



TAX PAK

NEWSLETTER BY TOLA ASSOCIATES



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EDITORIAL NOTE

Asalam-o-alaikum everyone! Hope this monthly issue of TAXPAK finds you in good spirits and immaculate health! I welcome you to another edition of TAXPAK, our monthly publication the purpose of which is to provide a monthly update on the ongoing legal and administrative developments that take place within the world of tax in Pakistan. Alhumdulillah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of, these developments on a monthly basis.



Moving on to the contents of this letter, I would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important notifications and circulars issued by the Federal Board of Revenue and its provincial counterparts. Moreover, notifications from the corporate regulatory body i.e. SECP are also discussed. Furthermore, keeping in mind the aforementioned stated purpose of this document, we usually discuss a (relatively) recent judgment passed by the courts of law. In this monthly edition, we have opted to discuss the judgment passed by the Lahore High Court discussing that the extension of interim relief beyond statutory relief can be determined by the Commissioner (Appeals).

Lastly, this newsletter is concluded with our Topic of the month that is titled "TAXATION OF NOT-FOR PROFIT ORGANIZATIONS". The said topic discusses about the provisions of ITO 2001, in which FBR has provided relief for Not-for Profit Organizations.

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. ADJUSTMENT OF SALES RETURNS THROUGH CREDIT NOTES AGAINST UNREGISTERED SALES:

Automation of adjustment through Credit notes against sales returns from unregistered buyers to all taxpayers has been allowed by the FBR via its Circular referenced C.No.5(17) ST-L&P/CN/2021/125983-R dated 27th May 2022. The adjustment shall apply to all sales returns of the taxpayers with effect from 1st December 2021. Earlier last month, the FBR issued a circular allowing sales tax return adjustment from unregistered persons to the extent of only 10% of all unregistered supplies. Adjustment is now allowed without restriction with effect from 01-12-2021.

2. CNG MINIMUM VALUE:

Vide SRO 587(I)/2022, dated May 10, 2022, the FBR issued a notification regarding the minimum CNG values for CNG stations for the purpose of charging sales tax. The CNG stations shall charge to their CNG customers Rs, 140/- per KG for Range I (applicable to KPK, Balochistan, and *Potohar Region) and shall charge Rs 135/- per KG for Range II (applicable to Sindh and Punjab excluding *Potohar Region).

**Potohar region: Rawalpindi, Islamabad and Gujranwala*

3. CLARIFICATION FOR THE APPLICABILITY OF FURTHER SALES TAX

The FBR provided clarification regarding the applicability of further tax vide its circular C. No 1(4) ST-L&P/Misc/2020, dated 17th May 2022, wherein the matter was cleared that supplies to government, semi-government and statutory regulatory bodies whether they were registered or not shall not face further tax deductions. However, supplies made to private hospitals, NGOs and charitable organizations who do not have Sales Tax Registration Number (STRN) shall face further tax even if those goods were not consumed by these entities.

4. EXTENSION IN DATE OF PAYMENT OF SALES TAX AND SUBMISSION OF RETURN FOR THE TAX PERIOD APRIL 2022

The Khyber Pakhtukhwa Revenue Authority ("KPRA"), vide its circular C. No. 02/2022 dated 18th May 2022, has extended the due dates of the for payment and filing of the

sales tax returns for the month of April. The dates are as follows:

1. Payment of Sales Tax- Till 26.05.2022
2. Filing of sales tax returns -Till 30.05.2022

Please note the statutory dates for the above were (15.05.2022-21.05.2022) and (18.05.2022-25.05.2022) respectively.

5. ELECTRONIC ADDRESS:

The FBR has, through, SRO 549(I)/2022, dated 23rd April 2022, issued a draft amendment to Rule 74(2) of the ITR. The draft amendment was published, and the FBR invited any potential objections to be raised within 15 days of the publishing of the said draft amendment. The draft amendment intended to substitute sub rule (2) of Rule 74 is as under:

Current Provisions	Proposed Provisions
"(2) Where a person has notified the commissioner in writing of an electronic address for service of documents under the Ordinance or rules, a document required to be served on the person by the Commissioner or Chief Commissioner shall be considered sufficiently served if sent to that address."	"(2) Where a person has provided an electronic address, the document required to be served on the person shall be considered sufficiently served if sent to that address."

Now, the FBR has, via SRO 597(I)/2022, dated 19th May 2022, substituted the rule 74(2) of the Income Tax Rules, 2002. The above amendment will treat any electronic address, whether or not provided for the specific purpose of communication, as the valid address for service of any document.

6. PROPERTY VALUES-DHA GUJRANWALA

The FBR vide its SRO 593(I)/2022 has amended Sections 279-281 of its Notification No. SRO 337(I)/2022 wherein the property value per Marla for residential plots has been set at Rs 650,000/- for the villas situated in DHA Gujranwala having a measurement of 5, 6 and 10 Marlas.

7. RESTORATION OF ADJUSTABLE INPUT TAX TO REGISTERED PERSONS WHO ARE ISSUED EXCLUSION CERTIFICATES BY THE COMMISSIONERS (IR)

The FBR (Inland Revenue (Operations)) vide its letter referenced F. No. 01/PO/IR/2021-Part-IV/116246-R, on 11th May 2022, directed its Commissioners (IR) to perform a review of all the exclusion certificates they issued in order to detect any possibility of error pertaining to the misinterpretation of the allowance of 100% of input tax adjustment and misinterpretation of 100% restoration of input tax adjustments for integrated retailers. It was also directed to them that in case any of the above misinterpretations was present, then they were to re-issue the exclusion certificates urgently in order to avoid any court challenges.

8. STGO 17 REVERSAL OF 60% INPUT ADJUSTMENT BAR

The FBR, vide its Circular No. 44/POS/2021/118468-R, dated 13th May 2022, issued the process for reversal of bar on input tax adjustment by 60%. It is pertinent to mention here that this process has been automated and shall be implemented by PRAL and shall be effective from 10th May 2022. The process shall be as follows:

- a. A registered person whose input tax has been reduced by 60% via the relevant Section (8B) shall file an application for the removal of bar.
- b. A purview shall be presented where the registered person shall select the relevant reason and support it with relevant proof and evidence.
- c. Upon receiving the application, the concerned Commissioner-IR, upon examination of the records, shall pass an order in the system as under:
 - i. Exclusion certificate shall be allowed on basis of the selection of reasons in the purview of the main application. Below are the types of reasons:
 1. Application accepted for reason of "Integration with FBR's POS system":
 - a. Under this process, restoration of the input tax adjustment shall be applicable on the tax period following the tax period during which the Tier-1 Retailer remained non-integrated. 60%

reduction in input tax adjustment shall apply on the tax period in which the said was a non / partially integrated registered person. The Concerned Commissioner-IR shall provide the date of integration and the system shall restore the input tax adjustment accordingly.

2. Application accepted for reason "Not a Tier-1 Retailer as defined u/s (43A) of the Sales Tax Act, 1990.
 - a. Reduction of 60% shall be reversed with effect from the date the bar was placed, and no tax period shall remain subject to reduction.
 - ii. In case Exclusion certificate was disallowed the reduction in input tax adjustment shall continue in all subsequent tax periods before.

2. CORPORATE NOTIFICATIONS / CIRCULARS

1. AMENDMENTS IN THE THIRD SCHEDULE OF THE COMPANIES ACT, 2017:

The SECP issued an amendment to the Third Schedule of the Companies Act, 2017 vide SRO 602(I)/2022 wherein the criteria for assessment of the type of entities namely- Large, Medium and Small Sized Entities were reclassified. The amendments before and after are produced below for an easier comprehension:

Classification	Before	After	Reference: (THIRD SCHEDULE)
	Turnover in Rs.		
Large Sized Entities	More than 1 billion	More than 800 million	Serial 2, clause (a).
Medium Sized Entities	Less than 1 billion	Less than 800 million	Serial 3, clause (a)
	100 million to 1 billion	150 million to 800 million	Serial 3, clause (b)
Small Sized Entities	Upto 100 million	Upto 150 million"	Serial 3, clause (a)

3. THE LAHORE HIGH COURT HELD THAT EXTENSION OF INTERIM RELIEF BEYOND STATUTORY RELIEF CAN BE DETERMINED BY THE COMMISSIONER (APPEALS)

The Lahore High Court was approached for the finalization of the expiration of statutory period in the case of ***Romex International (Petitioner) versus The Federation of Pakistan etc. (Respondents)***. Traditionally, the statutory period for interim relief by the Commissioner (Appeals) is as follows:

- 60 days according to Section 128(1AA) of the Income Tax Ordinance, 2001 (“ITO”);
- 30 days under Section 45B(1C) of the Sales Tax Act, 1990; and
- 30 days under Section 33(1A) of the Federal Excise Act, 2005.

Two categories were determined, the first being where no Order was passed by the Commissioner (Appeals) on the expiry of the statutory period and the second where the application for stay was declined.

Orders where stay was declined, were appealable before the Appellate Tribunal Inland Revenue which usually disposed them after granting interim relief for a specified period. Thereupon, the Court was approached for, again, for the extension of interim relief, which was then relied on and directed to decide the appeal. This resulted to a practice and therefore started to be misused. It is pertinent to mention here that this was applicable only for cases where undue hardship was enforced on the taxpayer.

1. ARGUMENTS BY THE RESPONDENT

The Chief (Legal) FBR was called for addressal, and he apprised the Court by stating that in the earlier writ petitions, the procedure had been structured by Rules 76-76O in Chapter XII of the Income Tax Rules (“ITR”), 2002 and corresponding amendments were made into Sales Tax Rules, 2006 by inserting Chapter XIV-C.

The Court was also apprised that all Commissioners were restrained from pursuing recovery proceedings unless and until the first appellate stage was completed. The learned counsel for the respondent further explained that only

some, not all, applications were moved in absence of any notice and only for coercive measures.

2. ARGUMENTS BY THE PETITIONER

Learned counsel for the petitioner responded that they submitted the application of stay as a precautionary measure because of the notice for attachment of business accounts were also issued simultaneously to the bank managers without obliging procedure mentioned under Section 138 of the ITO.

3. FINDINGS BY THE COURT

The assertion by the petitioner could not be denied because Rule 210B, had been inserted in the ITR which permitted bypass of the procedure u/s 138 of the ITO and vires of this rule had been challenged in another petition. However, vide 2021 PTD 162, such bypass had been declared illegal by another learned Single Bench in its judgement.

The Court also observed that the FBR was unable to control the situation administratively which as a result needed to be addressed via this judgement. The Court also noted that by extending interim relief beyond statutory period every time obliterated the intent of the Legislature if such delay was on part of the taxpayer. Therefore, the safer recourse was that the taxpayer should move the application for extension of stay/interim relief beyond the statutory period before the Commissioner (Appeals), who shall upon receipt of application shall determine the cause of delay first. Then, if it determines that delay was on part of the taxpayer, the application would be rejected via a speaking order in writing, and if it determines otherwise an extension of interim stay will be granted.

The order for rejections of application or declining of interim relief is appealable before the Appellate Tribunal. Appellate Tribunal is not expected to grant interim relief as a practice and in routine. Findings of fact by Commissioner (Appeals) needs to be given weightage unless proven otherwise. The order of granting interim relief must be reasoned and speaking.

CONCLUSION

The Court concluded that if the appeal was not decided within time for which relief was granted by Appellate Tribunal, its extension during the pendency of appeal before Commissioner (Appeals) would again require determination of delay, which can neither be done by the Appellate Tribunal nor the Court in its constitutional jurisdiction.

Since solely the Commissioner (Appeals) can determine / attribute delay, the application for extension of interim relief, provided it was previously granted by the Appellate Tribunal, beyond statutory period shall be again moved before Commissioner (Appeals) and the remaining procedure shall be followed as per the directives stated in the Judgement.

This means the same cycle will repeat until the appeal is decided by the Commissioner (Appeals).

4. TOPIC OF THE MONTH

TAX CREDITS FOR NOT-FOR-PROFIT ORGANIZATIONS

There are organizations in Pakistan which do not have the aim or motives of earning profits/ returns/ benefits as compared to the others. Such entities are mainly focused with the commitments to improve certain segments or fragments of our society. They work selflessly and in a rigid structure to help these segments overcome issues they face such as lack of basic commodities, medical treatment, societal welfare etc. Almost all countries have made certain provisions in their taxation systems wherein they provide relief to these organizations. Here in Pakistan, the FBR has also developed such reliefs in order to promote and encourage individuals and entities to donate or contribute to these entities - Not for Profit Organizations. We have below summarized and reproduced the sections in the Income Tax Ordinance 2001, for a better and clearer understanding of the relevant sections.

1. DEFINITION

Not for profit organizations are defined by the Income Tax Ordinance, 2001 ("ITO") as *"any person other than an individual, which is*

- (a) *established for religious, educational, charitable, welfare purposes for general public, or for the promotion of an amateur sport;*
- (b) *formed and registered by or under any law as a non-profit organization;*
- (c) *approved by the Commissioner for specified period, on an application made by such person in the prescribed form and manner, accompanied by the prescribed documents and, on requisition, such other documents as may be required by the Commissioner; and none of the assets of such person confers, or may confer, a private benefit to any other person."*

2. TAXATION 100% TAX CREDIT FOR CHARITABLE ORGANIZATIONS

2.1. AMOUNT OF TAX CREDIT

The persons to whom section 100C applies, are allowed a **tax credit equal to one hundred percent** of tax payable under any of the provisions of the ITO, including minimum and final taxes, subject to the conditions and limitations provided under Section 100C.

2.2. ELIGIBLE PERSONS

Section 100C applies to the following:

- (a) Persons mentioned in Table II of clause (66) of Part I of the Second Schedule of the ITO;
- (b) A trust administered under a scheme approved by the Federal Government and established in Pakistan exclusively for the purposes of carrying out such activities as are for the welfare of ex-employees and serving personnel of the Federal Government or a Provincial Government or armed forces including civilian employees of armed forces and their dependents where the said trust is administered by a committee nominated by the Federal Government or a Provincial Government;
- (c) A trust;

- (d) A welfare institution registered with Provincial or Islamabad Capital Territory (ICT) social welfare department;
- (e) A not-for-profit company registered with the Securities and Exchange Commission of Pakistan under section 42 of the Companies Act, 2017;
- (f) A welfare society registered under the provincial or Islamabad Capital Territory (ICT) laws related to registration of co-operative societies;
- (g) A waqf registered under Mussalman Waqf Validating Act, 1913 (VI of 1913) or any other law for the time being in force or in the instrument relating to the trust or the institution;
- (h) A university or education institutions being run by nonprofit organization existing solely for educational purposes and not for the purposes of profit;
- (i) A religious or charitable institution for the benefit of public registered under any law for the time being in force; and
- (j) International non-governmental organizations (INGOs) approved by the Federal Government.

2.3. ELIGIBLE INCOMES

Eligibility of tax credit applies on the following incomes:

- (a) Donations, voluntary contributions and subscriptions;
- (b) House property;
- (c) Investments in the securities of the Federal Government;
- (d) Profit on debt from scheduled banks and microfinance banks;
- (e) Grant from Federal, Provincial, Local or foreign Government;

- (f) so much of the income chargeable under the head "income from business" as is expended in Pakistan for the purposes of carrying out welfare activities: Provided that, only so much of such income shall be eligible that bears the same proportion as the amount of business income bears to the aggregate of income from all sources; and
- (g) all incomes of the persons mentioned under 2.2(a), (b) and (h) above.

2.4. CONDITIONS FOR ELIGIBILITY

For the specified incomes of the specified persons to be eligible for the 100% tax credit, the following conditions are required to be fulfilled:

- (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 relevant tax year have been filed;
- (d) the administrative and management expenditure does not exceed 15% of the total receipts: However, this shall not apply to a nonprofit organization, if—
 - (i) charitable and welfare activities of the non-profit organization have commenced for the first time within last three years; or
 - (ii) total receipts of the non-profit organization during the tax year are less than Rs 100 million Rupees;
- (e) approval of Commissioner has been obtained; *Provided that the condition of approval in respect of persons mentioned in paragraph 2.2(a) above shall take effect from the 1st July 2022 and shall not be applicable for prior years this means the benefit of tax credit for these persons without approval will end on 30th June 2022;*
- (f) none of the assets of trusts or welfare institutions confers, or may confer, a private

benefit to the donors or family, children or author of the trust or his descendants or the maker of the institution or to any other person. However, if such benefit is taken, then such amount shall be added to the income of the donor; and

- (g) Statement of voluntary contributions and donations received in the immediately preceding tax year has been filed in the prescribed form and manner.

Surplus funds of organizations falling under Section 100C shall be taxed at a rate of 10%. Surplus funds mean funds or monies—

- (a) not spent on charitable and welfare activities during the tax year;
- (b) received during the tax year as donations, voluntary contributions, subscriptions and other incomes;
- (c) which are more than 25% of the total receipts of the nonprofit organization received during the tax year; and
- (d) are not part of restricted funds (Funds received could not be spent and treated as revenue during the year due to any obligation placed by the donor or funds received in kind.

3. TAX CREDIT TO DONORS:

Tax Credits are an amount of money that taxpayers can deduct directly from the taxes they owe. Tax credits shall be entitled for any sum paid, or any property given by the person in the tax year as a donation, voluntary contribution or subscription to the following: —

- (a) any board of education or any university in Pakistan established by, or under, a Federal or a Provincial law;
- (b) any educational institution, hospital or relief fund established or run in Pakistan by Federal Government or a Provincial Government or a Local Government; or

- (c) any non-profit organization or any person eligible for tax credit under section 100C of this Ordinance; or
- (d) entities, organizations and funds mentioned in the Thirteenth Schedule to this Ordinance.

The amount of a person's tax credit allowed is calculated using the following formula:

$$(A/B) \times C$$

where —

A is the amount of tax assessed to the person for the tax year **before allowance** of any tax credit;

B is the **taxable income** for the tax year; and

C is the lesser of —

- (a) the total amount of the person's donations in the year, (Fair value of property given inclusive); or
- (b) If the person is —
 - i. an individual/AOP, 30% (15% in case donor is an associate) of the taxable income for the year; or
 - ii. a company, 20% (10% in case donor is an associate) of the taxable income of the person for the year;

NOTES:

1. The fair market value of any property given shall be determined at the **time it is given**.
2. Cash amount paid by a person as a donation shall be taken into account only if it was **paid by a crossed cheque**.

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