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TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES


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Will OECD Convention give Desired Benefits to Pakistan

NAMES

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INAUGURAL NOTE

By the grace of ALMIGHTY, we are pleased to send 2nd edition of our newsletter.

I am extremely grateful to all the readers who have given their valuable suggestions for improvement. Due to over whelming response, we are trying to take this Newsletter to next level.

Your further feedback will be appreciated so that this newsletter may further be refined in future.

Please also spread this newsletter in your circle for the benefit of the society. I am grateful to my colleagues in ICAP Council and teaching fraternity for their support and commitment.

Readers are advised to look at disclaimer at end and consult their tax advisors for further clarification of any issue in the newsletter. Readers' feedback is welcomed.

Ashfaq Tola - FCA
Editor in Chief



EDITORIAL NOTE

This is our second Newsletter. Our first newsletter was highly applauded by our valuable readers. Tola Associates will leave no stone unturned to update its interested readers with the information evolving on regular basis.

The aim behind unveiling such service is just to refresh the readers by updating them with the recent developments being carried out in Tax Laws by the Authorities.

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1. PAKISTAN & HONG KONG SHAKE HANDS FOR AVOIDANCE OF DOUBLE TAXATION

Tax Treaty (ies) is also known as Double Tax Agreement(s).

The primary purpose of tax treaties is commonly understood to be for avoidance of double taxation of income arising from cross-border transactions. Double taxation emerges when the same income or capital is taxed in both treaty partner countries. Many countries enter into tax treaties with other countries with a common intention to mitigate double taxation. Likewise, very recently Pakistan and Hong Kong have embraced each other by executing a Tax Agreement for the avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income.

The Tax Treaty will benefit individuals and Companies working in Pakistan and Hong Kong by providing them shield against the charging of double taxation on the income of the residents of both the jurisdictions. On the pretext of this Treaty any tax paid by the Hong Kong residents in Pakistan will be allowed tax credit against the tax payable in Hong Kong on the same profits, subject to the provisions of the tax laws of Hong Kong.

Similarly, any tax paid by the Pakistani Companies/resident in Hong Kong will be allowed a deduction from the tax payable on the same income in Pakistan subject to the provision of Pakistan Tax Laws. The Agree-



ent will encourage the businesses of the two countries to promote the investments and would certainly strengthen the economic relations between the two countries.

Presently, the taxes to which the agreement shall apply are as follows:

- a) In the case of Hong Kong;**
 - i. Profits tax;
 - ii. Salaries tax; and
 - iii. Property tax
- b) In the case of Pakistan**
 - i. Income tax; and
 - ii. Super tax

In addition to that the agreement shall also have force on identical or substantially similar taxes that are enforced after the date of signature of the said agreement.

This Tax Agreement between Pakistan and Government of Hong Kong was signed on February 17, 2017 and will from November 24, 2017.

2. LAHORE HIGH COURT SWIPE OFF THE POWERS OF DEPUTY AND ASSISTANT COMMISSIONER - INLAND REVENUE

(A LANDMARK JUDGMENT)

The Lahore High Court has wiped off the powers of Deputy and Assistant Commissioner Inland Revenue from issuing the Show-cause Notices under section 11 of Sales Tax Act, 1990 and passing the Assessment Orders, by giving a landmark judgment in **Writ Petition No. 37295 of 2016**. According to the judgment the powers delegated by the FBR to the Commissioner Inland Revenue cannot be further delegated to the Deputy or Assistant Commissioners by the Commissioner Inland Revenue.

Though, the Commissioner Inland Revenue reserves the power under section 32(3) to prescribe the function to be performed by officers of Inland Revenue sub-ordinate to him in respect of such persons or classes of persons or of such area as the Commissioners would direct. But the Notification-I issued by the FBR has expressed its clear intent to confer on the Commissioners the functions to be exercised in respect of certain persons or classes of persons of such area as specified in that Notification. This would mean that in respect of the persons or classes of persons or cases or classes of cases as specified in

Notification-I, only the Commissioner of Inland Revenue mentioned in these notification will exercise the power and those functions cannot be delegated by the Commissioners of Inland Revenue. It can be argued that the said Judgment has allowed the taxpayers to raise the jurisdictional issue in the cases/appeals which are

pending sub-judice either before Commissioners Appeals or Appellate Tribunal Inland Revenue. It is pertinent to note that jurisdictional point can be raised at any stage and at any point in time and it is the duty of the Court to decide fundamental questions that may affect legality of proceedings before them, such as Jurisdiction and limitation at the earliest stage even if the objection to such effect has not been raised. Such inference was drawn in a case reported as **2015 CLD 600 (SHC)** and there are many other likewise judgments.

Assuming the situation that if, the subject Notification had not been issued by the FBR; there was no hindrance for the Commissioner of Inland Revenue to delegate its powers to be performed by officers of Inland Revenue subordinate to him.

3. REDUCTION IN VALUATION RATES OF IMMOVABLE PROPERTIES

The Federal Board of Revenue has announced a dramatic reduction in Valuation Rates of the Immovable properties located in six big cities

of Pakistan for determination of withholding tax and capital gain tax vide six different SROs. The changes adopted by the FBR through the different SROs are as follows:

S. No.	Area	Cities	Old Valuation Rates of Residential Property Per Marla	New Valuation Rates of Residential Property Per Marla
01	Hayatabad Town Ship	Peshawar	935,310	540,000
02	Eden Orchard	Faisalabad	437,500	375,000
03	EME Society, Allama Iqbal Town	Lahore	837,500	562,500
	Gujjar Pura China, Shalimar Town		748,500	363,000
	Anmol Coop Society, Nishtar Town		385,000	237,500
	Atari Saroba, Nishtar Town		440,000	275,500
	Balhar, Nishtar Town		221,000	190,000
	Dev Khurd Kalan		209,000	200,000
04	DHA-I	Rawalpindi	550,000	335,000
	DHA-II		400,000	255,000
	DHA-II Ext		175,000	95,000
	DHA-III		150,000	90,000
	DHA-IV		225,000	110,000
	Phase III Bharia Town		600,000	270,000
	Phase-I Bharia Town		375,000	280,000
	Phase-I Ext. Bharia Town		375,000	165,000
	Phase-II Bharia Town		350,000	160,000
	Phase-II Ext. Bharia Town		350,000	150,000
	Phase-II S Bharia Town		375,000	270,000
	Phase-III Bharia Town		375,000	250,000
	Phase-IV Bharia Town		350,000	260,000
	Phase-V Bharia Town		350,000	240,000
	Phase-VI Bharia Town		350,000	240,000
	Phase-VII Bharia Town		250,000	180,000
Phase-VIII Bharia Town	225,000	175,000		
DHA-V		168,000		
05	E-12	Islamabad	17,800/ sq. yard	15,309/ sq. yard
	I-15		15,000/ sq. yard	6,840/ sq. yard
	I-16		15,000/ sq. yard	9,566/ sq. yard
06	Category I – Industrial Open Plot	Karachi	12,000/sq. yard	9,603/sq. yard
	Category I – Industrial Built up Property		3,000/sq. ft.	1,905/sq. ft.
	Category IX - Residential Open Plot		9,100/sq. yard	7,500/sq. yard

4. LAUNCHING OF OFFLINE ENTRY OF SALES TAX DATA

In Persistence of FBR's policy of facilitation for taxpayers and assuring them to easily conduct their business, the FBR-IT Wing inaugurated IRIS-ADX (Asynchronous Data Exchange), that is, an application that permits the taxpayer / E-intermediary to prepare date related to sales tax return including sales invoices, debit/credit notes and sales tax withholding documents in offline mode.

Asynchronous Data is data that is not synchronized when it is sent or received. In this type of transmission, signals are sent between the computers and external systems or vice versa in an asynchronous manner. This usually refers to data that is transmitted at intermittent intervals rather than in a steady stream, which means that the first parts of the complete file might not always be the first to be sent and arrive at the destination.

Iris-ADX is a panacea for taxpayers' facilitation, which provides feature for preparation of sales invoices and synchronize data between client and server.

With the inauguration of this application the taxpayer will be able to prepare sales tax invoices without having to be dependent upon internet. Hence, the issue related to internet connectivity, peak load, system downtime etc. will have no effect on the efficiency of data entry.



FBR claims to have reduced the valuation rates of immovable properties upon the complaints of Stakeholders to remove the anomalies such as;

- 1) *The FBR rates in some areas were fixed much higher than the overall average percentage of the fair market value and;*
- 2) *The FBR rates as percentage of fair market value was higher in comparison with similar location*

The consequences of issuing such notifications will not only cause the irreparable loss to the Government Exchequer, but will also promote the further accumulation of black money as the real-estate GURUS usually declare two types of property prices, one for paying provincial taxes and the other for federal taxes, but the property prices declared by the real-estate GURUS is always far lower than the prevailing market prices.

However, the Government should take stringent steps to bridge such gap by legislating watertight policies for the betterment of Country.

5. AMENDMENT IN SRO 1125(1)/ 2011 DATED 31ST DECEMBER 2011

SRO 46(1) OF 2018, DATED 23 JANUARY 2018

By virtue of SRO 46(1) of 2018 dated 23 January 2018 the Federal Government has made an amendment in the condition of SRO 1125(1)/ 2011 dated 31 December 2011 whereby imported raw and ginned cotton was part of exclusion in Table-1 entry 2 (g) which has been omitted. Table-1 consist of goods which belong to the five sectors covered under SRO 1125(1)/2011 dated 31 December 2011. Instead this now appears as condition of Table-II which is as follows;

- (a) *In case of textile sectors, for imports, raw and ginned cotton stages and onwards, and for local supplies spinning stage onwards.*

Before this amendment the raw and ginned cotton was part of the exclusion in Table-1 of SRO 1125 which means that applicability of SRO 1125 was from spinning stage onwards for textile sector. After this amendment the benefit of SRO 1125 would be for import raw and ginned cotton onwards. However, for local supplies the benefit of the SRO would be from spinning stage onwards.

5.1 EXEMPTION OF SALES TAX, FEDERAL EXCISE DUTY & INCOME TAX ON CONSTRUCTION MATERIAL USED FOR KARACHI PESHAWAR MOTORWAY

SRO 47(I) DATED 23 JAN & 79(I) DATED 29 JAN OF 2018,

By virtue of SRO 46(1) of 2018 dated 23 January 2018 the Federal Government has exempted the whole of sales tax, federal excise duty & by virtue of SRO 79(I)/2018 dated 29 January 2018 the FBR has exempted the Income Tax on construction material imported by M/s China State Construction Engineering Corporation Limited, whether or not locally manufactured for the construction of Karachi-Peshawar motorway (Sukkur-Multan section) subject to fulfillment of the condition laid down on SRO 642(1)/2016 dated 27 July 2016. Provided that the total incidence of exemptions of all duties and taxes of construction material imported shall not exceed ten thousand eight hundred and ninety eight million rupees. The major conditions in SRO 642(1)/2016 dated 27 July 2016 are as under;

- a) *That the exemption under this Notification shall only be available to contractors named above.*
- b) *That the equipment and construction machinery imported under this Notification shall only be used for the construction of the respective allocated projects*
- c) *That the importer shall furnish an indemnity bond, in the prescribed manner and format as set out in Annex-A*
- d) *That the equipment" and construction machinery, imported under this Notification,*

shall not be re-exported, sold or otherwise disposed off without prior approval of FBR.

5.2 AMENDMENT IN SALES TAX SPECIAL PROCEDURE RULES, 2007

SRO 61(1) OF 2018, DATED 25 JANUARY 2018

By virtue of SRO 61(1) / 2018 dated 25 January 2018 the Federal Government has made an amendment in Chapter-IV Special Procedure for collection and payment of Natural Gas, in Rule, 20 (2) (b) whereby in case of bore-hole or a well or gas field run by a joint venture, the person acting as operator may transfer the share of common input tax to other registered person in the joint venture by issuing a credit transfer note and the same will be available for adjustment of input tax to whom credit note issued. The input tax of the operator will be reduced by the credit note it has issued.

Further, in the same SRO an amendment has been made Chapter XIII Special Procedure for Payment of Extra tax on Specified Goods. In Rule 58-T whereby payment of extra tax shall not apply to supplies of lubricating oil marketing companies registered with OGRA and those made by lubricating oil marketing companies registered with OGRA to registered manufactures for in-house consumption. The supplies of lubricating oil by Oil Marketing Companies (OMC) are already exempt from extra tax.

5.3 CHANGE IN SALES TAX RATES OF PETROLEUM PRODUCTS

By virtue of SRO 98(I)/2018, dated 31 January 2018, the Federal Government increased the rate of petroleum products. Hence, the amount of sales tax levied on petroleum products was also changed through the aforesaid SRO. Following is the comparison of rates

S.No	Description	PCT heading	Rate (effective 1 Feb 2018)	Rate (effective 1 Jan 2018)
1	Motor Spirit excluding HOBC	2710.1210	17% ad valorem	17% ad valorem
2	High Speed diesel Oil	2710.1931	25.5% ad valorem	25.5% ad valorem
3	Kerosene	2710.1911	7% ad valorem	6 % ad valorem
4	Light Diesel Oil	2710.1921	7.5% ad valorem	6 % ad valorem

6. TOPIC OF THE MONTH WILL OECD CONVENTION GIVE DESIRED BENEFITS TO PAKISTAN

Pakistan signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters on September 14, 2016.

The OECD is an intergovernmental forum, which focuses on issues including trade, taxation, environment, technology and education. It has 35 (founding) member countries in Europe, Americas and Asia Pacific and is a group of approximately 70 other countries becoming part of OECD from time to time. Pakistan, though not a member of the OECD, has been regularly invited to participate in its various committee meetings.

After signing of the convention by Pakistan, the instrument of ratification will be submitted as the next step. The convention shall come into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification. For example if Pakistan

deposits the instrument on October 03, 2016, the convention will come into force on February 01, 2017.

Key points of the convention are:

- > The convention provides that member countries (“parties”) shall provide administrative assistance to each other in tax matters. Such assistance may involve, where -
- > The above assistance may be in form of:
 - exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
 - assistance in recovery, including measures of conservancy; and
 - service of document
- > The information may be provided by any member country (“party”) on request of any other party.
- > The information may also be shared by two or more parties automatically in accordance with mutually agreed procedures.
- > Information shall also be shared without prior request if the information holding party has knowledge in following circumstances:
 - o It has grounds for supposing that there may be a loss of tax to other Party;
 - o A person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would

give rise to an increase in tax or to liability to tax in the other Party;

- o Business dealings between a person liable to tax in a country; and a person liable to tax in another country; are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
 - o A Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - o Information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- > Simultaneous tax examination with respect to tax affairs of a person may be performed by the parties in their own territory on a request of one or more parties, with a view to exchange any relevant information which they so obtain. However, each party has the right to decide whether it will perform such examination or not.
- > Any party may perform tax examination in the territory of another party subject to a request by the applicant and approval by the requested country.
- > If a Party receives from another Party

information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

> **Recovery of tax claims** - At the request of the applicant party, the requested party shall take the necessary steps to recover tax claims of the first-mentioned party as if they were its own tax claims.

> **Time limits** - Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant state. However, in any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

> Nothing in the Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

> The provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

- o To carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant state;
- o To carry out measures which would be contrary to public policy;
- o To supply information which is not obtainable under its own laws or its

administrative practice or under the laws of the applicant State or its administrative practice;

- o To supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy;
- o To provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;
- o To provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested state as compared with a national of the applicant state in the same circumstances;
- o To provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;

- o To provide assistance in recovery in those cases where the administrative burden for that state is clearly disproportionate to the benefit to be derived by the applicant state.
- > In no case shall the provisions of this Convention be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
- > The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

Certain benefits will surely accrue to Pakistan being part of the convention as Pakistan will be able to request for administrative assistance in the territory of any other member country to examine the tax affairs of a person who is likely to be involved in evasion of Pakistani taxes.

However, bare reading of the convention reveals that the benefits of information availability and administrative support will be restrained by various limits as prescribed in the Convention. For example if Pakistan needs to have access to information with respect to Mr. XYZ in USA, the competent authorities of USA has a right to refuse such

request if the compliance of such request will result in contradiction with any law of USA as well as Pakistan. Even if there is no conflict between the laws, no information may be sought with respect to any document or instrument after passing of 15 years from the date of document or instrument. In addition to time limits and conflict between laws, other restrictions such as administrative burden, public policy, secrecy of information, discrimination etc. will also be taken into account by the requested state before providing any information.

Due to above restrictive clauses in the Convention, the benefits are not likely to be reaped to the extent as exaggerated in the media at the time of signing of convention.

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