



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 tax related developments 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 newsletter, 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 Appellate Tribunal Inland Revenue, Karachi discussing that the amendments to time limitation u/s 111(2) will not affect time limits commenced before 1st July, 2018

Lastly, this newsletter is concluded with our Topic of the month that is titled "DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONALS" (DNFBPs). The topic provides introduction and registration requirements of DNFBPs along with monitoring powers of FBR.

We have also issued our comments on Finance Bill, 2022 and subsequent amendments therein: The same may be accessed through <https://bit.ly/3QZn-fc9>.

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 TAXPAK 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.

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1. NOTIFICATIONS/ CIRCULARS

A. INCOME TAX- NOTIFICATIONS

1. REVISION OF VALUE OF IMMOVABLE PROPERTIES

The FBR vide various SROs has revised the value of immovable properties for the following cities:

CITIES	
1.	Toba Tek Singh
2.	Jhang
3.	Sahiwal
4.	Sargodha
5.	Rahim Yar Kahn
6.	Multan
7.	Chakwal
8.	Bhawalpur
9.	Bahawal Nagar
10.	Mandi Bahaudin
11.	Lodhran
12.	Lasbela
13.	Khushab
14.	Jehlum
15.	Haripur
16.	Hafizabad
17.	Gujranwala
18.	Sheikhupura
19.	Islamabad

2. THE PRIME MINISTER'S FLOOD RELIEF FUND, 2022

The FBR vide SRO 1590(I)/2022, provided following exemptions for donations to "The Prime Minister's Flood Relief Fund, 2022" (Fund):

1. Any income derived by the fund has been exempted; and
2. Exemptions from following provisions has been provided:
 - a. Minimum tax (u/s 113);
 - b. Profit on Debt (u/s 151); and
 - c. Provisions of advance tax (i.e. on telephone and internet users u/s 236) on the amount donated through SMS to the Fund.
3. Addition in list of charitable organizations for the purpose of tax credit under section 61 to the persons making contributions to the fund.

The above exemptions have been made effective from 5th August, 2022.

3. SPECIAL PROCEDURES FOR COMPUTATION OF CAPITAL GAINS

The FBR vide SRO 1570(I)/2022 issued amendments to special procedures for computation of capital gains and collection of tax for securities of unlisted company who listed themselves on the stock exchange. The amendment provided that and the cost of acquisition of such securities shall be the face value instead of market price. An example with a scenario has also been inserted under Rule 13P for the computation of capital gain for such conversions.

4. TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2022

The captioned ordinance was promulgated by the President on 22nd August, 2022. Comments regarding the same have already been published by us. The said commentary can be accessed through the following link <https://cutt.ly/iCudD1a>

5. GOODS IMPORTED FOR FLOOD RELIEF

The FBR vide SRO 1634(I)/2022, inserted a new clause in the Second Schedule wherein the provisions of Section 148 (Advance Tax on Imports) shall not apply on goods required and imported for the relief operation for flood affectees as certified by the National Disaster Management Authority or the Provincial Disaster Management Authority for a period of 90 days.

6. ADVANCE TAX ON IMPORT OF TOMATO AND ONION

The FBR vide SRO 1639(I)/2022, has further amended the Second Schedule, wherein import of tomatoes and onions will not be charged an advance tax and this effect shall last till December 31, 2022.

B. SALES TAX

1. BALOCHISTAN REVENUE AUTHORITY SHALL NOW COLLECT WWF AND WPPF

In a press release by the Balochistan Revenue Authority (BRA), all industrialists were informed to pay/deposit the payable Workers Profit Participation Fund (WPPF) and Workers Welfare Fund (WWF) amounts to the BRA instead

of FBR. It is also mentioned that failure to comply would result to recovery methods established in the laws of BRA.

2. AMENDMENT TO THE SECOND SCHEDULE OF THE KHYBER PAKHTUNKHWA SALES TAX ON SERVICES ACT, 2022.

The Khyber Pakhtunkhwa Revenue Authority (KPRA) vide its Notification No. BO (Rev-II)/FD/3-2/2022 announced the following amendments to the Second Schedule of the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022:

1. A proviso was inserted for such marriage / wedding hall where the invoice management and reporting system if duly installed and fully functional, would be charged at the rate of tax of 5% without any input tax adjustment.
2. Health Insurance Services including Sehat Card Plus Programme shall be fully exempt instead of being charged at 1% without any input tax adjustment.

3. STGO- INTEGRATION WITH FBR'S POS SYSTEM

The FBR issued a Sales Tax General Order No. 02 of 2023 wherein a list of identified Tier-1 Retailers had been informed to have themselves integrated with the FBR by the 10th of August 2022. It has also been provided that failure to comply would result in disallowance of input tax claim and create tax demand of the same amount.

4. EXEMPTION OF GOODS FOR FLOOD RELIEF FROM SALES TAX

Subject to conditions for the purpose of zero-rated customs duty as under the Customs Act, 1969 (IV of 1969), the FBR vide SRO 1635(I)/2022 has exempted import of all goods received as gifts/relief/donation from foreign governments/organizations by the Federal/Provincial Governments or any public sector organization. It shall be deemed to have been effective since August 24, 2022.

5. EXEMPTION OF SALES TAX ON IMPORT AND SUPPLY OF GOODS

The FBR vide SRO 1636(I)/2022 has provided complete sales tax exemption on the import and supply of goods certified by the National Disaster Management Authority (NDMA) or Provincial Disaster Management Authority (PDMA) for the relief of flood affectees for a period of 90 days.

6. EXEMPTION OF SALES TAX ON THE IMPORT OF ONION AND TOMATO

The FBR vide SRO 1640(I)/2022, has provided an exemption of sales tax on the import of tomatoes and onions and such exemption shall be valid till December 31, 2022.

C. FEDERAL EXCISE DUTY

1. EXEMPTION OF FED ON ANY DONATION TO PM'S FLOOD RELIEF FUND, 2022

The FBR vide SRO 1589(I)/2022, issued a notification wherein any donation received in the Prime Minister's Flood Relief Fund, 2022 would be exempted from Federal Excise Duty.

2. EXEMPTION OF FED ON GOODS FOR FLOOD RELIEF

Vide SRO 1637(I)/2022, the FBR has exempted federal excise duty for 90 days on goods certified by the National Disaster Management Authority (NDMA) or Provincial Disaster Management Authority (PDMA) in order to provide relief to the flood affectees.

D. CUSTOMS DUTY

1. EXEMPTION OF CUSTOM DUTIES ON IMPORT OF GOODS FOR FLOOD RELIEF

Vide SRO 1638(I)/2022, the FBR has exempted custom duties for 90 days on goods needed for flood relief activities as certified by the National Disaster Management Authority (NDMA) or Provincial Disaster Management Authority (PDMA).

2. CORPORATE NOTIFICATIONS / CIRCULARS

A. COMPANIES ACT 2017 (UPDATED)

The SECP issued an updated version of the Companies Act 2017, incorporating the amendments relevant up to 18th August 2022. The said can be accessed from <https://cutt.ly/DCubD1x>

B. NOTIFICATIONS

1. AMENDMENTS TO THE SEVENTH SCHEDULE OF THE COMPANIES ACT, 2017

The SECP vide SRO 1373(I)/2022, issued a notification wherein fees for (a) Certified copy of certificate of

incorporations / certificate of commencement of business / certificate of registration of mortgage/charge; (b) Certified copy of the Memorandum and Articles of Association of a company and (c) Certified copy of any return except financial statements; had been revised for both electronic and physical modes.

2. AMENDMENTS TO THE COMPANIES (REGISTRATION) OFFICES REGULATIONS 2018

The SECP vide SRO 1374(I)/2022, issued a notification wherein timeframe for application filed/registered physically for issuance of certified copy of documents shall be disposed within 3 days and instead of physical issuance of certified true copy of documents, the same would be received digitally.

3. PERMITTING A MODARABA TO ENGAGE IN REAL ESTATE

The SECP vide SRO 1546(I)/2022 has granted permission enabling Modarabas to now hold, deal or trade in real estate projects subject to certain conditions on basis of either it is a multipurpose Modaraba or a specific-purpose Modaraba, with additional conditions in case of the latter.

4. AMENDMENTS TO THE MODARABA REGULATIONS 2021

Vide SRO 1547(I)/2022, the SECP amended the Modaraba Regulations, 2021. The said regulation can be accessed from <https://cutt.ly/5CubVEF>

B. GUIDELINES

1. GUIDELINES FOR SHARIAH-COMPLIANT INVESTING ON PAKSITAN STOCK EXCHANGE

The SECP, provided brief insights to the general public interested in investing in the Shahriah-Compliant companies listed on the Pakistan Stock Exchange (PSX). The guidelines were presented in the form of general question/answers including definitions, nature and methodology for Islamic Sukkuks, Islamic Exchange Traded Funds, Islamic Real Estate Investment Trusts, and many more.

C. CIRCULAR

1. MASTER CIRCULAR FOR MUTUAL FUNDS / COLLECTIVE INVESTMENT SCHEMES / INVESTMENT ADVISORY SERVICES

The SECP vide its Circular No. 08 of 2022 compiled a detailed understanding of Asset Management Companies (AMCs)/ Investment Advisor (IAs) in order to ensure compliance of statutory requirements for Mutual Funds/ Collective Investment Schemes (CIS) or Investment Advisory Services. It was also informed that this Master Circular shall supersede the previously issued Master Circular No. 30 of 2021.

3. AMENDMENTS TO TIME LIMITATION UNDER SECTION 111(2) WILL NOT AFFECT THE TIME LIMITS COMMENCED BEFORE SUCH AMENDMENT I.E. 1ST JULY, 2018

1. INTRODUCTION

The Appellate Tribunal Inland Revenue (ATIR), Karachi in the case of Shahabuddin C. Subjally vs. CIR, Zone AE01 ("Respondent") was approached by the Appellant to declare the Order issued by the CIR(A) as illegal and void ab-initio and that the CIR(A) was not justified in remanding the order back to the Deputy Commissioner Inland Revenue AE01 Zone ("DCIR").

2. BACKGROUND

The Appellant received a notice from the DCIR claiming that they received information from Common Reporting Standards (CRS) under the OECD protocol that the Appellant had off shore accounts in the name of Highvern Trustees Limited Jersey ("HTLJ"), to which the Appellant responded by evidences supporting the stance that the Appellant had established an Irrevocable Trust with HTLJ as a settlor. The Appellant had proven that HTLJ was formed from funds received from Dubai while under employment there and that no funds from Pakistan were remitted. A copy of email from the Director was also provided wherein records of funds and trust details were also furnished. The email also stated that HTLJ was established for the benefit of the Appellant's daughter. However, the DCIR treated the bank account as an "investment in confronted bank accounts" and

disregarded the evidence and documents submitted by the Appellant, resulting to an appeal to the learned Respondent who decided the appeal and remanded the case back to the DCIR. Consequently, the Appellant filed an appeal with the ATIR.

3. ARGUMENTS BY THE APPELLANT

The Appellant argued that the learned Respondent claimed that the case was on legal and factual plane and that the order of the DCIR was not sustainable on both these grounds. The Appellant also reiterated that no fund from Pakistan had been disbursed and the source of settling the trust was purely out of salary derived from abroad. The Appellant also contested that Section 111 (Unexplained Income or Assets) can only be applied where the nature and source of investment is not explained, which was on the contrary as the Appellant had duly provided sufficient explanations alongwith supporting evidences.

Furthermore, the counsel for the Appellant also argued that the provision regarding the year of "Discovery" was inserted in the Finance Act 2018 and by that time, the case had already been time barred with respect to settlement of Trust back in 2008.

Additionally, the Appellant argued that Section 107 of the Income Tax Ordinance, 2001 ("ITO") was also relevant and to be read with Sec 165B and Chapter XII of the Income Tax Rules, 2002 ("ITR") as it is related to off shore entity providing information to Pakistan Tax Authorities in order to be a definite information as required by the ITO.

4. ARGUMENTS BY THE RESPONDENT

The learned responded stated that they had received the information from CSR by the authority under virtue of 165B of the ITO and Rules under Chapter XII of the ITR, they also contested that 165B allows banks to provide information to the FBR.

The learned Respondent took reference from the Suo Moto case no 02/2018 by the Supreme Court of Pakistan where it had directed the FIA to investigate and provide a list of Pakistanis owning property in the UAE, the said list contained the names, CNICs and UAE property addresses

of Pakistanis having properties in UAE and thereby directed the department to probe and take lawful action.

The learned Respondent stated that no documentary evidence was submitted to support the claim that no funds from Pakistan were remitted.

5. FINDINGS OF THE APPELLATE TRIBUNAL INLAND REVENUE

The ATIR quoted that the Suo Moto case no. 02/2018 was not applicable in the present case as no directions from the Honourable Supreme Court to collect details in this case were present, as the Appellant did not maintain a bank account in his name as alleged by the DCIR.

The ATIR Concluded following points:

a. Definite Information:

The ATIR agreed to the arguments that Pakistan financial institutions including banks were permitted to provide information to FBR and the DCIR were in possession of definite information as the Appellant made investment abroad and is liable to explain his source of investment. The ATIR was of the opinion that relevant provisions regarding information collected when solicited by another country namely u/s 107(1A) should have been cited or referred instead.

b. Nature and Source of Investment:

It was confirmed by the Trustees of HTLJ through their email that an irrevocable trust was formed for the sole benefit of his daughter who was facing serious health issues and that it had been setup over a decade ago. The ATIR also noted that being an irrevocable trust the Appellant apparently did not hold ownership of the trust, and that the Appellant's daughter was in receipt of the distributions and nothing in this regard had been dislodged by the DCIR, therefore it was clear that the Appellant discharged his onus before the DCIR that the Appellant had sufficient funds from his non-Pakistan source earnings to settle the Trust. Furthermore, the ATIR stated that the documentary evidence in the form of an email from the Director was sufficient, which the DCIR misread and ignored the replies, evidences, legal references submitted by the Appellant and issued a

show cause notice on an assumption of jurisdiction which is illegal and not sustainable.

Consequently, the ATIR concluded that the addition made by DCIR u/s 111(1)(b) was not sustainable.

c. Legal Connotations u/s 111:

The ATIR quoted that the burden of proof lies on the taxpayer when confronted u/s 111 (Unexplained Income or assets), however since the taxpayer had provided all sufficient sources available, the onus shifted to the DCIR, and if the DCIR did not agree with explanation, even then the onus remained on the department to prove that there was concealment in particulars of income, which in this instant case was not dislodged by the DCIR as appropriate evidences had already been submitted.

d. Limitation of time

The ATIR highlighted that the trust was formed back in 2008 about 9 years before the Tax Year 2018 which is the Tax Year in appeal, while the Ordinance has set the limit for amendment of assessment to 5 years. The ATIR placed reliance on the judgment by the Full Bench of the Supreme Court of Pakistan vs ITO and on a recent 5-member bench of the Hon. Supreme Court of Pakistan in the case of Eden Builders, wherein, it was held that the period of limitation once it begins to run cannot be interrupted or extended unless expressed in words in the legislature. But since, neither was applicable in this instant case, the case had already been time barred in respect of settling of trust and the right had vested in favour of the Appellant. Therefore, it was clear that the case was time barred and not sustainable in law on facts.

e. Power of remand back by the Commissioner (Appeals)

The ATIR found that the learned CIR(A) was a functus officio (having no official authority) to remand back the case to the DCIR and that the CIR(A) had all material facts available before him to delete the addition and annul the order and held that remand should not have been resorted to when all material evidence was available before the court to give definitive findings and found it violative of the established principles of justice,

fair play and observance of due process of law thus the findings of the CIR(A) was not sustainable and therefore vacated.

4. TOPIC OF THE MONTH

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONALS (DNFBP)

1. INTRODUCTION

The FBR was empowered by the Anti-Money Laundering Act, 2010 (“AMLA”) to issue licenses or register Designated Non-Financial Businesses and Professionals (“DNFBPs”) and to impose any conditions on any activities by them, to prevent money laundering or terror financing. DNFBPs are businesses or professions who are not financial institutions but may pose risk of money laundering or terror financing. For instance, an agent might sell off a plot bearing value of Rs 9 million in cash and no money trail would be available if such proceeds are used in financing of terror activities.

The following professions/businesses have been defined to be DNFBPs:

- a) Real Estate dealers/ agents, brokers, builders, developers, housing authorities;
- b) Dealers in precious metals and stones including jewelers when conducting cash transactions over Rs 2,000,000/-;
- c) Lawyers, notaries, other independent legal professionals, firms, and accountants; and
- d) Trust and company service providers.

The accounting and legal sectors are subject to the AML/CFT rules when they provide trust and company services for clients. Each DNFBP is responsible to perform customer due diligence by looking into their delivery channels, geographic exposure, type of customer or business before indulging in the transactions or performing tasks for them. They are also responsible to inform their respective reporting entities immediately if they come to know of any suspected transaction. The FBR has also reserved a separate helpline for queries or information related to AML/CFT for DNFBPS.

2. REGISTRATION

The DNFBP shall be registered with the FBR and shall be responsible to provide any information/document intimated by them. Every DNFBP shall also notify the board within a stipulated timeframe when there is a change in following:

- a) any ownership or controlling interest in the DNFBP;
- b) any beneficial owner(s) of the DNFBP; and
- c) any senior management or board position in the DNFBP.

3. MONITORING

The DNFBPs will be monitored and regulated by the following:

- a) Members of ICAP and ICMA will be regulated / supervised through their respective institutes, while SECP shall regulate/supervise ICAP and ICMAP (b)
- b) FBR shall regulate/supervise the remaining categories of accountants (ACCA, PIPFA, CIMA etc.), Precious metal/gem dealers, and real estate agents; and
- c) Pakistan Bar Council shall regulate (through Ministry of Law and Justice) the Lawyers.

4. MOBILE APP

FBR has also created a user-friendly mobile app which shall register, monitor questionnaires, information, alert for upcoming inspections, provide details on follow up, assist in searching Proscribed persons in National Counter Terrorism Authority (NACTA) and United Nations Security Council (UNSC) list and upload suspicious transaction/currency transactions reports directly to the Financial Monitoring Unit (FMU) in a convenient and easy manner. Furthermore, the mobile app saves time and resources of both the customer representative and the DNFBP.

5. CONDITION ON DNFBPS

During the year all Real Estate Development Authorities, Cooperative Housing Societies, and all other Housing Societies, Schemes and Firms dealing in the real estate, were informed that no public or private Development

Authority shall conduct business activity with any real estate agent for the transfer / registration of immovable property unless the Agent is registered as a DNFBP and should possess a registration certificate from the concerned Director DNFBP.

Failure to register as a DNFBP would result in actions and measures as set out by AMLA.

6. RED FLAGS BY FBR

FBR has also listed "Red flag indicators" on their website for the Real Estate Sector, Precious Metals/ Stones Dealers, Accountants, and Targeted Financial Sanctions related to Terrorism Financing (TF) and Proliferation Financing (PF) (provision of funds or financial services used for to manufacture/ acquire/ export nuclear/chemical/biological weapons) where the matter is not only explained in depth but also guides the DNFBPs of their course of action if one or more than one red flags is highlighted. It is pertinent to mention that the indicators provided on the website are in addition to the red flags published by the FMU or international stakeholders.

CONCLUSION

Concluding to the above, as Pakistan is currently undergoing from the proceedings of FATF, it is also our social and moral responsibility to ensure that the guidelines provided are complied with as it forms the backbone of our statutory duty. Entities should also evaluate themselves whether or not they fall under the said requirements and should be aware of the mode and methodology of informing the appropriate authorities.

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