

TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES



SEPTEMBER
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

CONTENTS

Tax Notifications/ Circulars

Corporate Notification/ Circulars

Carry forward of Minimum Tax u/s. 113 is allowed even if Zero Tax paid - ATIR Islamabad

Topic of the Month - Classification of Income for Taxability "Fee for Technical Service or Business Income"

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 readers, hope this newsletter finds everyone in sound health. Welcoming our readers, I would like to urge everyone reading this, to please stay safe, and stay at home as the second wave of COVID-19 is about to surge. It is our moral as well as social obligation to look forward towards the well-being of ourselves as well as our closed ones, especially our family members.



With that being said, I, with the name of Allah Almighty welcome you on behalf of my entire team, to this month's issue of TAXPAK for the month of September 2020. Being the season for the Income Tax return filing for the Tax Year 2020, the month has proved to be a hectic one, as there have been a lot of developments via Notifications passed by the FBR, PRA, and SRB, with regards to fixation of cases/appeals, and filing thereof. We have tried our best to include all those Notifications to keep you on the front foot with the relevant updates in relation to functioning of the aforesaid Revenue Authorities.

Moreover, we have included recent notifications passed by the Securities and Exchange Commission of Pakistan ("SECP"). We have also discussed a recent judgment passed by the Appellate Tribunal Inland Revenue, Islamabad that relates to Carry Forward on Minimum Tax by virtue of Section 113 of the Income Tax Ordinance, 2001. Furthermore, at the end we conclude our newsletter, with our all-important 'topic of the month'. In this month's issue, we have clarified the conceptual anomaly between Business Profits and Fee for Technical Services in the light of Double Tax treaties and under the scope of International Taxation.

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. NOTIFICATIONS/ CIRCULARS

A. RULES FOR DETERMINING VALUE OF SUPPLY OF USED VEHICLE

Through FA 2020, the definition of value of supply for used vehicle was inserted in Section 2(46) of Sales Tax Act 1990, whereby in case of registered person who is engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing, and which are, later on, sold in the open market after making certain value addition, value of supply will be the difference between sale and purchase price of the said vehicle on the basis of the valuation method prescribed by the FBR.

Now FBR vide SRO 931(1)/2020 dated 30th September 2020 has prescribed valuation method by inserting rule 164A in Sales Tax Rule 2006. The value of supply shall be difference between sale value – purchase value with no input tax adjustment allowed. The whole of sales and purchase amount is required to be received through banking channel under Section 73. Moreover, in case of purchase value is higher than sale value, the value of supply shall be considered as zero.

B. VIDEO ANALYTICS RULES FOR ELECTRONIC MONITORING OF PRODUCTION OF SPECIFIED GOODS

Section 50 of Sales Tax Act, 1990 empowers FBR to make Rules by notification for carrying out rules for the purposes of this Act including rules for charging fee for processing of returns, claims and other documents and for preparation of copies thereof. According to Section 3(2) taxable supplies or import of goods specified in Third Schedule shall be charged at the rate of seventeen percent of the retail price. Now FBR has issued Rules for video analytics for electronic monitoring of production of these goods vide SRO 889(I)/2020 dated 21st September 2020.

The Rules are inserted as new Chapter XIV-BA in Sales Tax Rules 2006, the salient features are as follows:

- The goods specified in Third Schedule [attached as Annexure] shall be monitored through video surveillance and video analytics from the date notified by FBR.

- The manufacturer shall make all production facilities available for installation of the system and allow access to the vendor and FBR for routine operations, inspection, and maintenance of surveillance system.
- This system will consist of video cameras, sensors etc. at production line for real time collection of data that shows production through object detection and object counting, transmission of data to central control room at FBR on real time basis, detection of unexpected stops, quantitative analysis of productions, data analytics for required legal actions.
- The manufacturer shall not supply any goods without routing them through the intelligent video analytics.
- The manufacturer shall be responsible to pay fees as agreed with vendor of system.
- The manufacturer shall be responsible for smooth functioning, protection, and security of the intelligent video analytics
- The manufacturer shall report to the FBR and concerned Commissioner Inland Revenue within twenty-four hours of any operational failure, damage, disruption, or tampering of the intelligent video analytics.
- The manufacturer shall allow unhindered access to the FBR and any officer, authorized in this behalf.
- The manufacturer shall give notice to the FBR, at least thirty days in advance, from the date of start of production of new brands of goods, expansion, modification, or any other changes in the production line.
- The manufacturer shall make available the damaged equipment, camera, etc., for inspection by the officer authorized by Commissioner Inland Revenue.
- The manufacturer shall report any inoperative production lines within 24 hours of occurrence to the Commissioner and authorized officer shall immediately proceed to secure such lines using security seal and register the action in the intelligent video analytics.
- The FBR shall conduct audit of the system each year.

The Rules also specify provisions for vendor approval, functioning vendor approval committee, functions and responsibilities of IT team and FBR, responsibilities of the vendor, fee and charges.

C. STANDARD OPERATING PROCEDURE FOR DISPOSAL OF CASES OF CONDONATION OF TIME LIMIT UNDER SECTION 74 OF THE SALES TAX ACT 1990

As per Section 74, if any time or period is specified for any procedure or action in Act, and that time period has been lapsed, the taxpayer or any officer can apply for FBR for condonation of time limit. Now FBR has specified SOPs for field formations i.e. LTOs, MTO, CTOs, RTOs for processing of such applications through Circular No. 2 of 2020/IR Operations dated 21st September 2020 w.e.f. same date. The field officers are required to ensure following with respect to application:

- The reasons narrated for condonation are genuine/authentic and logical, along with supporting documents.
- Revenue impact.
- If any system/technical glitch is involved, detail of same along with supporting documents.
- If condonation involves transaction of any closed, de-registered or any person whose registration has been blacklisted or suspended, specify reasons.
- If condonation involves adjustment/refund of amount which has already been claimed by taxpayer, then officer will specify detail.
- In cases of condonation of power sectors, to check whether supplier has discharged due sales tax on supply after issuance of invoice and duly verified from Annexure-C in the return and specify the date and month of return in which the same has been incorporated.
- Check whether both buyer and supplier are active on Active Taxpayers List (ATL).
- In case of input relating to provincial sales tax and power sector supplies, check whether payment is made to supplier through banking channel in terms of Section 73 of the Act. If partial payment to supplier is made, then specify balance amount and reason for partial payment.

D. REAL TIME ELECTRONIC ACCESS FOR AUDIT AND SURVEY

The FBR has inserted Chapter VIAB in Sales Tax Rules 2006 vide SRO 888(I)/2020 dated 21st September 2020, to

prescribe rules for real time access to the premises, stocks, accounts, and record of the registered person.

Now registered person shall give continuous and full real-time electronic access to premises, stocks, accounts, and records u/s 38 of Act. The registered person shall provide SAF-T files which include account books, journal ledgers, bank details and bank statement, inventory record, record of sales, record of purchases, including exempt purchases against which no input is claimed and record of invoices etc., to FBR when required on XML format.

E. LICENSING COMMITTEE COMPOSITION

The Chapter XIV-B of Sales Tax Rules 2006 was introduced for prescribing rules for electronic monitoring, tracing of production, import and supply-chain of tobacco, beverages, sugar, fertilizer, cement, and petroleum products. A Licensing Committee was prescribed to issue license to the service providers of monitoring and tracking services. It was provided that the licensing committee shall comprise of at least three members of Inland Revenue Officers not below the rank of BPS-20 of FBR Headquarters, assisted by technical or IT expert and any other officer or authority designated by the board. Now through SRO 831(I)/2020 dated 9th September 2020, the composition of committee is changed and now it will comprise of at least 3 officers of Inland Revenue Services not below the rank of Commissioner, headed by an officer not below the rank of Chief Commissioner, assisted by technical or IT experts and any other Officer or authority designated by the FBR.

F. CPEC PROJECT PAK-CHINA TECHNICAL & VOCATIONAL INSTITUTE OF GWADAR PORT

The BRA has issued notification no. BRA/BSTS/15/2020 dated 01 September 2020, whereby CPEC project Pak-China Technical & Vocational Institute of Gawadar Port is exempt from Sales Tax on services.

G. TECHNICAL COMMITTEE AND COMPLAINT OVERSIGHT COMMITTEE OF FBR

The Advice to Prime Minister has notified two above cited committees along with their Terms of Reference (TOR) for Income Tax, Federal Sales Tax & Excise and Customs issues with respect to input and refund. The advice has been

notified vide letter no. C.No, 1(282)/ST-Ops/2020/163731-R dated 17th September 2020.

H. EXEMPTION ON IMPORT ON LOCUST CONTROL EQUIPMENT

The FBR has issued SRO 922(I)/2020 dated 29th September 2020 whereby exemption from taxes at import stage u/s 148 of ITO in respect of procurement of 83xMicron Sprayers for Anti-Locust has been provided by inserting Clause (12H) in Part IV of Second Schedule.

I. PROCEDURE FOR OBTAINING EXEMPTION CERTIFICATE U/S 152

If a person intends to make a payment to a non-resident person without deduction of tax u/s 152, other than payments liable to reduced rate under relevant agreement for avoidance of double taxation, the person shall, before making the payment, furnish to the Commissioner a notice in writing.

Now FBR has issued SRO 923(I)/2020 dated 29th September 2020 whereby a new part in Chapter IX of Income Tax Rule 2002, is added to prescribe procedure for getting exemption under Section 152.

J. PROCEDURE AND MANNER FOR APPLYING AND APPROVING GREEN FIELD INDUSTRIAL UNDERTAKING

The profits and gains of green filed industries are exempt for income tax as per Clause (126O) of Part I of Second Schedule. Now SOP for obtaining approval from FBR is prescribe in newly inserted Rules Chapter XVIIIA in Income Tax Rules 2002, vide SRO 882(I)/2020 dated 18th September 2020, in which prescribe format of application for application of exemption and rules for processing by Commissioner, refusal and appeal against Commissioner's decision is prescribed.

K. FINAL SIMPLIFIED INCOME TAX RETURN FOR RETAILERS HAVING TURNOVER LESS THAN RS. 10 MILLION

The FBR has issued simplified returns for retailers having turnover less than Rs 10 million vide SRO 885(I)/2020 dated 17th September 2020.

L. EXTENSION IN DATE OF FILLING OF INCOME TAX RETURNS/STATEMENTS FOR TAX YEAR 2020

The FBR has issued circular no. 4 dated 30th September 2020 whereby it has extended date of filling of Income Tax Returns/statements as follows:

- The individuals and Association of persons till 8th December 2020
- The companies with special tax year, till 8th December 2020.

It has also been clarified that no further extension will be granted.

M. EXPLANATION OF IMPORTANT AMENDMENTS MADE IN INCOME TAX ORDINANCE, 2001 THROUGH FINANCE ACT, 2020

Now FBR has issued Circular 3 of 2020 dated 3rd September 2020 to explain various amendment made through FA 2020.

2. CORPORATE NOTIFICATIONS / CIRCULARS

A. SRO 808 (I)/2020 DRAFT AMENDMENT TO THE COMPANIES (FURTHER ISSUE OF SHARES) REGULATIONS, 2020.

The SECP vide SRO 808 dated 2 September 2020 proposed draft amendments to the Companies (Further issue of shares) Regulations, 2020, wherein the SECP broadened the scope of requirements to be fulfilled by the companies opting for further issue of shares. The changes were proposed while making amendment in Regulation number 3 of the said regulations.

B. SRO 818 (I)/2020 AMENDMENTS IN THE PUBLIC OFFERING (REGULATED SECURITIES ACTIVITIES LICENSING) REGULATIONS, 2017.

The SECP vide SRO 818 dated 7 September 2020, made amendments in the Public Offering (Regulated Securities Activating Licensing) Regulations, 2017.

Scheduled Banks, Development Finance Institutions and Investment Finance companies were included as Consultant to the issue in case of public offering of debt securities and Growth Enterprise market, in the recently concluded amendment.

C. SRO 819 (I)/2020 AMENDMENTS IN THE PUBLIC OFFERING REGULATIONS, 2017.

The SECP vide SRO 819 dated 7 September 2020 made amendments in the Public Offerings Regulations, 2017. The amendments were made in Regulations number 2-9, 11-13, 15, 16, First Schedule and Eight Schedule of the above-named Regulation.

D. SRO 881 (I)/2020 DIRECTIVE – RED FLAGS ON ASSOCIATES OF PROSCRIBED INDIVIDUALS

The SECP vide SRO 881 dated 9 September 2020 issued Red Flags / indicators whereby all the Regulated Persons registered in SECP has to comply with the above-mentioned Red Flags / indicators on the suspected prescribed / forbidden persons or entities under the Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018.

E. SRO 867(I)/2020 DRAFT AMENDMENTS TO COMPANIES (GENERAL PROVISIONS AND FORMS) REGULATIONS, 2018.

The SECP vide SRO 867 dated 11 September 2020 proposed draft amendments to Companies (General Provisions and Forms), wherein Form No. 40 to 45 were added in regulation 4 of the abovementioned regulations as follows:

Serial No.	Form No.	Particulars
46	Form 40	Public notice to holders of securities of bearer nature issued by a company
47	Form 41	Register containing particulars of holders of securities of bearer nature and particulars of such securities surrendered or cancelled
48	Form 42	Notice to members for providing particulars of ultimate beneficial owners
49	Form 43	Declaration by member about ultimate beneficial owners
50	Form 44	Declaration by member about change of ultimate beneficial owners or particulars thereof
51	Form 45	Declaration of compliance with the provisions of section 123A of the Companies Act, 2017.

F. SRO 866 (I)/2020 DRAFT AMENDMENTS TO FOREIGN COMPANIES REGULATIONS, 2018

The SECP vide SRO 866 dated 11 September 2020 proposed draft amendments to Foreign Companies Regulations, 2018, wherein the provisions relating to ultimate beneficial owner are proposed to be added in the abovementioned regulations.

G. SRO 865 (I)/2020 DRAFT AMENDMENTS TO COMPANIES (INCORPORATION) REGULATIONS, 2017.

The SECP vide SRO 865 dated 11 September 2020 proposed draft amendments to Companies (Incorporation) Regulations, 2017, wherein the provisions relating to ultimate beneficial owner are proposed to be added in the abovementioned regulations.

H. SRO 864 (I)/2020 DRAFT AMENDMENTS TO LIMITED LIABILITY PARTNERSHIP REGULATIONS, 2018.

The SECP vide SRO 864 dated 11 September 2020 proposed draft amendments to Limited Liability Partnership Regulations, 2018, wherein the provisions relating to ultimate beneficial owner are proposed to be added in the abovementioned regulations.

I. SRO 893 (I)/2020 DRAFT COMPANIES (AUDIT OF COST ACCOUNTS) REGULATIONS, 2020.

The SECP vide SRO 893 dated 21 September 2020 proposed draft of Companies (Audit of Cost Accounts) Regulations, 2020. You can access the draft regulation through the following link: <https://bit.ly/2HEMO30>.

3. CARRY FORWARD OF MINIMUM TAX U/S 113 IS ALLOWED EVEN IF ZERO TAX PAID - ATIR ISLAMABAD

The provisions of Section 113 of ITO prescribe a minimum tax liability for company, an individual or AOP, having a prescribed turnover, and due to loss, setting off of a loss of an earlier year, exemption from tax, application of credits, rebates or claiming of allowances or deductions, there is no tax paid or payable or tax paid or payable is less than prescribed rate. However, a relief was provided that in case the minimum tax exceeds actual tax payable, the excess amount of tax paid shall be carried forward for adjustment against tax liability in subsequent years.

Sindh High Court in case of CIR, Zone-II, Karachi vs. Messers Kassim Textile Mills (Pvt.) Limited in case reported as 2013 PTD 1420, held in favour of department's interpretation of carry forward of minimum tax u/s 113 that the benefit is available only when some tax had actually been paid but was less than that minimum tax. In case zero tax is paid the carry forward of differential will not be available.

In case of M/s Haidri Beverages (Pvt.) Ltd. Islamabad, the ACIR passed amended Order and disallowed the claim of adjustment/credit of minimum tax paid in tax year 2008 under Section 113(2)(c) of ITO against tax payable for tax year 2013 on basis of above SHC Order. Feeling aggrieved the taxpayer preferred an appeal with Commissioner appeals and then Appellate Tribunal on following grounds:

1. GROUND TAKEN BY THE PETITIONER

1.1. Tax Credit vs Exemption

The learned representative of petitioner contended that sub section 1 of section 113 is not a charging provision rather than a machinery provision. This sub section only lists the conditions when this subsection will apply without providing about the income to be charged to tax or rate of tax. It was further submitted that sub section 2 is a charging section.

The learned representative of petitioner contended that Learned SHC omitted clause (a) and (b) of sub section and only discussed clause (c) in its Order and for proper interpretation all three clause are to be read in sequence. The SHC has wrongly treated adjustment and carry forward of unadjusted/excess tax as exemption and applied same rules of interpretation as are applicable on exemptions.

1.2. Lahore High Court Order Holds the Field

The Learned representative submitted the judgement of Lahore High Court tilted as CIR vs M/s Education Excellence Ltd. ITR No. 255/16, which is passed after SHC order and had dismissed reference application filed by FBR on same subject, holds field.

2. REBUTTAL BY DEPARTMENT

The departmental representative submitted that the view taken by SHC was correct and to be preferred over-view taken by LHC as LHC did not give any reason/finding/opinion in its order and only confirmed the ATIR view.

3. DECISION

The ATIR decided Order reported as ITA No. 1117/IB/2019 in favour of taxpayers with following observations:

3.1. Tax Credit vs Exemption

The SHC agrees with the Learned representative of Petitioner that the Clause (c) could only be interpreted correctly if read with Clause (b) of Section 113(2). The SHC has wrongly treat adjustment/ carry forward as exemption and applied the principles of interpreting exemptions to Section 113(2)(c) and interpret such provision strictly and against the taxpayer. The Section 113(2)(c) is a beneficial provision, which allows adjustment of credit of tax in excess of tax payable under First Schedule, and not exemption. In case of beneficial provision. The rule of liberal interpretation is to be observed as held by Supreme Court of Pakistan in case reported as Shezan Limited vs. Abdul Ghaffar (1992 SCMR 2400) wherein it was held that " Since it is a beneficial provision, designed and intended for the benefit of tenants, it is to be construed liberally so that it may suppress the mischief aimed at, and may advance remedy."

3.2. Lahore High Court Order Holds the Field

The SHC order was duly considered by Lahore High Court and it even refused to admit reference filed by department. The Lahore High Court confirmed the view taken by ATIR that in a situation where due to declaration of loss no tax was payable or paid or nil or zero tax was paid under the normal tax regime, the taxpayer cannot be denied right of carry forward of minimum tax u/s 113(2)(c) of ITO. It was further clarified that Appellate Court i.e. LHC was not required to give its independent reasoning and it had all the powers to merely approve the findings of the forum below and this short cut is not offensive to fair trial under Article 10-A of the Constitution.

4. TOPIC OF THE MONTH

- **CLASSIFICATION OF INCOME FOR TAXABILITY "FEE FOR TECHNICAL SERVICE OR BUSINESS INCOME"**

➤ PREAMBLE

Bringing you very customary part of our newsletter, the topic of the month segment. After our very concerned call we have decided our topic of the month to be

Classification of income between Fee for Technical Service and Business Profits for taxability purpose in international transactions. The reason to select this topic is the confusion which happens while categorizing income into Business Income and Technical Fee for taxability purpose.

The difference arises on the part of taxability where business income of non-residents is exempt from Pakistan Tax ambit and therefore no withholding is required, whereas Fee for technical services falls under the Pakistan Tax ambit and therefore taxability is required by taxpayers in Pakistan.

We will define, differentiate, classify, and elaborate Business Profits and Fee for Technical Service in order to minimize the confusion and efficiency in tax compliance.

1. DEFINITION AS PER INCOME TAX ORDINANCE, 2001

i. BUSINESS PROFITS

Profits which are chargeable to tax under the head “Income from Business” will be as follows:

- a. Profits and Gains of any business carried by a person at any time of a tax year;
- b. Profits derived by any trade, professional or similar association from the sale of goods or provision of services to its members;
- c. Profit derived from the hire or lease of tangible movable property i.e. leasing business.
- d. The fair market value of any benefit or perquisite, whether convertible into money or not, derived by a person in the course of, or by virtue of, a past, present, or prospective business relationship; and
- e. Any management fee derived by a management company (including a modaraba management company).

ii. FEE FOR TECHNICAL SERVICE

The term “Fee for Technical Service” refers to payments of any kind to any person, other than to an employee of the person making the payments in consideration for any services of a technical, managerial or consultancy nature. The Fee should not be related to any service related to the

Secondary Sector of the industry i.e. manufacturing or construction etc.

2. TAXABILITY OF BUSINESS PROFITS AS PER DOUBLE TAX TREATIES [DTT]

The article “Business profits” as per DDT states that the right to tax business profits is **only** in the country of residence. The country of source has the right to tax only if the enterprise carries on business through a Permanent Enterprises [“PE”] situated in the country of source and to the extent of profits attributable to PE, discussed in our earlier version of monthly newsletter.

In case where the enterprise of a country carries on business through PE in the other country, the country of source may have the right to tax the following profits:

- 1) Profits attributable directly to such PE situated in the country of source.
- 2) Profits attributable to sale of similar goods in the other country as sold by the PE even when it is not sold by such PE.
- 3) Profits attributable to any other activities carried on in the other country where such activities carried out are similar to that carried out by the PE.

The scope of Business profits taxability is very wide in scope as per DTT, wherein it also provides right to the country of source to tax the profits attributable to activities which are similar to the activities carried on by the PE even though these are not carried on by the PE.

ILLUSTRATION

B Inc. a UAE based company is carrying on the business of trading in garments. The company carries on its operations through A Ltd, its PE situated in Pakistan which is also into trading of garments. According to Business profits in DTT, the profits attributable to operations carried out by A Ltd would be taxable in Pakistan. Further say suppose, B Inc. is also engaged in sales in Pakistan of the similar type of garments dealt in by A Ltd through an independent agent. In normal scenario the independent agent does not constitute as PE of B Inc. as per DTT, however, as per the provisions of Business Profits in DTT, profits attributable to such sales made by the independent agent will also be taxed in Pakistan.

Business profits definition as per DTT includes the word “**may be taxed**” with respect to right of the country of source does not have the **only** right to tax the profits attributable to PE. If as per domestic laws of the country of residence, the profits of PE are taxable in the country of residence, such profits will be taxed both in the country of source and the country of residence with relief of taxes paid in country of source available against the taxes payable in the country of residence.

ILLUSTRATION

Nature of Payment	Country of source	Country of Residence
Business Profits where there is no PE situated in the Country of Source.	No right to tax	Only right to tax
Business profits attributable to PE situated in the Country of Source	Fundamental right to tax	Additional right to tax

3. TAXABILITY OF FEE FOR TECHNICAL SERVICE AS PER DTT

Fee for Technical Service arising in a Contracting State which are derived by a resident of the other Contracting State **may** be taxed in that other state.

However, such technical fees **may** also be taxed in the Contracting State in which they arise, and according to the laws of that State, but where the beneficial owner of such technical fees is a resident of the other Contracting State, **the tax charged should not exceed 12 percent of the gross amount of the technical fees.**

4. TAXABILITY OF FEE FOR TECHNICAL SERVICE PAID TO NON-RESIDENT AS PER ITO

As per ITO, Fee for Technical Service when payable to a non-resident person by a resident person or a permanent establishment of a non-resident in Pakistan will be as follows:

A Technical Fee will be considered a Pakistan-source income if it is-

- (a) Paid by a resident person, except where the fee is payable in respect of services utilized in a business carried on by the resident outside Pakistan through a permanent establishment; or
- (b) Borne by a permanent establishment in Pakistan of a non-resident person.

5. PROFIT WHICH FALLS UNDER THE SCOPE OF BUSINESS PROFITS RATHER THAN FEE FOR TECHNICAL SERVICE

From the above it is evident that the Non- resident will prefer to treat income as Income from business rather than FTS as it exempts from tax in Pakistan. It is worthwhile to mention here that FTS is chargeable at gross amount whereas business profits are chargeable at gross revenue minus allowable expenses.

The provisions of taxability of Fee for Technical Service will not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, or performs in that other State independent personal services from a fixed base therein and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of **Business Profits** or **Independent Personal Services**, will apply according to the case.

More specifically classification of services in fee for technical service will be when technical knowledge, experience, skill, know-how, process, development or transfer of technical plan to the other party for use in future without further reference to the provider is made available. Therefore, provision of technical staff on for setting up business, property selection and retail operations, products and merchandise selection is not transfer of technical knowledge, hence these are not FTS. Similarly, provision of telecommunication network facilities providing interconnectivity to 3rd party, are not transfer of technology and hence no technical service. FTS will also not apply where there is PE of non-resident.

DISCLAIMER

This newsletter is the property of Tola Associates and contents of the same may not be used or reproduced for any purpose without prior permission of Tola Associates in writing.

The contents of this newsletter may not be exhaustive and are based on the laws as of date unless otherwise specified. Tax laws are subject to changes from time to time and as such any changes may affect the contents.

The comments in the newsletter are a matter of interpretation of law and is based on author's judgments and experience, therefore, it cannot be said with certainty that the author's comments would be accepted or agreed by the tax authorities. Furthermore, this newsletter does not extend any guarantee, financial or otherwise. Tola Associates do not accept nor assume any responsibility, whatsoever, for any purpose.

This newsletter is circulated electronically free of cost for general public to create tax awareness in the country.



OFFICES IN PAKISTAN

Karachi Address:

**Office no. 408, 4th Floor, CTC
Building, Clifton Block-8,
Karachi**

Tel #: +92 21 3530 3293-6

Islambad 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