.60 whereas in the month of May 2019 it decreased to $1285.81 per troy ounce by 0.21%.

- The rate of Sugar at end of April 2019 was 0.33 US$/KG which slightly decreased to 0.32 US$/KG in the month of May 2019.

- The rate of Palm Oil in the month of April 2019 was 509.90 US$/MT which declined in the month of May 2019 to 479.99 US$/MT by 5.86%.

- The US$ parity to Chinese Yuan at the end of April 2019 was 6.72 whereas in the month of May 2019 it was 6.86 showing an increase of 1.45%.

- The US$ parity to Indian rupee at the end of April 2019 was 69.42 whereas in the month of May 2019 it was 70.41.

- The US$ parity to Bangladesh Takka at the end of April 2019 was 84.19 whereas at the end of May 2019 it was 84.36 showing an increase of 0.20%.

- The US$ parity to Pakistan Rupee at the end of April 2019 was 141.43 which changed to 145.84 at end of May 2019 by 3.02%.

- The stock of currency in circulation was Rs. 4,388 billion as on June 30th, 2018 which increased by Rs. 574 billion up to 4,962 billion till May 24, 2019.

- The Net Government Sector borrowings at end of June 30th, 2018 were Rs. 10,199 billion which increased by Rs. 1,146.523 billion up to May 24th, 2019 to Rs. 11,345.52 billion. The net government sector borrowings were used for the purpose of budgetary support (Rs. 9,392 billion) and commodity operations (Rs. 819.68 billion); and supported by others (Rs. -12.97 billion).

- The credit to private sector at the end of June 30th, 2018 was Rs. 5,973 billion which rose by Rs. 558 billion up to May 24th, 2019 to Rs. 6,531 billion.

- Foreign exchange balance at end of May 3rd, 2019 (Provisional) and May 24th, 2019 (Provisional) were $ 15,972.6 million (SBP: $8,984.1 million, Commercial Banks: $6,988.5 million) and $ 15,089.8 million (SBP: $8010.2 million, Commercial Banks: $7079.6 million) respectively showing a decrease of 5.52%.

- Workers' remittances for the month of April and May 2019 were $ 1,779 million and $ 2,315.74 respectively, an increase of only 30.17%.

- (The data with respect to imports and exports has not been updated on the official website yet. A detailed analysis on imports of last ten months will follow soon.)

4. TOPIC OF THE MONTH

- INTERNATIONAL TAXATION - DOUBLE TAX TREATIES

1. History of Model Convention

To avoid double taxation, countries tend to enter into agreements/treaties with each other and try to standardize then to the extent possible. Organization for Economic Cooperation and Development ("OECD") and United Nations ("UN") have developed certain model tax treaties which various countries use as starting point or a model contract template for negotiation when entering into Double Taxation Avoidance Agreements ("DTAAs"). While these model drafts are not legally binding, they have been extensively used by various countries to enter into binding tax treaties. In some cases, the models have been incorporated as it is with minor amendments. However, in other cases, countries have made suitable changes in the draft model according to economic environment, legal, commercial and tax consideration.

The significant model conventions are briefly discussed hereunder:

OECD Model

The emergence of present form of OECD model convention can be traced back to 1972, when the fiscal committee legal nations prepared the first draft of model form applicable to all countries. In 1946 the model convention was published in Geneva by the fiscal committee of UN social and Economic Council and by the Organization of European Economic Co-operation (OEEC) in 1963. However, in 1961, OECD was established with developed countries as its members to succeed OEEC and OECD approved the draft presented to the OECC. In 1977, the final draft was prepared in the present form which has been revised several times, the latest being in the year 2014.

UN Model

In 1986, the United Nations set up an Adhoc Group of experts from various developed and developing countries to prepare draft Model Convention between developed and developing countries. In 1980, this group finalized the UN Model Convention in its present form. It has further been revised a number of times the latest being in the year 2011.

US Model

This model is developed by US for Entering into tax treaties with various countries. The US Model Convention is similar to OECD Model Convention except certain aspects Which are materially different from OECD Model. The latest version was adopted by United Sates in 2016.

Andean Model

The Andean model treaty is treaty existing between the Andean Community. The Andean Community is a customs union comprising the south American countries of Bolivia, Colombia, Ecuador, and Peru. The treaty was signed on 5thmay 2004 with effective date from 1st January 2005. The model is intended to avoid double taxation on the same income at community level and to promote trade among member countries, attract foreign investment and prevent fiscal evasion.

These Models have a significant influence on international treaty practice and have important common provisions. The similarities between these models highlight the areas of consistency and thinking behind each model. The areas of divergence indicate some critical differences in approach or emphasis based on the countries which have advocated the same. These differences are majorly in relation to the taxing rights which would be available to a country under the domestic law and the extent to which any country should sacrifice, under a bilateral tax treaty, in order to avoid double taxation and encourage investments. At present, there are more than 3000 DTAAs signed between nations worldwide.

OECD model advocates Residence based taxation since the members are majorly capital exporting countries and hence wanted to retain the taxation rights with them since the outflow of capital is from their countries. On the other hand, UN model convention advocates source-based taxation principle since the members UN wanted to retain the rights in the place where the income arose.

Although Pakistan is a signatory to OECD, however, Pakistan is signatory only to the extent of exchanging of information and does not follow OECD model of DTAAs. Since, UN model favors developing countries like Pakistan, Pakistan follows the UN model while entering into DTAAs with countries and retains its rights of taxation on Pakistan sourced income mostly.

2. Countries Having DTAAs with Pakistan

To date, Pakistan has signed DTAAs with following countries:

A. FULL SCOPE TREATY:

S. NO	Country	S. NO	Country
1	Hong Kong	16	Tunisia
2	Brunei Darussalam	17	Turkey
3	Czech Republic	18	Tajikistan
4	Nepal	19	Thailand
5	Ukraine	20	Saudi Arabia
6	Kyrgyz Republic	21	Syria
7	Spain	22	Switzerland
8	Serbia	23	Sweden
9	Yemen	24	Sri lanka
10	Vietnam	25	Singapore
11	United State of America	26	Romania
12	Uzbekistan	27	Qatar
13	United Arab Emirates	28	Portugal
14	United Kingdom	29	Poland
15	Turkmenistan	30	Philippines

S. NO	Country
31	Oman
32	Norway
33	Nigeria
34	Netherlands
35	Morocco
36	Mauritius
37	Malta
38	Malaysia
39	Lebanon
40	Libya
41	Korea
42	Kazakhstan
43	Kuwait
44	Jordan
45	Japan
46	Italy
47	Ireland
48	Iran

S. NO	Country
49	Indonesia
50	Hungary
51	Germany
52	France
53	Finland
54	Egypt
55	Denmark
56	Chine
57	South Africa
58	Canada
59	Bosnia and Herzegovina
60	Belarus
61	Belgium
62	Bangladesh
63	Bahrain
64	Azerbaijan
65	Austria

B. LIMITED SCOPE TREATY

Sr #	Countries
1	India (Air Transport Agreement)
2	Saudia Arabia
3	Kenya
4	Jordan (Treaty Partners)

3. Important Articles in a DTAA

Following are the important articles in a UN model DTAA:

1. Article 1 – Persons Covered
2. Article 4 – Resident
3. Article 5 – Permeant establishment
4. Article 6 – Income from Immovable Property
5. Article 7 – Business Profits
6. Article 8 – Shipping, Inland Waterways Transport and Air Transport
7. Article 10 – Dividends
8. Article 11 – Interest
9. Article 12 – Royalty
10. Article 13 – Capital Gains
11. Article 21 – Other Income
12. Article 25 – Mutual Agreement Procedure
13. Article 26 – Exchange of Information

We will cover the above articles in detail in our next issues.

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