



OCTOBER 2018

# TAX PAK

NEWSLETTER BY  
TOLA ASSOCIATES

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## CONTENTS

1. **Notifications/ Circulars**
2. **Comments on Punjab Finance Act, 2018**
3. **Economic Indicators**
4. **Topic of the Month - Common Reporting Standards**

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## EDITORIAL NOTE

Although annual anniversary of Tax Pak will be due next month, twelve issues of Tax Pak including this issue and a special edition have successfully and consistently been completed. Our coverage on 'OECD Convention', 'Transfer Pricing', 'NFC Awards', 'Turkish Taxation System', and 'FATCA' in topic of the month section were highlights of these 12 issues.



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

Readers are requested to visit our website [www.tolaassociates.com](http://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

## 1. NOTIFICATIONS/ CIRCULARS

### 1. Tax Concessions in FATA/PATA

In our July 2018 newsletter, we discussed in Topic of the month "Tax Exemptions for FATA and PATA" that 25<sup>th</sup> Constitutional Amendment (Formerly 31<sup>st</sup> Constitutional Amendment) brings FATA and PATA under the ambit of federal & provincial taxes which had been decided to be deferred through granting of exemption from various taxes up to 30<sup>th</sup> June 2023 in the Economic Coordination Committee of the Cabinet (ECCC) meeting held on 31<sup>st</sup> May 2018.

#### 1.1. Income Tax

In line with the decision of ECCC, FBR issued SRO 887(I)/2018 dated 23<sup>rd</sup> July 2018 granting exemption from income tax by inserting Clause 144 & 145 in Part 1 and Clause 106 in Part IV of Second Schedule of Income Tax Ordinance, 2001. The trading community of FATA highlighted that said SRO did not completely exempt the provisions of income tax as available before 25<sup>th</sup> Constitutional Amendment. To address this concern, FBR has now issued SRO 1213(I)/2018 dated 05<sup>th</sup> October 2018 making amendments in Second Schedule by omitting Clause 144 & 145 in Part 1 and Clause 106 in Part IV of Second Schedule, and inserting Clause 146 in Part 1 & 110 in Part IV of Second Schedule of Income Tax Ordinance, 2001 having retrospective effect from date the said Constitutional Amendment received assent of the President of the Islamic Republic of Pakistan.

#### 1.2. Federal Sales Tax

Similarly, FBR has now issued SRO 1212(I)/2018 dated 05<sup>th</sup> October 2018 whereby earlier issued SRO 888(I)/2018, 889(I)/2018 & 890(I)/2018 all dated 23<sup>rd</sup> July 2018 are rescinded due to above concern of stakeholders, and exemption from whole of Sales Tax levied under Sales Tax Act, 1990 or notification issued thereunder, till 30<sup>th</sup> June 2018, has been granted.

### 2. E-Procedure for Correction in CPR-IT, FST, FED and Procedure for taking Credit of Tax paid under Amnesty Acts, 2018.

2.1. The FBR vide Circular no 1(2)-SS(BDT)/18-CPR/119196-R has now restricted procedure for

changes in following particulars of Computerized Payment Receipts (CPR) only through online application on IRIS.

- Change of name, address, NTN/CNIC
- Change in tax year/ tax period
- Change in payment code/ payment section

The Online application will be submitted along with scanned copies of;

- Copy of such CPR
- Copy of CNIC
- In case of mistake made by Withholding agent, letter from withholding agent and affidavit from the tax payer on stamp paper that amendment may be made in CPR.
- For correction of NTN/CNIC in CPR, affidavit from the person on whose name the payment has been deposited mistakenly.

The application will be processed within three days from receipt of complete documents. Shortcoming, if any, will be communicated to the tax payer electronically. These instructions are effective from 15<sup>th</sup> October 2018.

2.2. The Amnesty Scheme 2018 consisting Voluntarily Declaration of Domestic Assets Act, 2018 and Foreign Assets (Declaration and Repatriation) Act, 2018 requires tax to be paid and declaration to be filed by 30<sup>th</sup> June 2018, which was further extended up to 31<sup>st</sup> July 2018.

FBR has issued Circular 7 of 2018 dated 24<sup>th</sup> October 2018 in which it is clarified that if tax had been paid under said Scheme on or before 31<sup>st</sup> July 2018, but declaration has been not filed on or before that date, the person cannot take amnesty on assets against which such tax had been paid in his wealth statement for Tax Year 2018. However, the tax paid can be used against Tax liability arising under Tax Return 2018. For this purpose, the procedure for correction of CPR as mentioned above shall be followed to change the payment section from "5-Payment of Tax Under Voluntary Declaration of Domestic Assets Act, 2018- 92034" to "9202-147- Advance Income Tax" if payment was made before 30<sup>th</sup>

June 2018 and “**9203- 137- Admitted Income Tax**” if payment was made after 30<sup>th</sup> June 2018.

### **3. Advance tax on extraction of minerals**

Section 236V Income Tax Ordinance, 2001(**ITO,2001**) empowers provincial authority -collecting royalty per metric ton from the lease-holder of mines or any person extracting minerals- to collect advance tax on **value of minerals** (as specified by FBR) extracted, produced, dispatched and carried away from the licensed or leased areas of the mines at rates specified in Division XXVI of Part-IV of the First Schedule.

The values of 48 minerals for above purpose has now been notified by FBR vide draft SRO 1226(I)/2018 dated 05<sup>th</sup> October 2018, through inserting new Rule 231I in Chapter XIX of Income Tax Rules, 2002. We understand that the said notification is relevant for non-filers only, as no tax deduction is required for filers under Section 236V of ITO, 2001.

### **4. Cash Management- Daily cash position of Banks**

SBP had mandated Banks to submit a) denomination wise and b) branch wise monthly stock position of cash balance via SBP Data Acquisition Portal (**DAP**) through Circular No. CMD/5/2016 dated 26<sup>th</sup> September 2016.

Now in addition to above SBP has mandated banks to submit branch wise cash receipt and cash payment at each day end through DAP to improve monitoring and management of its cash operations.

It is feared that this amendment will encourage cash economy in country, in our opinion.

### **5. FM backed TRC panel’s recommendations to use NADRA data for Tax net expansion**

Finance Minister Asad Umar has directed the Federal Board of Revenue (FBR) to implement short-term recommendations of the Tax Reforms Commission’s Implementation Committee and explore the possibility of effectively using National Database & Registration Authority (Nadra) data for bringing potential persons into the tax net.

Further to it, a proposal of member of TRC implementation committee has been accepted by the Ministry of Finance, Tax Reforms Commission (**TRC**) and FBR to maintain a

databank with the help of NADRA and other third-party sources to capture the economic transactions for documentation and expanding tax net. In the first stage the data available with NADRA about banking transactions, foreign travels, property data, vehicles data and all information of citizens will be collected in next stage this data will be utilized to broaden tax net.

### **6. FBR declares Aza Khel dry port as custom station**

Aza Kel dry port in Nowshera being built by Pakistan Railway is declared as custom station by FBR which can help re-shifting of the 70% Afghan transit trade to Pakistani sea ports, revival of 370 customs clearing agents and business of over 10,000 persons linked with the transit trade.

### **7. 11 Tax Heavens refuses to cooperate with FBR**

Under the Organization for Economic Cooperation and Development’s (**OECD**) Pakistan starts receiving information under new automatic exchange of information programmed from 01 September 2018. The tax heaven countries which had already signed multilateral tax convention did not show willingness to share information with Pakistan are Anguilla, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Hong Kong, Mauritius, Niue, Panama and Samoa, inter alia, due to some reservations about Pakistan’s system of handling such data.

### **8. Unmanufactured Tobacco cannot be supplied to Unregistered Person.**

Section 8(6) of Sales Tax Act, 1990 [**STA**] empowers Federal Government [**FG**] to specify any goods or class of goods which a registered person cannot supply to any person who is not registered under STA. In exercise of power conferred above, the FG had issued SRO 488(I)/2004 dated 12 June 2004 which has listed goods or class of goods in respect thereof a registered person is not entitled for adjustment of input tax if supplied to unregistered persons.

Now FBR has issued SRO 1267(I)/2018 dated 16th October 2018 whereby unmanufactured tobacco has also been added to the list of goods mentioned in SRO 488(I)/2018.

## 9. SRO 1308(I)/2018 dated 31<sup>st</sup> October 2018.

The Federal Government [FG] has increased the rates of petroleum products for November 2018 as per OGRA recommendations. However, the rates of Sales Tax levied on petroleum products remained unchanged through SRO 1308(I)/2018 dated 31<sup>st</sup> October 2018 except HSD which decreased to 12% from previous 17.5%. Hence by virtue of the said SRO the FG managed to increase price of HSD only by Rs 6.37% as against OGRA recommendation of Rs 13.22 per litre by decreasing Sales Tax rate.

We understand that the new rate of Sales Tax on HSD of 12% which is lower than Standard Sales Tax rates under SRB, FBR & PRA may trigger inadmissibility of input tax by respective authorities.

A comparison of Sales Tax rates of petroleum products from August 2017 to September 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

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

## 2. COMMENTS ON PUNJAB FINANCE ACT, 2018

Punjab Finance Act, 2018 has been passed on 29<sup>th</sup> October 2018. The highlights of the amendments in Punjab Sales Tax on Services Act, 2012 is as under:

- Definitions of Commission and Commission agent have been introduced.
- Sale of Immovable property has also been included in Economic Activity.
- Powers of Authority to compulsorily register has been devolved into Commissioner or any other officer to his order.
- Time limit prescribed for retention of records has been extended from 6 years to 8 years.
- Time limit allowed for recovery of tax has been extended from 6 years to 8 years.
- Commissioner has been empowered to seal the business for one month.
- The authority has been empowered to monitor or track the provision of services by electronic or other means.
- Provisions for filing of reference to High Court has been introduced in line with federal income tax and sales tax laws.
- Cash collection services by courier companies has also been included in taxable courier services.
- Life and health insurance, which were excluded from insurance services, has now been included therein.
- Rate of sales tax on construction services other than with respect to Government civil works have been increased to 16% from earlier 5%.
- Cosmetic and plastic surgery and hair transplant services have been excluded from taxable services.
- Services with respect to provision of space, equipment, accessories and other allied services have been included in taxable services.
- Intercity carriage of goods by an individual owner of a vehicle, which was earlier excluded from taxable services, has now been included therein.
- Sales tax rate on intercity carriage of goods by rail or road has been reduced from 16% to 15%, consequently depriving the users of such services from adjustment of respective input tax.

- Rent collection, collection of toll, fee, regulatory fee or duty or similar other services have been made taxable.
- services provided by skin and laser clinics including consultation services have been made taxable.
- warehouse service for storage of agricultural produce for own use has been excluded from taxable services.
- Parking services has also been made taxable.
- Penalty has been introduced for any person who avoids, denies or obstructs installation of electronic invoice monitoring system at a business premises or fails to comply with the electronic invoice monitoring system or issues invoices bypassing the system, of up to one hundred thousand rupees, but not less than twenty-five thousand rupees. In case of three acts of commission or omission, the business premises of such person may further be liable to be sealed for a period which may extend to one month.
- Penalty has also been introduced for any person who causes intentional damage to or intervention in the electronic invoice monitoring system; or impedes or obstructs transmission of invoice data to the Authority, of one hundred thousand rupees for each act of commission. In case of three acts of such commission, the business premises of such person shall be liable to be sealed for a period which may extend to one month and such person shall further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to one year, or with fine which may extend to the amount equal to the tax payable for the tax period to which the offence relates, or with both.
- The PSE 100 index at the end of September was 40,998.59 points and at the end of October 2018 was 41,649.36 while the average index for the month of September 2018 was 41,076.69 points and for the month of October 2018 was 39,149.46 points posting a decline of 4.7%.
- The rate for Crude Oil in the OPEC basket at the end of September 2018 was \$ 73.25, whereas, at the end of October 2018 was \$ 75.51. The rise in price was 3.08%
- The rate of Gold per troy ounce in the month of September 2018 was \$1,206.70 whereas in the month of October 2018 it fell slightly to \$1,196.20 per troy ounce by 0.87%
- The rate of Sugar at end of September 2018 was 0.3205 US\$/KG rising in the month of October 2018 to 0.3557 US\$/KG by 10.98%
- The rate of Palm Oil in the month of September 2018 was 513.14 US\$/MT which fell in the month of October 2018 to 480.19 US\$/MT by 6.42%.
- The US\$ parity to Chinese Yuan at the end of September 2018 was 6.87 whereas in the month of October it was 6.98 posting an increase of 1.6%.
- The US\$ parity to Indian rupee at the end of September was 72.49 whereas in the month of October 2018 it was 73.96 posting an increase of 2.02%.
- The US\$ parity to Bangladesh Takka at the end of September was 83.96 whereas at the end of October 2018 it was 83.87 posting a decline of 0.11%.
- The US\$ parity to Pakistan Rupee at the end of September 2018 was 124.25 which rose to 132.50 at end of October 2018 by 6.64%
- The volume of imports in October 2018 was 631,246 Million rupees (4,841 million \$) while the exports were 248,128 Million rupees (1,903 million \$). Exports in July to October 2018 rose by 3.5% to \$ 7,285 million while Imports in July to October 2018 rose by 0.06% to \$19,071 million.
- The stock of currency in circulation was Rs. 4,388 billion as on June 30<sup>th</sup>, 2018 which increased by Rs. 54 billion up to October 26<sup>th</sup>, 2018 to Rs. 4,442 billion

### 3. ECONOMIC INDICATORS

- The 3-month, 6-month and 1-year KIBOR rate for the month of September 2018 were 8.05%, 8.23% and 8.77%; respectively, which hiked in October 2018 to 8.96%, 9.42% and 10.01%, respectively.
- The 3-month, 6-month and 1-year T-Bills rate for the month of September 2018 were 7.75%, 8.09% and 6.97%; respectively, which hiked in October 2018 to 8.46%, 8.85% and 6.97%, respectively.

- The Net Government Sector borrowings at end of June 30<sup>th</sup>, 2018 were Rs. 10,199 billion which increased by Rs. 39 billion up to October 26<sup>th</sup>, 2018 to Rs. 10,238 billion. The net government sector borrowings were used for the purpose of budgetary support (Rs. 9,474 billion) and commodity operations (Rs. 778 billion); and supported by others (Rs. 13 billion).
- The credit to private sector at end of June 30<sup>th</sup>, 2018 was Rs. 5,973 billion which rose by Rs. 201 billion up to October 26<sup>th</sup>, 2018 to Rs. 6,174 billion.
- Foreign exchange balance at end of September and October 26<sup>th</sup>, 2018 (provisional) were \$ 14,920.7 million (SBP: \$8,408.7 million, Commercial Banks: \$6,512 million) and \$ 14,184.5 million (SBP: \$7,776.9 million, Commercial Banks: \$6,407.6 million) respectively showing a decline of 4.93%.
- Remittance in October amounted to \$ 2 billion, up by 38% and 21% from September 2018 and October 2017, respectively. Whereas, during July to October of 2018 amounted to \$ 7,420 million which was \$ 6,444 million during the same period last year.

#### 4. TOPIC OF THE MONTH

##### - COMMON REPORTING STANDARDS

The **Common Reporting Standard (CRS)** is an information standard for the **automatic exchange of information (AEOI)** regarding bank accounts on a global level, between tax authorities, which the Organization for Economic Co-operation and Development (OECD) developed in 2014.

Its purpose is to combat tax evasion. The idea was based on the US Foreign Account Tax Compliance Act (FATCA) implementation agreements and its legal basis is the Convention on Mutual Administrative Assistance in Tax Matters. 97 countries had signed an agreement to implement it, with more countries intending to sign later. First reporting occurred in 2017, with many of the rest starting in 2018.

The **Common Reporting Standard (CRS)** calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information

with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

Section 107 of Income Tax Ordinance, 2001 ("ITO") empowers the federal government to enter into intergovernmental agreement for the exchange of information for the prevention of fiscal evasion or avoidance of taxes including automatic exchange of information. Section 165B makes every financial institution liable to make arrangements to provide such information to Board.

In September 2016, Pakistan signed the Multilateral Convention on Mutual Administration Assistance in Tax Matters and became 104th signatory to the Convention. FBR worked closely with local as well as international stakeholders and finalized Common Reporting Rules and notified the same vide S.R.O. 166 (I)/2017 dated March 15, 2017 by introducing Rules 78A to 78J in Income Tax Rules, 2002. With this notification, Pakistan has adopted the global Standard for Automatic Exchange of Financial Account Information in Tax Matters commonly known as the Common Reporting Standard (CRS) as developed by the Organization for Economic Cooperation and Development (OECD).

SBP vide its Circular Letter No. 10 of 2017 dated April 19, 2017 also advised all Banks to ensure compliance with the CRS rules and take all necessary actions / steps to put in place requisite systems / mechanism.

As a first step, all **financial institution** is required to:

- Start due diligence of customer from July 1, 2017 and
- Obtain Self-Certification from
  - Individuals (in case of individual, Joint & Sole-proprietorship Accounts),
  - Entities (Companies including but not limited to partnerships, Private & Public limited, NGOs / NPOs / FIs, etc.) and
  - Controlling Persons (where an entity account holder is treated as a Passive Non-Financial Entity or an Investment Entity located in a non-participating Jurisdiction).



After the due diligence and identification of reportable accounts, each **Reporting Financial Institution** shall report the following information with respect to each **Reportable Account** to **Federal Board of Revenue:**

- Name, address, jurisdiction of residence, TIN and date and place of birth in case account holder is an individual
- In case account holder is an entity Name, address, Jurisdiction of residence and TIN of the entity and Name, address, Jurisdiction of residence, TIN and date and place of birth of controlling persons of the entity (if they are reportable persons)
- Account number
- Name and identifying number of Reporting Financial Institution
- The account balance or value at end of reporting period or date of closure of account
- In case of custodial accounts:
  - i. Gross amount of interest, dividend and other income generated and paid or credited to the account with respect to assets held in the account during the reporting period; and
  - ii. Gross proceeds from sale or redemption of financial assets paid or credited to the account during reporting period with respect to which the financial institution acted as a custodian etc. for the account holder;
- In case of depository account, gross amount of interest paid or credited to the account during reporting period;
- In other cases, the total amount paid or credited to the account during the reporting period with respect to which the Reporting Financial Institution is the obligor or debtor;
- The currency in which the amounts are presented

❖ **Important Terms**

- **Financial Institution** means
  - i. A Custodial Institution - an entity that holds, as a substantial portion of its business, Financial Assets for the account of others.
  - ii. A Depository Institution – an entity that accepts deposits in the ordinary course of a banking or similar business.
  - iii. An Investment Entity - an entity

- That primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer namely:
  - ◆ Trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading;
  - ◆ Individual and collective portfolio management; or
  - ◆ Otherwise investing, administering or managing Financial Assets or money on behalf of other persons; or
- The gross income of which is primarily attributable to investing, reinvesting or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity.
- iv. A Specified Insurance Company - an entity that is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a Cash Value Insurance Contract or an Annuity Contract
- **“Reporting Financial Institution”** means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.
- **“Non-Reporting Financial Institution”** means any Financial Institution that is-
  - i. A Governmental Entity, International Organization or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in a Specified Insurance Company, Custodial Institution, or Depository Institution;
  - ii. A Broad Participation Retirement Fund, a Narrow Participation Retirement Fund, a

Pension Fund of a Governmental Entity, International Organization or Central Bank or a Qualified Credit Card Issuer;

- iii. Any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in sub-clauses (i) and (ii) and included in the list to be published by Federal Board of Revenue and made available on its web portal, on recommendations of the State Bank of Pakistan and the Securities Exchange Commission of Pakistan, as the case may be, as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of these rules;
  - iv. An Exempt Collective Investment Vehicle; or
  - v. A trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to rule 78C with respect to all Reportable Accounts of the trust;
- **Reportable Account** means an account held by:
- i. One or more Reportable Persons or
  - ii. A Passive NFE with one or more Controlling Persons that is a Reportable Person provided it has been identified as such subsequent to due diligence procedures by the Financial Institutions;
- **“Reportable Person”** mean persons other than the following -
- i. A corporation the stock of which is regularly traded on one or more established securities markets;
  - ii. Any corporation that is a Related Entity of a corporation which is a reportable person;
  - iii. A Governmental Entity;
  - iv. An International Organization;
  - v. A Central Bank; or
  - vi. A Financial Institution.
- **“NFE”** means an entity that is not a financial institution.
  - **“Active NFE”** means any NFE that meets any of the following criteria, namely: -
    - i. Less than fifty per cent of the NFE’s gross income for the preceding calendar year is passive income and less than fifty per cent of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income;
    - ii. The stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
    - iii. The NFE is a Governmental Entity, an International Organization, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
    - iv. Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
    - v. The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is twenty-four months after the date of the initial organization of the NFE;

- vi. The NFE was not a Financial Institution in the past five years and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- vii. The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- viii. The NFE meets all of the following requirements, namely:
  - It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - It is exempt from income tax in its jurisdiction of residence;
  - It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all its assets be distributed to a

Governmental Entity or other non-profit organization.

- **“Passive NFE”** means:
  - i. An NFE that is not an Active NFE or,
  - ii. An Investment Entity that is not a Participating Jurisdiction Financial Institution.
- **Participating Jurisdiction** means a jurisdiction:
  - i. With which an agreement is in place pursuant to which there is an obligation in place to provide the information, and
  - ii. Which is identified in a published list to be made available on FBR's portal.
- **“Controlling Persons”** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust and in the case of a legal arrangement, other than a trust, such term means persons in equivalent or similar positions.
- **“Related Entity”** means an entity which controls the other Entity or is controlled by a third entity. For this purpose, control includes direct or indirect ownership of more than fifty percent of the vote and value in an Entity.

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