



TAX PAK

NEWSLETTER BY TOLA ASSOCIATES



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SEPTEMBER 2022



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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. This edition's discussion on case law includes two cases regarding two separate orders issued by the Appellate Tribunal Inland Revenue (ATIR), where in the first case the ATIR, stated that principles of natural justice requires that where a taxpayer produce books of accounts and supporting documents the Assessing officer shall before disagreeing with such accounts/version, give a notice to the taxpayer of the defects in the accounts and provide him an opportunity to explain his point of view about such defects. In the second case, the ATIR, passed an order annulling the orders passed by the lower authorities citing lack of interest on part of the Department and ordered the Chairman, Member (Legal) and Member (Operation) to take action against the authorities.

Lastly, this newsletter is concluded with our Topic of the month that is titled "SALES TAX WITHHOLDING ON GOODS AND SERVICES". The said topic provides an insight on the withholding requirements applicable for goods and services in Pakistan.

We have also issued our comments on Finance Bill, 2022 and subsequent amendments therein: The same may be accessed through <https://bit.ly/3QZnfc9>.

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

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1. NOTIFICATIONS/ CIRCULARS

A. INCOME TAX

1. FURTHER AMENDMENTS TO THE MANUAL INCOME TAX RETURN 2022

The FBR, vide SRO 1733(I)/2022, has issued further amendments to the SRO 1612(I)/2022 for manual return submission. The said notification inserted a new part to the return namely, Part II-W for individuals, AOP and businesses deriving income other than salary. The said amendment was for the Tax year 2022.

2. IMMOVABLE PROPERTIES VALUE UPDATION

The FBR vide various SROs from SRO 1734(I)/2022 to SRO 1736(I)/2022 issued an update for the property values of Attock, Dera Ismail Khan and Rawalpindi.

3. DIRECTORATE-GENERAL OF COMPLIANCE RISK MANAGEMENT (FUNCTIONS, POWERS AND JURISDICTION OF OFFICERS), 2022

The FBR issued a new instrument titled the “Directorate-General of Compliance Risk Management (Functions, powers and jurisdiction of Officers), 2022” vide SRO 1796(I)/2022, wherein functions of Directorate-General of Compliance Risk Management (CRM), their jurisdictions and powers were described at length.

4. EXTENSION IN DATE FOR FILING OF ANNUAL RETURN FOR THE TAX YEAR 2022

Vide Circular 16 of 2022, FBR announced an extension for annual return filing for the tax year 2022, the date has been extended up to 31st of October, 2022.

5. CAPITAL VALUE TAX RULES, 2022

The FBR issued rules for Capital Value Tax (CVT) vide SRO 1797(i)/2022. The CVT was introduced through the Finance Act, 2022 for the very first time, attracting taxation on certain specified Motor Vehicles and Foreign Assets. This has been discussed in detail in our edition of [TAX LAWS \(SECOND AMENDMENT\) ORDINANCE, 2022](#). Vide these Rules, an important matter pertaining to the value of foreign assets was settled and it was clarified that the value of foreign assets shall be converted into Pakistani rupees at rates notified by the State Bank of Pakistan (SBP)

as on the last day of the tax year (30th June). The rules further provided that persons collecting CVT on motor vehicle shall submit quarterly electronic returns to the Commissioner, and within 30 days of the end of the tax year, they shall submit an Annual Electronic statement. The rules also laid down procedures and forms for collection of CVT through either Computerized Payment Receipt (CPR) or SWAPS Payment Receipt (SPR). Furthermore, CVT for foreign assets or assets specified by the Federal Governments shall be paid at the time of filing the annual income tax return, a separate form shall be submitted, and a specimen was also provided in the Rules. In addition to the above, the Rules also laid down procedures for (a) collecting tax from a defaulter, (b) applicability of the income tax recovery rules (c) payment of refunds; (d) modes and methodology of revision by commissioner and subsequently filing of appeal;

B. SALES TAX

1. CLARIFICATION REGARDING IMPORT/LOCAL SUPPLY FOR GOODS FOR FLOOD VICTIMS

A clarification was issued by the FBR, vide Clarification No. 4/5-STB/2022(Pt-2), to address multiple queries that whether Sales tax and FED exemption on local supplies provided to the flood relief victims was applicable or not. This issue was clarified by stating that goods certified by the NDMA or PDMA shall be exempted from sales tax for a period of 90 days from 30th August 2022 irrespective of whether those goods were imported or locally supplied or sold.

2. STGO- INTEGRATION WITH FBR'S POS SYSTEM

The FBR issued a Sales Tax General Order No. 03 of 2023 wherein a list of identified Tier-1 Retailers had been informed to have themselves integrated with the FBR by the 10th of September 2022. It has also been provided that failure to comply would result in disallowance of input tax claim and shall create tax demand of the same amount.

2. CORPORATE NOTIFICATIONS / CIRCULARS

1. AMENDMENTS TO THE LISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2019

Amendments to the Listed Companies (Buy-Back of Shares) Regulations, 2019 were made after the statutory

period for public consultation was issued. The said amendments can be accessed from [Regulations | SECP](#).

2. INITIAL PUBLIC OFFERING MARKET OVERVIEW AND REGULATORY INITIATIVES GUIDELINES

The SECP issued guidelines regarding Initial Public Offering (IPO) for the general public to create an awareness and understanding of what an IPO is, benefits in investing, comparatives with various countries and much more.

3. FURTHER AMEDEMMENT TO CIRCULAR 26 OF 2021

Vide SECP's Circular 9 of 2022, further amendments were made to Circular 26 and 32 of 2021 wherein requirements for minimum documents needed by Asset Management Companies (AMCs) to enlist an individual were amended and AMCs were empowered to conduct NADRA verification on their own motion if a customer's identification document was not obtained through onboarding platform, and the clause for the activation of dormant and blocked accounts was entirely deleted.

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

Amendments were made to the Companies (Further Issue of Shares) Regulations, 2020 vide SRO 1754(I)/2022 after it was made available for public consultation as required by the Companies Act, 2017. The said regulations can be read from [Regulations | SECP](#).

5. CONVERTIBLE DEBT SECURITIES THROUGH RIGHT OFFER REGULATIONS, 2022.

The SECP vide S.R.O.1767(I)/2022, issued a new regulation for Convertible Debt Securities through Right Offer which shall be applicable to all listed companies proposing to issue convertible debt securities through right offer. These regulations can be read from [Regulations | SECP](#).

6. AMENDMENTS TO THE CREDIT RATING COMPANIES REGULATION, 2016

The SECP vide SRO 1755 (I)/2022 issued amendments to the Credit Rating Companies Regulation, 2016. The said regulations can be read from [Regulations | SECP](#).

7. AMENDMENTS TO THE MODARABA REGULATIONS 2021

The SECP vide SRO 284(I)/2021 issued amendments to the Modaraba Regulation, 2021. The said regulations can be read from [Regulations | SECP](#).

3. FBR SHOULD EVALUATE AMOUNTS ON FACTS & RECORDS, AND NOT ON ESTIMATION.

INTRODUCTION

This edition's discussion on case law includes two cases regarding two separate orders issued by the Appellate Tribunal Inland Revenue (ATIR).

1. CASE ITA NO.2708/LB/2022:

The Appellant in this case was Mr Mujahid Farooq, who had filed a notion against the CIR (Learned Respondent). The brief facts of the case are that the taxpayer had duly filed his return for the tax year which was under consideration and was selected for audit through a random computer ballot which is performed by the FBR every year. Upon selection of the audit, the taxpayer was provided with a notice which was delivered to him as per the requirement in law and the taxpayer made compliance accordingly. Resultantly, a partial relief was granted by the Assessing Officer who then issued a finalized order. The taxpayer felt aggrieved thereby, he filed an appeal before the CIR(Appeals-III) who then upheld the order and the taxpayer had to then file a further appeal before the ATIR.

1.1 FINDINGS OF THE ATIR

The ATIR found that details, supporting documents and relevant information were indeed submitted and wasn't considered by both the departments. The ATIR stated that where a person provides accounts, supports before the Assessing Officer then, if the officer disagrees with these evidences he should give notice of the defects and provide the taxpayer an opportunity of being heard, which in this case had apparently not been done. Furthermore, the ACIR should have evaluated the amounts mentioned therein based on facts and records and not on estimation, and also that such basis should have been communicated to the taxpayer too. Therefore, the impugned orders of both the authorities were thereby modified and the appeal of the taxpayer was partially accepted.

2. CASE NO. STA NO. 371/IB/2019 TO STA NO. 374/IB/2019:

Azad Pottery Works (Appellant) moved to the ATIR against the Commissioner Inland Revenue (Respondent) against the order wherein the CIR had estimated the amount of production of the Appellant on an estimate basis and the same had been disposed by the CIR upon subsequent appeal, therefore the Appellant had to file a further appeal.

2.1 BRIEF FACTS

Brief facts of the case was that the Appellant was registered as a manufacturer and was involved in taxable supplies of earthen items in the local market. The Appellant had declared sales and claimed input adjustments accordingly. However, the CIR assumed the amount of sales on basis of the gas meter consumption of the Appellant which was registered under the entity. The CIR also claimed that the registered person had concealed purchases of raw materials therein. The DCIR arrived at his own formula to determine production on basis of gas consumption. The DCIR claimed that show cause notices were issued and that no responses were received despite reminders. Therefore, the DCIR issued an order to the Appellant who in return filed an appeal with the CIR(Appeals-I). The CIR(Appeals-I) confirmed the order so passed and resultantly, the Appellant had to further proceed and file an appeal before the ATIR.

2.2 FINDINGS BY ATIR

The appellant contended against the estimation stating that no provisions of the Sales Tax Act, 1990 (Act) empowers an assessing officer to deem sales. Thereafter, the Court passed an order annulling the orders passed by the lower authorities citing lack of interest on part of the Department and ordered the Chairman, Member (Legal) and Member (Operation) to take action against the authorities.

4. TOPIC OF THE MONTH

SALES TAX WITHHOLDING ON GOODS & SERVICES

INTRODUCTION

In this edition of Tax Pak, we have decided to provide our readers a comprehensive and self-explanatory guide on the requirements of withholding sales tax on goods and services which will not only be general guide but will also explore the boundaries and scope on provinces.

1. WHAT IS SALES TAX?

The first question which comes to mind is What is Sales Tax? The structure of Sales tax is built by the Sales Tax Act, 1990 (STA) read with the Sales Tax Rules, 2006 (STR). Sales tax in simpler terminology means any tax, additional tax, default surcharge, fine, penalty or any sum payable under the STA and STR.

2. WHO IS REQUIRED TO WITHHOLD SALES TAX

Recipients of services or goods mentioned in the Eleventh Schedule of the STA are required to withhold sales tax at the rate specified in the schedule, other than the services liable to pay sales tax under a Provincial enactment (who shall withhold as per withholding sales tax rules of respective provincial authorities).

However, the only exception to the above is for an operator of the online market place providing a platform for sellers and purchasers of the goods. Such online operators are required to withhold sales tax at the rate of 1% of gross value of supplies in case of suppliers not appearing in active taxpayers list.

3. RATES OF WITHHOLDING

Withholding agents mentioned below shall be responsible for withholding sales tax at rates specified below:

S. No.	Withholding Agent	Supplier Category	Rate / extent of deduction
1.	Federal & Provincial government departments/ autonomous bodies and public sector organizations.	• Active Taxpayers only	• 1/5th of the value specified as sales tax in the invoice
		An active taxpayer, registered as a wholesaler, dealer or distributor	1/10 th of the value specified as sales tax in the invoice
		If Non-Active Taxpayer	Whole amount of tax involved or as applicable to supplies on the basis of gross value of supplies.
2.	Companies defined under the Income Tax Ordinance, 2001	• Active Taxpayers only	• 1/5th of the value specified as sales tax in the invoice
		• An active taxpayer, registered as a wholesaler, dealer or distributor	• 1/10th of the value specified as sales tax in the invoice
		• Other than Active Taxpayer	• 5% of the gross value of supplies
3.	Recipients of advertisement services (Registered Persons)	Persons providing advertisement services	Whole of sales tax applicable

4.	Registered persons purchasing cane molasses	Persons other than Active taxpayers	Whole of sales tax applicable
5.	Registered persons manufacturing lead batteries	Person supplying any kind of lead	75% of the sales tax applicable

However, the above shall not be applicable on supply of following:

- 1) Electrical energy;
- 2) Natural gas;
- 3) Petroleum products to petroleum production and exploration companies, oil refineries, oil marketing companies, dealers of motor spirit and high-speed diesel;
- 4) Vegetable ghee and cooking oil;
- 5) Telecommunication services;
- 6) Goods specified in the Third Schedule to the Sales Tax Act, 1990;
- 7) Supplies made by importers who paid value addition tax at the time of import; and
- 8) Supplies made by an Active Taxpayer to another registered persons (Except advertisement services).
- 9) Supply of sand, stone, gravel/crush and clay to low-cost housing schemes sponsored or approved by Naya Pakistan Housing and Development Authority

4. APPLICABILITY OF WITHHOLDING SALES TAX ON PROVINCES:

The institutions listed below shall be registered mandatorily under all revenue collection boards of the provinces. Other than these, various other forms are required to be registered and they are mentioned under each provinces in the following sections:

1. Federal and provincial government departments;
2. Autonomous bodies;
3. Public sector organizations;

Also, under all withholding rules of the provinces, persons invoicing to unregistered persons should keep record of copies of CNIC in case of individual and copies of NTN if

AOP or Company. Furthermore, all provinces have a certain procedure for withholding and deduction for services by Foreign/Local/ District governments and departments.

A. SINDH

Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 shall apply on withholding agents for the province of Sindh. Under the said rules, the following persons shall be required to be registered with the Sindh Revenue Board (SRB):

1. Organizations which are funded fully or partially out of the budget grants of the federal / provincial governments;
2. Companies defined under the Act; and
3. The following persons other than Companies:
 - a. FBR or SRB registered persons;
 - b. persons who receive/ procure advertisement services and also other than such advertisements transmitted or displayed on websites/ webpages of newspapers and periodicals published in Sindh;
 - c. Renting of immovable property services;
 - d. Services of inter-city transportation/ carriage of goods by road other than those through pipeline or conduit;
 - e. Through specialized car carriers or through the fleet of logistic companies owning less than 25 goods transport vehicles;
 - f. And persons providing / rendering the services of advertising space in relation to advertisement services.
 - g. SRB registered persons receiving / procuring taxable service from unregistered persons;
 - h. SRB registered persons / insurer receiving / procuring services provided by insurance agents or insurance brokers.
 - i. Persons/ passengers using services of cab aggregator and are required to deduct / withhold tax by the owners or drivers of motor vehicles.

- j. Persons enjoying reduced rate for receiving / procuring services of contractors and construction.

The withholding agent shall not be responsible to deduct or withhold sales tax against the invoice issued by a SRB registered service provider for:

- (a) Telecommunication;
- (b) Banking company;
- (c) Financial institution;
- (d) Insurance company (except re-insurance company) in relation to its services of life insurance and health insurance of individual persons;
- (e) Port operator;
- (f) Airport operator;
- (g) Terminal operator; and
- (h) Airport ground services.

A withholding agent, other than point 3, shall withhold 1/5th of the total amount of sales tax, for example:

Gross sales	Rs 1,000
Sales tax (13%)	Rs 130
Sales tax withheld (Rs 130/5)	Rs 26
Total amount to be payable to supplier	Rs 1,104

If the invoice does not contain the amount of sales tax, then it shall be computed on basis of gross value under the tax fraction formula i.e.

$$\left(\frac{\text{Rate of tax as per the 2nd Schedule}}{100 + \text{Rate of tax as per the 2nd Schedule}} \right).$$

Withholding agents having a Free Tax Number (FTN) /NTN/ SNTN shall deduct the amount of sales tax as per the rates mentioned in the Second Schedule of the Sindh Sales Tax on Services Act, 2011 against the taxable services provided / rendered to him. Not all services shall be taxed in this manner, some would require the use of the fraction formula, who shall deduct and withhold the entire amount of Sindh Sales tax at the time of payment, such services are as follows:

1. Services of advertisement;
2. Auctioneers;
3. Renting of immovable property;

4. Inter-city transportation / carriage of goods by road, except by services of inter-city transportation and carriage of goods through truck addas / through bus/wagon stands.

B. PUNJAB

For the province of Punjab the Punjab Sales Tax on Services (Withholding) Rules 2015 shall be binding on the withholding agent for all services other than:

1. Telecommunication;
2. Banking;
3. Courier;
4. Insurance except if insurance service is provided from outside the province to a withholding agent for risk located in the province or related to it;
5. Services provided by the Companies which are active taxpayers, other than advertisement services.

Where advertisement services are provided by a person based in Pakistan or abroad, the whole amount of sales tax shown in the tax invoice, issued by a registered person, shall be withheld. If the amount is not mentioned, then the applicable rate on the gross value of taxable service shall be computed.

Services by unregistered persons (except advertisement services from unregistered persons) shall be worked out on the basis of gross value of taxable services as per the rates applicable according to their services.

C. ISLAMABAD CAPITAL TERRITORY

Tax shall be levied and charged in the same manner and at the same time as specified in the STA and Table 1 of the Schedule under the Islamabad Capital Territory (Tax on Services) Ordinance, 2001 which contains the list of taxable services. Moreover Table 2 shall contain all the rates against the services mentioned in Table 1.

Furthermore, explicitly mentioned in this Ordinance is that export of services shall be taxed at 0%, and no tax shall be levied on regulatory/ licensing services rendered / provided by an organization established under by or under the Federal statute.

D. BALOCHISTAN (BALOCHISTAN SALES TAX ON SERVICES ACT, 2015)

A person shall be treated as a withholding agent of Balochistan if he is a resident or the place of business is situated in Balochistan. Persons required to be registered with the Balochistan Revenue Authority (BRA) to deduct and deposit tax are as follows:

1. Persons registered under BRA and those who receive or procure services of:
 - a. Advertisement;
 - b. Intercity transportation / carriage of goods by road;
 - c. Advertising agent;
 - d. Renting of immovable property;
 - e. Consultant; and
 - f. Auctioneer.
2. Persons registered under BRA but receive services from unregistered persons.

A withholding agent registered with the BRA will not deduct/withhold sales tax from the following services:

- a. Telecommunication;
- b. Banking Company;
- c. Insurance Company other than re-insurance;
- d. Financial institution;
- e. Port operator;
- f. Airport operator;
- g. Terminal operator; and
- h. Airport ground services.

Withholding of 1/5th of the total sales tax shall be applied on all except for (a) non-filers, and (b) those mentioned in Point 1 above. If the invoice does not contain the amount of sales tax, then deduction shall be on basis of the rate applicable to the services provided or rendered to him. Furthermore, if a withholding agent is registered with BRA/ has an NTN / FTN, then he shall deduct and withhold according to the following formula:

$$\frac{\text{Rate of tax as per 2}^{\text{nd}} \text{ Schedule}}{100 + \text{Rate of tax as per 2}^{\text{nd}} \text{ Schedule}}$$

The same formula shall apply for persons (a) mentioned in Points 1, (b) unregistered persons being residents of Balochistan or (c) non-resident person based in any country other than Pakistan, if the invoice raised does not have the sales tax amount. However, if it does, then they shall deduct the amount of sales tax as mentioned in the bill.

E. KHYBER PAKHTUNKHWA

Irrespective of the locations of the head office or business premises or jurisdiction, if anyone meets the statutory registration requirement, they shall be required to have themselves registered and the Khyber Pakhtunkhwa Sales Tax on Services (Withholding) Regulation, 2020 shall be binding on the withholding agents. Under the said regulation, the following service providers shall withhold the entire amount of taxes raised in the bill:

1. Advertisement services;
2. Services provided by persons who are not registered with KPRA, or even if registered, are inactive / non-filers under KPRA;
3. Services provided to the Federal / Provincial Governments, public sector institutions, entities and projects.
4. Services provided in KPK by persons outside the province and are not registered with KPRA; and
5. Services liable to tax under the Act less than the standard rate of 15% (reduced rate).

The following services are not subject to withholding:

- a. Telecommunication services (other than from telecom companies to and from each other);
- b. Other services as specified by the Authority.

For services other than all of the above, only 50% of the amount of tax shall be withheld and deposited to the Government.

F. AZAD JAMMU & KASHMIR (AJ&K)

The Sales Tax (Tax on Services) Act, 2001 shall be enforceable in AJ&K. Where a taxable service originates from outside Pakistan but is received / terminated in AJ&K, the recipient of such service shall be liable to pay tax to the Government and shall also be required to have themselves registered.

Deduction/withholding of taxes shall not be applicable to regulatory and licensing services provided by an organization established under the Federal statute.

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