TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

TAX PAK

NEWSLETTER BY TOLA ASSOCIATES

JUNE

2021

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EDITORIAL NOTE

Our readers are welcome to yet another edition of the Newsletter for the month of June 2021. By the grace of the Almighty Allah we have composed and compiled data from the tax and corporate world while integrating them into our Newsletter to make it worthwhile and educative for our readers. It is our prime motive to educate and enlighten our readers regarding the updates from the tax and corporate world.

With that being said, we will explain the scheme of things which our readers should expect in our Newsletter. We begin our newsletter with analysis on the notifications passed by the Tax regulatory bodies including FBR and SRB, etc. Going along, 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 Appellate Tribunal Inland Revenue, Lahore on the matter of "Time Limitation for Amendment of assessment".

In the end, we conclude our newsletter with our Topic of the Month "Baddebts under Income Tax Ordinance, 2001, Debit/Credit Notes under Sales Tax Act, 1990" which is selected keeping in mind the current conditions of Businesses/Industries during the pandemic of COVID-19.

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

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1. NOTIFICATIONS/ CIRCULARS

1) DRAFT INCOME TAX RETURN FORMS FOR SALARIED PERSONS, AOPS, BUSINESS INDIVIDUAL AND COMPANIES FOR TAX YEAR 2021

The FBR has issued draft income tax returns forms for salaried persons, AOPs, Business Individual and companies for Tax Year 2021 vide SRO 730(I)/2021 dated 11th June 2021, whereby draft amendments are made in Second Schedule, after Part-II-T of Income Tax Rules, 2002. The FBR invited comments on the draft income tax return forms within seven days from the issuance of the SRO. Last year the FBR had taken strict stance by not extending the last date for filing income tax returns beyond December 08, 2020 in case of salaried persons, business individuals and Association of Persons. Further, it had also announced that the return filing for tax year 2021 would be started from July 01, 2021. The last date for filing income tax returns by salaried persons, business individuals, AOPs and companies having special year is September 30. Meanwhile, the due date for filing income tax returns by corporate entities having normal fiscal year is December 31.

2) COMPUTATION OF CAPITAL GAINS ON DISPOSAL OF SECURITIES UNDER SECTION 37A OF THE ITO

The FBR has issued SRO 801(I)/2021 dated 24th June 2021, whereby it has made amendment in chapter II, Part III of Income Tax Rules, 2002 relating to Computation of Capital Gains on Disposal of Securities under Section 37A of the ITO, followed by NCCPL in determining withholding of tax on capital gains.

2.1. RULE 13D

As per Rule 13D, Capital gain or loss arising on the disposal of any security shall be computed on the basis of First in First out (FIFO) inventory accounting method. Now Rule relating to future contracts that In case of futures contracts, holding period shall be the period intervening between the date of entry into a futures contract and the date of exit from such contract is removed. This is done as only correction of drafting error as this already provided in Rule 13C.

Now it has been prescribed that capital loss arising on disposal of listed securities in tax year 2019 and onwards that has not been set off against the gain of the person from disposal of listed securities chargeable to tax during the tax year shall be carried forward to the following tax year and set off only against the gain of the person from disposal of listed securities chargeable to tax but no such loss shall be carried forward to more than three tax years immediately succeeding the tax year for which the loss was first determined. It is in now in line with amendment in Section 37A through Proviso inserted by Finance Supplementary (Second Amendment) Act, 2019.

This rule is applicable for persons who opt out of option of calculation and deduction of capital gain tax by NCCPL.

2.2. RULE 13N

As per Rule 13N, NCCPL shall, in accordance with this rule, collect tax on capital gains as provided in Eighth Schedule (Rule for the computation of capital gains on listed securities) to the Ordinance. Now the provisions that 'Capital loss arising on disposal of listed securities in any financial year shall not be carried to a subsequent financial year' have been removed to allow carry forward of losses by NCCPL, and provisions are given for NCCPL to allow Capital loss arising on disposal of listed securities in tax year 2019 and onwards that has not been set off against the gain of the person from disposal of listed securities chargeable to tax during the tax year shall be carried forward to the following tax year and set off only against the gain of the person from disposal of listed securities chargeable to tax but no such loss shall be carried forward to more than three tax years immediately succeeding the tax year for which the loss was first determined.

Following Sub Rules are also added through SRO

Capital loss arising on disposal of listed securities in tax year 2019 and onward shall be carried forward to a subsequent tax year for setting off, in the manner prescribed as follows:-

a. The setting off eligible capital loss carried forward from previous tax year(s) shall be made by NCCPL under this Rule, only in respect of a taxpayer whose name appear or appeared in the Active Tax Payers List

[ATL] pertaining to the tax year to which such loss pertains as witnessed by the Active Tax Payers List [ATL] available on FBR's website after updation for tax year to which such loss pertains;

b. Adjustment of carried forward capital loss (es) shall be made on monthly basis by NCCPL from the first month of updation of ATL for the tax and on first-in-first-out (FIFO) basis;

c. NCCPL may requisition date wise position of Active Tax Payers List [ATL] in respect of particular taxpayer from Information Technology (IT) Wing of the Board as and when required;

d. At the end of relevant tax year, NCCPL shall maintain tax year-wise balance of unexpired carried forward capital losses separately identifiable for computation of limitation period for each tax year; and

e. The manner of adjustment of capital loss carried forward from previous tax years will be in accordance with illustration given in clause (zf) of Rule 13P.

Now, NCCPL shall collect an amount as computed in the manner laid down in the said Eighth Schedule and these rules on monthly basis in respect of transactions settled in a month, after adjustment of losses including adjustment of carried forward losses as per section 37A(5) and sub-rule (7) and (7A) above and repayment of amount collected in previous month or months of same financial year, to ensure that at the end of any given month NCCPL possesses an amount equal to the estimated amount of tax liability on capital gains.

Accordingly the format of annual certificates of capital gains to be issued by NCCPL to taxpayer under Rule 1(4) of the Eight Schedule to the ITO has also been changed.

Following practical ambiguities may arise due to above amendments in rules:

- The rules are applicable on NCCPL not on an ordinary person, therefore, an ordinary investor may or may not have adjusted its losses of tax year 2019 in tax year 2020. How will NCCPL will determine whether the taxpayer as already adjusted losses or not.
- There will be double adjustment in case of persons who have already adjusted their losses and have claimed the excess tax collected by NCCPL in tax year 2020 as refund or may have adjusted same against tax liability of incomes from other heads.
- Whether these rules are applicable on NCCPL for the transactions of tax year from 2021 or 2022.

3) PROCEDURE FOR E-AUDIT UNDER RULE 231FA OF THE INCOME TAX RULES, 2002.

The FBR vide SRO 835 dated 29 June 2021 made amendments to the Income Tax Rules, 2002 [ITR]. The FBR added the procedure for E-Audit or "Electronic Audit" and its related provisions under the amendments made to the ITR. The E-Audit procedure(s) are provided in lieu of sub-section 2A pertaining to E-Audit that was included under the scope of section 117 of the Income Tax Ordinance, 2001 vide Finance Act, 2020.

The Procedure of E-Audit are as follows;

1. The provisions of this rule shall apply for the conduct of audit proceedings electronically under sub-section (2A) of section 177 of ITO.
2. Where a case has been selected under section 177 or section 214C of the Ordinance, as the case may be, and the competent authority may issue direction to conduct e-audit, the following procedure shall be adopted, namely:-

(a) The cases selected for e-audit shall be processed through Automated Case Selection System which will create an assignment for issuing notices through Iris to the taxpayer against selection of cases for audit;

(b) For issuance of notices, Automated Case Selection System will configure the:-

(i) list of officers of Inland Revenue to whom the case can be assigned; and

(ii) list of the cases to be marked across the jurisdiction; and thereafter, will intimate to the concerned Commissioner IR where the case has been assigned by the Automated Case Selection System;

(c) The concerned Commissioner Inland Revenue to whom the case has been assigned by the Automated Case Selection System shall serve a notice under sub-section (1) of section 177 of Income Tax Ordinance, 2001, specifying the reason for selection of his case for audit;

(d) A taxpayer shall produce the record or documents including books of accounts maintained under Income Tax Ordinance, 2001 through Iris of electronic data carrier notified by the Board;

(e) A taxpayer shall not be required to appear either personally or through authorized representative in connection with any proceeding under e-audit before the officer of Inland Revenue. In case of any explanation required by the taxpayer or officer of Inland Revenue, requests for personal hearing, shall be made through Iris and may be allowed to do so in assigned Jurisdiction and such hearing shall be conducted exclusively through video links from personal computer system or any of the nearest Tax Facilitation Centre situated at the premises of the different Tax Offices, as the case may be;

(f) An Audit Officer to whom the case is assigned, after considering all the information, documents or evidence, if no discrepancy found and have no conclusive proof against taxpayer may close the audit and send it to the Automated Case Selection System;

(g) After examination of record and after obtaining taxpayers' explanation on all the issues raised, if the Audit Officer to whom the case is assigned, does not agree with the declared version and proposes order for assessment of tax, shall prepare and audit report, containing audit observation/findings and forward the report to taxpayer through Iris and Automated Case Selection System simultaneously.

(h) The Automated Case Selection System will once again configure and assign the case to any Adjudication Officer across the jurisdiction to make an order for assessment of tax under section 122, including imposition of penalty and default surcharge in accordance with sections 182 and 205 of the Ordinance, if required, as pointed out in the audit report;

(i) Notwithstanding anything contained in the Income Tax Rules, 2002, the Jurisdiction assigned under sub-clause (ii) of clause (b) of sub-rule (3) above, by the Automated Case Selection System shall be deemed to have been made under the powers conferred by section 209 of the Income Tax Ordinance, 2001 till such time are finalized for the purpose of section 122 and section 177 of Income Tax Ordinance, 2001;

(j) The adjudication officer to whom the case is assigned shall after a notice under section 122(9) of the Ordinance through Iris to show cause to such person, make an order for assessment of tax as pointed out in the audit report and issue Assessment Order accordingly under section 122 of the Income Tax Ordinance, 2001 and send it to the Automated Case Selection System.

Provided that in case the taxpayer applies electronically for agreed assessment under section 122D in the prescribed form to the committee constituted under section 122D(5), and the committee may.-

(i) accept or modify the offer, and the taxpayer agrees to that offer, the Adjudication Officer shall pass the amended assessment order accordingly; or

(ii) rejects or unable to reach on consensus, the case will be referred back to Adjudication Officer for passing amended order under section 122 on the basis of available record and reply of the taxpayer; and

The Automated Case Selection System, shall forward the assessment order passed under section 122 of the Ordinance for initiating recovery proceedings, if any under section 137 of the Income Tax Ordinance, 2001 to the jurisdiction where such person is originally registered.

4) PROCEDURES FOR CALCULATING GAIN ON DISPOSAL OF ASSETS OUTSIDE PAKISTAN

Section 101A inserted through FA 2018, which is related to the gain on disposal of assets outside Pakistan, provides that any gain from the disposal or alienation outside Pakistan of an asset located in Pakistan of a non-resident company would be treated as a Pakistan source income. The gain derived through the sale of assets would be chargeable to tax in Pakistan. To implement this Section, SRO 849(I)/2021 dated 29th June 2021 issued by FBR whereby following rules are prescribed:

4.1. VALUE OF SHARES

The value of share interest or interest as mentioned in Section 101A shall be computed as in the following manner, namely:

(a) In case shares or securities are traded on any stock exchange and the transaction is carried out through the stock exchange, fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange on the dale of transaction;

(b) In case shares or securities are traded on any stock exchange and the transaction is not carried out through the stock exchange, fair market value of such shares and securities shall be the market (day-end price) of such shares or securities traded on stock exchange on the date off transaction, or previous day on which such securities last traded on stock exchange.

(c) In case shares or securities are not traded on any stock exchange and the shares are equity shares, the fair market value shall be computed according to the following formula, namely:

$$(A + B + C - D)\ E/F$$

(The formula does not seem correct and will need clarification).

Where—

A book value of all assets, other than those mentioned in component B;

B fair market value under section 68 in respect of:
(i) immovable property; and
(ii) assets as mentioned in subsection (5) of section 38 under section 68;

C fair market value of shares and securities as computed in this sub-rule;

D book value of liabilities shown in the balance sheet excluding contingent liabilities, provisions made for meeting liabilities, paid-up capital regarding equity shares, reserves and surpluses, amount set apart for dividends where such dividends(regarding equity as well as preference shares) have not been declared and provision made for taxation;

E paid-up value of equity shares;

F Paid-up equity share capital.

(d) In case shares or securities are not traded on any stock exchange and the shares are not equity shares, the fair market value shall be estimated to be price it would fetch if sold in the open market on the date of transaction. In case where the Commissioner is not satisfied with the valuation, the Commissioner may appoint any expert as is considered necessary for the purposes of obtaining valuation under section 222.

(e) In case of interest by a member in an association of persons, the fair market shall be computed in the following manner. namely:—

$$A + B$$

Where—

A capital contributed by the member in the association of persons;

B Share of the member in the value of the association of persons as is in excess of capital contributed.

Value of the association of persons, as mentioned in clause (e) shall be computed in accordance with any internationally accepted valuation methodology. However, where the Commissioner is not satisfied with the valuation or the valuation methodology, the Commissioner may appoint any expert as is considered necessary for the purposes of obtaining valuation under section 222.

4.2. INCOME ATTRIBUTABLE TO ASSETS LOCATED IN PAKISTAN

For the purpose of sub-section (6) of section 101A, income attributable to assets located in Pakistan Shall be computed according to the following formula, namely:

(A/B*C)

(The formula does not seem correct and will need clarification).

Where—

A income from the transfer of share of, or interest in, computed in accordance with the provisions of section 101, as if, such share or interest is located in Pakistan;

B fair market value of assets located in Pakistan from which the share or interest referred to in A derives its value substantially

C Fair market value of all the assets of the company, computed under these rules.

4.3. FURNISHING OF INFORMATION

If the taxpayer required to furnish information under section 101A (7) or under these rules or transferor of the share or interest in the company or the entity fails to provide the information required under section 101 or under these rules the gain shall be computed in such manner as the Commissioner deems appropriate on the basis of whatever information available or obtained from any person or source.

Every taxpayer through which a non-resident company holds, directly or indirectly, assets, the value of which is derived, wholly or principally from the assets located in Pakistan and the non-resident company disposes of the asset, the taxpayer shall furnish to the Commissioner within sixty days of the transaction of disposal or alienation of the asset by the non-resident company, the information and documents as specified in Form A of this rule. Where the said period of sixty days has already expired before coming into force of this rule, and the transaction has been made after 01 July 2018, the information and documents specified in Form A shall be furnished within thirty days of coming into force of this rule.

The provisions of Division IV of Part V of Chapter X and section 205 shall apply, to the person required to deduct tax under sub-section (8) of section 101A and company required to collect tax under sub-section (9) of section 101A.

The new rules would be applicable on the transactions by non-resident companies made after July 1, 2018. With the implementation of the law the practice of tax avoidance would be stopped and the foreign companies, selling or transferring their shares of entities located in Pakistan to other foreign companies, would pay capital gains tax to the tax authorities.

5) REDUCTION IN RATE OF SALES TAX ON TAKEAWAY FROM RESTAURANTS

The FBR has issued notification no. 725(I)/2021 dated 8th June 2021, the FG has reduce rate of sales tax to 5% for supplies made by restaurants and catteries on account of takeaway up to 30th June 2021, subject to the conditions that no input tax shall be adjusted.

6) CHANGES IN SALES TAX ON PETROLEUM PRODUCTS

The FBR has issued SRO 726(I)/2021 dated 08 June 2021 whereby following rates of sales tax are applicable w.e.f. 18th May 2021.

S.No	Description	PCT heading	Rate
1	Motor spirit excluding HOBC	2710.1210	17% ad valorem
2	High speed diesel oil	2710.1931	17% ad valorem
3	Kerosene	2710.1911	10.07% ad valorem
4	Light Diesel Oil	2710.1921	3.67% ad valorem

The FBR has further issued SRO 750(I)/2021 dated 14 June 2021 whereby following rates of sales tax are applicable w.e.f. 1st June 2021

S.No	Description	PCT heading	Rate
1	Motor spirit excluding HOBC	2710.1210	17% ad valorem
2	High speed diesel oil	2710.1931	17% ad valorem
3	Kerosene	2710.1911	9.15% ad valorem
4	Light Diesel Oil	2710.1921	2.74% ad valorem

The FBR has further issued SRO 807(I)/2021 dated 26 June 2021 whereby following rates of sales tax are applicable w.e.f. 16th June 2021.

S.No	Description	PCT heading	Rate
1	Motor spirit excluding HOBC	2710.1210	17% ad valorem
2	High speed diesel oil	2710.1931	17% ad valorem
3	Kerosene	2710.1911	6.70% ad valorem
4	Light Diesel Oil	2710.1921	0.20% ad valorem

7) INSTRUCTIONS REGARDING PROCESSING OF FASTER – DEFERRED REFUNDS

The FBR issued instruction letter no. 14(7)/Chief(P&R)/FBR/2020-21 dated 8th June 2021, to communicate its decision to enhance refund risk parameter check from 12% to 15% of export value in cases of partially-integrated manufacturing concerns and commercial exporters. This is clarified as under:

- Refund claims upto 12% of export value will be automatically processed by FASTER
- That, any amount exceeding 12% will be deferred and marked to the field office concerned for processing and sanctioning.
- The field officers will thoroughly scrutinize the claim to ascertain its admissibility and genuineness.
- After satisfying themselves with respect to admissibility and genuineness of the refund, field officers will sanction the refund whereby RPOs shall appear in CSTRO's payment system in a separate especially earmarked stream.
- CSTRO will release payment in all genuine cases falling within the range of 12% to 15% of export value.
- No refund claims beyond 15% of export value would be sanctioned/paid under any circumstances.
- All cases marked to the field involving higher refund-to-export ratio, by their very nature, are to be taken as high risk cases, and put to stringent levels of both pre and post-refund audit so as to optimally safeguard the exchequer against any undue release on this account.
- The field formations shall speedily dispose off all pending cases either accepting or rejecting the refund, but no claims, on whatever count, be kept pending beyond July 31, 2021.

8) EXTENSION IN EXEMPTION ON CABLE TV OPERATOR SERVICES IN SINDH

The SRB has issued SRO no. SRB 3-4/18/2021 dated 30th June 2021 whereby amendment is made in SRO SRB-3-4/15/2019 dated 27th June, 2019. As per SRB-3-4/15/2019 dated 27th June, 2019 the Cable TV Operators classified under Tariff heading 9819.9000 are exempt from Sindh Sales Tax on Services subject to fulfillment of conditions which are as under:

- The taxpayer e-files his tax returns (Form SST-03) regularly in the prescribed manner, showing the details of his exempt services of Cable TV Operators (tariff heading 9819.9000) and also of other taxable services including the taxable services of advertisements on Cable TV (tariff heading 9802.5000) therein. Earlier, where the tax returns for the tax periods July, 2016 to June 2020, were not filed, the same were required to be e-filed by the stand-alone service provider on or before the 31st day of July, 2020. Now the period of filing of return is increased to June 2021 and date of filing upto 31st July 2021.
- The taxpayer e-deposits his tax liability on the taxable services, including the taxable services of "advertisement on Cable TV network" (tariff heading 9802.5000), regularly in the prescribed manner. However, if the tax liability for the tax periods July, 2016 to **June, 2020,** is not paid, the same was required to be e-deposited by the stand-alone service provider in Sindh Government's head of account "B-02384" in the prescribed manner by the **31st day of August, 2020.** Now the Tax period is increased to June 2021 and date of payment upto 31s August 2021.
- The taxpayer complies with the provisions of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014, in relation to the taxable services, including the taxable service of advertisement on Cable TV network (tariff heading 9802.5000), as are provided or rendered by him and e-deposits the amounts of Sindh sales tax involved, in case such amounts are or were not deducted or withheld by the service recipient or the withholding agent in terms of the said Rules. However, the liability of Sindh sales tax under the aforesaid Sindh Sales Tax Special Procedure (Withholding) Rules, 2014, for the tax periods July, 2016 to **June, 2020,** if not paid

earlier, was required to be e-deposited by the stand-alone service provider in Sindh Government's head of account "B-02384" in the prescribed manner by the **31st day of August, 2020.** Now the Tax period is increased to June 2021 and date of payment upto 31s August 2021.

9) EXTENSION IN EXEMPTION ON HEALTH INSURANCE SERVICES

The SRB had issued SRO 3-4/5/2019 dated 08th May 2019 whereby following services other than related re-insurance services were exempt from tax.

S.No	Tariff Heading	Description of insurance services	Period during which exempted
1	9813.1500	Life Insurance	From 01st July 2018 to 30th June 2019
2	9813.1600	Health Insurance	From 01st July 2016 to 30th June 2019

Through SRO no. 3-4/14/2020 dated 22nd June 2020, the exemption of Health Insurance was extended till 30th June 2021. Now further extension for health insurance upto 30th June 2022 is granted vide SRO 3-4/17/2021 dated 30th June 2022.

10) EXTENSION IN SINDH SALES TAX SPECIAL PROCEDURE (TRANSPORTATION OR CARRIAGE OF PETROLEUM OILS THROUGH OIL TANKERS) RULES, 2018

As per Sindh Sales Tax Special Procedure (Transportation or Carriage of Petroleum Oils through Oil Tankers) Rules, 2018, the rate of tax on inter-Province service or services is 15 per cent of the value of the services in case the registered service provider elects or opts to pay the said higher rate of 15 per cent on the inter-Province service or services provided or rendered by him. For this purpose, the registered service provider was required to submit his written election or option, in the Form appended to these rules, to the concerned Commissioner of the SRB so as to reach him within 14 days from the date of the notification. However, persons commencing their economic activity in relation to the business of inter-Province service or services on a date after the date of this notification were required to submit their election or option electronically in the prescribed Form at least 10 days before the commencement of such economic activity. The option/election, so given in the prescribed Form, was valid for the period ending **30th June, 2021;**

The person opting/electing to pay sales tax at 15 per cent under these rules was liable to pay the tax at 15 per cent on intra-Province service or services in Sindh and, for this purpose, they were required to submit the other option/election in the Form prescribed under rule 42G of the Sindh Sales Tax on Services Rules, 2011.

Now the option/election, so given in the prescribed Form, is made valid for the period **ending on 30th June 2022** in terms of SRO no. SRB-3-4/16/2021 dated 30th June 2021.

11) REQUIREMENT TO FILE SCANNED ATTACHMENT WITH SINDH SALES TAX RETURN

As per Rule 16 of Sindh Sales Tax on Services Rules, 2011 where the input tax claimed on goods used, consumed, or utilized for providing services exceeds 20% of output tax, the registered person was required to file scanned attachment as evidence with return.

Now through SRO no. 3-4/15/2021 dated 30th June 2021, requirement for attachment of invoices is made applicable in case of input **services** too.

12) EXPERIENCE REQUIREMENT FOR E-INTERMEDIARY IN SRB

As per Rule 19, a person having professional experience in the field of taxation desirous of being appointed as e-intermediary, shall apply to SRB or its officer.

Now through SRO no. 3-4/15/2021 dated 30th June 2021 changes in professional experience has been made as follows:

Before Amendment	After Amendment
(a) A firm or sole proprietor approved by ICAP or ICMAP, ACCA or CPAs; (b) A person appointed as authorized representative under chapter IX of Sales Tax Rules, 2006	(a) providing or rendering the services of an accountant; (b) providing or rendering the services of legal practitioners and consultants; (c) who is an income tax practitioner registered

(c) A person or firm approved to practice as Income Tax Practitioner under the Income Tax Ordinance, 2001; or (d) as may be approved by the Board	with a tax bar affiliated with All Pakistan Tax Bar Association and providing or rendering the services of a tax consultant; or (d) as may be approved by the Board

13) SINDH SALES TAX ON SERVICES OF CALLS CENTERS

The **reduced rate of 3%** was applicable on services provided or rendered by call centre from a place of business in Sindh for which the registered person receives the value of services from a place outside Pakistan in Foreign Exchange through banking Channels in the business bank account of the registered person in the manner prescribed by SBP as per SRO 3-4/8/2013 dated 1st July 2013. Now it is withdrawn through SRO SRB-3-4/14/2021 dated 30th June 2021 w.e.f. 1st July 2021 and it is put into **exemption category** by amending SRO 3-4/7/2013 dated 18th June 2013 through SRO SRB 3-4-/13/2021 dated 30th June 2021.

14) EXEMPTION ON TELECOMMUNICATION SERVICES WITHDRAWN

As per SRO 3-4/7/2013 dated 18th June 2013 telecommunication services involving charges payable on the international leased lines or bandwidth services used by software exporting firms registered with the Pakistan Software Export Board is exempt from SST. Now this exemption has been withdrawn vide SRO SRB-3-4-13/2021 dated 30th June 2021 making such services liable to be taxed at 19.5%.

2. CORPORATE NOTIFICATIONS / CIRCULARS

1) AMENDMENTS IN LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) REGULATIONS, 2017.

The SECP vide SRO 638 dated 28 May 2021 placed on the website on 04 June 2021 made amendments in Listed (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017.

The amendments made has now withdrawn the power of the Commissioner to further extend the time period of offer by a maximum of 90 days upon request of the acquirer.

Moreover, the provision is substituted and now provides that in case an acquirer further extends the time of an offer, which, originally constitutes of 180 days by maximum 90 days, he will have to intimate, both the Commissioner and the SECP in case of such extension.

2) AMENDMENTS TO REIT REGULATIONS, 2015.

The SECP vide SRO 724 dated 7 June 2021, placed on the website on 8 June 2021 made amendments to REIT regulations, 2015. The SECP made structural changes in the REIT Regulations, 2015 through its amendments.

The changes can be accessed through the link: https://bit.ly/3AfBS2I

3) DRAFT AMENDMENTS IN REGULATION OF ASSOCIATIONS WITH CHARITABLE AND NOT FOR PROFIT OBJECTS REGULATIONS, 2018.

The SECP vide SRO 371 dated 29 March 2021 placed on the website on 16 June 2021 proposed draft amendments in Regulation of Associations with Charitable and Not for Profit Objects Regulations, 2018.

The Proposed amendments were made in the provisions of **"Solvency and financial soundness**". The major change was the amount of overdue or past payment, payable to a financial institutions in order to act as a promoter, director or chief executive, has been increased to Rs. 200, 000/- appearing in the Consumer Credit Information Report (CCIR), which was nil before the proposed amendment.

4) EXTENSION IN APPLICATION OF IFRS 9 ON NBFC(S) AND MODARABA.

The SECP vide SRO 800 dated 22 June 2021 has extended the time limit for the purpose of replacement of IAS 39 "Financial Instruments: Recognition and Measurements" with IFRS 9 "Financial Instruments" in case of Non-Banking Finance Companies and Modarabas for the reporting period ending on or after 30 June, 2022.

Moreover, the SECP has also permitted early action on the above change, if possible.

5) AMENDMENT IN THE SEVENTH SCHEDULE TO COMPANIES ACT, 2017.

The SECP vide SRO 808 dated 28 June 2021 made amendments in the Seventh Schedule to Companies Act, 2017 pertaining to the Fees for registration of companies with share capital. The amended schedule can be perused through the link: https://bit.ly/3Ajfrd9

3. LAW IN FORCE AT THE TIME OF FILLING OF RETURN WILL APPLY IN ASSESSMENT PROCEEDINGS

1) BACKGROUND

Under the Self-assessment scheme of Income Tax Ordinance, 2001, the return filed by taxpayer is treated as assessment order issued by Commissioner u/s 120. Section 122(5A) gives power to Commissioner to amend assessment order issued under Section 120 if after making such enquiries, as he deems necessary, he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue.

However, there is time limitation provided in Section 122(2) whereby the order amendment of assessment can be made as follows:

- Before Finance Act, 2009, an assessment order could only be amended within 5 years after the Commissioner has issued or is treated as having issued the assessment order on the taxpayer.
- After FA 2009, an amendment can only be made within 5 years from the end of the financial year in which Commissioner has issued or treated to have issued assessment order to the taxpayer, applicable from 1st July 2009.

As per General Clauses Act, 1897 Section 9 "Commencement and termination of time", it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from", "and", for the purpose of including the last in a series of days or any other period of time, to use the word "to".

In case reported as Commissioner of Inland Revenue, Zone-VII, CRTO, Lahore vs. Shahpur Textile Mills, Lahore (MA No. 35/LB/2020 in ITA No. 2431/LB/2013), Tax Year 2004, the FBR filed application u/s 221 for rectification of ATIR order dated 05.12.2019.

2) ARGUMENT OF FBR

The representative of FBR apprised the court that through ATIR order dated 05.12.2019, the amendment proceedings u/s 122(5A) have been declared unlawful due to time limitation, which was quite unjustified as the return for the tax year 2004 was filed on 30.09.2004 and amended on 30.09.2009 i.e. within 5 years of date of filling of return as per provision of Section 122(2) as applicable prior to before FA 2009. Therefore, it is mistake apparent from record and rectifiable in terms of Section 221 of ITO.

3) DECISION OF ATIR

The ATIR disagrees with the instance of FBR's representative, and observe that the limitation of 5 years for amendment of the same expired on 29.09.2009, against which the proceedings finalized in terms of section 122(5A) of ITO on 30.09.2009 by the department. Therefore, the FBR miscellaneous application is without merit and is dismissed.

➢ CONCLUSION

From the decision of court, the other principle of law settled is that in amendment proceedings, the law of limitation applicable at the time of filling of return of subject tax year (on 30.09.2004) will be applicable i.e. law before FA 2009 instead of the law applicable at the time the amendment proceedings are finalized i.e. law after FA 2009.

4. TOPIC OF THE MONTH

BAD DEBTS AND DEBIT/CREDIT NOTE(S)

➢ PREAMBLE

In our topic of the month segment this month we are going to discuss the provisions relating to bad debts in Income Tax Ordinance, 2001 ("ITO"). In addition, we are also going to discuss the provisions of debit/credit notes in the Sales Tax Act, 1990 ("STA") as it is closely related to debt creation and debt payment. The COVID-19 pandemic has widespread global impacts on economies, markets & businesses, giving rise to significant volatility and considerable uncertainty. As a result of the COVID-19 pandemic there may be initiatives aimed at sustainable solutions for temporary distressed debtors. In the current

environment, the entities may renegotiate the terms of existing contracts and arrangements.

The current challenges that societies and businesses face around the world in light of the Novel Coronavirus (COVID-19) pandemic are significant and unprecedented. The extent of disruption to everyday life is unparalleled, leading to widespread cancellations, 'no-shows' and other forms of disruption and/or interruptions to events, conferences, bookings, subscriptions, and many other forms of contractual undertakings.

Clearly the impact is most widely publicized in areas such as the travel sector, but it extends well beyond this. Whether it's a membership subscription which is affected, an event or conference booking which cannot proceed, a construction contract which is delayed, or even a contract to provide goods or services which cannot be fulfilled. Each of these cases raise specific and oftentimes complex or uncertain Direct & indirect tax implications.

From a policy perspective, there are really two main schools of thought around the treatment of bad debts. On the one hand, there are jurisdictions which do provide bad debt relief implicitly recognize that businesses should not be required to ultimately bear VAT/GST in circumstances where the business does not receive the related income, as applicable in Pakistan. On the other hand, there are jurisdictions which do not provide bad debt relief and seemingly believe that government should not be required to contribute back its tax revenue due to the default of another party. In between these two extremes lies a range of jurisdictions which impose significant conditions around proof of the irrecoverability of the debt before the taxes may be reversed, including limitations where a debt has been sold or factored.

1) BAD DEBTS AS PER INCOME TAX ORDINANCE, 2001 [SEC-29]

The treatment of Bad debt as an admissible expense is explained in section 29 of the Income Tax Ordinance, 2001. A debt may be defined as a sum of money due from one person to another. As a general rule where a taxpayer is entitled to receive a sum of money from another either at law or in equity, it is accepted that a debt exists for the purposes of section 2(15) of the Ordinance. A debt exists when a certain sum of money is owing from one person to another. 'Debt' denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment.

There are certain conditions which are needed to be fulfilled in order to claim Bad debt as an admissible deduction. The conditions are as follows:

1. The debt is written off in the accounts which means that provision for doubtful debt is not allowable as tax deduction unless and until it is written off in the accounts. Therefore, provision for doubtful debts for the year is required to be added back and any debt written off against provision already made is to be deducted.
2. The debt should have been included in taxable business income in the previous years.
3. The debt pertains to money lent by a financial institution or bank.
4. There are reasonable grounds to believe that the debt is irrecoverable.

Although point number 4 provided above, creates ambiguity and uncertainty, as there are several precedence present in various courts in Pakistan as well in India wherein the Burden of onus to prove is on assessee to show that debt has become bad or irrecoverable.

Now this point has created a challenge to determine that whether or not the debt is recoverable or not and in case the taxpayer is unable to prove that the bad debt is in fact irrecoverable, the amount so allowed as an admissible expense can be disallowed in the amended assessment.

There are various verdicts which shows mixed sentiments by the several courts on the matter of bad debt being irrecoverable and therefore being allowed as an admissible deduction against the income.

2) FULL RECOVERY OF BED DEBTS

According to Section 70 (recouped expenditure), where a person has been allowed a tax deduction for any expenditure or loss incurred in a tax year and subsequently, the person has received, in cash or in kind,

any amount in respect of such expenditure or loss, the amount so received shall be included in the income chargeable under that head for the tax year in which it is received.

The said concept is also applicable for the recovery of bad debts and therefore recovery against bad debts already allowed as a tax deduction is a taxable amount, However, if the bad debts was not allowed as a tax deduction in the previous year then the same shall not be treated as taxable amount and shall be deducted from accounting profit in which the said amount has been taken as income.

3) PARTIAL RECOVERY OF BAD DEBTS

Section 29(3) explains the taxability of partial recovery of bad debts as where a person has been allowed a deduction in a tax year for a bed debt, and in a subsequent tax year the person receives in cash or kind any amount in respect of that debt, the following rules shall apply, namely:

(a) Where the amount received exceeds the difference between the whole of such bad debts and the amount previously allowed as a deduction under this section, the excess shall be included in the person's income under the head "Income from business" for the tax year in which it was received; or

(b) Where the amount received is less than difference between the whole of such bad debt and the amount allowed as a deduction under this section, the shortfall shall be allowed as a bad debt deduction in computing the person's income under the a head "Income from Business" for the tax year in which it is received.

4) SETTING OFF IRRECOVERABLE DEBT INCURRED BY ONE ASSOCIATED ENTITY AGAINST INCOME OF ANOTHER ASSOCIATED ENTITY AND VICE VERSA.

The High court of Allahabad in its verdict 9 ITR 635 in the year 1941 heard the case where it was contented by the Revenue Authority that the Bad debt expense incurred by first associated entity cannot be set off against the income of the second associated entity.

Upon perusal of the facts and law, the court decided in the favor the taxpayer and allowed the deduction of irrecoverable bad debt incurred by the first associated entity against the income of the second.

5) TIME BARRED ISSUE AGAINST ADJUSTMENT OF IRRECOVERABLE BADDEBT.

The High court of Madras in its verdict 7 ITR 76 in the year 1939 heard the case where it was contented by the revenue Department that the debt which became part of the assessment in the year 1930 should have been adjusted in case of being irrecoverable maximum by the year 1931 in the assessment of that year and that it cannot be adjusted against the income for the tax year 1934.

Upon perusal of the facts and the law, the court concluded that as the revenue department does not have any evidence that the debts become irrecoverable in the year 1931 and there is no law to warrant this assertion of time, therefore, the court decided in the favour of the taxpayer and allowed the irrecoverable debt to be adjusted from income of tax year 1934

Upon perusal of the verdicts above, it can be assessed that there have been cases of discrepancy where the bad debts which have been irrecoverable are difficult to adjust or be treated as an admissible expense and that the burden of onus to prove that the bad debt is irrecoverable, further complicates the situation.

6) DEBIT NOTE / CREDIT NOTE UNDER SALES TAX RULES, 2006 [CHAPTER 3]

In cases, where sales has been declared by a registered person and the return regarding such sales arise, the credit note is filed by the supplier against which the buyer needs to issue debit note. The sole purpose of issuing debit and credit note is to make adjustments in the output tax of a supplier and in the input tax of the buyer.

The time limit to issue debit note / credit note is within 180 days from the date of declaration of tax invoice in the tax return.

In normal circumstances, when a sale is declared, the supplier pays the tax collected from buyer to the FBR as a part of its output tax. And the buyer reclaims the amount paid as sales tax to the supplier from the FBR as a part of its input tax.

When the scenario arises where the buyer needs to return the goods, the supplier issues the credit note and reduces his output tax by the amount paid to the FBR.

Whereas vice versa in case of buyer, who issues a debit note, and pays the amount claimed from FBR by reduction in input tax by adding the same amount in his output tax.

However, if the buyer fails to correspond to a credit note and does not issue a debit note, then provisional adjustment will be allowed to the supplier against its output tax, whereas the same amount will be added and adjusted to the liability of the buyer and recovered from him as well.

DISCLAIMER

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