TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

DECEMBER 2019

TAX PAK

NEWSLETTER BY TOLA ASSOCIATES

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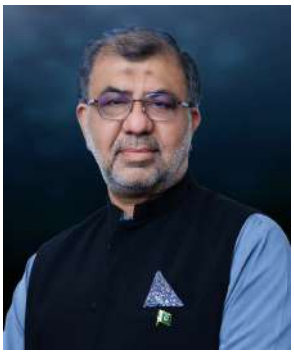

By the grace of Almighty Allah, we are back yet again with our Twenty Sixth edition of this monthly issue for December 2019. It is our absolute pleasure to have compiled this Newsletter to keep all our readers up to date with regards to the taxation system and the major developments therein.

In addition to this monthly issue, we have just recently published our comments on one of the most recent amendments in the laws of Taxation in our Country in the form of the newly promulgated 'Tax Ordinance, 2019'. The comments referred to hereinabove may be accessed through the link https://bit.ly/300910N.

Following our trend, we have once again discussed a recent development in the form of a seminal Judgment, which was passed in December 2019. The peculiar judgment pertains to the procedure and power used by the Commissioner of the Inland Revenue to issue a notice under Section 25 of the Sales Tax Act 1990, for obtaining Records of a person, and to select a taxpayer for audit. The adjudicating authority in the above was the Honourable High Court of Sindh. Moreover, we have concluded our newsletter with our Topic of the Month "Independent Personal Services" which discusses the cross-border treatment of income arising from activities of certain profession(s).

Nevertheless, we have gone a step further in this edition of our monthly issue and added the understanding of notifications and/or circulations issued by the Securities & Exchange Commission of Pakistan. These have been added considering that they are of immense value for investors who are looking forward to investment opportunities in Pakistan, and for a better understanding of the laws concerned therewith.

All our readers are requested to visit our website www.tolaassociates.com or download our mobile application from the links mentioned hereinbelow, in order to access our previously published monthly issues along with other publications, and to stay updated of future notifications.

1. https://goo.gl/QDM4ZM (iOS)
2. https://goo.gl/LFiWyx (Android)

Lastly, we request our readers 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. TAX NOTIFICATIONS/ CIRCULARS

1. EXEMPTION FROM PUNJAB INFRASTRUCTURE DEVELOPMENT CESS

The Punjab Revenue Authority (hereafter "PRA") through a Notification, bearing No. PRA/ STE-04/ 2018/ 453, dated 12th December 2019, has exempted goods declared as temporary imports (to be re-exported) from the payment of Punjab Infrastructure Development Cess (hereafter "PIDC") by exercising its power under **Section 6 of the PIDC Act 2015**.

2. THE PUNJAB WORKERS WELFARE FUND ACT 2019

The Provincial Assembly of Punjab approved the Punjab Workers Welfare Fund Act 2019 (hereafter "PWWF") on 20th November 2019. It came into force right after the Act received the Punjab Governor's assent; i.e. 10th December 2019. After its enactment, the WWF for entities in Punjab will now be a provincial subject and will be collected by the PRA instead of FBR. Moreover, the fee so paid will be allowed as a deduction under Section 60A of the Income Tax Ordinance 2001.

Salient features of the PWWF, are as follows:

- Establishments with total income viz. accounting income exceeding Rs 500,000, will be liable to pay @ 2% of its total income.
- The amount is to be deposited within 30 days of the close of accounts.
- The payment receipt and the last income tax return that was filed, shall be submitted with the PRA before the due date of filling of income tax returns.
- The officer can, through an order, reassess the liability. The said order shall be appealable with the Appellate Tribunal.
- The maximum amount that shall be recoverable can be of the last 5 tax or income years, with an additional charge @15%.
- In addition to the above, the Government of Punjab, on recommendation of the Committee, may determine the 'additional amount' to be paid by the establishments. The Committee shall examine the circumstances of an establishment, including but not limited to those of financial in nature, and make recommendations as to the additional amount to be collected from the entity.
- The contribution payable under the Workers' Welfare Fund Ordinance 1971 will now be collected under the PWWF.
- The provisions of the Punjab Sales Tax on Services Act 2012, and the rules made thereunder, in relation to matters of record keeping, registration, charge, additional charge, recovery and appeals shall apply.
- No Suit can be instituted in any Civil Court, to set aside, or modify any order passed, any assessment made, or any penalty or default surcharge imposed by an Officer.

3. FBR EXTENDS TIME LIMIT FOR FILING ANNEX-H (STOCK STATEMENT) FOR MONTH OF JULY 2019

The FBR has extended the time limit for the filing of Annexure H (Stock Statement) in the Sales Tax Return for exporters for the period concerning July 2019 to 15th January 2020. This extension was given due to serious problems being faced in the filing of such statement.

4. RULES ON REFUND OF SALES TAX ON SERIVICES, AS PRESCRIBED BY THE PRA

The PRA issued a Gazetted copy of the Punjab Sales Tax on Services (Refund) Rules 2019 (hereafter "the Rules") on 29th November 2019, wherein the procedures relating to refunds arising due to the following have been laid down;

(a) The amount of sales tax is erroneously or inadvertently deposited in excess of the amount due;
(b) The amount of sales tax deposited by or recovered

from the registered person is held not to be payable under the Punjab Sales Tax on Services Act or Rules or as a result of an order of a court or appellate forum;

(c) The sales tax paid on services used in the **exports of services** (as defined in Rule 12 of Punjab Sales Tax on Services (Adjustment of Tax) Rules 2012); services (as defined in Rule 12 of Punjab Sales Tax on Services (Adjustment of Tax) Rules 2012;

Salient features of the captioned Rules, are as follows;

- **Refund Not Admissible**

Refunds are not admissible, if;

- o It is filed by a person other than the registered person who paid the sales tax amount claimed for refund; or
- o It is filled 1 year after date of payment of tax unless it is based on an order of the court; or
- o The incidence of tax has been passed to the service recipient; or
- o There is a failure to submit evidence of the withholding/input tax within the prescribed time limit.

- The **monetary limit** for officers to sanction refunds are as follows:

- o Assistant Commissioner (not exceeding Rs 10,000)
- o Deputy Commissioner (not exceeding Rs 100,000)
- o Deputy Commissioner (not exceeding Rs 100,000)
- o Additional Commissioner (not exceeding Rs 1,000,000)
- o Commissioner (unlimited)

- **Sanction and payment of refund claim:**

o On completion of the analysis, and an audit report (if required), the above officers shall sanction the admissible part of refund and issue a Refund Sanction-cum-Payment Order.

o The payment shall be made through crossed refund payment cheques via registered post/ courier service, at the claimants' address or electronically transferred to the notified bank account.

5. E-PROCEDURE FOR CORRECTION IN CPR OF INCOME TAX, SALES TAX AND FEDERAL EXCISE DUTY

The FBR has issued a circular dated 30th December 2019, whereby all previous circulars on the pertinent subject matter- to prescribe the procedure for correction in the CPR through IRIS- have been superseded. Most of the new procedures are similar to the ones previously prescribed, through the circular dated 5th October 2018, except that the requirement to submit a copy of CNIC of the withholding agent has been removed. Previously, if the CPR had already been utilized, there would be no further process. However, now the particulars will be rectified though the CPR already utilized. The timespan for processing has also been increased from 3 to 15 days. If the officer rejects the application, he is under an obligation to give reasons for doing so in writing.

6. EXTENSION IN DATE OF FILING INCOME TAX RETURNS/STATEMENTS FOR TAX YEAR 2019

The FBR, vide Circular 18/2019 dated 31st December 2019, has provided another extension for the filing of Income Tax Returns under Section 114, and Statements under Section 115. The extension has been granted up till 31st January 2020, for the following:

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

2. CORPORATE NOTIFICATIONS/ CIRCULARS

1. DRAFT AMENDMENTS TO THE NON-BANKING FINANCE COMPANIES AND NOTIFIED ENTITIES REGULATIONS 2008.

The SECP (hereafter "Security & Exchange Commission

of Pakistan"), through an SRO bearing No. 1642 dated 30th December 2019, issued draft amendments to the **Non-Banking Finance Companies** (hereafter "NBFC") and **Notified Entities Regulations 2008**.

The essential amendments were made in relation to the following;

- Regulation 2 was amended, and definitions for the terms 'Infrastructure Finance Company (hereafter "IFC")', and 'Public Funds' were added.
- The time period for submitting an application, or information for (re)appointment, or removal of the chief executive, has now been prescribed under Regulation 10.
- Regulation 14 has been amended, whereby new upper limits for deposit raising have been added.
- Maximum finance limits for small and medium enterprises have been added in Regulation 17.
- Limit on Unsecured Finance has been changed in Regulation 18A,
- A non-deposit taking NBFC is now allowed to take exposure against unsecured debt, as per Regulation 19.
- In Regulation 21, the provision relating to microfinancing has been amended.
- In Regulation 25A, a change in formula for creation of general provision against micro finance portfolio and finance to small enterprises etc.

2. MINIMUM PAID-UP CAPITAL REQUIREMENT FOR INCORPORATION OF A CORPORATE RESTRUCTURING COMPANY

The SECP, through an SRO bearing No. 1566(I)/2019, dated 18th December 2019, has specified Rs 500 Million as the minimum 'Paid-up Capital' for the incorporation of a Corporate Restructuring Company.

3. REGULATORY DEFERRAL ACCOUNTS

The SECP has notified vide SRO 1480(I)/2019 dated 29th November 2019 IFRS 14 "Regulatory Deferral Accounts" to be followed in preparation of financial statements for period beginning 1st July 2019.

3. NOTICE UNDER SECTION 25(2) OF THE SALES TAX ACT, 1990 | ILLEGAL WITHOUT REASONS - SINDH HIGH COURT

The High Court of Sindh (hereafter "SHC") in **Indus Motors and others v/s Secretary Finance and others** in **Suits No 2249/2016, 2467/2016 & 35/2018** dated 13th December 2019, has laid down the procedure for the commissioner to invoke his powers for conducting audit under the Sales Tax Act 1990 (hereafter "STA"), and Federal Excise Act 2005 (hereafter "FEA"). The facts of the case are that the taxpayers were filling their monthly returns on a regular basis with the Federal Board of Revenue (hereafter "FBR"), and were selected for the purposes of audit by the Commissioner Inland Revenue (hereafter "CIR") for the period commencing from July 2014 till June 2015. Notices were issued under Section 25 of the STA (hereafter "STA"), and Sections 45 and 46 of the FEA to conduct audit. However, the taxpayers preferred challenging the notice, by filing a Lawsuit before the SHC, instead of replying to the notice. The grounds upon which the said notice was challenged included; that the selection of the taxpayer for the purposes of audit was made without assigning any reasons in terms Section 24-A of the General Clauses Act 1897, that both subsection (1) & (2) have been invoked simultaneously, and that separate notices have been issued on the same date. The department contended that no reasons are required to be recorded for selection of a person for audit under Section 25 of the STA, that under a self-assessment scheme, an audit is a pre-condition, and that Section 25(1) and (2) are to be read as a whole, and not separately. They further contended that simultaneously issuing two notices is not illegal, that selection by the FBR is different from selection by the Commissioner, and that the court cannot add words of "providing reasons" where the legislature has not provided for it. Nevertheless, the

department, in its submissions also contended that no adverse order has been passed by the department under Section 11 of the STA, and that the taxpayer has approached the Court prematurely.

The SHC, after a perusal of the notice issued by the CIR, observed that no subsection of Section 25 of STA was mentioned on the same, whereas each subsection of Section 25 deals with a different situation. Section 25(1) allows an officer of the Inland Revenue to have access to the record being maintained by the taxpayer and does not speak about or refer to an audit. However, Section 25(2) empowers an officer of the Inland Revenue to conduct audit, once a year, only on the basis of the record obtained under Section 25(1). In the instant case, the procedure applied by CIR, is different than what has been provided in law. The power of the CIR to access record under 25 of STA is unconditional, and therefore, reasons need not be given/stated for exercise of such powers. However, there is no justification of issuing of two notices simultaneously i.e. one for submitting of record(s) under Section 25(1), and the other under Section 25(2) asking/authorizing an officer of the Inland Revenue to conduct an audit of the taxpayer. The Commissioner can only invoke Section 25(2) when he himself has obtained the record, seen it and in his opinion the sales tax affairs of such person are such, that they need to be audited. Therefore, Sub section (1) and (2) are distinct in nature, and the latter can only be invoked once the exercise of obtaining the documents under the former subsection is completed by the Commissioner. The officer can conduct an audit after obtaining authority from the CIR, where the CIR is of the opinion that an audit is required on the basis of the records obtained under subsection 1, for reasons assigned in writing. Henceforth, the issuance of notices by CIR and the officer on same date are unlawful and illegal. It is settled law that, while exercising discretion, the authority should not act arbitrarily, unreasonably and in complete disregard of rules and regulations.

Hence, the SHC held that the CIR can have access to record under Section 25(1) of STA without giving any reasons for the obtaining the same, whereas, the CIR cannot select a taxpayer for the purpose of conducting audit of sales tax/federal excise tax without assigning any reason. Moreover, the SHC also stated that the CIR cannot exercise powers under Section 25(1) and (2) of STA, or Section 45(1) and 46 (1) of FEA, simultaneously for getting access to record/ document, and to select an order for the audit of a taxpayer.

4. TOPIC OF THE MONTH

- INDEPENDENT PERSONAL SERVICES

A. PREAMBLE

This months' topic of the month pertains to "Independent Personal Services" (hereafter "IPS"), which entails the taxability of income received through rendering of independent personal services by a resident in another state.

The word 'personal services' is in reference to the term 'Professional Services' provided independently, i.e. without any affiliation to any commercial/industrial entity or firm.

What follows is a discussion of the scope of Professional Services, its limitations, and its taxability in certain circumstances.

B. DEFINITION

I. Professional Services

Professional Services includes independent activities pertaining to professions which include activities such as scientific, literary, artistic, and educational, and teaching activities. Moreover, Independent activities of physicians, lawyers, engineers, architects, dentists and accountants are also well within the scope of Professional Services.

Activities such as Industrial and Commercial activities, professional services performed in employment, and

activities of artistes and sportsmen, are excluded from the scope of Professional services.

In the most simplistic of terms, the term 'Professional Services' may be termed as:

- An advanced level of knowledge acquired through formal training in the chosen practice area;
- Specialized skill sets and experience acquired through dedicated practice in the chosen field; and
- Accreditation to a certificate of practice issued by a relevant professional body.

ILLUSTRATION

For example, a Physician serving independently in a Contracting State will be termed as an Independent Personal Service provider and will be taxable according to the Double Tax Avoidance Agreement (hereafter "DTAA").

However, a Physician is serving as a medical officer in a factory, will fall outside the purview of a 'Professional Service' in terms of a DTAA, and the income arising therefrom shall not be taxed as an income arising from an independent personal service.

II. Fixed Base

The term Fixed Base refers to a center of activity (place) being fixed or permanent in terms of its character. In wider terms, it can be said to imply; a place from where a person can conduct or operate his independent professional activities.

ILLUSTRATION:

i. A Physician's consulting room or the office of an architect or lawyer will be considered as his fixed base.

ii. An auditor who is provided a room at client's place will not be considered to have a fixed base in the client's place.

iii. An experienced doctor who occasionally visits a hospital in another country for the purposes of critical surgeries. The doctor, in that situation does not have a fixed base in that other Contracting State.

C. TAXABILITY OF INDEPENDENT PERSONAL SERVICES

After briefing out the pillars necessary to understand the taxability of IPS, we now reiterate the taxability of IPS as provided for in the UN Model Convention / DTAA. It may be noted that Pakistan follows the UN Model Convention, which sets out the treatment of IPSs in the following manner;

"Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

a. If he has a fixed base regularly available to him in the other Contacting State for the purpose of performing his activities; in that case, only so much income as is attributable to that fixed base may be taxed in that other Contracting State; or

b. If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed.

The reiteration of the laws *supra* is crystal clear on the fact that the primary right to tax such income resides with the country of residence. However, where any of the following criterion is met, the country of source may only tax such income attributable to such fixed base, or to its activities. The criteria is as follows;

i. If the person has a fixed base of income in the source country; or
ii. Of the period of stay equals or exceeds more than 183 days in the source country during the a 12-month period.

It is also clarified in terms of (ii), that if the presence of

an individual in the **source country** equals or exceeds the period(s) aggregating 183 days in any twelve-month period commencing, or ending in the fiscal year concerned, the source country shall obtain a **Fundamental right to tax**, even if there is no fixed base in the source country. This can be deduced from the way the relevant provision has been drafted, wherein it deciphers the 'taxable income' of the source state to be attributable to the "***…activities performed in that other state…***"

ILLUSTRATION:

Mr. XYZ of Pakistan conducts a seminar in UAE where he resides for 150 days in a year. It is very clear in this case that the income will be taxable in the country of residence (Pakistan) of Mr. XYZ.

He has a fixed base in UAE where he conducts seminars frequently but stays for 150 days in a fiscal year. He earns Rs. 2 million from seminars conducted in UAE and earns income of Rs. 1 million from conducting seminars in Pakistan.

Here the income from such seminars may be taxable in UAE as he has a fixed base in UAE, but only restricted to the income attributable to that fixed base. Therefore, Rs 2 million will be taxable in UAE and Rs 1 million will be taxable in Pakistan.

If Mr. XYZ resided in UAE for 184 days during the course of a 12-month period, and pursues the same activities as mentioned above, without a Fixed Base, then the outcome shall be the same as above, as the Rs. 2 Million income shall be attributable to his activities in the source country i.e. UAE.

5. AMENDMENTS IN CUSTOMS ACT, 1969 THROUGH 'TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2019

I. A new Directorate by the name of '**Directorate General of Law and Prosecution**' has been established by adding Section 3CCA in the Customs Act 1969 (hereafter "the 1969 Act"), through the Tax Laws (Second Amendment) Ordinance 2019 (hereafter "the 2019 Ordinance").

II. Section 7 of the 1969 Act requires all officers of the Federal and Provincial Governments, including the Inland Revenue, Police, National Highways and Pakistan Motorway Police, Civil Armed Forces, and officers engaged in the collection of land revenue, to assist the officers of Customs in the discharge of their functions. Now through the 2019 Ordinance, the assistance required by customs, shall be binding on such officials.

III. Section 194 of the 1969 Act specifies the provisions relating to establishment and functions of the Appellate Tribunal. However, by virtue of an amendment through the 2019 Ordinance, the power to appoint members and their terms and conditions now vests with the Prime Minister of Pakistan, instead of the Federal Government.

IV. New penalties have been imposed on smuggling of currency, gold, silver, platinum or precious stone in Serial No.8 of Section 156 and been substituted in Serial No. 70. These are as follows;

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Offences	Penalties
Smuggled Currency, if over and above permissible limit up to:	
• $10,000 or equivalent	• Confiscation + maximum penalty up to excess amount
• $10,001 - $20,000 or equivalent	• Confiscation + maximum penalty up to twice of excess amount.
• $20,001 - $50,000 or equivalent.	• Confiscation + maximum penalty up to thrice of excess amount + imprisonment of maximum 2 years.
• $50,001 - $100,000 or equivalent.	• Confiscation + maximum penalty up to four times of excess amount + imprisonment of maximum 7 years.
• $100,001 - $200,000 or equivalent.	• Confiscation + maximum penalty up to five times of excess amount + imprisonment of minimum 3 years and up to maximum 10 years.
• Exceeding $200,000 or equivalent.	• Confiscation + maximum penalty up to 10 times of excess amount + imprisonment of minimum 5 years and up to maximum 14 years.
Smuggled gold, silver, platinum or precious stones, if over and above permissible limit up to:	
• 15 Tola gold or equivalent in value	• Confiscation + maximum penalty up to excess amount
• 16 - 30 Tola gold or equivalent in value	• Confiscation + maximum penalty up to twice of excess amount.
• 31 - 50 Tola gold or equivalent in value	• Confiscation + maximum penalty up to thrice of excess amount + imprisonment of maximum 1 year.
• 51 - 100 Tola gold or equivalent in value	• Confiscation + maximum penalty up to thrice of excess amount + imprisonment of maximum 3 years.
• 101 - 200 Tola gold or equivalent in value	• Confiscation + maximum penalty up to four times of excess amount + imprisonment of maximum 5 years.
• 201 - 500 Tola gold or equivalent in value	• Confiscation + maximum penalty up to five times of excess amount + imprisonment of minimum 3 years and up to maximum 10 years
• Exceeding 500 Tola gold or equivalent in value	• Confiscation + maximum penalty up to ten times of excess amount + imprisonment of minimum 5 years and up to maximum 14 years
Incorrect declaration, non-satisfactory explanation regarding luggage in relation to:	
Other than currency, gold, silver, platinum & precious stones	• Same as above in case of smuggled currency
Currency if over and above permissible limit up to	• Confiscation + Penalty maximum up to three times value
Gold, silver, platinum and precious stones in any form, if over and above permissible limit	• Same as above in case of smuggled gold, silver etc.

DISCLAIMER

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