

TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES



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EDITORIAL NOTE

We are pleased to issue the 28th edition of TAXPAK this month. None of this would have been possible without Allah All Mighty. We are delighted to have compiled this Newsletter to keep all our readers updated as to the recent developments in our taxation system.

Needless to say, we have once again apprised our readers of a recent judgment passed by the Appellate Tribunal Inland Revenue of Lahore. The said judgment pertains to the procedure and powers used by the Commissioner Inland Revenue to issue a notice under Section 122 (5A) of the Income Tax Ordinance, 2001. Moreover, as part of our dedication towards research, we have concluded our newsletter with our Topic of the Month “Non-Discrimination” which elaborates the element of Non-Discrimination in terms of cross-border taxability of income/profits etc.

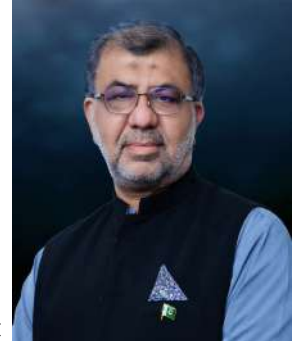
Furthermore, we have also briefly touched upon certain notifications and/or circulations issued by the Securities & Exchange Commission of Pakistan and the Federal Board of Revenue.

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 previously published editions of this monthly issue 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. DRAFT AMENDMENTS IN INCOME TAX RECOVERY RULES

The Federal Board of Revenue (hereafter "FBR"), vide a Statutory Regulatory Order (hereafter SRO) No. 111(I)/2020 dated 14th February 2020, has published draft amendments to the Income Tax Rules 2002 (hereafter "ITR"). Our comments on the proposed changes are as follows;

A. DEFINITIONS:

In Rule 210A different definitions have been proposed to explain about the persons who hold money on behalf of the others as provided in sub-section (1) of Section 140 of ITO. For instance, a person holding, or who may hold money on account of some other person for payment to the taxpayer, includes money held by a member of an association of persons or by an agent on behalf of the person in tax default.

B. NOTICE OF RECOVERY TO BE ISSUED BY COMMISSIONER:

In Rule 210B, without prejudice to recovery under the Chapter XVI of the ITR, it has been proposed that the Commissioner shall issue, after the expiry of the due date of the notice under section 137, a prescribed notice of recovery where any tax is due. However, the Commissioner shall consider the following precautions before issuance of the said notice:

- a. In case of delegated power, the Commissioner shall satisfy himself that no refund is available for adjustment and no rectification application is in pending before service of the order;
- b. In case where tax is due as a result of ex-parte order or rejection of estimate under section 147, approval in writing be obtained from the Chief Commissioner.
- c. In case where appeal u/s 127 is pending and recoverable tax has become payable and taxpayer has not voluntarily paid 10% of the tax, approval in writing be obtained from the Chief Commissioner.

C. SERVICE AND COMPLIANCE OF NOTICE:

In Rule 210C, it has been proposed that the notice shall be served on the person who holds money on behalf of

the person in default under Section 218 of ITO along with the copy forwarded to person in default at his last known address, and where joint-holders are involved to all joint holders to their last known address. On receipt of the notice, the person shall make the payment on the same day or at a future due date, if any. Where the taxpayer is to receive payment in series, the Commissioner shall specify the amount out of each payment until the tax due is paid. In case the person holds a joint-account with any person other than the defaulter, the share of joint account-holders shall be presumed equal unless proven to the contrary.

D. DETERMINATION OF DISPUTES:

In Rule 210D, it has been proposed that where any dispute regarding the issue of notice under these rules arises with the Commissioner, it shall be decided by the Order of the Commissioner under these rules before whom such question arises.

There seems no logic in the proposition of this rule as the Commissioner, who is at dispute with the taxpayer has been empowered to decide the dispute.

E. APPEAL:

In Rule 210E, it has been proposed that an appeal may be filed before the Chief Commissioner and the Commissioner, in cases where an Order has been passed by the Commissioner, and an Officer of Inland Revenue, respectively. The appellate authority under these rules may confirm, reverse or remand back the order.

F. RECEIPT TO BE GIVEN:

In Rule 210F, it has been proposed that the Commissioner shall give a receipt of the amount so received.

G. WITHDRAWAL OF NOTICE:

In Rule 210G, it has been proposed that notice of recovery may be withdrawn by the Commissioner.

H. FAILURE TO COMPLY WITH NOTICE:

In Rule 210H, it has been proposed that a where a person

fails to comply with the notice, the Commissioner before hearing such person may pass an Order under Section 140(5) of ITO, to make the person personally liable. Such person shall also be liable to pay default surcharge under Section 161(1B) of ITO. from the date he failed to comply with the notice, if meanwhile the defaulter pays the tax. If the person has paid tax personally, he is entitled to recover the same from the defaulter. The recovery of tax from the person holding money on behalf of the taxpayer in default shall not set free the taxpayer in default.

2. PROPOSALS FOR FEDERAL SALES TAX AND FEDERAL EXCISE BUDGET

The FBR, has issued a letter bearing No. C. No. 2/10-ST-B/2020, dated 26th February 2020, whereby they have invited proposals for the upcoming budget of FY 2020-21. The proposals may be sent to FBR by 16th March 2020.

3. EXTENSION IN DATE OF SUBMISSION OF SALES TAX AND FEDERAL EXCISE RETURN FOR THE TAX PERIOD JANUARY 2020.

The FBR, through a letter bearing No. C. No. 9(11) ST-LPE/Mis/2016/34402-R, dated 27th February 2020, had extended the date of filing for returns of January 2020, to 28th February 2020.

4. EXTENSION IN DATE OF FILLING OF ANNEX-H FOR THE TAX PERIOD OF JULY, AUGUST AND SEPTEMBER 2019:

The FBR, through letter C. No. 9(11)/ST/Misc/Cond/2016/18421-R, dated 13th February 2020, has extended the date of filling of Annexure H to 15th March 2020.

5. AMENDMENTS IN SRB EXEMPTION NOTIFICATION SRB-3-4/8/2013 DATED 1ST JULY 2013:

The Sindh Revenue Board (hereafter "SRB"), vide a Notification bearing No. SRB 3-4/7/2020, dated 6th February 2020, has made the following amendments in

the main exemption notification 'SRB 3-4/8/2013' dated 1st July 2013, w.e.f 15th February 2020:

Tariff Heading	Before Amendment	After Amendment
9810.0000, 9821.4000 and 9821.5000	Services provided or rendered by beauty parlors, beauty clinics, slimming clinics, body massage centers, pedicure centers, etc. 10%	"(a) Services provided or rendered by beauty parlors, beauty clinics, slimming clinics, body massage centers, pedicure centers, etc. (a) 10% (b) Services provided or rendered by such beauty parlors, beauty clinics, slimming clinics, body message centers, pedicure centers, etc., who have submitted their option or election on Form "B" as prescribed under rule 42C of the Sindh Sales Tax on Services Rules, 2011, and fulfill the limitations, conditions and restrictions prescribed in the Provisos to sub-rules (3A), (3B) and (4) thereof. 5% 1. The registered person electronically submits his election or option in Form "B" by the prescribed due date;

	<p>2. The registered person installs POS machine for electronic issuance of the invoices or receipts and gets all such machines linked up with SRB web portal e.srb.gos.pk to the satisfaction of SRB;</p> <p>3. The registered person issues his tax invoices/bills of charges or receipts electronically and no tax invoice/ bill of charges or receipt is issued otherwise except through the POS of the registered person; and</p> <p>4. Input tax credit/ adjustment shall not be admissible.</p>
9821.1000	<p>Healthcare centers, gyms or physical fitness centers, etc., who have submitted their option or election on Form "G" as prescribed under rule 42CC of the Sindh Sales Tax on Services Rules, 2011 and fulfill the limitations, conditions and restrictions prescribed in the Provisos to sub-(4), (5) and (6) thereof.</p>

	<p>5%</p> <p>1. The registered person electronically submits his election or option in Form "G" by the prescribed due date;</p> <p>2. The registered person installs POS machine for electronic issuance of the invoices or receipts and gets all such machines linked up with SRB web portal e.srb.gos.pk to the satisfaction of SRB;</p> <p>3. The registered person issues his tax invoices/bills of charges or receipts electronically and no tax invoice/bill of charges or receipt is issued otherwise except through the POS of the registered person; and</p> <p>4. Input tax credit/ adjustment shall not be admissible.</p>
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6. AMENDMENTS IN SINDH SALES TAX ON SERVICES RULES 2011

The SRB, vide Notification no. 3-4/8/2020, dated 6th February 2020 has made the following amendments in the captioned Rules, w.e.f. 6th February 2020:

- A new Rule 13A has been inserted, whereby the time and manner of filling of Annexure C of the Return has been prescribed. This in line with the newly introduced STIRVE system in SRB. The data submitted in Annexure C of the supplier shall be available immediately in Annexure A of the buyer. However, the input related to goods supplied to the service provider shall be available in Annexure A of SRB when the sales tax return has been filed by the supplier.
- In Rule 35, “Procedure for collection of Sales Tax on Telecommunication Services”, the due date for payment of sales tax has been changed from 15th of the following month, to 21st of the second month in case of post-paid telephone service. For incoming international calls, the due date has been changed from the 15th of following month to 15th of second month. Moreover, the date of submission of monthly statement by telecommunication service provider has been prescribed as 24th day of the month following tax period instead of the 18th day.
- In Rule 42C, a ‘sub rule 3’ has been added whereby the procedure and form of exercising the option for reduced-rate has been prescribed for services rendered by a; Beauty Parlor, Beauty Clinics, Slimming Clinics, Body Massages, Pedicure Centers etc. in line with the reduced rate notification SRB 3-4/7/2020 dated 6th February 2020.
- A new Rule 42CC is added to prescribe the form and procedure to exercise option of reduced rate for services provided or rendered by Health Care centers, gyms, or physical centers.

2. CORPORATE NOTIFICATIONS/ CIRCULARS

1. LISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2019

The Securities Exchange Commission of Pakistan (hereafter “SECP”), has issued the Listed Companies (Buy-Back of Shares) Regulations 2019. The aforementioned regulations were issued on 23rd May 2019 but were published on the SECP website on 3rd

February 2020.

2. SRO 76 (I)/2020 AMENDMENTS TO THE PUBLIC OFFERING (REGULATED SECURITIES ACTIVITIES LICENSING) REGULATIONS, 2017

The SECP, through the captioned SRO, have issued amendments in the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017 dated 3rd February 2020 which was previously issued as draft amendments vide SRO 27 dated 10th January 2020. These were also discussed in our January Newsletter. Substitutions were made in the said regulation to incorporate the changes brought in by the introduction of categorization of security brokers.

3. SRO 77 (I)/2020 AMENDMENTS TO THE SECURITIES BROKERS (LICENSING AND OPERATIONS) REGULATIONS, 2016

The SECP, vide SRO 77 has made amendments in the Futures Market Act 2016, dated 3rd February 2020, with respect to the Categorization of Security Brokers into three Categories; “Trading Only”; “Trading and Self-Clearing”; and “Trading and Clearing”.

4. SRO 84 (I)/2020 DRAFT AMENDMENTS IN THE MODARABA COMPANIES AND MODARABA RULES, 1981

The SECP, vide SRO 84, has issued draft amendments in the Modaraba Companies and Modaraba Rules, 1981 dated 4th February 2020, whereby substitutions were made in the rules as well as in Form No. 11 and the Second Schedule of the abovementioned rules.

5. SRO 80 (I) 2020 DRAFT AMENDMENTS TO THE LIMITED LIABILITY PARTNERSHIP REGULATIONS, 2018

The SECP, vide SRO 80 (I) of 2020, has issued draft amendments to the Limited Liability Partnership (LLP) Regulations, 2018 dated 7th February 2020, wherein they have added the definition of “ultimate beneficial owner” while substituting LLP form 3 reading “Body Corporate” and LLP form 5 reading “Notice of induction

or cessation of partners and designated partners” in the LLP regulations 2018.

6. SRO 81 (I)/2020 DRAFT AMENDMENTS TO FOREIGN COMPANIES REGULATIONS, 2018

The SECP, vide SRO 81 issued draft amendments in Foreign Companies Regulations 2018 dated 7th February 2020, wherein it has proposed changes to be made in order to incorporate the newly introduced term i.e. “Ultimate beneficial owner” and its particular in the said regulation.

7. SRO 82 (I)2020 DRAFT AMENDMENTS TO COMPANIES (GENERAL PROVISIONS AND FORMS) REGULATIONS, 2018

The SECP, vide SRO 82 has proposed draft amendments to Companies (General Provisions and Forms) Regulations, 2018 wherein it has proposed additions of 3 new regulations and changes pertaining to the introduction of the term “ultimate beneficial owner” and its addition in the above-mentioned regulation.

8. SRO 83 (I)/2020 DRAFT AMENDMENTS TO THE COMPANIES (INCORPORATION) REGULATIONS, 2017

The SECP, has issued draft amendments to the Companies (Incorporation) Regulations, 2017 Dated 7th February 2020 wherein it has made draft amendments with respect to the addition of the term “ultimate beneficial owner” and its related particulars in the said regulations.

9. S.R.O. 116 (I)/2020 DRAFT AMENDMENTS TO NBFCs REGULATIONS 2008

The SECP, has issued SRO 116, dated 18th February 2020, following the draft amendments made in the Non-Banking Finance Companies and Notified Entities Regulations 2008. They have updated the fee schedule pertaining to “Application fees under the NBFC Rules, 2003” and “Application fees under the NBFC regulations”.

10. S.R.O. 117 (I)/2020 DRAFT AMENDMENTS TO PRIVATE FUNDS REGULATIONS 2015

The SECP, has issued SRO 117 dated 18th February 2020 with respect to draft amendments pertaining to substitution of Schedule 1 present in the Private Funds Regulations 2015. They have proposed a change in the Application fees under the NBFC Rules 2003 and Private Funds Regulations, 2015.

11. S.R.O. 118 (I)/2020 DRAFT AMENDMENTS TO REITS REGULATIONS 2015

The SECP, has issued SRO 118 dated 18th February 2020 with respect to draft amendments pertaining to substitution of Schedule 3 present in the Real Estate Investment Trust (REIT) Regulations 2015 while proposing a change in the Application fees under the NBFC Rules 2003 and Application fees for registration of a Real Estate Investment Trust under REIT regulations 2015.

3. CASH/ PRIZE BOND GIFT ALLOWED BETWEEN FATHER AND SON - LHC

In “*Mr. Asad Rauf, Prop. Asad Traders Faisalabad Vs. CIR, RTO, Faisalabad*” (bearing ITA No. 3297/LB/2018), the taxpayer was engaged in the trading of textile products. The tax officer issued a show cause notice for Tax Year 2016 (hereafter “SCN”) under Section 122(9) of Income Tax Ordinance 2001 (hereafter “ITO”), and passed an Order (hereafter “ONO”), under Section 122(5A) of the ITO for “unexplained income from other sources” on basis of gifts received from his father otherwise than through banking channel. The taxpayer being aggrieved, preferred an appeal to the Commissioner Appeals (hereafter “CIRA”), who upheld the ONO. The taxpayer preferred a second appeal before Appellate Tribunal Inland Revenue Lahore (hereafter “ATIR”) on the grounds that addition under Section 111 of the ITO, by the officer without issuing a separate notice under Section 111 of ITO is illegal. Moreover, the taxpayer informed the ATIR through his representative that the addition made on basis of the gifts received were actually received in the shape of prize bonds from the father who is a taxpayer, and that

the donor has declared the gift in his wealth statement, and that the sources for such gifts are known.

The ATIR held, that before making additions the tax officer was under a legal obligation to issue a notice specifically under Section 111 of ITO and wait for a satisfactory response from the taxpayer. Furthermore, if no satisfactory reply/explanation was obtained from taxpayer, it is then that the officer should have gone on to include the unexplained income in the person's income chargeable under the head 'income from other sources. All of this should have been done after issuing of the SCN under Section 122(9) of ITO. Hence, it was held proper procedure was not followed by the officer, and resultantly the ATIR declared the ONO passed under Section 122(5A) of ITO to be without lawful jurisdiction.

Regarding the merits of the case, the ATIR held that cash gifts from a husband to his wife, and/or from a brother to his sister, is distinguishable from the gift made during ordinary course of business, and that in our culture it cannot be expected that a gift from a husband to his wife, or other family member(s), could be made through banking channels. Furthermore, in the instant case, the gift received by the taxpayer was not in cash, but in the shape of prize bonds, hence, the question of receipt of gift through a banking channel does not arise. Therefore, the addition made under Section 111(1)(b) of ITO was unjustified and resultantly deleted.

4. TOPIC OF THE MONTH

- NON-DISCRIMINATION

A. PREAMBLE

The term 'non-discrimination' is of utmost important in the modern world. It essentially offers to guarantee that human rights are practiced, without discrimination of any kind based on, inter-alia, race, color, gender, language, religion, political or other opinion, and national or social origin.

We will discuss the removal of discrimination from the sphere of cross border taxation in specific circumstances. The topic at hand emphasizes on balancing the need to prevent unjust discrimination with the need to identify legitimate distinctions. The whole crux of signing a Double Tax Avoidance

Agreement (hereafter "DTAA") is to avoid any kind of discrimination.

B. NON DISCRIMINATION AS PER DTAA.

DTAA's are based upon the principle of mutuality. A tax treatment that is granted by one Contracting State under a bilateral or multilateral agreement to a resident or national of another Contracting State, which is party to that agreement due to a special economic relationship between those Contracting States, may not be extended to a resident or national of a third state under the non-discrimination provision of the tax convention between the first state and the third state.

As per the DTAA's followed by Pakistan and the other contracting states, non-discrimination is defined as;

"Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 i.e. "Persons Covered", also apply to persons who are not residents of one or both of the Contracting States.

The reiteration supra concedes that discrimination on the basis of nationality and residence is forbidden with respect to taxation, and with due respect to reciprocity, the national of a Contracting State may not be treated different or less favorably in the other contracting state than its own nationals in the same circumstances.

Although a person may not be a resident of either of the Contracting states, but the provisions of the DTAA with respect to non-discrimination will still be applicable if that person is a national of either of the Contracting States. Therefore, the reiteration mentioned as above, is an exception to the general rule of the Article 1 "Persons Covered" that the provisions of the UN Model Double Taxation Convention will only apply to residents.

Illustration

A Pakistani national who is a resident of China, and earning income from a source in UAE shall make use of Pakistan-UAE DTAA, in case he faces any discrimination relating to tax in either Pakistan or UAE since he is a Pakistani National, though he is not a resident of either of the countries.

C. RESIDENCE IN RELATION TO NON-DISCRIMINATION

Residence of a taxpayer is one of the major factors that is relevant in determining whether a taxpayer is placed in similar circumstance or not. There should be no discrimination between national of different countries especially where they are residents of the same country.

Illustration

Mr. X, a Pakistani national is working in the UAE for the past 20 years. In accordance with the UAE taxation laws, Mr. X is a resident of UAE. Since, Mr. X is a UAE resident, there should be no distinction between a UAE national who is a UAE resident and Mr. X with respect to taxation.

D. NON-DISCRIMINATION IN TAXATION OF A PERMANENT ESTABLISHMENT

Non-discrimination in taxability of a Permanent Establishment (hereafter "PE") is reiterated in the DTAA's as follows:

"The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities".

The abovementioned reiteration is devised to diminish discrimination based on nationality. It is affective towards all the residents of a Contracting State irrespective of their origin or parents.

The crux of the clause reproduced above is that there should be no discrimination in the treatment of a PE, which is a resident of the other contracting state in comparison to any other enterprise in the same contracting state, which is carrying on similar business. However, the clause doesn't command the contracting state to offer incentives, reliefs and other reductions to the situated PE, which it offers to its local entities.

E. NON-DISCRIMINATION WHILE ASSESSING EXPENSE AGAINST INCOME BETWEEN CONTRACTING STATES.

Assessment of taxable profits of a resident company in a contracting state in terms of deductible allowances such as interest, royalties and any disbursements paid to a resident of other contracting state should be made without any discrimination by the Contracting state in comparison to as if the said allowances are being paid

by the resident company to the Contracting State's own resident.

Illustration

XYZ Pvt. (Ltd), a Pakistani Company pays royalty fee to its patentees against the acquired patents. Let's assume for the Tax Year, 20XX, XYZ Pvt. (Ltd) paid royalty fee to a patentee Mr. A in Pakistan while also paying the same to a patentee Mr. B in China. According to the convention and the DTAA signed between both the contracting states i.e. (China and Pakistan), royalty fee paid to Mr. B should be allowed similar deductible allowance by Pakistan tax authority to XYZ Pvt. (Ltd) as applicable for the royalty paid to the Mr. A in Pakistan, without any distinction.

F. NON-DISCRIMINATION IN TAXABILITY OF CAPITAL.

According to the DTAA, non-discrimination while taxability of capital is reiterated as follows:

"Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected".

The reproduced clause forbids a Contracting State to give less favorable treatment to an enterprise, the capital of which is owned or controlled, wholly or partly, directly or indirectly, by one or more residents of the other Contracting State. The main objective is to ensure equal treatment for a company which is financed by foreign capital in comparison to a company which is financed by domestic capital.

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