



TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES

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EDITORIAL NOTE

We greet our readers to yet another edition of our newsletter for the month of May 2021. We have compiled this newsletter through devotion and determination towards the noble cause to educate the masses. Despite this month being hectic with budget awaited shortly, by the grace of Almighty Allah, we have continued our trend to keep our readers abreast of the updates pertaining to tax and corporate world. Wishing our readers health and prosperity, we move



forward to the context of our newsletter which takes off with elaboration of important notifications and circulars from the premier tax body, FBR and its provincial counterparts. Next in line we advance towards our comments on notifications from the corporate regulatory body i.e. SECP. Keeping in view the importance of the legal aspect of the tax world, we also include our explanatory comments on a recent verdict passed by Appellate Tribunal Inland Revenue, Lahore on section 111 of the Income Tax Ordinance, 2001 pertaining to "Unexplained Income or Assets" which is very beneficial for people currently involved in proceedings under the same section.

In the end, we conclude our Newsletter with our Topic of the month which for this month happens to be "Formation of Liaison Office and its distinction with Permanent Establishment". The topic is of interest to the people involved in cross-border transactions.

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

1. NOTIFICATIONS/ CIRCULARS

1. APPEAL TO THE COMMISSIONER INLAND REVENUE (APPEALS) ON IRIS

Rule 76 to Rule 760 were substituted by Notification SRO 1315(I)/2020 dated December 09, 2020, to provide for provisions related Appeal u/s 127 of ITO to be only filed on IRIS web portal from 1st January 2021. In Rule 760 it was clarified that no case pertaining to the Tax Year 2014 onwards, shall be filed manually from 1st of January 2021, and the cases already filed manually before the said date shall be proceeded as per the SRO 279(1)/2018 dated 5th March, 2018. All such cases i.e. manually filed cases, shall be finalized as per law but not later than 30th June, 2021. If any case is left out or remanded back by the Tribunal or Higher Judiciary, from the cases processed earlier manually, the Commissioner (Appeals) shall process it electronically with the effect from 1st July, 2021.

Now through Corrigendum dated 24th May 2021, the above date of 30th June 2021 is changed to 31st December 2021.

2. IT & ST EXEMPTION ON IMPORT OF COVID-19 RELATED ITEMS

The FBR has issue SRO 589(I)/2021 and 590(I)/2021 dated 25th May 2021 whereby Federal Government has given exemption u/s 148 of ITO and Sales Tax to following items by inserting clause 12M in Part IV of Second Schedule of ITO for period of 180 days starting from 14th May 2021:

S.No.	Description	PCT Code
1.	Oxygen	2804.4000
2.	Other (Oxygen Cylinders)	7311.0090
3.	For Cryogenic (Tanks/Vessels)	7311.0030
4.	Oxygen Concentrators/Generators/Manufacturing Plants of all specifications and capacities	Respective headings

3. INTRODUCTION OF E-HEARING ROOM, BAN ON PHYSICAL HEARING / FACE-TO-FACE HEARING IN FBR

The FBR has issued letter no. F.No.1(7)Chief(IR-Formations)/2021-62658-R dated 18th May 2021 to all Chief Commissioners (except LTO Islamabad & RTOs Rawalpindi, Faisalabad, Peshawar) whereby it was informed that in 1st phase, an e-Hearing module in IRIS for e-hearing of audit/assessment related hearings as well as appeal related hearings with online hearing both from the dedicated hearing rooms established in the filed formations, and from the places of the taxpayers, is launched and tested in LTO Islamabad, RTO Rawalpindi, RTO Faisalabad, and RTO Peshawar wherein online e-hearings through the dedicated e-Hearing Rooms, and from the places of the taxpayers, have been enabled. In the 2nd phase, such e-hearings are being enabled and operationalized for all the remaining field formations as well.

Therefore, all the remaining field formations are required to establish dedicated e-Hearing Rooms, and all hearings should be conducted from such hearing rooms. Further if any taxpayer requests, the facility of online hearing from the place of the taxpayer may also be extended. The module allows head office to join any hearing at any time, without any prior notice, for an administrative appraisal of the system. With the introduction of e-hearing module, the taxpayer and their representative would no longer be required to visit the Tax Offices for hearing and physical/face-to-face hearings in the offices of the officers would be phased out completely. Accordingly, no physical/across-the-table hearings in the offices of the officers would be allowed w.e.f. 1st July 2021 in any tax office and all hearings would be conducted online through the e-Hearing module.

4. INSTRUCTIONS REGARDING AMENDMENT PROCEEDING U/S SECTION 122(5) OF ITO

Karachi Tax Bar Association (KTBA) vide its letter no. KTBA/05,2021/190 dated 21-05-2021 to FBR raised issue on above subject matter that the filed officers are recklessly issuing notices u/s 122(5) read with 122(9) of ITO without obtaining "definite information" as defined in Section

122(8) of ITO and merely on basis of audit suspicion picked from within the declaration lodged by the taxpayers themselves only a recovery tactics and need to be abate. The scheme of law requires that a taxpayer must be dealt with precisely as per principles of justice and fairplay.

In this regard FBR has issued letter no. 2(22) Rev.Bud./2020 dated 25th May 2021 in response to above wherein it has acknowledged the perspective of KTBA and directed that the officers should adhere to law and due diligence in respect of taxpayer and no case be opened merely on surmises and assumptions. All taxpayers must be provided adequate opportunity of being heard. As per sources it comes to our attention that notices issued by FBR on above subject matter has already been withdrawn / deleted from IRIS portal.

5. CHANGE IN SALES TAX RATES ON PETROLEUM PRODUCTS

The FBR has issued SRO 551(I)/2021 dated 9th May 2021 whereby changes have been made rate of sales tax in petroleum products w.e.f. 1st May 2021, to keep petroleum prices unchanged, as follows:

S.No	Description	PCT Heading	Rate
1	Motor spirit excluding HOBC	2710.1210	17.00% ad valorem
2	High speed diesel oil	2710.1931	17.00% ad valorem
3	Kerosene	2710.1911	15.44% ad valorem
4	Light diesel oil	2710.1921	7.56% ad valorem

It may be noted that sales tax less than standard rate of 17% will not be allowed as input against output tax in FBR or any provincial authority.

6. EXTENSION IN DATE OF FILLING OF FEDERAL SALES TAX RETURN FMO APRIL 2021

The FBR has issued letter no. C.No.9(11)ST-LPE/Misc/2016/60017-R dated 6th May 2021 whereby it has extended the date of payment of sales tax & FED up to 18.05.2021 and date of submission of Sales Tax Return & FED up to 21.05.2021.

7. EXTENSION IN DATE OF FILLING OF BALOCHISTAN SALES TAX RETURN FMO APRIL 2021

The BRA has issued letter no. BRA/STA&A/20-21/447 dated 7th May 2021 whereby it has extended the date of payment of sales tax upto 18.05.2021 and date of submission of Sales Tax Return upto 21.05.2021.

8. EXTENSION IN DATE OF FILLING OF SINDH SALES TAX RETURN FMO APRIL 2021

The SRB has issued circular letter no. 01 dated 17th May 2021 whereby it has extended the date of payment of sales tax upto 24.05.2021 and date of submission of Sales Tax Return upto 27.05.2021.

9. EXTENSION IN DATE OF FILLING OF PUNJAB SALES TAX RETURN FMO APRIL 2021

The PRA has issued letter no. PRA/Orders.06/2021/40 dated 06th May 2021 whereby it has extended the date of payment of sales tax and date of submission of Sales Tax Return upto 21.05.2021.

10. SINDH REVENUE BOARD'S INCENTIVE SCHEME ON SINDH SALES TAX

Sindh Revenue Board ("SRB") issued SRO 3-4-2021 dated 31st May 2021 whereby amnesty is given for exemption from penalty and such of the amount of default surcharge as is in excess of the amount of default surcharge, provided that the principal amount of the tax (as outstanding on May 31, 2021) and the following amount of the default surcharge thereon are deposited during the periods as specified below:

Period of deposit	Percentage of default surcharge
June 1, 2021 to June 12, 2021	0%
June 13, 2021 to June 21, 2021	5%
June 22, 2021 to June 30, 2021	10%

The benefits of exemption of penalty and default surcharge, as specified in the notification, shall also be available in relation to the arrears of the tax (so outstanding on the May

31, 2021) payable under Sindh Sales Tax Ordinance, 2000 and under the Sindh Sales Tax on Services Act, 2011 by:

- i. Persons who are liable to be registered under Section 24 of the Act but were not registered, provided that:
 - (a) They get themselves registered (or e-sign up as withholding agents) with SRB in the prescribed manner during the aforementioned periods from June 1, 2021 to June 30, 2021;
 - (b) They deposited their tax liabilities for the principal amount of tax along with the aforementioned percentage of the amount of default surcharge thereon in relation to the tax periods from the date of the commencement of their economic activity to the tax period of May 2021;
 - (c) they also e-file their tax returns, for the tax periods from date of commencement of their economic activity of taxable services to the tax period May 2021 during the period from the date of this notification to June 30, 2021.
- ii. Persons who were registered but were non-filers or null filers or nil-filers of their tax returns;
- iii. Persons who were late-registered with SRB and they did not file all of their tax returns for the tax periods from the date of commencement of their economic activity of taxable services;
- iv. persons who withheld any amount of Sindh sales tax but have either not deposited that withheld amount in provincial government account or have deposited the withheld amount in a head of account other than the Sindh government's head of account.
- v. Persons who determine the arrears through self-detection and self-assessment;
- vi. persons who short-paid any amount of tax in their tax returns and persons against whom any arrears of tax was detected in SRB's scrutiny of tax returns or in SRB's audit of taxpayers' record;
- vii. persons against whom any tax amount has been determined or assessed or adjudged, by an officer of the SRB, through an order or decision passed under the

Sindh Sales Tax on Services Act, 2011, or the rules/notification issued thereunder;

- viii. Persons against whom any tax liability has been adjudged or confirmed by the Commissioner (Appeals) or the Appellate Tribunal;
- ix. Persons whose cases are under assessment or under adjudication with any officer of the SRB or are pending, at the appellate stage with the Commissioner (Appeals) or with the Appellate Tribunal; and
- x. Persons whose cases are under litigation in any court of law including the High Court or the Supreme Court.

The SRB said that the benefits of this notification, to the extent as specified below, shall also be available in case where a person has late paid the principal amount of tax prior to the date of this notification and/ or has not yet discharged the liability of penalty (whether the prescribed amount or the adjudged amount of the penalty) and the default surcharge on such late payment provided that he pays an amount equal to following percentages of amounts of penalty and default surcharge as outstanding on May 31, 2021:

Period of deposit	Percentage of penalty	Percentage of default surcharge
June 1, 2021 to June 12, 2021	5%	10%
June 13, 2021 to June 21, 2021	10%	15%
June 22, 2021 to June 30, 2021	15%	20%

If the whole of the dues of the principal amount of tax and the aforementioned prescribed percentage of the amount of default surcharge thereon are paid by a person in terms of this notification, he shall not be prosecuted under Section 49 of the Act and section 46 of the Act shall also not be invoked to the extent of the arrears of the tax paid under this notification.

If the principal amount of the tax and the aforementioned percentage of the amount of the default surcharge thereon, as are paid in terms of this notification are later held to be not payable in view of the order issued by the respective

competent authority (i.e. the adjudicating officer or the commissioner appeals or the appellate tribunal or the court of law), the officer of the SRB, not below the rank of an assistant commissioner, shall allow tax adjustment/credit of the amount or alternately, shall refund the amount, so paid, within 90 days from the date of receipt of the taxpayer's application, for refund or for tax adjustment/credit, together with a copy of the order/judgment and also of the evidence that the incidence of the tax was not passed on to the service recipient.

The SRB further said that the notification would not apply for refund or adjustment of any amount of tax or default surcharge or penalty as has already been paid or recovered on any date prior to May 31, 2021.

11. SINDH WORKERS WELFARE FUND (SWWF) INCENTIVE SCHEME

The SRB has issued notification 3-4/10/2021 dated 31st May 2021, whereby it has exempted the whole of the amount of penalty and such of the additional amount/default surcharge as is in excess of amount specified below, provided that the principal amount of contribution of Sindh Workers Welfare Fund and the following amounts of the additional amount/default surcharge thereon are deposited during the periods as specified below:-

Period of deposit	Percentage of additional payment
June 1, 2021 to June 18, 2021	0%
June 19, 2021 to June 30, 2021	5%

It is further clarified that the benefits of exemption of penalty and additional amount, as specified in this notification, shall also be available in relation to the arrears of the fund (as outstanding on the 31st May, 2021) payable under the Sindh Workers Welfare Fund Act, 2014, (Sindh Act No. XXXIII of 2015) by:

- (i) Industrial Establishments who are liable to pay two percent of its total income along with the

forementioned percentages of the amount of additional amount thereon in relation to the previous years up to the month of May, 2021;

- (ii) Industrial Establishments against which on the basis of any amount assessed or adjudged, by an officer of the SRB, through an order or decision passed under section 5(4) of the Sindh Workers Welfare Fund Act, 2014, the Industrial Establishment shall pay the amount so determined under the said Act/notification issued thereunder;
- (iii) Industrial Establishments against whom any tax liability has been adjudged or confirmed by the Commissioner (Appeals) or the Appellate Tribunal;
- (iv) Industrial Establishments whose cases are under assessment or under adjudication with any officer of the SRB or are pending, at the appellate stage, with the Commissioner (Appeals) or with the Appellate Tribunal; and
- (v) Industrial Establishments whose cases are under litigation in any court of law including the High Court or the Supreme Court.

Further, benefits of this notification shall also be available in cases where Industrial Establishment has late paid the principal amount of contribution of Sindh Workers Welfare Fund prior to the date of this notification but has not yet discharged the liability of penalty (whether the prescribed amount or the adjudged amount of the penalty) and additional amount/default surcharge on such late payment provided that they pay an amount equal to 1% of such amount of penalty (as outstanding on the 31st May, 2021) and 1% of such additional amount (as outstanding on the 31st May, 2021) during the period from 1st June, 2021 to 30th June, 2021.

12. SINDH WORKERS PROFITS PARTICIPATION FUND (SWPPF) INCENTIVE SCHEME

The SRB has issued notification no. 3-4/11/2021 dated 31st May 2021, whereby it has exempted the amount of penalty prescribed under section 5(1) of the Sindh Companies Profits (Workers' Participation) Act, 2015 (Sindh Act No. XVIII of 2016) and interest as per paragraph 2 of the scheme

of the 2015-Act and penalties or default surcharge established under sections 43 and 44 of the Sindh Sales Tax on Services Act, 2011, read with section 15 of the 2014-Act subject to condition that the leftover amount of contribution of Sindh Workers' Participation Fund outstanding and the following amounts of the penalties/interest/default surcharge thereon are deposited during the periods as specified below:-

Period of deposit	Percentage of additional payment
June 1, 2021 to June 18, 2021	0%
June 19, 2021 to June 30, 2021	5%

SRB further said that the benefits of exemption of penalty/interest/default surcharge, as specified in this notification, shall also be available in relation to the arrears of the fund (as outstanding on the 31st May, 2021) payable under the Sindh Companies Profits (Workers' Participation) Act, 2015 (Sindh Act No. XVIII of 2016) by:-

- (vi) Industrial Undertakings who are liable to pay left over amount after distribution of workers participation fund among eligible workers along with the aforementioned amounts of penalties/interest/default surcharge in relation to the previous years up to the month of May, 2021;
- (vii) Industrial Undertakings against which on the basis of any amount assessed or adjudged, by an officer of the SRB, through an order or decision passed under section 3 read with paragraph 4(d) of the Sindh Companies Profits (Workers' Participation) Act, 2015 (Sindh Act No. XVIII of 2016), also read with section 4 and 5(4) of the Sindh Workers Welfare Fund Act, 2014, the Industrial Undertaking shall pay the amount so determined;
- (viii) Industrial Undertakings against whom any tax liability has been adjudged or confirmed by the Commissioner (Appeals) or the Appellate Tribunal;
- (ix) Industrial Undertakings whose cases are under assessment or under adjudication with any officer of

the SRB or are pending, at the appellate stage, with the Commissioner (Appeals) or with the Appellate Tribunal; and

- (x) Industrial Undertakings whose cases are under litigation in any court of law including the High Court or the Supreme Court.

The benefits of this notification shall also be available in cases where Industrial Undertaking has late paid the left over amount of contribution of Sindh Workers' Participation Fund prior to the date of this notification but has not yet discharged the liability of penalty/interest/default surcharge (whether the prescribed amount or the adjudged amount of the penalty) on such late payment provided that they pay an amount equal to 1% of such amount of penalty (as outstanding on the 31st May, 2021) and 1% of such additional amount/interest/default surcharge (as outstanding on the 31st May, 2021) during the period from 1st June, 2021 to the 30th June, 2021.

It is further clarified that this notification shall not apply to the refund or adjustment of any amount of fund or penalty/interest/default surcharge as has already been paid before the 31st May, 2021.

2. CORPORATE NOTIFICATIONS / CIRCULARS

A. AMENDMENTS TO NBFC & NOTIFIED ENTITIES REGULATIONS, 2008

The SECP vide SRO 581 dated 20 May 2021 made amendments to the NBFC & Notified Entities Regulations, 2008 wherein changes were made in regulations 38 and in Schedule no. 9 pertaining to "Assessment of Fitness and Propriety".

B. AMENDMENTS TO FUTURES BROKERS (LICENSING AND OPERATIONS) REGULATIONS, 2018 DATED APRIL 29, 2021.

The SECP vide SRO 553 dated 29 April 2021 placed on the website on 26 May 2021 made amendments to Futures Brokers (Licensing and Operations) Regulations, 2018.

The amendments were made in clause b pertaining to "Educational or other Qualification or Experience" and

clause (d) pertaining to “Integrity, Honesty and Reputation” of the abovementioned regulation.

C. AMENDMENTS TO PUBLIC OFFERING (REGULATED SECURITIES ACTIVITIES LICENSING) REGULATIONS, 2017 DATED APRIL 29, 2021.

The SECP vide SRO 555 dated 29 April 2021 placed on the website on 26 May 2021 made amendments to Public Offering (Regulated Securities Activities Licensing) Regulations, 2017.

The amendments were made in Schedule No. 3 in sub clause (a) pertaining to “Integrity and Track Record” and sub clause (c) pertaining to “Competence and Capability”.

D. AMENDMENTS TO SECURITIES BROKERS (LICENSING AND OPERATIONS) REGULATIONS, 2016 DATED APRIL 29, 2021.

The SECP vide SRO 556 dated 29 April 2021 placed on the website on 26 May 2021 made amendments to Securities Brokers (Licensing and Operations) Regulations, 2016.

The amendments were made in regulation 7 pertaining to “Trading and Clearing” and Annexure B pertaining to “Educational or other Qualification or Experience” and “Integrity, Honesty and Reputation” of the abovementioned regulations.

3. NON DECLARATION OF ASSET IS NOT CONCEALMENT IF SUFFICIENT SOURCES ARE AVAILABLE – ATIR LAHORE

A. RELEVANT PROVISIONS OF LAW

As per Section 111 of ITO, if a taxpayer fails to give any explanation for any income credited in a person’s books of account or a person has made any investment or is the owner of any money or valuable article or person has incurred any expenditure or concealed income or furnished inaccurate particulars of income including the suppression of any production, sales or any amount chargeable to tax or suppression of any item of receipt liable to tax in whole or in part, such amount is liable to be added in taxable income of the person. Section 111(1) amended through Finance Act, 2020 provides to add unexplained receipt into business income instead of income from other sources in respect of

suppressed amount of production, sale, and receipt chargeable to tax.

In exercise of powers under Section 42 of the Anti-Money Laundering Act, 2010, the Federal Government through SRO 425(I)/2016 with effect from 14th May 2016 has made concealment of income to be treated as crime where tax sought to be evaded is Rs 10 million or more.

B. ISSUES RAISED BEFORE ATIR

The taxpayer, an individual, filed return for Tax Year 2020 declaring income at Rs 174,200/- which was deemed to be an assessment u/s 120 of ITO. After filling of return, the department had received an information that the taxpayer made investment of Rs 1,842,000/- in purchase of motor vehicle which was registered in the name of taxpayer in the same Tax Year. The Taxation officer issued show cause notice u/s 122(9) for amendment u/s 122(5) of ITO which was replied by taxpayer in writing. The taxpayers reply was found unsatisfactory and therefore the officer amended the assessment u/s 122(5) of the ITO. The taxpayer filed appeal with Commissioner Appeals (CIRA) in which tax officer decision was upheld with respect to tax levied while the penalty amount was remanded back for recording of reasons. The taxpayer filled appeal with ATIR Lahore which is reported as ITA No. 1745/LB/2015 order dated 03-05-2018.

C. GROUNDS OF TAXPAYER

The Taxpayer informed that CIRA had upheld order without considering his submissions and arguments therefore CIRA order should be vacated. The discrepancy arose due to separate disclosure of personal and business assets of the taxpayer. He further informed that he was in possession of sufficient documentary evidence to establish that he had acquired all the assets in question from foreign remittance through proper banking channel which were received from New York and sale of house but non-disclosure of an asset is not sufficient reason for making any addition u/s 111 of ITO.

D. OBSERVATION OF ATIR

The ATIR agrees with taxpayer argument that addition can only be made if the taxpayer does not possess sufficient evidence to justify and explain the sources of acquisition of

the assets. Therefore it is not necessary as to whether or not the assets were disclosed in the wealth statement. It is to be seen that whether the taxpayer could prove the sources of investment or not, here the taxpayer had successfully brought on record sufficient documentary evidences in the shape of foreign remittances to explain the source of asset purchased.

The taxpayer is also legally entitled to revise his wealth statement for reflection of correct picture and both the authorities below had badly failed to consider these facts while passing orders. Therefore the orders of below authorities was vacated and Order u/s 120 restored.

4. TOPIC OF THE MONTH

FORMATION OF LIAISON OFFICE AND ITS DISTINCTION WITH PERMANENT ESTABLISHMENT

➤ PREAMBLE

In the end, we commemorate our practice to conclude our newsletter with a carefully selected and carved topic of the month. This month it pertains to a topic with respect to cross border transactions titled as Formation of Liaison office [LO] and its distinction with permanent establishment [PE].

The topic is pillared upon several verdicts which were passed upon the foreign companies showcasing many of its Permanent establishment as liaison office and fulfilling their motives by escaping from the tax net of the country where it has masked its permanent establishment as a liaison office.

It is necessary for individuals and institutions to know the difference between permanent establishment and liaison office before establishing any opinion.

Multi-National Companies ('MNCs') are allowed to set up their presence in Pakistan subject to the Foreign Direct Investment policy and other relevant regulations. One such presence that MNCs typically try to build is in the form of a liaison office ('LO') in Pakistan. Such offices are set up by foreign enterprises to understand the Pakistani market and to carry out certain pre-defined limited activities without any exchange of commercial value.

A. DEFINITION

1. LIAISON OFFICE

The word Liaison Office is a terminology used for an Office established by a company in its target country for the purpose of promotion of product(s), provision of technical advice & assistance, exploring the possibility of joint collaboration and export promotion. All expenses of an LO in Pakistan are required to be borne by its head office outside Pakistan, as the LO cannot and does not earn any income in Pakistan.

2. PERMANENT ESTABLISHMENT

The word permanent establishment ("PE") is a terminology used for a corporation which operates an establishment in a target country via its home country in essence of a treaty signed between two countries. Although there are some requisites which are essential to declare an operating unit in a target country as a PE. One of the characteristic of a PE is "Fixed place of business".

The phrase fixed place of business is comprehensive and includes, place of management, branch or an office, Factory, Workshop, a place where natural resources are extracted, etc.

A PE can also be established if a company operates in a target country as a dependent agent of corporation. The company will be treated as dependent agent if it fulfills the following criteria:

- a. Economically dependent from the home country corporation that has contracted for their services.
- b. Acting in the ordinary course of their business.
- c. Legally independent from the home country corporation that has contracted their services.

B. DIFFERENCE BETWEEN PERMANENT ESTABLISHMENT AND LIAISON OFFICE.

Now, that we have elaborated the definition(s) of both, the liaison office and permanent establishment, we will now explain what is the purpose of liaison office and how it differentiates from a permanent establishment. In order to understand the differences we must acknowledge the similarity that both are established by a non-resident

companies in order to increase their business activity, although what differentiates them both are their motives.

Liaison office are established to promote foreign companies and provide assistance to the consumers of the products / services of the companies established abroad whereas, permanent establishment of a foreign company is established in a target country in order to carry on business in the target country, with its resources and management present therein. Basically Liaison offices are prohibited from entering into trading or commercial activities which is tool to differentiate them from Permanent Establishment.

The main reason a foreign company labels an established unit in a target country as liaison office rather than a permanent establishment is due to the different tax treatment of both the establishments under the tax treaties between the two countries. The liaison office escapes from the ambit of taxability in country in which it is operating whereas the income of a PE is chargeable to tax in the country where PE is present.

There are several cases highlighted in various countries where many Foreign companies have established liaison offices but are using the same for the purpose of Permanent Establishment and getting away with the same while also escaping from the tax liabilities which are applicable under the laws of such countries.

C. HOW TO DETERMINE IF AN ESTABLISHMENT FORMED BY A FOREIGN COMPANY IS A LIAISON OFFICE OR PERMANENT ESTABLISHMENT.

In the current law of taxation being practiced in Pakistan, as per its definition any liaison office which engages itself in any of the following services, it will be treated as a PE:

- Commercial activity;
- Trading;
- Negotiation or conclusion of contract;
- Marketing or promoting of products or services; and
- Providing after sales service.

Generally, services performed under the scope of liaison office are as provided below.

- To collect and compile data as to whether it is suitable to carry out trade with Pakistan or within Pakistan;

- To act as a financial or technical bridge between its foreign head unit and taxpayers in Pakistan;
- Promoting products which are yet to enter in Pakistan's markets;
- To provide any technical advice or assistance regarding their product or service; and
- To sort out any possibility of joint collaboration and export promotion.

The definition of permanent establishment as provided in the current taxation law practiced in Pakistan clearly excludes a liaison office from its scope while also clarifying that all the negotiation of contracts by the liaison office escapes from the scope of a permanent establishment except for contracts of purchase.

Hence, the current law has already distinguished a liaison office and a permanent establishment, their purpose of formation and range of services. But due to the current issues arising regarding the clever masking of various permanent establishment(s) as liaison office by foreign entities in order to escape from the tax ambit, it was imperative to elaborate the difference between both for fair trial.

To summarize, LO of a non-resident may be established in Pakistan and can only undertake liaison activities, i.e. it can act as a channel of communication between head office abroad and parties in Pakistan i.e. activities merely of preparatory or auxiliary in nature may be performed provided it does not carry from its premises activities which are substantial and core in nature with respect to business of foreign entity. Also, while analyzing the 'preparatory and auxiliary' activities, Base Erosion and Profit Shifting Plan ('BEPS') Action Plan 7 and Article 13 of the Multi-Lateral Instruments ('MLI'), which deals with the issue of artificial fragmentation of activities between various group companies to avail the benefit of 'preparatory and auxiliary' activities, should also be considered.

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