



# TAX PAK

NEWSLETTER BY  
TOLA ASSOCIATES

JANUARY  
**2021**



<https://goo.gl/LFiWyx>



<https://goo.gl/QDM4ZM>

## ADDRESS



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



Email: [connect@tolaassociates.com](mailto:connect@tolaassociates.com)



Ph# 35303294-6



Website: [www.tolaassociates.com](http://www.tolaassociates.com)

**THIS PAGE IS LEFT BLANK INTENTIONALLY**

## CONTENTS

### Tax Notifications/ Circulars

#### Corporate Notification/ Circulars

**Lahore High Court - Input/  
Refund claimed on Invoices  
having connection with Tax  
Fraud-Initial burden of proof  
lies on FBR**

**Topic of the Month -  
Bartering and Trade Exchanges,  
Tax treatments in Income Tax  
and Sales Tax Laws**

## 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

A very sincere and warm welcome to our readers to the first edition of the new year of our monthly newsletter. We strive hard to gather and compile quality content for our readers to keep them interested and intrigued. We help keep them abreast with the recent developments in the tax system of Pakistan. By the grace of the Almighty Allah and devotion of our readers we continue to perform our noble duty to cultivate the masses towards tax and corporate enlightenment.



With that being said, according to our scheme of things, we start our newsletter with analysis on the notifications passed by the Tax regulatory bodies including FBR and SRB, etc. Moving forward, the mid-section of our newsletter comprises of brief analysis on the corporate notifications passed by the Securities and Exchange Commission of Pakistan "SECP" and our comments on a recent verdict passed by the Judiciary Body pertaining to tax. For this month, the Case Law section pertains to a verdict passed by the Lahore High Court on the matter of assessment of initial burden of proof in tax fraud cases with respect to input adjustment of sales tax.

In the end, we conclude our newsletter with our customary Topic of the Month, which for this month happens to be "Barter and Trade Exchange, Tax treatments in Income Tax and Sales Tax Laws" which is set to clear the air regarding the peculiar concept of Taxation of Income generated via Barter and Trade Exchange.

All our readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com), or download our mobile application from the links mentioned below, 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. NOTIFICATIONS/ CIRCULARS

### A. INLAND REVENUE REWARD RULES, 2021

FBR has issued SRO 78(I)/2021 dated 22<sup>nd</sup> January 2021, whereby the reward rules issued from time to time have been consolidated to provide incentives to its officers/third parties for detecting of tax evasion, meritorious service and outstanding performance.

#### i. DEFINITION OF TAX SOUGHT TO BE EVADED

The meaning of this term is defined as follows:

##### In Sales Tax/FED:

- Detection of un-registered person liable to be registered;
- Detection of evasion or non-assessment of tax by a registered person; or
- Detection of payment of inadmissible refunds or claims of inadmissible input tax.

Resulting in and leading to an assessment/determination of tax owed to the state. The reward will only be given when penalty under Sales Tax/FED had been imposed.

##### In Income Tax:

Difference between tax originally paid on the basis of income originally assessed/declared and the tax calculated/computed on account of re-assessment of income framed on the basis of information collected or provided resulting in and leading to an assessment/determination of tax owed to the state. The reward will only be given when penalty under Serial no. 12 of Section 182(1) had been imposed.

#### ii. REWARD FOR OFFICERS OF FBR

- Officer/member of staff detecting the tax evasion: Lower of 20% of the tax sought to be evaded or 2 years' salary as at the time of detection/filing of detection report.
- Officer/member of staff completing the assessment/adjudication: Lower of 20% of the tax sought to be evaded or 2 years' salary as at the time of completion of adjudication/assessment.
- If no appeal/revision has been filed against the assessment, the whole of the admissible reward shall

be paid immediately after expiry of limitation for filling of appeal/revision.

- In case an appeal has been filed against the assessment order the admissible reward claim would be processed as follows:
  - 50% upon confirmation at 1<sup>st</sup> appeal forum; and
  - 50% upon completion of appellate process on point of fact i.e., Appellate Tribunal Inland Revenue (ATIR)
- The reward will be paid only if the tax sought to be evaded has been recovered at least to the extent of 50% of the tax sought to be evaded.
- In case detection and assessment have been made by the same officer, he shall be entitled to a reward of the lower of 20% of the tax sought to be evaded or 3 years' salary as at the time of detection/filing of the detection report.
- In case there are more than one claimant of reward on account of detection or assessment, the reward would be apportioned as per the recommendation of the Chief Commissioner or Director General concerned.

#### iii. REWARD FOR INFORMERS/WHISTLEBLOWER

Any person, not being an employee of FBR, who:

- Gets himself registered for the purpose of being an informer;
- provides information in shape of concrete evidence, leading to detection of tax evasion, formulation of assessment/reassessment, and eventual recovery of the evaded taxes; and
- lodges a claim on the prescribed format on the conclusion of the processes will be eligible for the reward as informer/whistle blower.

An Informer/Whistleblower shall be entitled to a reward of lower of 20% of tax sought to be evaded or Rs. 5 million, in a single case.

#### iv. REWARD FOR MERITORIOUS SERVICES

Meritorious Services covers following:

- Exceeding budgetary targets through extra-ordinary planning and efforts.
- Displaying exceptional results in the recovery of arrears

- Enlarging the base of taxpayers by adding large number of new taxpayers whose contribution to revenues would be substantial.
- Exceptional performance in defending cases (by the Departmental Representatives) before ATIR.
- Displaying extra-ordinary devotion to duty and acumen towards making some original contribution.

The amount of reward for meritorious services in no case will be between 3 and 6 salaries in each single case.

#### **v. REWARD FOR EXTRAORDINARY PERFORMANCE**

The term “Extraordinary Performance” means a duly notified activity-oriented task assigned to and performed by an officer or a staff or a group of officers/staff up to an exhibited degree of excellence and within the timelines prescribed and pre-notified for the purpose.

The amount of reward for extraordinary performance will be between 12 and 24 salaries in each single case i.e., for each officer/staff involved in the assigned task.

#### **B. INCOME TAX EXEMPTION ON WHEAT IMPORT**

The FBR has issued SRO 99(I)/2021 dated 26-January-2021 whereby import of 300,000 metric tons of wheat by Trading Corporation of Pakistan has been exempted from tax u/s 148 of Income Tax Ordinance, 2001.

#### **C. FBR CLARIFICATION ON TAXPAYER PROFILE U/S 114A OF ITO**

The FBR has issued Circular C.no.3(2)/2021-Court Matter/1008-R dated 20th January 2021 whereby following clarification is made in respect of profile updating date extended till 31<sup>st</sup> March 2021:

- Salaried individual is not required to update their tax profile, however, every person applying for new registration u/s 181 of ITO including salaried persons are required to update.
- The option to verify changes has been given in tax profile for submission of changes made in the profile.
- E-intermediaries have been enabled to update tax profiles of taxpayers, however, e-intermediary needs to be nominated by taxpayer in order to update tax profile.

#### **D. CONSTITUTION OF ASSESSMENT OVERSIGHT COMMITTEE**

In order to facilitate taxpayers, reduce burden on formal appeal system and effecting speedy recoveries, a new Section 122D enabling agreed assessment has been inserted through the Finance Act, 2020. As per section 122D, if a taxpayer intends to settle his case on or after receipt of a notice for amendment of assessment under Section 122(9) of the Ordinance, he shall have the option of filing an offer of settlement in the prescribed form before the Assessment Oversight Committee for resolution of his dispute.

The FBR vide SRO no. CCIR/RTO/Admin/8060 dated 07-01-2021 in pursuance of availability of e-module of agreed assessment u/s 122D of ITO in IRIS and in light of Sub-Section (5) of Section 122D of ITO, the following “Assessment Oversight Committee is constituted with immediate effect:

| S. No. | Name   | Designation |
|--------|--|-------------|
| 1      | Chief Commissioner IR, RTO, Lahore   | Chairperson |
| 2      | Commissioner Inland Revenue concerned (having jurisdiction over the taxpayer)  | Member      |
| 3      | Additional Commissioner Inland Revenue (having jurisdiction over the taxpayer) | Member      |

The following procedure will be followed:

- The Committee is not empowered to accept, or process offer of settlement in cases involving concealment of income or where interpretation of question of law is involved having effect on other cases.
- Where a taxpayer, in response to a notice under sub-section (9) of Section 122, intends to settle his case he may file offer of settlement in the prescribed form before the committee, in addition to filling reply to the Commissioner.
- The Commissioner after examining the aforesaid offer may call for the record of the case and after affording opportunity of being heard to the taxpayer, may decide to accept, or modify the offer of the taxpayer through consensus and communicate its decision to the taxpayer.

- Where the taxpayer is satisfied with the decision of the Committee, the taxpayer shall deposit the amount of tax payable including any amount of penalty and default surcharge as per decision of the Committee and the Commissioner shall amend assessment in accordance with the decision of the Committee after payment of tax, penalty, and default surcharge, as per decision of the Committee.
- The taxpayer shall waive the right to prefer appeal against such amended assessment and no further proceedings shall be undertaken in respect of issues decided by the Committee unless the tax has not been deposited by the taxpayer.
- Where the Committee has not been able to arrive at a consensus or where the taxpayer is not satisfied with the decision of Committee, the case shall be referred back to the Commissioner for decision on the basis of reply of the taxpayer in response to notice under sub-section (9) of Section 122 notwithstanding proceedings or decisions of the Committee.

The Committee shall finalize the applications filed under section 122D of ITO within 30 days of receipt of application or within an extended period of 60 days, for reasons to be recorded in writing by Committee.

#### **E. SALES TAX ON IT SERVICES IN ISLAMABAD CAPITAL TERRITORY**

The FBR issued SRO 495(I)/2016 dated 4<sup>th</sup> July 2016, to specify reduce rates for sale tax on services rendered within ICT. As per SRO, the rates for IT services and IT enabled services are 5% with input adjustment. Now explanation of nature of these services has been added for clarity of their scope as follows:

- **IT Services:** include software development, software maintenance, system integration, web design, web development, web hosting and network design.
- **IT enabled services:** include inbound or outbound call centers, medical transaction, remote monitoring, graphics design, accounting services, HR services, telemedicine's centers, data entry operations, locally produced television programs and insurance claims processing.

#### **F. RESTRICTION ON INPUT TAX – SECTION 8B**

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 lower profit margin he is required to pay 10% of his output tax to FBR.

##### **EXCEPTIONS:**

This restriction of 90% is not applicable in cases mentioned in Table 1 of SRO 1190 dated 2.10.2019. Now FBR has added "Sales tax registered manufacturing companies of cold rolled, GI or coated coils/sheets which are listed on Pakistan Stock Exchange" in this list vide SRO 98(I)/2021 dated 26<sup>th</sup> January 2021.

The FBR has power to increase the limit from 90% to 95% in any particular case. FBR has specified some cases where limit is 95% in Table-2 of SRO 1190 dated 2.10.2019 including "Automobile manufacturing companies which are listed on Pakistan Stock Exchange till 31<sup>st</sup> December 2020". Now FBR has extended date of listing of these companies till 30<sup>th</sup> June 2021 to avail the benefit, vide SRO 98(I)/2021 dated 26<sup>th</sup> January 2021.

#### **G. SALES TAX EXEMPTION ON THE IMPORT OF CRYOGENIC TANKS (FOR OXYGEN GAS)**

The Ministry of Finance vide SRO 97(I)/2021 dated 26<sup>th</sup> January 2021, has exempted sales tax on import of cryogenic tanks (for oxygen gas) (PCT heading 7311.0030) for medical purposes, from whole of the sales tax for a period of 3 months starting from 29<sup>th</sup> December 2020, for letters of credit opened or goods declaration forms filed on or after the 29<sup>th</sup> December 2020.

#### **H. ESTABLISHMENT OF EXPORT ORIENTED SECTORS REGISTRATION CELL (ESRC)**

The FBR had earlier issued SOPs for registration of new manufacturers for concessionary tariff rates on supply of Electricity and Gas vide Circular no. 04 of 2020 dated 31<sup>st</sup> December 2020. Now, in continuation to it, FBR has issued Letter no. C.No. 1(1) ST-LP&E/ZR//2017/3165-R dated 7<sup>th</sup> January 2021 whereby it has established above cell w.e.f. 7<sup>th</sup> January 2021 for manufacturers of export-oriented sectors/zero rated sectors to process request for



concessionary tariff rates on supply of electricity and gas. The functions of cell will be:

- To examine the particulars and recommendations of the respective Associations and counter-verify particulars of the taxpayer including declarations in the registration profile etc. required and forward the case to the Ministry of Commerce for further necessary action.
- To liaise with Inland Revenue field formations for ground-check, report, and recommendations, in case any discrepancy in the verification report and data available with FBR is spotted.

### **I. SALES TAX RULES ON SUPPLY FROM TAX EXEMPT AREA**

Section 40D was inserted in Sales Tax Act, 1990 through The Tax Laws (Second Amendment) Ordinance, 2019, containing provisions / control measures relating to monitoring of goods supplied from tax exempt areas to Pakistan. The term 'tax exempt areas' has been defined as Azad Jammu and Kashmir, Gilgit Baltistan, Tribal Areas and other prescribed areas.

Now to make it operational FBR has issued Rules vide SRO 96(I)/2021 dated 26th January 2021 with following provisions:

#### **i. REGISTRATION AND LIABILITY OF PERSONS BRINGING TAXABLE GOODS FROM TAX-EXEMPT AREAS**

The person bringing goods shall be liable to get registration before supply and furnish all the prescribed documents. In case of goods brought from Azad Kashmir to taxable area in Pakistan, the input paid under AJK will be adjustable against output tax in Taxable area.

#### **ii. E-TRANSPORT ADVICE**

The registered person shall before supplying goods in taxable area shall electronically generate E-transport advice in form STR-32 on FBR portal. The e-advice can only be generated by persons not blacklisted or suspended and have at least filed 2 returns of immediately preceding tax periods.

The e-advice can be cancelled within earlier of 12 hours of its issuance or before it is examined by check post in case

any change in delivery or details furnished. It shall be valid for 1 day for distance up to 100 km in taxable area and 1 additional day for every 100 km thereafter. The CIR can extend the validity period on receiving application. The recipient of supply shall accept or reject this e-advice on FBR portal within earlier of goods delivery or intimation. However, if not accepted or rejected within 48 hours of delivery or intimation, it will be assumed to be accepted. This acceptance or rejection is not required if supplier directly supplies its goods to consumers.

One advice to be issued against one invoice and e-advice may be updated with regard to vehicle particulars while goods are in transit, after due intimation to CIR with reasons.

#### **iii. PRESCRIBED DOCUMENTS**

Every vehicle shall contain following documents till its destination mentioned in e-advice:

- Sales Tax invoice or serially number invoice (in case of exempt goods) containing all particulars and mentioning legal provisions of exemption.
- Stock advice in form-33 and ST registration Form-1 for manufacturers / importers cum wholesaler, distributors, and retailers.
- Goods Declaration in case of imported goods
- E-transport advice

#### **iv. CHECK POSTS AND POWERS OF AUTHORIZED OFFICER**

The FBR shall specify locations of check posts, including mobile teams through notification. At every check post the authorized officer shall scrutinize and may intercept or search any conveyance. The officers can seize goods which are supplied in contravention to these rules. The adjudicating authority shall have powers to confiscate taxable goods through order in writing and such goods shall vest in Federal Government.

## **2. CORPORATE NOTIFICATIONS / CIRCULARS**

### **A. PREAMBLE**

The Security & Exchange Commission of Pakistan ("SECP") is a financial regulator for the corporate sector in Pakistan. The SECP was formed on January 1, 1990, it is the successor to the previously established Corporate Law

Authority or CLA. The SECP scope of services includes, asset management services, investment advisory services, investment financial services, venture capital investment, etc. By approach, SECP generally promotes the free market model. The working body of SECP is headed by the CEO who is vested with the operational and executive powers further assisted by four commissioners who in turn manage the various operational units. The SECP head-office is located in Islamabad, the capital territory, while its regional offices also known as Company Registration offices or “CRO(s)” are present in Islamabad, Karachi, Lahore, Multan, Peshawar, Sukkur, Faisalabad, Quetta and Gilgit-Baltistan.

#### **B. DELEGATION OF POWERS OF THE COMMISSION TO OFFICERS OF INSURANCE DIVISION.**

The SECP vide SRO 20 dated 11 January 2021 and in continuation of SRO 744 of 2020 dated 17 August 2020 delegated further power and functions to its Commissioner (Insurance) and officers of the insurance division.

Now the Commissioner have rights to exercise his powers and to refuse issue or renewed of an insurance broking license.

#### **C. AMENDMENTS IN THE PUBLIC OFFERING (REGULATED SECURITIES ACTIVITIES LICENSING) REGULATIONS, 2017.**

The SECP vide SRO 50 dated 18 January 2021 made addition in regulation 12 of the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017.

Sub-Regulation 5A has been added, wherein, it has been made compulsory for every development financial institution engaged in business of underwriting to submit an affidavit that it is compliant with all the requirements of above-mentioned regulations, along with fee of Rs. 100,000/-.

#### **D. AMENDMENTS TO THE SECURITIES AND FUTURES ADVISERS (LICENSING AND OPERATIONS) REGULATIONS, 2017.**

The SECP vide SRO 49 dated 15 January 2021 made amendments to the Securities and Futures Advisors (Licensing and Operations) Regulations, 2017 as follows;

- i. The Education requirement to qualify as securities advisor has been substituted by 16 years of education in place of a post-graduate degree.
- ii. The Experience requirement to qualify as a securities advisor has been reduced from 5 years to 3 years.
- iii. The provisions relating to Companies Ordinance, 1984 has been substituted by Companies Act, 2017.

#### **E. STRUCTURING OF DEBT SECURITIES REGULATIONS, 2020.**

The SECP vide SRO 15 dated 11 January 2021 issued Structuring of Debt Securities Regulations, 2020. The same can be accessed via the link given below:  
<https://bit.ly/3pD8qhv>

#### **3. LAHORE HIGH COURT [LHC] – INPUT /REFUND CLAIMED ON INVOICES HAVING CONNECTION WITH TAX FRAUD-INITIAL BURDEN OF PROOF LIES ON FBR**

The rules for claiming input are provided in Section 8 of Sales Tax Act, 1990. As per Section 8(ca), a registered person is not entitled to claim or deduct input tax paid on the goods or services in respect of which sales tax has not been deposited in the Government treasury by the respective supplier. Section 21 of Act read with Rule 12 of Sales Tax Rules, 2006 prescribe rules for De-registration, blacklisting and suspension of registration. As per Section 21 of Act:

- The FBR or any officer, authorized in this behalf, may de-register a registered person or such class of registered persons not required to be registered under this Act.
- If the Commissioner is satisfied that a registered person is found to have issued fake invoices or has otherwise committed tax fraud, he may blacklist such person or suspend his registration in accordance with Rules.
- During the period of suspension of registration, the **invoices issued by such person shall not be entertained for the purposes of sales tax refund or input tax credit**, and once such person is blacklisted,



the refund or input tax credit claimed against the invoices issued by him, **whether prior or after such blacklisting**, shall be rejected through a **self-speaking** appealable order and after affording an opportunity of being heard to such person.

In case reported as Commissioner Inland Revenue vs M.s Bridge Engineering Company in S.T.R. No. 62 of 2017, the taxpayer was issued SCN and then order on grounds that it received refund of input tax against sales tax invoices issued by suspended/blacklisted units. However, the appeal filed with CIRA decided in favour of taxpayer. The department file appeal in ATIR which was also rejected as a result a Reference Application by department was filed with LHC on following question of law:

*“Whether Taxation Officer was justified to invoke the provisions of section 21(3) of the Sales Tax Act, 1990 or Rule 12(5) of the Sales Tax Rules, 2006 for not entertaining invoices, issued prior to blacklisting of supplier, for tax credit or refund **without establishing**, through self-speaking order, that the invoices were fake or flying because the claimed tax was not deposited in National Exchequer?”*

This question of law was answered by LHC in **NEGATIVE** hence rejecting department’s reference on basis of following principals:

#### 1. LAW TO BE APPLIED ON BASIS OF FACTS ASCERTAINED

The LHC held that determination of every right or liability claimed or asserted in a legal proceeding depends upon the ascertainment of facts and the application of the law to the facts so found. It is a normal feature of the judicial process **first to discover the facts** and then to determine what rights and liabilities follow from the application of the law to the facts found.

- Commissioner or Taxation Officer has to ascertain the fact that the invoices were issued **during** suspended or blacklisted period.
- In case invoices issued prior to blacklisting, the cause or reason for blacklisting has some **nexus** with the invoices.

#### 2. INITIAL BURDEN OF PROOF

The LHC held that initial burden lies on the department that invoices have been issued during suspended or blacklisted period and in case invoices were not issued during period of blacklisting, the cause or reason for blacklisting has some nexus with the invoices. Taxation Officer did not establish that said invoices were either fake or flying or the claimed tax was not deposited in the Government Exchequer. To deny adjustment or refund of a tax deposited in the Treasury, if a registered person is entitled under that law, is against the legislative will. This burden can only be shifted upon taxpayer in cases of tax fraud in accordance with rules contained in Section 2(37) of Sales Tax Act.

In other words, the initial burden lies on the Department to show that an assessee, knowingly, dishonestly, or fraudulently and without any lawful excuse has done any act or has caused to be done or has omitted to take any action or has caused the omission to take any action in contravention of duties or obligations imposed under the Act or rules or instructions issued by FBR. Once this burden is discharged by the Department, only then, the burden is shifted to the taxpayer to establish that the act done was without any knowledge on his part or without any intention of dishonesty or fraud and was done with any lawful excuse.

#### 4. TOPIC OF THE MONTH

- **BARTERING AND TRADE EXCHANGES, TAX TREATMENTS IN INCOME TAX AND SALES TAX LAWS**

##### ➤ PREAMBLE

We conclude our Newsletter with our Topic of the month, which happens to be “Bartering and Trade Exchanges, Tax Treatments in Income Tax and Sales Tax Laws” for this month.

The concept of bartering is an old one where payment was made in kind rather than in Cash. Bartering takes place when two or more parties – such as individuals or businesses – trade in goods or services evenly without the use of a monetary tool.

Exchanging goods and services with another business owner i.e., bartering is a common practice, and can make excellent sense in today's economy,

Our motive in this month's topic is to elaborate the presence of Barter System in the current economies and its tax related implications in both the Income Tax and Sales Tax Laws and regulations in Pakistan.

### A. HOW BARTER TRADE TAKES PLACE?

The barter trade involves the direct exchange of goods or services for other goods or services without reference to money or money value. The Barter system is based on reciprocity and it requires mutual coincidence of wants between traders. A barter economy is a cashless economic system in which services and goods are traded at negotiated rates.

An example of the Barter system exists in the rural areas on Sindh, Pakistan, named as Goats for Water (GFW) program. The program enables the people of rural Sindh to trade their goats for solar powered water pump or solar home-lighting solutions in order to counter acute water and energy crises in their areas.

#### i. BARTER AND ENTREPRENEURSHIP

For centuries people exchanged goods and services off a barter system; it has only been recently that so much emphasis has been placed on monetary exchanges. If you know what people want, then you can always negotiate a deal with them that favors both parties.

A sports grounds management company may strike a deal with schools to develop their sports grounds in exchange for them to use those grounds in evening to rent out to sports teams. Here the school management benefitted in form of developed sports grounds while on the other, the ground management company benefitted from letting out those grounds. Both benefitted by the transaction. The transaction occurred and no cash was involved.

Transacting business with someone does not need to be done with cut and dry invoices. However, entrepreneurs should keep in mind before they start bartering that **just because money is not being exchanged in the bartering process does not mean that it is exempt from taxes.** Tax

implications remain for both parties and should be recorded at fair market value.

#### ii. BARTER AS OPEN-SOURCE SOFTWARE DEVELOPMENTS AND BLOCKCHAIN

Open source is a revolutionary software development model where complex software projects are built without central management. If we look closely at how the open-source model works in practice, we realize that it is a closed system, exclusive only to open-source developers. The only way to influence the direction of a project is by joining the open-source community, understanding the written and the unwritten rules, learning how to contribute, the coding standards, etc., and doing it yourself. It is where the barter system analogy comes from, where the software is built—that means in order to take something, you must also be a producer yourself and give something back in return. And that is by exchanging your time and knowledge for getting something done. Open-source platform is a place where open-source developers interact with other open-source developers and produce open source software the open source way.

However, the limitations of pure barter system such as lack of divisibility, storing value, transferring value etc. give way to development of Blockchain into picture. The blockchain tries to improve transparency, decentralization and subsidization and establish a direct link between open-source users and developers.

#### iii. DIGITAL BARTER AND BLOCKCHAIN IN AGRICULTURE DURING PANDEMIC

Forbes magazine in an article written on 27 January 2021 by Micheal O'Loughlin has provided classical example of Argentina agriculture economy during pandemic where tokenized agriculture via Blockchain technology is indeed providing significant opportunities for crucial economic relief under hyperinflation. Such a marketplace enables farmers to redeem and trade their tokenized titles with any other tokenized asset on the Abakus platform. This means that **soybeans could effectively work like an asset-backed currency**, and be traded for cattle, corn, or even the peso. "In an inflation-stricken country, access to physically-backed assets can be the difference between surviving and thriving for these farmers", said Johannes

Schweifer, CEO of Core Ledger. Meanwhile, Martin Furst, CEO of Abakus commented, “the tokenization of agricultural assets brings greater agency to farmers who can now sell the physical-backed assets according to their own needs.”

## **B. TAX TREATMENTS OF TRANSACTIONS UNDER BARTER SYSTEM.**

As general rule, when valuing the payment arising from barter or countertrade transactions, we will accept a fair market value as adequately reflecting the money value or arm’s length, as applicable. In most cases, we will accept as a fair market value the cash price that the taxpayer would normally have charged a stranger for the services or for the sale of the goods or property.

Business Transactions involving bartering or trade exchanges are subject to the same income tax and GST treatment as normal cash or credit transactions.

Payment may be in money or kind, or in some instances a combination of these.

Barter transactions are assessable and deductible for income tax purposes to the same extent as other cash and credit transactions.

## **C. BARTER EXCHANGE AS PER INCOME TAX ORDINANCE, 2001 [ITO].**

- **Capital Gain and Other Income**

The Taxability of Consideration received in kind or as per barter system, is elaborated vide Section 77(1) of the ITO. As per the section, “*The consideration received by a person on disposal of an asset shall be the total amount received by the person for the asset or the fair market value thereof, whichever is the higher, including the fair market value of any consideration received in kind determined at the time of disposal*”.

The determination of fair market value of an asset or service being traded with another asset or service is discussed in Section 68 of the ITO. Section 68 gives clues regarding taxation of barter trade by extracting value of any property, asset, service, benefit, or perquisite for the purpose of taxability of such exchange.

The determination of fair market value for taxability of a barter exchange depends on the price of exchange of an asset or service that would ordinarily fetch on sale or supply in the open market at that time.

- **Employee/Employer Relationship**

Many transactions between employer and employee also involve the exchange of non-cash considerations. E.g., in rent free use of employers property, a barter exchange of the rental value of the employer’s property for the employees’ services takes place. Interest free loan between employer and employee is another example of barter exchange in which employee’s services are exchanged for the use of employers’ money.

There may be many other similar examples. ITO provides specific rules for some of them, for e.g., rent free accommodation, medical facilities, provision of car, stock options, interest free loans, etc. However, general rule of fair market value of any benefit will apply, and the fair market value of the benefit is treated as salary where any specific rule is not provided.

- **Relation between Associates**

Bartering is most common in practice in Associated Companies in case of both inland and cross border transactions raising tax issues if transfer pricing is aimed at tax avoidance. There is a general anti-avoidance rule in the Pakistani tax law that applies to transfer pricing (TP). In addition, the arm’s length standard was firstly introduced in Section 108, Chapter V, part IV of the Income Tax Ordinance (ITO) 2001. The ITO, amended in 2017, provides powers to the Pakistan’s Federal Board of Revenue (FBR) to distribute, apportion or allocate income, deductions or tax credits between the persons as is necessary to reflect the income that the persons would have realized in an arm’s length transaction. Furthermore, the Section 108 determines the methods and steps to establish the arm’s length standard. This section resembles with the Article 9 of the OECD Model Tax Convention.

## **D. BARTER EXCHANGE AS PER SALES TAX ACT, 1990 [STA].**

For the purpose of determining taxable value of supply, Section 46(a)(i) discusses the case where the

Consideration for a supply is received in kind. As per the section, in cases where the consideration of a supply is received in kind or is partly in kind and partly in money, the value of the supply will mean the open market price of the supply excluding the amount of tax.

In continuation to above, the open market price used in the elaboration above is defined in section 2(19) of the STA. As per the section, *““open market price” means the consideration in money which that supply, or a similar supply would generally fetch in an open market”*.

### 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**