TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

AUGUST 2018

TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES

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EDITORIAL NOTE

Happy belated Independence Day! This August has been much happening as it witnessed oath taking of new PM, CMs and Members of National and Provincial assemblies for another tenure. Lets hope for a better Pakistan in future. Tola Associates has published an economic study of past two governments and has also presented its budgeted figures for the next setup. You may access the study through link (https://goo.gl/obSa64).

In this 10th edition of Tax Pak, we have added another segment on economic performance for the month and plan to cover this segment regularly in our next issues.

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

INCOME TAX

Extension in Date of Filing of Income Tax Returns

Vide circular No. 02/2018 (Income Tax), FBR has extended the date of filing of Income Tax Returns (and wealth statement) for salaried Individuals for tax year 2018 up to 30th September 2018. The date of filing of statement of final taxation for tax year 2018 under section 115(4) of ITO has also been extended up to 30th September 2018.

Both the above documents were originally required to be filed by 31st August 2018

SALES TAX

SRO 996(I)/2018 dated 11 August 2018.

By virtue of SRO 996(I)/2018, dated 11 August 2018, the Federal Government has amended SRO 1125 dated 31 December 2011. Notification provides that in case of machinery not manufactured locally if imported by textile units as specified in Part-IV of the Fifth Schedule to the Customs Act,1969, sales tax shall be charged at 0%.

2. APPLICATION OF SRO PROSPECTIVE EVEN IF IN TAXPAYER'S FAVOR – ATIR

Honorable Appellate Tribunal Inland Revenue vide I.T.A. No.936/LB of 2015 dated: 18-06-2015, in case of Shaukat Oil Traders Vs Commissioner Inland Revenue, RTO, Faisalabad has concluded that notifications issued by Federal Board of Revenue [FBR] take effect from the date of issuance unless otherwise specified.

The Divisional Bench of Honorable Appellate Tribunal Inland Revenue disputed over applicability issue viz. retrospective or prospective, in case of issuance of SRO 575 dated 24 January 2012 (which gives benefit of reduced rate of Minimum tax to petroleum agents and distributors who are registered under Sales Tax Act, 1990) based on following:

a) the ratio decided under Supreme Court Order cited as 2005 SCMR 492 and;

b) whether benefit of SRO 575 can be extended for the Tax Year 2011 when the amended order has been passed on much later date i.e. 22 January 2015.

It was finally held as under:

(a) Notifications containing administrative instructions are procedural hence not binding.
(b) Notifications containing beneficial legislation to the general public can be applied retrospectively.
(c) Notification involving public money cannot be given effect retrospectively even the same are beneficial to the taxpayer.

3. ECONOMIC INDICATORS

- The 3-month, 6-month and 1-year KIBOR rate for the month of July 2018 were 7.91%, 8.02 and 8.45%; respectively, which rose slightly in August 2018 to 7.93%, 8.05% and 8.47%, respectively.
- The 3-month, 6-month and 1-year T-Bills rate for the month of July 2018 were 7.73%, 8.09% and 6.97%; respectively, which rose slightly in August 2018 to 7.74%, 8.09% and 6.97%, respectively. The 6-month and 1-year T-Bills rates were last auctioned on July 18th 2018 and March 14th 2018.
- The PSE 100 index at the end of July was 42,712.43 points and at the end of August 2018 was 41,742.24

while the average index for the month of July 2018 was 40,929 points and for the month of August 2018 was 42,490.24 points. The change between month ends was -2.27%.

- The rate for Crude Oil in the OPEC basket at the end of July 2018 was $ 68.76, whereas, at the end of August 2018 was $ 72.19. The change was 4.96%
- The rate of Gold per troy ounce in the month of July 2018 was $1,233.60 whereas in the month of August 2018 it fell slightly to $1206.70 per troy ounce by 2.18%
- The rate of Sugar in the month of July 2018 was 0.3179 US$/KG and it rose in the month of August 2018 to 0.3259 US$/KG by 2.5%
- The rate of Palm Oil in the month of July 2018 was 525.93 US$/MT which increased in the month of August 2018 to 540.64 US$/MT by 2.8%.
- The US$ parity to Chinese Yuan at the end of July 2018 was 6.83 whereas in the month of August it was 6.82 posting a change of 0.15%.
- The US$ parity to Indian rupee at the end of July was 68.55 whereas in the month of August 2018 it was 71.00 posting a change of 3.5%.
- The US$ parity to Bangladesh Takka at the end of July was 84.23 whereas at the end of August 2018 it was 83.87 posting a change of 0.43%.
- The US$ parity to Pakistan Rupee at the end of July 2018 was 124.80 whereas at the end of August 2018 was 124.25 posting a change of 0.44%
- The volume of imports in July 2018 was 601,586 Million rupees (4,838 million $) while the exports were 204,688 Million rupees (1,646 million $).
- The stock of currency in circulation was Rs. 4,388 billion as on June 30th, 2018 which rose by Rs. 231 billion up to August 31st, 2018 to Rs. 4,619 billion
- The Net Government Sector borrowings at end of June 30th, 2018 were Rs. 10,199 billion which declined by Rs. 155 billion up to August 31st, 2018 to Rs. 10,044 billion. The net government sector borrowings were used for budgetary support (Rs. 9,249 billion) and commodity operations (Rs. 809 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. 40 billion up to August 31st, 2018 to Rs. 6,013 billion.
- Workers' remittances for the month of July and August were $ 1,929 million and $ 2,037 million respectively showing an increase of 5.6%.
- Foreign exchange balance at end of July and August (provisional) were $ 16,891 million (SBP: $10,211 million, Commercial Banks: $6,679 million) and $ 16,369 (SBP: $9,885 million, Commercial Banks: $6,484 million) million respectively showing an increase of 5.6%.
- The Consumer Price Index (CPI) at the end of August 2018 was 5.8 % whereas the CPI at the end of July 2018 was also 5.8.
- The Sensitive Price Index (SPI) at the end of August 2018 was 3.3% whereas the SPI at the end of July 2018 was 3.6.
- The wholesale Price Index at the end of August 2018 was 11.00% whereas the WPI at the end of July 2018 was 10.5

4. TOPIC OF THE MONTH

- FOREIGN ACCOUNT TAX COMPLIANCE ACT ("FATCA")

INTRODUCTION

In 2010, USA enacted a law known as "Foreign Account Tax Compliance Act" (FATCA) with the objective of tackling tax evasion through obtaining information in respect of offshore financial accounts maintained by USA residents and citizens. The provisions of FATCA essentially provide for 30% withholding tax on US source payments made to Foreign Financial Institutions unless thy enter into an agreement with the Internal Revenue Service (US IRS) to Provide information with respect to accounts held with them by USA persons or entities (firms/companies/trusts) controlled by USA persons. Since domestic laws of sovereign countries may not permit sharing of client confidential information by FIs directly with USA, USA has entered into Inter-Governmental Agreement (IGA) with various countries as under:

1	Algeria
2	Angola
3	Anguilla
4	Antigua and Barbuda
5	Armenia
6	Australia
7	Austria
8	Azerbaijan
9	Bahamas
10	Bahrain
11	Barbados
12	Belarus
13	Belgium
14	Bermuda
15	Brazil
16	British Virgin Islands
17	Bulgaria
18	Cambodia
19	Canada
20	Cayman Islands
21	Chile
22	Colombia
23	Costa Rica
24	Croatia
25	Curaçao
26	Cyprus
27	Czech Republic
28	Denmark
29	Dominican Republic
30	Estonia
31	Finland
32	France
33	Georgia
34	Germany
35	Gibraltar
36	Greece
37	Greenland
38	Grenada
39	Guernsey
40	Guyana
41	Honduras
42	Hong Kong
43	Hungary
44	Iceland
45	India
46	Ireland
47	Isle of Man
48	Israel
49	Italy
50	Jamaica
51	Japan
52	Jersey
53	Kazakhstan
54	Kosovo
55	Kuwait
56	Latvia
57	Liechtenstein
58	Lithuania
59	Luxembourg
60	Macau
61	Malta
62	Mauritius
63	Mexico
64	Moldova
65	Montenegro
66	Montserrat
67	Netherlands
68	New Zealand
69	Norway
70	Panama
71	Philippines
72	Poland
73	Portugal
74	Qatar
75	Romania
76	Saint Kitts and Nevis
77	Saint Lucia
78	Saint Vincent and the Grenadines
79	San Marino
80	Saudi Arabia
81	Singapore
82	Slovakia
83	Slovenia
84	South Africa
85	South Korea
86	Spain
87	Sweden

88	Switzerland
89	Taiwan
90	Thailand
91	Trinidad and Tobago
92	Turkey
93	Turkmenistan
94	Turks and Caicos Islands
95	Ukraine
96	United Arab Emirates
97	United Kingdom
98	Uzbekistan
99	Vatican City
100	Vietnam

FATCA was reportedly enacted for the purpose of detecting the non-U.S. financial accounts of U.S. resident taxpayers rather than to identify non-resident U.S. citizens and enforce collections. However, although there might be thousands of resident U.S. citizens with non-U.S. assets, such as investors, dual citizens, or legal immigrants, FATCA also applies to the estimated 5.7 to 9 million U.S. citizens residing outside of the United States and those persons are believed to be U.S. persons for tax purposes. FATCA also affects non-U.S.-person family members and business partners who share accounts with U.S. persons or who have U.S. person signatories of accounts. This feature allows the reporting of the assets of non U.S. corporations, volunteer organizations, and any other non U.S. entity where a U.S. person can be identified.

FATCA is used to locate U.S. citizens (residing in the U.S. or not) and "U.S. persons for tax purposes" and to collect and store information including total asset value and Social Security number. The law is used to detect assets, rather than income. The law does not include a provision imposing any tax. In the law, financial institutions would report the information they gather to the U.S. Internal Revenue Service (IRS). As implemented by the intergovernmental agreements (IGAs) with many countries, each financial institution will send the U.S.-person's data to the local government first. For example, according to Ukraine's IGA, the U.S.-person data will be sent to U.S. via the Ukrainian government. Alternatively, in a non-IGA country, such as Pakistan, only the Pakistani bank will store the U.S.-person data and will send it directly to the IRS.

FATCA is used by government personnel to detect signs of U.S. persons and their assets and to enable cross-checking where assets have been self-reported by individuals to the IRS or to the Financial Crimes Enforcement Network (FinCEN). U.S. persons, regardless of residence location and regardless of dual citizenship, are required to self-report their non-U.S. assets to FinCEN on an annual basis.

According to qualification criteria, individuals are also required to report this information on IRS. FATCA will allow detection of persons who have not self-reported, enabling collection of large penalties. FATCA allows government personnel to locate U.S. persons not living in the United States, so as to assess U.S. tax or penalties.

Under FATCA, non-U.S. ('foreign') financial institutions (FFIs) are required to report asset and identify information related to suspected U.S. persons using their financial institutions.

FATCA Provisions

FATCA has the following important provisions:

- Requires non-U.S. ('foreign') financial institutions such as banks to agree to search customer databases to identify those suspected of being US persons, and to disclose the account holders' names, TINs and addresses, as well as the transactions for most types of account. Some types of account, notably retirement savings and other tax-favored products, may be excluded from reporting on a country-by-country basis. U.S. entities making payments to non-compliant foreign financial institutions are required to withhold tax equal to 30 percent of the amount.

Foreign financial institutions which are themselves the beneficial owners of such payments are not permitted a credit or refund for taxes withheld, sans a treaty override.

US persons are identified by "FATCA indicia" (FATCA Signs). A bank official who knows a U.S. person's status by other means is also required to identify that person for FATCA purposes. After identification, the FFI is responsible under the law for further questioning the individual.

- To implement this requirement, the IRS put out a Form in February 2014. Since then, the IRS has required FFIs to have all foreign account holders certify their status on the Form unless an intergovernmental agreement is in place authorizing another method of certification.

In other words, all account holders of FFIs are expected to comply with FATCA reporting requirements.

- U.S. persons who own or have signing authority on these foreign accounts or assets must report them on the new IRS Form, Statement of Specified Foreign Financial Assets, which is filed with the person's U.S. tax returns if the accounts are generally worth more than US$50,000. A higher reporting threshold applies to U.S. persons who are overseas residents and file jointly. Account holders would be subject to a 40% penalty on understatements of income in an undisclosed foreign financial asset. Understatements of more than 25% of gross income are subject to an extended statute of limitations period for six years. It also requires taxpayers to report financial assets that are not held in a custodial account, i.e. physical stock or bond certificates.
- FATCA also increased penalties and imposed certain negative presumptions on Americans whose accounts are not located in U.S.

The reporting requirements are in addition to the one that all U.S. persons report non-U.S. financial accounts to the U.S. Financial Crimes Enforcement Network (FinCEN). This notably includes Form 114, "Report of Foreign Bank and Financial Accounts" (FBAR) for foreign financial accounts exceeding US$10,000, required under Bank Secrecy Act regulations issued by the Financial Crimes Enforcement Network.

FATCA indicia

Banks which are performing functions according to FATCA law will be searching their data bases according to FATCA indicia, which include:

- A U.S. place of birth
- Identification of the account holder as a U.S. citizen or resident
- A current U.S. residence or mailing address (including a U.S. PO box)
- A current U.S. telephone number
- Standing instructions to pay amounts from a foreign (meaning non-U.S.) account to an account maintained in the United States
- A current power of attorney or signatory authority granted to a person with a U.S. address
- A U.S. "in-care-of" or "hold mail" address that is the sole address with respect to the account holder
- Special note: Others affected by FATCA include
  - any non-U.S. person who shares a joint account with a U.S. person or otherwise

authority on their account.
- Any business or not-for-profit organization that allows a U.S. person to have signatory authority on a financial account.

FATCA Impacts

- **Possible capital flight**. The primary mechanism for enforcing the compliance of FFIs is a punitive withholding levy on U.S. assets which the *Economist* speculated in 2011 might create an incentive for FFIs to divest or not invest in US assets, resulting in capital flight.

- **Foreign relations**. Forcing 'foreign' financial institutions and governments to collect data on US persons at their own expense and transmit it to the IRS has been called disruptive and imperialist. Canada's former Finance Minister Jim Flaherty raised an issue with the "far reaching and extraterritorial implications" which would require Canadian banks to become extensions of the IRS and jeopardise Canadians' privacy rights. There are also reports of many foreign banks refusing to open accounts for Americans, making it harder for Americans to live and work abroad.

- **Effect on "accidental Americans"**. The reporting requirements and penalties apply to all US citizens, including accidental Americans, those who are unaware that they have US citizenship. Since the US considers all persons born in the U.S., and most foreign-born persons with American parents, to be citizens, FATCA affects a large number of foreign residents, who are unaware that the US considers them citizens.
- **Citizenship renunciations**.

The number of Americans renouncing their citizenship has risen each year since the enactment of FATCA, from just 1,006 in 2010 to 3,415 in 2014, 4,279 in 2015, and 5,411 in 2016. Among those who renounced was the Mayor of London, Boris Johnson, who did so after the IRS taxed the sale of his house in London. Due to the rise in applications and resulting backlog, the fee for renouncing citizenship was raised by roughly 400 percent in 2015 to $2,350. The 5,411 renunciations in 2016 were a 26% increase from the previous record, set in 2015. The number of renunciations for the first three quarters of 2017 was 4,448, which exceeds the entire year's total for 2015

- **American citizens living abroad**. *The Wall Street Journal* reported in July 2014 that "FATCA worsens the already profoundly unjust tax treatment of millions of middle-class Americans living abroad. FATCA rules were intended to correct a tax loophole. Applied to Americans living abroad, they are absurd”. *The Guardian* reports that Americans living abroad feel financially terrorized by FATCA requirements. In 2013, Robert Stack stated the IRS position that "FATCA withholding applies to the U.S. investments of FFIs whether or not they have U.S. account holders, so turning away known U.S. account holders will not enable an FFI to avoid FATCA.

- **Lack of reciprocity**. There is no US legislation to allow reciprocity, and as of 2017, no reciprocal data exchanges have taken place. The model IGA states: "The Parties are committed to working with Partner Jurisdictions and the Organization for Economic Cooperation and Development on adapting the terms of this Agreement and other agreements between the United States and

Partner Jurisdictions to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions." The president's budget for year 2014 included a proposal to allow the Treasury Secretary to collect information which could be used for FATCA reciprocity. The proposal stated that its intent was to "facilitate such intergovernmental cooperation by enabling the IRS to reciprocate in appropriate circumstances"; however, the proposal did not request to allow the Secretary to have further transmittal authority. The president's federal budget proposals of 2014, 2015 and 2016 did not list either costs or revenues for reciprocity implementation in any of the coming 10 years—thus if this collection was either cost neutral or, more logically, it would be interpreted as not budgeted.

FATCA and Pakistan

Pakistan has not yet signed an IGA with U.S., therefore, most of the Pakistani Financial Institutions have registered themselves with IRS to avoid withholding of taxes. (Non-exhaustive) list of Pakistani Financial Institutions, registered with IRS is as under:

1	Albaraka Bank (Pakistan) Limited
2	Allied Bank Limited
3	Askari Bank Limited
4	Bank Al-Habib Limited
5	Bank Alfalah Limited
6	Bank Islami Pakistan Limited
7	Barclays Bank Pakistan
8	Burj Bank Limited
9	Deutsche Bank AG
10	Dubai Islamic Bank Pakistan Limited
11	Faysal Bank Limited
12	First Women Bank Limited
13	Habib Bank Limited
14	Habib Metropolitan Bank Limited
15	HSBC Bank Middle East Limited
16	Industrial and Commercial Bank of China
17	JS Bank Limited
18	KASB Bank Limited
19	MCB Bank Limited
20	Meezan Bank Limited
21	National Bank of Pakistan
22	NIB Bank Limited
23	NRSP Microfinance Bank Limited
24	Pak Oman Microfinance Bank Limited
25	Samba Bank Limited
26	Silk Bank Limited
27	Sindh Bank Limited
28	Soneri Bank Limited
29	Standard Chartered Bank (Pakistan) Limited
30	Summit Bank Limited
31	The Bank of Khyber
32	The Bank of Punjab
33	United Bank Limited

(Source – Excerpt from "Black Money and FATCA" by Taxman's and Wikipedia)

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