# TAX PAK

## NEWSLETTER BY TOLA ASSOCIATES


APRIL
**2020**

https://goo.gl/LFiWyx https://goo.gl/QDM4ZM


## ADDRESS

408, 4th Floor, Continental Trade Centre,
Clifton Block-8, Karachi

Email: connect@tolaassociates.com Ph# 35303294-6

Website: www.tolaassociates.com

This page is left blank intentionally

TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

APRIL 2020
TAX PAK

## CONTENTS



## CONTRIBUTORS

**Mr. Ashfaq Tola -** FCA
Editor in Chief

**Mr. Muhammad Furqan -** ACA - Managing Editor

**Mr. Muhammad Amayed Ashfaq -** Contributor

**Mr. Talha Shahid -** Contributor

**Mr. Sameer Ahmed**
Designer

## EDITORIAL NOTE

Dear All,

Hope this newsletter finds everyone in good health. At the very outset of this month's edition, I would like to urge everyone reading this, to please stay safe, and stay at home during this tough time. It is our social and moral obligation to not only save ourselves, but to also keep everybody else safe, especially our family members.

With that being said, I welcome you on behalf of my entire team, to yet another monthly issue of TAXPAK. We have tried our best to include all the important Notifications passed by the Sindh Revenue Board ("SRB"), Federal Revenue Board ("FBR") and the Securities Exchange Commission of Pakistan ("SECP"), so as to keep you posted with the recent developments occurring during this pandemic.

Moreover, we have also discussed a recent judgment passed by the High Court of Sindh, that relates to taxation of association of persons or partnerships, in terms of Section 92 of the Income Tax Ordinance 2001 ("ITO"). Furthermore, at the end of our newsletter, is our all-important 'topic of the month'. In this month's issue, we have discussed the measures taken by different countries to counter the effect of COVID-19.

Lastly, I would like to extend, on behalf of myself and my entire team, our warm regards to all of you, during this tough lockdown. You can visit our website www.tolaassociates.com, or download our mobile Application, in order to access previous versions of this newsletter, or more of our monthly publications. The aforesaid application can be downloaded from the links below:

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

It is requested that you may circulate this e-copy within your circle(s), as our primary aim is to benefit the masses. Feedback is always welcomed.

**Ashfaq Tola - FCA**
Editor in Chief

## 1. TAX NOTIFICATIONS/ CIRCULARS

### i. SRO 295(I)/2020 (dated 8th April 2020)

Through the Finance Act 2019, the special tax regime for the steel industry was abolished, and a Federal Excise Duty had been levied, in Sales Tax Mode, upon the steel sector, at the rate of 17%. Vide SRO 918(I)/2019 dated 7th August 2019, Annexure K was inserted in the Sales Tax Return Form STR-7, mandating the steel melting and re-rolling sector to submit a "Statement of Production and Supplies for Steel Products", mentioning prescribed particulars with respect to 13 items for Steel melting and Re-rolling. Now, the FBR has, through the captioned SRO, removed all 13 items, and only require the Consumer number of the Electricity Meter and Electricity units consumed during the month(kwh), to be reported in Annexure K, by the steel melting and rerolling industries.

### ii. SRO 317(I)/2020 (dated 16th April 2020)

The FBR, through SRO 237(I)/2020 dated 20th March 2020, had exempted 61 medical devices and equipment to related to COVID-19, from sales tax at import stage and subsequent supplies. However, the FBR has, through the captioned SRO, now replaced some items in the aforesaid notification with other items.

### iii. SRO 316(I)/2020 (dated 16th April 2020)

The FBR, vide SRO 236(I)/2020 dated 20th March 2020, had inserted Clause 12B in Part IV of the Second Schedule to the ITO, whereby, the items mentioned in the aforesaid notification were exempted from income tax at import stage under Section 148 of ITO. The FBR has, through the Captioned SRO, now replaced some items in Clause 12B, with other items.

### iv. SRO 326(I)/2020 (dated 27th April 2020)

The FBR through, the captioned SRO, has amended SRO 495(I)/2016 dated 4th July 2016, resulting in an amendment of the reduced rates of sales tax under Islamic Capital Territory Ordinance 2001. The amendments are as follows:

| BEFORE AMENDMENT | AFTER AMENDMENT |
|---|---|
| 1. Construction, excluding:<br>(i) Construction projects (Industrial and commercial) of the value (excluding actual and documented cost of land) not exceeding Rs 50. Million per annum.<br>(ii) The cases where sales tax is otherwise paid as property developers or promoters.<br>(iii) Government civil works including Cantonment Boards.<br>(iv) Construction of industrial zones, consular building and other organizations exempt from income tax.<br>(v) Residential construction projects where the covered area does not exceed 10,000 square feet for houses and 20,000 square feet for apartments.<br><br>9824.0000 and 9814.0000<br><br>Five percent subject to the condition that no input tax adjustment or refund shall be admissible. | 2. Construction, excluding:<br>(i) Construction projects (Industrial and commercial) of the value (excluding actual and documented cost of land) not exceeding Rs 50. Million per annum.<br>(ii) The cases where sales tax is otherwise paid as property developers or promoters.<br>(iii) Government civil works including Cantonment Boards.<br>(iv) Construction of industrial zones, consular building and other organizations exempt from income tax.<br>(v) Residential construction projects where the covered area does not exceed 10,000 square feet for houses and 20,000 square feet for apartments.<br><br>9824.0000 and 9814.0000<br><br>*Zero* percent subject to the condition that no input tax adjustment or refund shall be admissible. |
| 8. Services provided by property dealers and realtors.<br><br>Five percent subject to the condition that no input tax adjustment or refund shall be admissible. | 8. Services provided by property dealers and realtors.<br><br>Zero percent subject to the condition that no input tax adjustment or refund shall be admissible. |
| | 12. Services provided by property developers and promoters (including allied services) relating to low-cost housing schemes sponsored or approved by Naya Pakistan |

| | |
|---|---|
| | Housing and Development Authority or under Government's Ehsaas programme.<br>9807.0000 and respective subheadings of heading 98.14<br>Zero per cent subject to the condition that no input tax adjustment or refund shall be admissible. |

### v. SRO 323(I)/2020 (dated 09th April 2020)

The Islamic Republic of Pakistan, and the Republic of Bulgaria, had signed a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income on 21st May 2019, in Islamabad. The said tax treaty has been notified by the FBR, through the captioned SRO. The tax treaty has been given effect from 20th February 2020.

### vi. SRO 287(I)/2020 dated 7th April 2020

The FBR, through the captioned SRO, has prescribed reduced rates at 1.5% under Section 153(1)(a) of ITO, for individuals/sole proprietors only supplying unbranded tea, spices, salt, dry milk, sugar, pulses, wheat flour and ghee to the Utility Stores Corporation of Pakistan, for the period commencing from the date of issuance of the notification till 30th June 2020 [Clause 24CA in Part II, Second Schedule to the ITO]. If the withholding tax under Section 153(1)(a) is already below 1.5% this clause will not apply. Furthermore, the FBR has also exempted taxes under Section 148 of ITO, of (un)branded imported pulses till 30th June 2020, by any person including the corporate sector. [Clause 12C, Part IV of Second Schedule to the ITO]

### vii. SRO 296(I)/2020 (dated 9th April 2020)

Draft rules for online integration of following businesses operating in Karachi, Lahore, Islamabad, Rawalpindi, Faisalabad, Multan, Peshawar and Gujranwala have been issued through the Captioned SRO, by the FBR. Chapter VIIA has been inserted in the Income Tax Rules 2002 to give effect to these rules, which cover the following businesses;

- Restaurants, if operating as part of a food court, or the facility of air conditioning is available.
- Hotels, motels, guest houses, marriage halls, Marquees and clubs (including race clubs), where covered area is at least 4500 sq. feet, or have the facility of air conditioning.
- Inter-city travel by road, having air-conditioned facility, or travel service maintaining a fleet of more than 10 vehicles.
- Courier service and cargo service, if the taxpayer is a company and is offering international courier and cargo.
- Services provided for personal care by beauty parlors, clinics, body message centers, pedicure centers, including cosmetic and plastic surgery by such parlors/-clinics, where covered area is more than 1000 sq. feet or having air conditioning facility.
- Medical practitioners and consultants, if their fee is more than Rs 1,500/- and consultation is provided at hospital or poly clinic.
- Pathological laboratories, and medical diagnostic laboratories including X-Rays, CT Scan, M.R. Imaging etc., where the taxpayer is a company and is maintaining more than one branch under its own name, or through an associate
- Hospitals or medical care centers providing medical consultation, hospitalization or other ancillary services.
- Health Clubs, gyms, physical fitness centers, and body or sauna massage centers, where the covered area is more than 1000 sq. feet, or the facility of air-conditioning is not installed or available in the premises.
- Photographers charging more than Rs. 100,000 per event.
- Accountants operating as a part of a firm or a company.
- Pharmacies, where the taxpayer is a company maintaining more than one branch, under its own name, or through an associate

### viii. SRO 300(I)/2020 (dated 10th April 2020)

Donation to certain institutions specified in Clause 61

Part 1 of the Second Schedule to the ITO, are a straight deduction from the income of the donor, instead of calculating rebate at the average rate of tax. However, the maximum limit on donations under this clause is 30% (for individuals and AOPs) and 20% (for Companies) of one's taxable income. The Prime Minister's recently announced COVID-19 Pandemic Relief Fund-2020 has been included in the abovementioned clause, through the captioned SRO. Moreover, the income of this fund will be exempt under Clause 66 Part 1 of the Second Schedule to the ITO. Section 113 (minimum tax), Section 151 (withholding on dividends), and Sections 231A, 231AA and 236P (applicable to cash withdrawals and transfer from bank) will also not apply on the aforesaid Pandemic Relief Fund, as per clause 11A of Part IV of Second Schedule to the ITO.

### ix. Exemption of Commission received by a retail branchless agent

The FBR, has exempted withholding tax under Section 233 of ITO, on commission received by a retail branch-less banking agent, on any amount disbursed by the Ehsas Emergency Cash Transfer Programme from 16th April 2020 to 30th June 2020.

### x. SRO 344(I)/2020 (dated 29th April 2020)

As per Section 8B of the Sales Tax Act 1990, a registered person shall not be allowed to adjust input tax in excess of 90% of the output tax, for a particular tax period. Therefore, in case of a lower profit margin, he is required to pay 10% of his output tax to FBR.

However, through SRO 1190 (1)/2019 dated 2nd October 2019, FBR had excluded various persons from preview of Section 8B, means they can adjust 100% input tax against the output tax for period. Further "Retailers also importing goods in bulk and operating chains of stores" were also allowed to adjust their input tax up to 95% of the output tax for that tax period and the excess amount shall be carried forward to the next tax period. The FBR, through the captioned SRO, has allowed 95% adjustment of input for **"All Tier-1 retailers who have integrated all their POSs with the Board in terms of Chapter XIV-AA of Sales Tax Rules, 2006".**

Moreover, retailers "also importing goods in bulk and operating chains of stores" have now been removed from the exclusion list, whereby the restriction of the maximum input adjustment of 90%, now applies to such retailers as well.

### xi. Extension in date for filing of Annexure-H for the Tax Period of July 2019 to November 2019

The FBR has, through Letter no. C.No.9(11)/ST/Mis/Cond/2016 dated 30th April 2020, extended the date of filing of Annexure-H for the captioned timeframe, up to 15th May 2020.

### xii. SRB-Extension in date of E-deposit of tax and E-filing of return for the month of March 2020

The SRB, has issued Circular no. 03/2020 on 16th April 2020, to extend the date of return filing and deposit of tax due for the tax period of March 2020, due to the COVID-19 pandemic. For deposit of tax due, the date was extended up to Monday the 27th April 2020 and for filing of return the date was extended up to Thursday 30th April 2020.

### xiii. KPRA-extension in date of payment of Sales Tax and filing of Sales Tax return for the months of February and March 2020.

The Khyber Pakhtunkhwa Revenue Authority ("KPRA"), has issued Circular no. 03/2020 on 20th April 2020, to extend the date of return filing and payment of sales tax due for the tax periods of February 2020 and March 2020 due to COVID-19 pandemic. For payment of sales tax due for both periods, the date has been extended up to 28th April 2020 and for filing of return the date has been extended up to 30th April 2020.

### xiv. BRA-sales tax and filing of Sales Tax return for the months of February and March 2020.

The Baluchistan Revenue Authority ("BRA"), has issued Circular no. BRA/STA & A/19-20/3981 on 20th April 2020, to extend the date of return filing and payment of sales tax due for the tax period of March 2020 due to COVID-19 pandemic. For payment of sales tax due date was 15.04.2020, the date has been extended up to 27th April 2020 and for filing of return the due date was

18.04.2020 has been extended up to 30th April 2020.

### xv. Exemption of Punjab Infrastructure Development cess on Import of All Goods

The Punjab Revenue Authority ("PRA"), has issued Circular no. PRA/ORDER 06/2019/IDC/1538 on 2nd April 2020, to exempt import of all goods from the payment of the whole amount of Cess, from the date of publication of the notification till 30th June 2020.

### xvi. Exemption of Baluchistan Infrastructure Development cess on Import of All Goods

The Baluchistan Revenue Authority ("BRA"), has issued Circular no. BRA/BIDC/03/2020 on 17th April 2020, to exempt all kinds of goods/items imported under interest-free loans or grants for the province of Baluchistan from any donor agency from the payment of the whole amount of Cess.

### xvii. PRA-extension in date of payment of Sales Tax and filing of Sales Tax Return/Withholding Statements for the month of March 2020

The PRA has issued a Circular no. PRA/ORDER/2020/1545 on 16th April 2020 to extend the date of sales tax return/withholding statements filing, and payment of sales tax due for the tax period March 2020 due to the COVID-19 pandemic. For payment of sales tax due and for filing of return including withholding statements for the tax period of March 2020, the date was extended up to 30th April 2020.

### xviii. Exemption on Commission paid to Retailers by Banks

The PRA, has issued Circular No. PRA/ORDERS06/2019/1544 on 16th April 2020, to exempt commission from sales tax charged under the Second Schedule to the Punjab Sales Tax on Services Act, 2012 by banks to retailers on account of disbursement of financial assistance under the Ehsas Emergency Cash Transfer Programme. This will be effective from the date of publication of this notification till 30th June 2020.

### xix. KPRA - exemption on Construction and Allied Services

The KPRA, has issued circular no. F No. 7(3-2) KPRA/ Exemption/2019/709-11 on 07th April 2020, to exempt all construction and allied services from sales tax charged, specified at serial no. 14 under the Second Schedule to the Khyber Pakhtunkhwa Finance Act, 2013, subject to the following conditions:

- No input tax incurred at standard or higher rate during the currency of this notification shall be allowed to be adjusted against any future standard or higher rate output tax.
- Every registered person engaged in providing exempt services as aforesaid shall be required to file monthly return showing aggregate monthly value of such services.
- It shall be mandatory on a person providing exempt services to get registration and shall file return without any tax liability.
- An option to operate under standard rate of sales tax of 15% shall remain open and available provided that once exercised, the business concerned shall not be entitled or allowed to discontinue the option during the currency of this Notification.
- This notification shall remain in force till 30th June 2020.

### xx. Reduction of Rates in Punjab Sales Tax on Services Act 2012

The PRA has issued Circular No. SO(TAX)1-110/2020 (COVID-19) dated 2nd April 2020 and has made the following amendments in the Second Schedule of the Punjab Sales Tax on Services Act 2012. The amendments shall be effective from 2nd April 2020 to 30th June 2020, after which the original entries will be restored:

<table>
<tr><th>Before Temporary Amendment</th><th>After Temporary Amendment</th></tr>
<tr><td>1. Services provided by hotels, motels, guest houses, marriage halls and lawns (by whatever name called) including pandal and shamiana services, catering services (including all ancillary/allied services such as floral or other decoration, furnishing of space whether or not involving rental of equipment and accessories) and clubs including race clubs and their membership services including services, facilities or advantages, for a subscription or any other amount, to their members<br><br>9801.1000, 9801.3000, 9801.4000, 9801.5000, 9801.6000, 9830.0000, 9837.0000, 9862.0000 and respective<br><br>Sixteen percent</td><td>1.<br>Hotels, motels, guest houses.<br>9801.1000<br>(i) Zero percent without input tax adjustment for noncorporate, nonfranchise, nonchain businesses; and<br>(ii) sixteen percent for others<hr>Marriage halls and lawns (by whatever name called) including pandal and shamiana services.<br>9801.3000<br>Zero percent without input tax adjustment<hr>Catering services (including all ancillary/allied services such as floral or other decoration, furnishing of space whether or not involving rental of equipment and accessories)<br>9801.5000<br>Zero percent without input tax adjustment.<hr>Clubs including race clubs and their membership services including services, facilities or advantages, for a subscription or any other amount, to their members.<br>9801.4000<br>Sixteen percent</td></tr>
<tr><td>7. Services provided in respect of insurance to a policy holder by an insurer, including a re-insurer for:<br>(a) Fire insurance;<br>(b) Goods insurance;<br>(c) Health insurance;<br>(d) Life insurance;<br>(e) Marine insurance;<br>(f) Theft insurance; and<br>(g) Any other insurance.<br>EXCLUDING:<br>(a) Marine insurance for export; and<br>(b) Crop insurance.<br>98.13<br>Sixteen percent of the gross premium paid</td><td>7. Services provided in respect of insurance to a policy holder by an insurer, including a re-insurer for:<br>(a) Fire insurance;<br>(b) Goods insurance;<br>(c) Health insurance;<br>(d) Life insurance;<br>(e) Marine insurance;<br>(f) Theft insurance; and<br>(g) Any other insurance.<br>EXCLUDING:<br>(a) Marine insurance for export; and<br>(b) Crop insurance.<br>98.13<br>(i) Zero percent without input tax adjustment for health insurance and life insurance; and (ii) Sixteen percent of the gross premium paid, for others</td></tr>
<tr><td>22.Information technology-enabled or information technology-based services including software development, software customization, software maintenance, system support, system assembly, system integration, system designing and architecture, system analysis, system development, system operation,</td><td>22.Information technology-enabled or information technology-based services including software development, software customization, software maintenance, system support, system assembly, system integration, system designing and architecture, system analysis, system development, system operation,</td></tr>
</table>

| | |
|---|---|
| 9815.6000 and respective headings<br><br>sixteen percent | 9815.6000 and respective headings<br><br>(i) Zero percent without input tax adjustment for services provided by digital platforms; and<br>(ii) Sixteen percent for others |
| 14. Construction services and services provided by contractors of building (including water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical works (including air conditioning), horticultural works, multi-discipline works (including turn-key projects) and similar........<br><br>five percent without input tax credit/adjustment in respect of Government civil works and sixteen percent with input tax credit/adjustment for others | 14. Construction services and services provided by contractors of building (including water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical works (including air conditioning), horticultural works, multi-discipline works (including turn-key projects) and similar........<br><br>Zero percent without input tax adjustment. |
| 18. Services provided for personal care by beauty parlors, salons, clinics, sliming clinics, spas.......<br><br>sixteen per cent | 18. Services provided for personal care by beauty parlors, salons, clinics, sliming clinics, spas.......<br><br>Zero percent without input tax adjustment |
| 24. Services provided by other consultants (by whatever name called or treated, whether as consultant or otherwise) including human resource and personnel development services......<br><br>sixteen per cent | 24. Services provided by other consultants (by whatever name called or treated, whether as consultant or otherwise) including human resource and personnel development services......<br><br>Zero percent without input tax adjustment |
| 25. Services provided by tour operators and travel agents including all their allied services or facilities] (other than Hajj and Umrah including Ziyarat.<br><br>sixteen per cent | 25. Services provided by tour operators and travel agents including all their allied services or facilities] (other than Hajj and Umrah including Ziyarat.<br><br>Zero percent without input tax adjustment |
| 32. Services provided by property dealers and realtors.<br><br>sixteen per cent | 32. Services provided by property dealers and realtors<br><br>Zero percent without input tax adjustment. |
| 35. Services provided in respect of rent-a-car (including renting of all categories of vehicles meant for transportation of persons<br><br>sixteen per cent | 35. Services provided in respect of rent-a-car (including renting of all categories of vehicles meant for transportation of persons<br><br>Zero percent without input tax adjustment |
| 36. Services provided by car/automobile dealers.<br><br>sixteen per cent | 36. Services provided by car/automobile dealers.<br><br>Zero percent without input tax adjustment |
| 43. Services provided in specified fields such as health care, gym, physical fitness, indoor sports, games 4 [, amusement parks, arcades and other recreation facilities] and body or sauna massage etc.<br><br>Sixteen percent | 43.Services provided in specified fields such as health care, gym, physical fitness, indoor sports, games, amusement parks, arcades and other recreation facilities] and body or sauna massage etc<br><br>Zero percent without input tax adjustment |
| 44. Services provided by laundries and dry cleaners<br>Sixteen percent | 44. Services provided by laundries and dry cleaners<br>Zero percent without input tax adjustment |
| 45. Services provided by cable TV operators.<br><br>Sixteen percent | 45. Services provided by cable TV operators.<br><br>Zero percent without input tax adjustment |
| 66. Services in respect of treatment of textile, leather but not limited to Dyeing services, Edging and cutting, cloth treating, water proofing, Embroidery, Engraving, Fabric bleaching, Knitting, Leather staining, Leather working, Pre-shrinking, Colour separation services, pattern printing and shoe making services.<br><br>Sixteen percent | 66. Services in respect of treatment of textile, leather but not limited to Dyeing services, Edging and cutting, cloth treating, water proofing, Embroidery, Engraving, Fabric bleaching, Knitting, Leather staining.<br><br>Zero percent without input tax adjustment |

| | |
|---|---|
| 67. Apartment house management, real estate management and services of rent collection.<br><br>Sixteen percent | 67. Apartment house management, real estate management and services of rent collection.<br><br>Zero percent without input tax adjustment |
| 68. (i)Medical consultation/ visit fee exceeding Rs. 1,500 per consultation/ visit of doctors, medical practitioners and medical specialists. (ii)Bed/ room charges of hospitals exceeding Rs. 6000/- per day per bed / room.<br><br>Five percent without input tax adjustment | 68. (i) Medical consultation / visit fee exceeding Rs. 1,500 per consultation/ visit of doctors, medical practitioners and medical specialists. (ii)Bed/ room charges of hospitals exceeding Rs. 6000/- per day per bed / room.<br><br>Zero percent without input tax adjustment |

## 2. CORPORATE NOTIFICATIONS/ CIRCULARS

### i. Relief from requirements contained in IFRS 9.

The SECP, vide SRO 278, dated 1st April 2020, announced a couple of relief measures in terms of submission of certain information, while filing of Statement of Profit or loss due to the outbreak of Corona Virus Disease or COVID-19.

The relief announced, was, with respect to IFRS 9 (IAS 39, IFRS for SME and AFRS for SSEs) which requires the companies to record fair value adjustments of equities held as FVPL or Fair Value through Profit or loss in the Statement of Profit and loss.

Through the said SRO, the SECP, has also clarified that all the companies which are in consent in the applicability of IFRS 9 / IAS 39 and AFRS have the option to do that as well.

### ii. Draft amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008.

Through SRO 275, dated 2nd April 2020, draft amendments in the Non-Banking Finance Companies and Notified Entities Regulations 2008 were issued.

Earlier, in the month of March, the Pakistan Stock Exchange had introduced an investment opportunity for small investors in the face of Exchange Traded Funds (“ETF”). The SECP, in order to integrate the ETF, has proposed additions in the regulation 2 and 63 of Non-Banking Finance Companies and Notified Entities Regulations 2008.

### iii. Guidelines for performance evaluation of Board of Directors, CEOS and CROS.

The SECP has issued of Guidelines for Performance Evaluation of Board of Directors, Chief Executing Officers and Chief Regulatory Officers through SRO 301 dated 9 April 2020.

The crux of this SRO is performance appraisal and evaluation. The guidelines have been laid down so that the companies can synchronize their evaluation and appraisal framework according to the guidelines provided in the SRO.

### iv. Draft amendments to the Companies (Distribution of Dividend) Regulations, 2017.

The SECP, vide SRO 304 dated 13th April 2020, issued draft amendments to the Companies (Distribution of Dividend) Regulations 2017.

Therein, the SECP has added the Central Depository Company as a paying agent which, can be appointed by a company in substitution to other **paying agents** for the purpose of payment of cash dividend directly into the bank account of shareholders.

### v. Draft amendments to Futures Exchanges (Licensing and Operations) Regulations, 2017.

The SECP, through SRO 314 dated 15th April 2020, issued draft amendments to the Futures Exchanges (Licensing & operations) Regulations, 2017.

The SECP has proposed alterations in Annexure A of the Futures Exchanges (Licensing & Operations) Regulations 2017, consisting of a “Fit and Proper Criteria”. The changes have been made in Section (b) of Annexure A pertaining to “Educational Qualification and Experience”.

### vi. Relaxation from certain provisions of Non-Banking Finance Companies, 2008.

The SECP, has issued Circular no 16 of 2020 dated 21 April 2020, in lieu of relaxation from certain provisions of NBFC Regulations 2008.

Due to the outbreak of COVID-19, the SECP has increased the time period for submission of the quarterly financial statements of Open-Ended Scheme as well as Close Ended Scheme. It has also increased the time to ensure compliance with minimum fund size for Open end schemes under the NBFC Regulations, 2008.

### vii. Regulatory relief to Dilute Impact of Covid-19

The SECP issued Circular No. 18 of 2020 dated 27th April 2020 with respect to Regulatory Relief to dilute impact of Coronavirus (COVID-19).

In the wake of COVID-19, ensuring compliance, as per the Anti-Money laundering and Countering Financing of Terrorism (AML-CFT) Regulations 2018, has become difficult. The SECP has granted relaxation of 30 days to Regulated Persons (i.e. Security Brokers, Future Brokers, Insurers, Takaful Operators, NBFC's and Modarabas) in filing of quarterly information till 31 May 2020. Additionally, the SECP has advised the Regulated Persons to ensure use of technology in order to maintain social distancing and to encourage work from home environment.

## 3. SINDH HIGH COURT HELD THAT ONLY THE FIRM IS LIABLE TO TAX OF ITS INCOME AND NOT PARTNERS IN NORMAL CIRCUMSTANCES

In **M/s A.F. Ferguson & Co. & Others Vs. Pakistan & Others (Suit Nos. 2013, 2014 of 2015, 2287, 2344, 2345 of 2014, 2514, 2515, 2516 of 2016, 2276, 2277, 2278 of 2017, 2452, 2453, 2454 of 2018)**, the Petitioner is an Association of persons/ firm registered under the Partnership Act 1932. The background of case is that the firm filed tax returns from the year 2007 to 2014, in which the tax liability of the firm was discharged in accordance with Section 92 of ITO. The partners also filed tax returns in which receipts of their share was declared, however no tax was paid as it was exempt in hands of partners. However, the firm filed a lawsuit in the 2014 before the Honorable High Court of Sindh (hereafter "SHC"), wherein it pleaded that as per Section 92 of ITO, only filing of respective returns is mandatory by the firm and partners, whereas, the payment of tax was optional between the firm and partner, i.e. whether the firm pays taxes on its income or partners pay taxes on their share of income after it is distributed. The ground for this interpretation was that the term" where" used by legislature has given an option to both firm and partner that when one has paid taxes other one is exempted. The relevant excerpt is reproduced as under:

*"anywhere the association of persons has paid the tax the amount received by a member of the association in the capacity as member out of the income of association shall be exempt from tax"*

The SHC by its interim order allowed partners of firm to pay taxes and restricted department to proceed against firm for paying tax liability.

The department argued against the petitioner by stating that the Firm has paid tax since 2007 on departmental interpretation, and that only the firm can pay taxes on its income and once paid, the income of the partners is then exempt, and that it does not apply vice versa. Therefore, the principal of estoppel applies against their plea. The plaintiff replied by stating that they are not barred by challenging the law or its interpretation as there is no estoppel against the law, and that in tax law every tax year is a separate transaction period and that the preceding year is not a binding precedent for subsequent years. The Department further alleged that the firm had no issue from 2007 to 2014 and was paying taxes, whereas, the partners were exempted from tax on such income, but as soon as a new tax i.e. super tax was introduced from tax year 2015, the stance of firm had changed.

The SHC held that wordings of section 92 clearly provides that it is the firm which shall be taxed first and once this has been done and tax has been paid, the partners would not then be liable to pay any tax on the said income, and there is no provision for applying this principal in reverse. The Court further observed that the firm challenged the departmental view after promulgation of Super Tax under Section 4B of ITO, and the conduct of the firm appears to be to avoid payment of super tax as the total income of firm was liable to such super tax but when the income of the firm is divided/distributed among partners, the liability no more arises, hence for this reason the firm have made an attempt to challenge the vires of law and seek an interpretation of Section 92 to be applied conversely. Therefore, there is estoppel of law due to circumstances, i.e. if there is no implication and avoidance of super tax liability, then the argument of firm that there is no estoppel against law would have applied. The words "any" and "where" are not to be read together, and that the word "any" is redundant. With regard to firm's argument that interim orders of SHC provide partners to pay liability and restrict FBR to collect tax liability from firm was in favour of their instance, the SHC observed that any interim order passed by this court does not become final until it is so decided finally and cannot be used as shield for protection from any final liability. However, any payment made by partners which was liability of firm can be reimbursed from firm by virtue of amendment in Section 139(6) read with Section 139(5) (which were inserted in the ITO, through the Finance Act 2019.)

## 4. TOPIC OF THE MONTH

## - A COMPARATIVE OVERVIEW OF COVID-19 RELATED RELIEF MEASURES

COVID-19 has devastated the Global Economy, in so much so, that the entire world is going through a recession. There has been massive unemployment worldwide. It is very important to be aware of the economic measures countries have taken to counter the recessionary effects of the said pandemic. The response of Pakistan, UK, USA and India has been given below, in order to illustrate a comparative view:

### 1. PAKISTAN

#### Fiscal Measures

- The FBR, through SRO 237(I)/2020 dated 20th March 2020, had exempted 61 medical devices and equipment related to COVID-19 from charge of sales tax at import stage and at subsequent supplies. Moreover, the FBR, vide SRO 236(I)/2020 dated 20th March 2020, had inserted clause 12B in Part IV of Second Schedule of ITO whereby the above items were also exempted from income tax at import stage under Section 148 of ITO.
- The FBR has issued; SRO 326(I)/2020 dated 27th April 2020, SRO 287(I)/2020 dated 7th April 2020 and SRO 300(I)/2020 dated 10th April 2020, details whereof, can be found in the Notifications section of this newsletter.
- The FBR has exempted withholding tax on commission under Section 233 on commission received by a retail branchless banking agent on any amount, disbursed by the Ehsas Emergency Cash Transfer Programme, from 16th April 2020 to 30th June 2020.

#### Special Incentive package for construction industry

Special incentive package for construction industry has been approved vide Tax Laws (Amendment) Ordinance 2020, dated 30.03.2020, assented to, by the President of Pakistan. Our detailed comments on the same can be accessed through the following link; https://bit.ly/3ddz7Tn

#### Other Measures:

a. The Government of Pakistan ("GoP") has approved a fiscal stimulus package of Rs. 1.2 trillion, and a Supplementary Grant of Rs. 100 billion for the "Residual/Emergency Relief Fund" in relation to provision of funds, for mitigating the effect of COVID-19 for the affected population.

b. Rs. 200 billion of cash assistance is available for the daily wagers working in the formal industrial sector who have been laid off as a result of COVID-19 outbreak

c. Rs. 50 billion for Utility Stores Corporation to provide essential food items to the vulnerable section of the society at subsidized rates.

d. The supplementary grant of Rs. 30 billion to Ministry of Commerce to payback duty drawbacks to textile exporters in the current financial year to improve their liquidity position

e. Pakistan has arranged about $4 billion additional financial assistance from multilateral lending and aid agencies to shore up foreign exchange reserves and budgetary support for fighting adverse impacts of the coronavirus pandemic

f. GoP has approved Rs.75 billion to payback the pending sales tax and income tax refunds, duty drawbacks and customs duties.

g. The SECP has allowed all lending Non-Bank Finance Companies (NBFCs), including Non-Bank Microfinance Companies (NBMFCs), to defer repayment of principal loans by their borrowers for one year, under the present circumstances owing to the outbreak of COVID-19 (coronavirus) pandemic.

h. The Federal Cabinet has approved launching a domestic Sukuk bond for generating Rs700 billion for financing the escalating budget deficit and meeting the increasing financial requirements for combating COVID-19.

## Monetary Measures by the State Bank of Pakistan

• A Refinance Scheme for payment of wages and salaries, to the workers and employees of Business Concerns is available from April 2020 to June 2020 (IH&SMEFD Cir No. 06 & 07 of 2020), starting from 4%, and repayable in 8 installments starting from January 2021.

| Cat. | Wage Bill for 3 Months | Loan Limit | Maximum Loan |
|---|---|---|---|
| A | Rs 200 Million | 100% of actual wage bill | Rs. 200 million |
| B | Rs 200 million -500 million | >200 million or 75% of 3 months wage bill, whichever is higher | Rs. 375 million |
| C | Rs >500 million | Rs 375 million or 50% of actual 3 month wage bill, whichever is higher | Rs. 500 million |

• The SBP has made amendments in Foreign Exchange Regulation, whereby Authorized dealers (hereafter "AD") may provide an extension in payments for export contracts and shipment against advance payments on imports with certain limits. Further, the requirement of physical submission of import/export related documents with SBP, has been replaced with online submission (EPD Circular Letter No. 7 of 2020).

• The SBP has developed a Regulatory Approval System ("RAS") to provide an online platform for ADs to interact with the regulator, for submission of cases and receive regulatory decisions against them (EPD Circular Letter No. 8 of 2020).

• Import of medical equipment for treatment of Corona Virus Pandemic against Advance payment and open account has been allowed (EPD Circular Letter No. 9 of 2020).

• The following Basel Capital Adequacy measures are to be implemented with immediate effect:

i) Capital Conservation Buffer reduced from 2.50% to 1.50%..

ii) Existing regulatory retail portfolio limit enhanced from Rs. 125 million to Rs. 180 million. (BPRD Circular Letter No. 12 of 2020)

• Banks/DFI/MFB have been advised to suspend distribution of profits by way of declaring dividends in any manner (cash/stock) for the quarter ending 31st March 2020, and half year ending 30th June 2020. This will not be applicable on dividend declared for the year ending December 2019 ( BPRD/BA&CPD/ 006315/20).

• The SBP has further taken the following decisions to bolster the economy (BPRD Circular Letter No. 14 of 2020):

o Debt Burden Ratio temporarily increased to 60% from 50%.

o In order to determine repayment capacity and credit worthiness, ensure that consumer financing facilities not to exceed 60% of the net disposable income of the borrower.

o Excess Over Limit ["EOL"] up to 15% may temporarily be allowed over original sanctioned limit.

o EOL repayable equally in next twelve-monthly bill payments.

o At the request of borrower received by 30th June 2020, the payment of principal installments may be deferred for one year at no fee or increase in mark-up rate i.e. if borrower continues to pay mark-up on agreed terms & conditions

o Decision on request is to be made within 15 working days from the receipt of request. In case of refusal, decision should be supported by reason for refusal.

o Banks/DFI to weekly report to SBP details of deferments granted by them to their borrowers.

o In case borrower is unable to pay mark-up or need deferment exceeding one year, financing facilities, upon request, may be rescheduled / restructured.

o If the rescheduling / restructuring done within 180 days of loans being past due, such financing facilities shall: (a) continued to be treated as regular; (b) not affect the credit history of the borrower; and (c) not be reported in the ECIB / private credit Bureau as restructuring

o The financing facilities are not to be (adversely) classified unless payment obligations are past due by 180 days. In case of being 180 days past due, such financing facilities will be classified under the instructions of prudential regulations of consumer financing.

o The SBP aggressively cut by 425 basis points in March-April to 9%, to reduce pressure on businesses to pay interest on bank loans.

## 2. UNITED KINGDOM ("UK")

o On 3rd April 2020, UK announced the Small Business Grant Fund (SBGF) and Retail hospitality and Leisure Grant Fund (RHLGF).

o The UK deferred payment of VAT, from 20th March 2020 to 30th June 2020, while deferring the date for payment for Self-Assessment Tax bill from 31st January 2020 to 31st January 2021.

o The UK announced on 20th April 2020, that UK businesses driving innovation and development will be helped through the coronavirus outbreak with GBP 1.25 billion. This package includes a GBP 500 million investment fund for high-growth companies impacted by the crisis. SMEs focusing on research and development, will also benefit from GBP 750 million of grants and loans. It may be noted that Britain is the startup capital of Europe and this package is a signal of intent that the Government will make sure it remains so in the future.

o The UK has announced an emergency package of GBP 65.5 billion until now.

o The Government has announced a new Self-Employed Income Support to support those who work for themselves with following features. It is estimated that about 3.8 million workers from hairdressers to cleaners will be eligible for the grants to the self-employed and it will cost Treasury GBP 3 billion pounds a month for three months. It includes.

- Government will pay 80% of average profits over the past three years
- The business will receive maximum up to GBP 2,500 per month.
- The eligible business under this scheme are those with average profits of GBP 50K or less.

## 3. UNITED STATES OF AMERICA ("USA")

a. The USA has enacted the Coronavirus Aid, Relief, and Econo Cares Act in order to provide economic support across six core areas of the economy.

b. Through the aforesaid Act, the US has floated a fund of USD 2.3 trillion which includes measures such as loans for small business, liquidity assistance and financial aid for hospitals including:

- About $500 billion in direct payments to people, in two phases up to $1,200 for an individual earning up to $75,000 a year. Additional payments for families with children could push the total to $3000 for a family of four.
- Up to $500 billion in "liquidity assistance" for distressed industries. The amount allocates up to $61 billion for passenger and cargo airlines and contractors, including $32 billion in grants and $29 billion in loans.

c. The Sectors, to receive the fund, are distressed industries of the US economy, small-businesses, individual and families, Supplemental Insurance, Healthcare support, State and Local Government Support amongst others.

## 4. INDIA

a. On 26th March 2020, the Indian Finance Minister announced a relief package worth INR 1.7 trillion.

b. On 31st March 2020, the President promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, to provide relaxation of certain provisions.

c. To provide immediate relief, the government has given directions to immediately issue all the pending income-tax refunds of up to INR 0.5 million.

d. With an objective to provide immediate relief to the businesses, the government has given directions to issue all the pending eligible refunds under both the GST and Customs law by 30 April 2020

e. As an immediate relief, the Government has granted an option to the taxpayer to defer payment of tax and file GST return for the period February to April 2020, up to 24th June 2020 without payment of any late fee and penalty. As far as interest is concerned, a concessional interest at 9 per cent p.a. (instead of 18% p.a.) is leviable only after 15 days from the end of the original due date. Similarly, monthly return of outward supplies which is generally due on 11th of next month has been extended up to 30 June 2020 for the months of March, April and May.

f. Primarily, exporters importing goods under Advance Authorization/Export Promotion Capital Goods scheme and imports made by an Export oriented unit, were granted exemption from the levy of IGST and Compensation Cess up to 31 March 2020. The said exemption has now been extended till 31 March 2021.

g. The government has notified an exemption from levy of both, Basic Customs Duty and Health cess, on import of Ventilators, face masks and surgical masks, personal protection equipment, COVID-19 testing kits and also on inputs used in the manufacture of these goods.

h. About two-thirds of population will be covered under the Pradhan Mantri Garib Kalyan Anna Yojana (Food scheme).

i. Everyone under this scheme will get 5 kg of wheat and rice for free in addition to the current 5 kg allocation for the next 3 months

j. In addition, 1 kg of preferred pulse (based on regional preference) will be given for free to each household under this Food scheme for the next three months.

k. This distribution will be done through Public Distribution Scheme (PDS) and can be availed in two instalments.

l. Farmers currently receive INR 6,000/- every year through the PM-KISAN scheme (minimum income support scheme) in three equal instalments. The Government will now be giving the first instalment upfront for fiscal year starting April 2020. About 86.9 million farmers are expected to benefit from this immediately.

m. MNREGA workers: Wage increase from INR 182/- to INR 202/-. Such increase will benefit 50 million families. The wage increase will amount into an additional income of INR 2,000/- per worker

n. 30 million senior citizens, widows, disabled to get one-time ex-gratia amount of INR 1,000 in two instalments over the next 3 months.

o. Women in 83 million families below poverty line will be covered by Ujwala scheme and will get free LPG cylinders for 3 months.

p. For 630,000 Self-help Groups (SHGs), which help 70 million households, the Government is doubling collateral-free loans to Rs 200,000.

q. The Employees Provident Fund Organization (EPFO) has announced that employees who contribute to EPF, can withdraw up to 75 percent of the account balance or 3 months' basic salary and dearness allowance, whichever is lower

r. In situations where establishments employ up to 100 employees, 90 percent of whom earn up to INR 15,000 per month, the Government will pay the employee provident fund contribution both, of the employer and the employee (12 per cent each), for April 2020 to June 2020.

s. The threshold of default has been increased from Rs 100,000 to Rs 10 million with the intention to prevent triggering of insolvency proceedings against MSMEs.

t. Reduction of policy repo rate by 75 basis points (from current 5.15% to 4.40%).

u. CRR of all banks to be reduced by 100 basis points to 3% beginning March 28, for 1 year. This will release liquidity of INR. 1,37,000 crore across the banking system.

This page is left blank intentionally

TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

# OFFICES IN PAKISTAN


**Karachi Address:**
Office no. 408, 4th Floor, CTC Building, Clifton Block-8, Karachi
Tel #: +92 21-3530 3294-6

**Islamabad Address:**
144, 1st Floor, Street No.82
Sector E-11 / 2 FECHS
Islamabad 44000,
Tel #: +92 51-835 1551

**Lahore Address:**
202-E, 2nd Floor, Sadiq Plaza
69-The Mall Road, Lahore
Tel #: +92 42-3628 0403


android https://goo.gl/LFiWyx

https://goo.gl/QDM4ZM