



TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES

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EDITORIAL NOTE

Happy Ramazan!

We welcome our readers to yet another edition of our monthly newsletter for April 2021. This is the 42nd edition of TAX PAK which shows our commitment and devotion to educate the masses through our research and analysis. Amid the third wave of COVID-19, which has clearly shown signs of being more devastating than its previous counterparts, we have managed to compile this newsletter, by the grace of Almighty Allah, in order to facilitate our readers with updates from the tax and corporate world.

Coming to our scheme of things, we start our newsletter with analysis on the notifications passed by the Tax regulatory bodies including FBR, 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 Sindh High Court on the matter of Withholding Tax under section 153(1)(b) of the Income Tax Ordinance, 2001.

We conclude our newsletter with our customary "Topic of the Month" which, for this month, covers "Freelancing in Pakistan and its Taxation". This topic has been selected keeping in mind that FBR has recently tightened the noose around the Freelancing industry and is trying to bring the Freelancers into the tax net as well.

We expect that this edition, as in the past, will also prove to be informative and beneficial for our large circle of readers.

All our readers are requested to visit our website 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



TAX NOTIFICATIONS/ CIRCULARS

1. EXEMPTION ON PROFIT ON DEBT - CLAUSE 75 OF PART 1 OF SECOND SCHEDULE

As per Clause 75, any income of an agency of a foreign Government, a foreign national (company, firm or association of persons), or any other non-resident person **approved by the Federal Government for the purposes of this clause**, from profit on moneys borrowed under a loan agreement or in respect of foreign currency instrument **approved** by the Federal Government [FG] shall be exempt from tax.

Now FBR has issued SRO 453(I)/2021 dated April 7, 2021, whereby FG has now approved exemption for the purpose of this clause in respect of income of any agency of a foreign government, a foreign national (company, firm or association of persons) or any other non-resident person, from profit on money borrowed in respect of US\$ 500 million issued by the Pakistan Water and Power Development Authority.

2. PLACEMENT OF ADVOCATES ON THE PANEL OF FBR

FBR, through its letter No. C.No. 8/65/Appointment of Panel Advocates/2020 dated April 28, 2021, has nominated on the basis of merit, a panel of 21 advocates for 3 years, which may be assigned Court cases for pleadings before various Courts/Tribunals at Islamabad Station. It has been clarified that the matters relating to fee/special fee, appointment, performance evaluation, de-notification, conduct of the Advocates and other related matters will be governed by the SOPs/Policy guidelines circulated vide FBR's letters No. 176432 dated October 12, 2020, No. 129965-R dated October 24, 2017 and No. 9(2) PA/2020-21(Pt) dated January 26, 2021 and any other notification.

3. THE BALUCHISTAN DEVELOPMENT AND MAINTENANCE OF INFRASTRUCTURE CESS ACT, 2021

The Government of Baluchistan, vide Notification No. PAB/Legis. V (08)/2021 dated 09th April 2021, has promulgated 'The Baluchistan Development and Maintenance of Infrastructure Cess Act, 2021'. The Act was promulgated to levy and collect a cess on goods entering and leaving the Province from or for outside the country through rail, road, air and sea for the purpose of development and maintenance of infrastructure of the province. The Baluchistan Infrastructure Development Cess Act, 1990 is now repealed.

The salient features of the Act are as follows:

3.1 LEVY OF CESS

The cess shall be levied on goods imported or exported upon entering or leaving the province from or outside the country through rail, road, air and sea at following rates determined on basis of their value, as assessed by the Custom Authorities (total assessed value), net weight in kilograms (kgs) and distance in kilometers (km) except in case of gold where the cess shall be charged at standard rate of 0.125% of the value of gold:

Net Weight of Goods	Rate of Cess Along with Distance
Upto 1,250 kgs	1.10% of total assessed value + 1 paisa per (km)
Exceeding 1,250 kgs upto 2,030 kgs	1.11% of total assessed value + 1 paisa per km
Exceeding 2,030 kgs upto 4,060 kgs	1.12% of total assessed value + 1 paisa per km
Exceeding 4,060 kgs upto 8,120 kgs	1.13% of total assessed value + 1 paisa per km
Exceeding 8,120 kgs upto 16,000 kgs	1.14% of total assessed value + 1 paisa per km
Exceeding 16,000 kgs	1.15% of total assessed value + 1 paisa per km

3.2 PERSONS LIABLE TO PAY CESS

The owner of the goods entering or leaving the Province from or for outside the country by rail, road, air and sea, shall be liable to pay the cess levied on such goods under section 3 of the Act.

3.3 PAYMENT OF CESS

In case of goods imported into or exported out of Baluchistan, the Customs Act, 1969 shall, as nearly as possible, apply to the assessment, collection, payment and administration of the cess in so far as it relates to time, manner and mode of payment.

3.4 EXEMPTIONS

The Provincial Government, by notification in the official Gazette, may exempt any goods or category or class of goods from payment of whole or any part of the cess, payable under the Act.

3.5 PENALTY

Where the goods are removed, transported or shipped without payment of cess, the owner of goods shall be

liable to a penalty not more than the amount of cess, after expiry of one month.

3.6 WAIVER OF PENALTY

The Baluchistan Revenue Authority (BRA) may waive penalty leviable under the Act, upto the amount of Rs.200,000 subject to the conditions as it deems appropriate. For penalty over the abovementioned amount, BRA may obtain approval for waiver of penalty from the Government which may be subject to the conditions as may be imposed.

3.7 APPEALS

Any person, aggrieved by an order passed by any Officer of BRA in pursuance of this Act or the rules, may, within 30 days of the receipt of such order, prefer an appeal against such order to the Commissioner (Appeals).

3.8 CLAIM OF REFUND

The claim of refund if made within 3 months of the date of payment of cess, that has been paid or over-paid through inadvertence, error or mis-construction will be allowed.

3.9 JURISDICTION BARRED

No provision of this Act or any order made thereunder shall be called in question by or before any Court.

4. EXTENSION IN DATE FOR SUBMISSION OF SALES TAX ON SERVICES RETURN IN BALUCHISTAN REVENUE AUTHORITY FOR THE TAX PERIOD MARCH, 2021

The BRA, vide its letter no. BRA/STA&A/20-21/427 dated April 22, 2021, has extended the due date for filing of return for March 2021 from April 18, 2021 to April 30, 2021. However, there is no extension in last date for payment of tax i.e. April 15, 2021.

CORPORATE NOTIFICATIONS / CIRCULARS

A. THE MODARABA REGULATIONS 2020

SECP, vide SRO No.284 dated March 5, 2021, has issued Modaraba Regulations, 2021, which were previously circulated as draft regulations for public comments vide SRO No.1417 dated November 19, 2019.

The Regulations were published on the website on April 02, 2021 where the Commission has prescribed definitions and laid guidelines for the people involved in the Modaraba related transactions and services.

B. DELEGATION OF ANTI MONEY LAUNDERING ACT SANCTION RULES

The SECP, vide SRO No.283 dated March 05, 2021, has delegated several powers and functions previously under the jurisdiction of "The Commission" to "Executive Director, Adjudication Department 1, Adjudication Division, in the first phase".

In the second phase, the Commission has delegated the Power to decide imposition of sanction or otherwise by Oversight Body of Sindh Revenue Board from "The Commission" to "Commissioner Supervision CCD".

The SRO was published on the website on April 02, 2021.

C. DELEGATION OF POWERS

The SECP, vide SRO No.292 dated March 05, 2021, has delegated powers and functions to impose penalty on contravention of provisions of Companies (General Provisions and Forms) Regulations, 2018 from "The Commission" to "Head of Department, Adjudication Department-I, Adjudication Division".

The SRO was published on the website on April 02, 2021.

D. DRAFT AMENDMENTS TO THE COMPANIES (FURTHER ISSUE OF SHARES) REGULATIONS, 2020

The SECP, vide SRO No.310 dated March 18, 2021, has proposed draft amendments to the Companies (Further issue of shares) Regulations, 2020 whereby a new Chapter VIA "Registration and Valuation" has been proposed to inserted in the said Regulations.

The SRO was published on the website on April 02, 2021.

E. AMENDMENT IN SEVENTH SCHEDULE

The SECP, vide SRO No.448 dated April 05, 2021, has made amendments in the Seventh Schedule of the Companies Act, 2017 adding therein fee for generating electronic certified copy of reports/data, which is further divided into four different categories.

The SRO was published on the website on April 16, 2021.

F. DRAFT AMENDMENTS TO COMPANIES (GENERAL PROVISIONS & FORMS) REGULATIONS, 2018

The SECP, vide SRO No.449 dated April 06, 2021, has proposed draft amendments to the Companies (General Provisions and Forms) Regulations, 2018, wherein a new regulation has been added, namely; "20A. Approval of Capital expenditure and disposal of assets by the board".

The SRO was published on the website April 16, 2021.

G. NOTIFICATION UNDER SECTION 66 OF THE COMPANIES ACT, 2017

The SECP, vide SRO No.492 dated April 19, 2021, has notified the persons to whom any instrument in the nature of “redeemable capital” may be issued where such issuance is being made under compliance of terms and conditions as provided in section 66 of the Companies Act, 2017.

In addition to the above, the SECP has also added the definitions of “accredited individual investor” and “Government Debt Securities” in order to clarify the meaning of these terminologies to with reference to the person(s) involved.

WITHHOLDING OF TAX WILL BE ON GROSS AMOUNT OF SERVICES EXCLUDING REIMBURSEMENT OF EXPENSES - SHC

A. RELEVANT PROVISIONS OF LAW

As per Section 153(1)(b) of Income Tax Ordinance, 2000 (ITO), Every prescribed person making a payment in full or part including a payment by way of advance to a resident person for the rendering of or providing of services except where payment is less than thirty thousand Rupees in aggregate, during a financial year, is required to withhold tax from such payments at prescribed rates.

Clause (94) was introduced by the Income Tax (Second Amendment) Ordinance, 2015, ratified by Income Tax (Second Amendment) Act, 2016, to provide exemption from applicability of minimum tax on specified service sectors from July 01, 2015 till June 30, 2019. However, minimum tax at 2% was made applicable on specified service sectors if they file undertaking to the Commissioner for audit of income tax affairs. Upon filing of such undertaking, the Commissioner is empowered to issue exemption certificate from withholding tax under section 153 by paying 2% tax on turnover.

As per Section 153(7) of ITO, “prescribed person” means;

- (a) the Federal Government;
- (b) a company;
- (c) an association of persons constituted by, or under any law;
- (d) a non-profit organization;
- (e) a foreign contractor or consultant;
- (f) a consortium or joint venture;

(g) an exporter or an export house for the purpose of sub-section (2);

(h) an association of persons, having turnover of one hundred million rupees or above in any of the preceding tax years];

(i) an individual, having turnover of one hundred million rupees or above in any of the preceding tax years.

As per Section 153(7)(v) “turnover” means the gross fees for the rendering of services for giving benefits including commissions.

B. ISSUES RAISED BEFORE SHC

The Petitioners in the case were human resource and manpower service providers who render such services to the recipients by providing labourers and employees under agreements and the employees so engaged, work under the control of the service recipients. The Petitioners are paid charges for such services, which comprise their fee for services and the reimbursement of the salaries and dues of the employees or labourers.

In this connection, following questions of law were raised before SHC in petitions reported as C.P No.D-2694 of 2019 & others:

- Whether withholding tax under Section 153(1)(b) of the ITO has to be deducted on the amount of their service fee and not the gross amount received from recipient of services, which includes amounts of salaries, contributions, insurance etc.
- Wherever the word “turnover” has been used in this respect, including for obtaining an Exemption Certificate, it is only the gross service fee and not the entire amount of gross receipts on which such tax is payable as in some of the cases at the time of issuing Exemption Certificates an objection was raised that turnover for the purposes of clause (94) would be the gross amount of receipts including all amounts received from the service recipient.

C. ARGUMENTS BY PETITIONERS

1. The FBR has wrongly interpreted the use of the word “gross amount” so as to include the entire amount received from the service recipient. In similar circumstances, relating to levy of Sales Tax on Services under the Sindh Sales Tax on Services Act, 2011, the SHC, in its Judgment dated November 17, 2020 passed in C.P No. D-5220/2017 and other connected matters, has held that such tax could only be levied on the amount of service fee; and not on the gross amount received from the service recipient.

2. The Section 113(b) of ITO is pari materia to Section 153(1)(b), which has already been interpreted through various judgments and is in favour of the Petitioners.

3. The Section 153(7)(v)(b) has defined “turnover” which excludes the total amount including reimbursement of expenses; hence Petitioners are not liable for payment of advance tax on the entire amount. The definition of “turnover” in Section 153(7)(v)(b), which is defined as the gross fee for rendering of services for giving benefit including commissions and it is only the gross fee on which advance tax is to be deducted by the prescribed person and not the gross amount paid by such prescribed person.

D. ARGUMENTS BY FBR

1. Counsel of Department had argued that Section 153 has used the words “gross amount payable”, therefore the tax has to be deducted on the gross amount. The accounting arrangement, through a contract between the parties which break service fee and reimbursement cannot override the provisions of ITO, which has used the words “gross amount payable” as there cannot be any distinction in payment of such amount as it is one payment together.

2. The Section 153(7)(v)(b) refers to turnover of the prescribed persons (withholding agents) and not of the Petitioners.

E. SHC’s OBSERVATIONS

The SHC observed that in essence, the gross amount payable Under Section 153(1)(b) has to be understood in context of rendering or providing services. The triggering event is the rendering or providing of services, hence, reference to the gross amount has to be in relation to that. The charges for manpower services comprise of services fees and other amounts in lieu of salaries and other reimbursements and they have distinct breakup in their billing system as well. Therefore, the gross amount referred to is the amount of service fee only, which is being received by the service provider and not otherwise.

Similarly, in case of an Exemption Certificate under repealed clause 94, the turnover referred to in Section 153(7)(v)(b) is the gross amount of fee exclusive of the reimbursable amounts and expenses paid by the service recipient.

TOPIC OF THE MONTH

FREELANCING IN PAKISTAN AND ITS TAXATION

A. CONCEPT OF FREELANCING

A freelancer is a self-employed person who offers services to clients. In this age of technology, these services are often offered to businesses through online platforms like TaskRabbit, Mechanical Turk, Fiver, or Upwork, etc. However, individuals can offer their services directly to clients, without third-party resources that often take a cut out of the pay.

Nearly every type of service needed by a business can be provided by a freelancer. Some of the most common freelance services include;

- Accounting/Bookkeeping;
- Graphic Design;
- Marketing;
- Project Management;
- Social Media Management;
- Teaching/Tutoring;
- Virtual Assistant;
- Web Design/Development; and
- Writing /Editing

Some freelancers work in general areas while others specialize in specific services, such as real estate assistants, or in niche skills such as pay-per-click (PPC) copywriters. Freelance income varies depending on the skills offered, experience, and the market targeted.

Other services such as Uber, Bolt, or Deliveroo can also fall under this model because they operate in collaboration with freelancers. For instance, the Uber app matches passengers with self-employed drivers. The driver gets the fare payment via Uber after the deduction of commission. Deliveroo/Food Panda and other food delivery services roughly do the same – the courier receives a fee for picking up the food from one of the participating restaurants and brings it to the customer. However, in some jurisdictions, these workers are treated as employees, not freelancers. The argument is that Uber has sufficient decision-making power over the drivers’ fare, working conditions, and work methods.

B. BENEFITS OF FREELANCING

• Freelancing is flexible

Freelancers can often work full or part time on projects of their choice, at the hours that are convenient for them.

• Work where you want

If a person likes to be location independent in his/her career, freelancing is a great portable option for him/her. If you enjoy traveling, you can work and travel at the same time.

• **Be an independent contractor**

Although clients can set specifications for the work they want to be done, a freelancer is still an independent contractor, not an employee. He/she is free to control how the work is completed.

• **Pick and choose your clients**

The freelance will probably want to take on any client who will hire him when he/she is starting out, but he/she also has the option not to take on difficult clients, especially as his/her career grows.

C. TAXES ON FREELANCING

• Provision of freelancing services in Pakistan

As per Income Tax Ordinance, 2001 (ITO) any revenue generated by an individual by implementing his skills is considered as income from business, as business includes any trade, commerce, manufacture, **profession**, vocation or adventure or concern in the nature of trade, commerce, manufacture, **profession** or vocation but does not include employment.

• Rules for admissibility or inadmissibility of deductions for tax purpose

Section 20 of ITO deals with the deductions which are admissible against taxable business income. The said Section does not provide a comprehensive list but provides a guideline for the allowability of expenditures incurred by a taxpayer. Summary of Rules are follows:

-A deduction shall be allowed for any expenditure incurred by the person in the year wholly and exclusively for the purpose of business.

-Where the expenditure is incurred for business purpose in acquiring a depreciable or an intangible asset with a useful life of more than one year or is a pre-commencement expenditure, the person must depreciate or amortize the expenditure in accordance with the ITO.

Section 21 provides a list of deductions which are not admissible for tax purpose e.g. penalty paid for violation of any law, rules or regulations is not admissible for tax purpose even though charged in the accounts.

When assets claimed or expenses incurred are used for both professional and personal purposes, only a

reasonable amount of the expenses and depreciation is allowed as a deduction, and not the full amount.

D. THE NORMAL TAX REGIME (NTR)

NTR is method of taxation under which the income under each head of income is computed after considering all admissible deductions related to that particular head and then net income of each head is included in total income. Total income is further reduced by deductible allowances such as Zakat and interest on loans etc. Tax is then applied to the taxable income as per First Schedule to the ITO which shall be reduced by the amount of tax credits, if any, available to the taxpayer including advance tax paid. The resultant figure shall be the amount of tax payable or refundable.

The rate of taxes in First Schedule are as follows:

S. No.	Taxable Income	Rate of Tax
1.	Does not exceed Rs.400,000	0%
2.	Exceeds Rs. 400,000 upto Rs.600,000	5% of the amount exceeding Rs.400,000
3.	Exceeds Rs. 600,000 upto Rs.1,200,000	Rs. 10,000 + 10% of the amount exceeding Rs.600,000
4.	Exceeds Rs. 1,200,000 upto Rs.2,400,000	Rs.70,000 + 15% of the amount exceeding Rs.1,200,000
5	Exceeds Rs. 2,400,000 upto Rs.3,000,000	Rs.250,000 + 20% of the amount exceeding Rs.2,400,000
6	Exceeds Rs. 3,000,000 upto Rs.4,000,000	Rs.370,000 + 25% of the amount exceeding Rs.3,000,000
E	Exceeds Rs. 4,000,000 upto Rs.6,000,000	Rs.620,000 + 30% of the amount exceeding Rs.4,000,000
8.	Exceeds Rs.6,000,000	Rs.1,220,000 + 35% of the amount exceeding Rs.6,000,000

E. THE MINIMUM TAX REGIME [MTR]

If the freelancer provides services to withholding agent as defined in Section 153, it shall fall in MTR regime instead of NTR. MTR is a method of taxation under which tax deduction or collection at source (WHT) is treated as minimum tax in respect of such transaction. WHT under

MTR shall become final tax where tax under NTR on such transaction is less than WHT. However, WHT shall be adjustable where tax under NTR on such transaction is higher than WHT.

F. FREELANCING SERVICES PROVIDED OUTSIDE PAKISTAN

As an incentive for freelancers, a new Section 65F was inserted in ITO vide Tax Laws (Second amendment) Ordinance 2021, whereby a tax credit equal to 100% of the tax payable, including minimum and final taxes for persons deriving income from exports of computer software or IT services or IT enabled services, upto the period ending on June 30, 2025, was provided, subject to condition that eighty per cent of the proceeds is brought into Pakistan in foreign exchange remitted from outside Pakistan through normal banking channels. The IT Services and IT enabled services are defined as follows:

- i. "IT services" include software development, software maintenance, system integration, web design, web development, web hosting and network design; and
- ii. "IT enabled services" include inbound or outbound call centers, medical transcription, remote monitoring, graphics design, accounting services, HR services, telemedicine centers, data entry operations, locally produced television programs and insurance claims processing. [Previously in Clause 133 of Part 1 of Second Schedule now omitted]

The above tax credit shall be available subject to fulfillment of the following conditions, namely:-

- (a) return has been filed;
- (b) tax required to be deducted or collected has been deducted or collected and paid;
- (c) withholding tax statements for the immediately preceding tax year have been filed;
- (d) sales tax returns for the tax periods corresponding to relevant tax year have been filed;

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