



# 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 edition's comments on case law we discuss the validity of the order of the Commissioner (Appeal) if it is passed after 180 days.

Lastly, this newsletter is concluded with our Topic of the month that is titled "Tax Liability for services rendered by non-residents and by unregistered person". The said topic provides an insight on the sales tax treatments applicable all over Pakistan for services by a nonresident or an unregistered person.

All our readers are requested to visit our website [www.tolaassociates.com](http://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.

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

#### 1. PROPOSAL FOR DRAFT AMENDMENTS IN PART II-V OF THE SECOND SCHEDULE OF THE INCOME TAX RULES, 2002

The FBR vide SRO 1929(I)/2022 dated 3rd October 2022, issued a proposal for public objections or suggestions of the draft amendment to the “Tax chargeable / Payments” portion in the Second Schedule of the Income Tax Rules, 2002. It also provided a timeframe of seven days for responses to reach FBR so that they can be reviewed and incorporated.

#### 2. AMENDMENTS IN PART II-V OF THE SECOND SCHEDULE OF THE INCOME TAX RULES, 2002

The FBR vide SRO 1891(I)/2022 dated 13th October 2022, further amended the Income Tax Rules, 2002 which was previously issued for suggestions vide SRO 1929(I)/2022. The said amendments affected the “Tax Chargeable/Payments” portion of the Income Tax Rules, 2002. It is pertinent to mention that this effect shall be applicable for the Tax Year 2022.

#### 3. PROPOSAL FOR DRAFT AMENDMENTS OF THE INCOME TAX RULES, 2002

Vide SRO 1892(I)/2022 dated 13th October 2022, the FBR proposed a draft for further amendments in the Income Tax Rules, 2002 for objections/suggestions from the general public. Deadline for receipt of responses was for a period of 7 days from the date the notification was issued. The said draft proposed substitution to various forms mentioned in the Rules which had been affirmed vide SRO 1955(I)/2022.

#### 4. AMENDMENTS TO THE INCOME TAX RULES, 2002

Vide SRO 1955 (I)/2022 dated 24th October 2022, the FBR amended the forms under rule 37, rule 38, and under the Second Schedule for (i) retailers having turnover of less than RS. 10 million; and (ii) Individuals/AOPs Having Turnover up to Rs. 50 million. The said amendment was applicable for the tax year 2022.

#### 5. AMENDMENT TO THE INCOME TAX RULES, 2002.

Vide SRO 1956(I)/2022 dated 24th October 2022, the FBR updated various format of forms under rules 13L, 13N, 13P under the Income Tax Rules, 2002, the said changes mainly pertained to Capital Gain on shares such as modes, methodology and treatments.

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

Vide Circular 17 of 2022, dated 31st October 2022, the FBR announced an extension for filing of annual return for the tax year 2022, from 31st October 2022 to 30th November 2022.

### B. SALES TAX

#### 1. EXEMPTION ON SALES TAX ON GOODS AND SERVICES TO JAPAN INTERNATIONAL COOPERATION AGENCY

The FBR vide SRO 1963 (I)/2022 dated 25th October 2022, provided an exemption on the entire amount of sales tax on goods and services provided / supplied to “Japan International Cooperation Agency (JICA)”, provided that these were conducted by service providers registered under the Sales Tax Act, 1990 and within the Islamabad Capital territory.

#### 2. STGO- INTEGRATION WITH FBR’S POS SYSTEM

The FBR issued a Sales Tax General Order No. 07 of 2023 dated 5th October 2022, wherein a list of identified Tier-1 Retailers had been informed to have themselves integrated with the FBR by the 10th of October 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. AMENDEMENTS IN THE FUTURES (LICENSING AND OPERATIONS) REGULATIONS 2018

SECP issued a notification vide S.R.O 1912(i)/2022, dated 14<sup>th</sup> October 2022, wherein amendments to the Futures Brokers (Licensing and Operations) Regulation 2018 were issued. The said can be read from [Notifications | SECP](#).

## 2. AMENDMENTS IN THE SECURITIES BROKERS (LICENSING AND OPERATIONS) REGULATIONS 2016

During the month, the SECP issued further amendments in the Securities Brokers (Licensing and Operations) Regulations 2016 vide SRO 1914(I)/2022, dated 14th October 2022, wherein a person desirous of obtaining a license shall submit an application (Form A-1) to the Commission before obtaining a TRE Certificate. A list pertaining to the statutory documents needed for this process was also specified.

## 3. CIRCULAR REGARDING SALES LOAD BEING CHARGED BY COLLECTIVE INVESTMENT SCHEMES

The SECP issued a Circular No. 10 of 2022, dated 4th October 2022, wherein it directed all Asset Management Companies (AMCs) to ensure that the following are fulfilled:

1. Cumulative sales load does not exceed 3% of the Net Asset Value (NAV) per unit where document of the Collective Investment Scheme (CIS) permits charging of sales load. A proviso was also inserted for further elaboration.
2. A table was included which bore lists of documents needed in order to meet the mandatory disclosures.

Moreover, an additional instruction was provided that an AMC shall make all disclosures in a prominent screenshot which shall be in both English and Urdu and shall provide the investor an opportunity to accept or decline through a visible and conspicuous button. This instruction was applicable only if the investments were done through 3rd party online distribution portal / website.

## 3. ORDER OF COMMISSIONER APPEAL WILL BE VOID UNDER SECTION 45B (2) OF SALES TAX ACT 1990 IF PASSED AFTER 180 DAYS

### INTRODUCTION

The Supreme Court of Pakistan (“SC”) was moved by the Commissioner Inland Revenue, Zone II, RTO, Rawalpindi and Another, hereinafter, known as the (“Petitioner”), against an order passed by the Lahore High Court where the case was settled in favor of M/s Sarwat Trader, 216/1-A, Adamjee Road, Rawalpindi and Another, hereinafter

referred to as the (“Respondent”). However, the said petition was dismissed on the grounds of being devoid of merit as the order was passed after 180 days had lapsed.

### 1. ARGUMENTS BY THE LEARNED PETITIONERS

The Learned Petitioners argued that an admitted delay of three days had occurred, and though it becomes a weak order, however, it is not a void order and hence it is enforceable. They further contested that non-compliance of the time frame is not fatal and therefore requested for a reversal of the decision.

### 2. ARGUMENTS BY THE LEARNED RESPONDENTS

The Learned Respondents argued that the Appeal was decided beyond the prescribed period of 180 days, and such was seconded by the Appellate Tribunal who on these grounds declared the order null in law.

### 3. FINDINGS OF THE COURT

The SC stated that vide the Sales Tax Act, 1990, (“Act”), an appeal is supposed to be filed within 30 days against the order passed by the Inland Officer and the Commissioner (Appeals) is supposed to decide the appeal within a period of 120 days, calculated from the date of filing of said appeal.

Moreover, the Act has also provided a further relief wherein it is stated that if the said timeline could not be fulfilled, then the Commissioner (Appeals) can extend it to another 60 days, however, such an extension can only be done if the Commissioner (Appeals) has recorded the reasons in writing as to why (s)he seeks the aforementioned extension. The SC bench also broke down the Section 45(B) according to the provisos it contained. It was found out in the first proviso that extension of 60 days shall be recorded in writing only and it was found in the second proviso that such period i.e.,

180 days shall not exceed under any circumstances. Therefore, the order should be mandatorily passed and the total number of days within which an appeal must be decided is in fact 180 days only. And if the Commissioner (Appeals) does not decide within 180 days then any decision made later than this shall be an invalid decision. Furthermore, the SC also dismissed the judgements on which the Learned Petitioners relied on the basis that

those judgements did not relate to the instant case, nor was the situation same.

Therefore, the petition was dismissed and refused.

#### 4. TOPIC OF THE MONTH

### TAX LIABILITY FOR SERVICES RENDERED BY NON-RESIDENTS AND BY UNREGISTERED PERSONS.

#### INTRODUCTION

In this month's edition, we have prepared a brief insight on a seemingly simple yet very complicated matter. We will define and explore the provincial withholding treatments on services performed both by non-residents and those by unregistered persons. All provinces will be dealt with separately for an easier and thorough understanding.

#### A. SINDH

In Sindh, the sales tax on services is governed by the Sindh Sales Tax on Services Act, 2011 ("**SSTS Act**"). Under the **SSTC Act**, the following treatments have been set out for both non-residents and for those persons having business conducted in Sindh or have received services in Sindh.

#### 1. NON-RESIDENTS

With respect to taxable services mentioned in the Second Schedule to the SSTS Act, tax on the sale of services shall be applied on all services provided by registered persons irrespective of whether these services were provided by resident or non-resident persons. Furthermore, if these services are provided by a non-resident to a resident person, then it will be taxable irrespective of whether such resident person is the end consumer or not.

Moreover, The **Sindh Sales Tax on Services Rules, 2011** provides an additional procedure for services such as franchise services and intellectual property for a non-resident based anywhere other than Pakistan. Under these rules, liability for payment rests on the recipient of these services and the value shall be determined as per formal agreement (if it exists) on the gross amount of consideration. However, in a case where no formal agreement exists, then 10% of the turnover of the franchisee or intellectual property services recipient shall be payable.

#### For Instance,

Mr. D, who is a non-resident has designed a logo for M/s A Pvt Ltd, a company registered under the laws and regulations of Pakistan. Mr. D has charged Rs 1,000 for this service, for which an Agreement exists and hence, M/s XYZ Pvt Ltd shall withhold the applicable rate (13%) Rs 130 and shall pay Rs 870/-.

#### 2. PLACE OF BUSINESS BOTH WITHIN AND OUTSIDE SINDH

Where a person has a registered office or place of business both in Sindh and another one outside of the province of Sindh, then the registered office or place of business in Sindh and the one outside will be treated as separate legal persons as per the SSTS Act.

#### For Example,

Mr. A acts as an indenter for Mr. B who resides in the UK. An indenter being a representative of a non-resident person who receives commission on such services with respect to his place of business in Sindh. Hence, once Mr. A receives Rs 20,000 for this service it shall be treated as tax inclusive value and the amount of tax should be worked out on the basis of tax fraction formula and Mr. A shall be responsible for depositing the said tax. The formula to calculate such tax has been discussed in our September Edition of Tax Pak (<https://tolaassociates.com/wp-content/uploads/2022/10/TaxPak-September-2022.pdf>)

#### B. PUNJAB

As with Sindh, Punjab also has a set governing law for tax on sales of services. i.e., the Punjab Sales Tax on Services Act, 2012 ("**PSTSA Act**").

#### 1. SERVICES PERFORMED OUTSIDE PUNJAB BUT RECEIVED IN PUNJAB

Under the PSTSA Act, if any person has a registered office and/or a place of business in Punjab and the other(s) outside of Punjab then the one in Punjab will be dealt with separately than the one outside of Punjab.

Furthermore, if a person provides taxable services in a Province other than Punjab but the recipient is a resident in Punjab then the person providing such services shall be responsible to pay tax and vice versa, moreover, if a



person provides taxable services in more than one Province including Punjab, then such person is liable to pay tax to the Government to the extent the tax is charged from a person resident in Punjab and/or avails such service in Punjab.

## 2. NON-RESIDENTS-PUNJAB

If a person provides services anywhere in Punjab or from their office but the commencement or the termination of the activity is in Punjab, they will be subject to said tax irrespective of whether such services were provided to a resident or a non-resident person.

Furthermore, if services are provided by a non-resident person to a resident, in the ordinary course of economic activity then it shall be treated as a taxable service, irrespective if such was to an end-consumer.

Moreover, where a taxable service originates from Punjab but terminates outside of Pakistan, such person is liable to pay tax on this service to the government. Similarly, if the service originates from outside of Pakistan but is received and/or terminated in Punjab, then the recipient of such service shall be liable to pay tax.

Examples of both these circumstances are mentioned below:

### Example 1:

M/s. DEF Couriers, registered in Lahore, couriers a package to USA of an amount of PKR 10,000/-. On this amount, PKR 1,600 (16%) shall be withheld as tax and M/s DEF Couriers shall be responsible for paying the said tax.

### Example 2:

JKL Attorney (registered in USA) provided an advisory service to Mr. Z in Lahore and invoiced an amount of PKR 10,000. On this amount Mr. Z shall withhold PKR 1,600 and shall be responsible for submitting the said amount to the Government.

## C. ISLAMABAD

The governing statute for sales tax on services in Islamabad is the Islamabad Capital Territory (Tax on Services) Ordinance, 2001” (“**ICT Act**”), however the law is silent on the taxability and treatment with respect to non-residents and services rendered out of Islamabad.

## D. BALOCHISTAN

For Balochistan the Sales tax on services is governed by the Balochistan Sales Tax on Services Act, 2015 (“**BSTS Act**”) and shall be applicable all over Balochistan.

### 1. SERVICES PERFORMED OUTSIDE BALOCHISTAN

If a person has a registered office and/or a place of business in Balochistan and another one outside of Balochistan, then the one in Balochistan shall be treated as a separate legal entity.

Furthermore, if a person provides taxable services in a Province other than Balochistan but the recipient is a resident in Balochistan then the person providing such services shall be responsible to pay the sales tax on services. Similarly, if a person provides taxable services in more than one Province including Balochistan, then such person shall pay tax to the Government to the extent the tax is charged from a person who is a resident of Balochistan and/or a person who avails such service in Balochistan.

### 2. NON-RESIDENT-BALOCHISTAN

Any service provided by a person in a place in Balochistan or by a person from his office which includes the commencement and/or termination of the activity shall be chargeable to tax irrespective of whether such services were provided to a resident or a non-resident person. If it is provided by a non-resident person to a resident in the ordinary course of economic activity then, it shall be treated as a taxable service (irrespective if such was to an end-consumer).

Furthermore, where a taxable service originates from Balochistan but terminates outside of Pakistan then such person shall pay the tax on this service to the government. Likewise, if the service originates from outside of Pakistan but is received and/or terminated in Balochistan, then the recipient shall be liable to pay sales tax on these services.

## E. KHYBER PAKHTUNKHWA (KPK)

The Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 (“**KPSTS Act**”) is enforceable and relevant in the entire province of Khyber Pakhtunkhwa (KPK).

## 1. BUSINESS CONDUCTED OUTSIDE KPK

Under the KPSTS Act, if a person has a registered office and/or a place of business in KPK and the other outside of KPK then treatment of both shall be done separately, and if a person provides taxable services in a Province other than KPK but the recipient is a resident in KPK then the person providing such services shall be responsible to pay tax. Similarly, if a person provides taxable services in more than one Province including KPK, then such a person shall pay tax to the Government to the extent the tax is charged from a person resident in KPK that avails such service in KPK.

However, an exception has been placed from incoming international calls, wherein the telecommunication companies shall pay tax on reverse charge basis to the extent of their share of charges received from abroad, and their local representatives shall be treated as recipients.

## 2. NON-RESIDENTS-KPK

Any service provided by a person in a place in KPK or by a person from his office which includes the commencement and/or termination of the activity shall be chargeable to tax of irrespective whether such services were provided to a resident or a non-resident person. If it is provided by a non-resident person to a resident, in the ordinary course of economic activity then it shall be treated as a taxable service (regardless of whether it was to an end-consumer).

Furthermore, where a taxable service originates from KPK but terminates outside Pakistan then such person shall pay tax on this service to the government. Likewise, if the service originates from outside of Pakistan but is received / terminated in KPK, then the recipient shall be liable for tax liability.

## F. AZAD JAMU AND KASHMIR (AJ&K)

For AJ&K the law governing the tax on sales of services is the Azad Jammu & Kashmir Sales Tax (Tax on Services) Act, 2001 (“AJKST Act”),

### 1. SERVICES PERFORMED OUTSIDE PAKISTAN BUT WITHIN AJK

For AJK the recipient of the service shall withhold tax as applicable for the services and shall be solely responsible for payment and registration.

### For example,

Mr. ABD, a resident of UAE provides Management advisory from UAE to Mr. GJO in AJ&K. He raises an invoice of PKR 10,000/- every month. Now under this example, the applicable rate under the AJKST is 16%, therefore Mr. GJO shall withhold the entire amount of PKR 1,600/- and shall be liable for the payment of such withholding.

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