



# **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. Before moving on, I would like to inform everyone that, Alhamdulillah, I have been appointed as Chairman of the Reforms and Resource Mobilization Commission of Pakistan.



Moreover, 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 comments on case law discusses the judgement passed by the Supreme Court of Pakistan that the labour and carriage services are “Services” falling under the section 153 (1)(b) of the Income Tax Ordinance, 2001.

Lastly, we have concluded our newsletter with our Topic of the month titled “Taxes at import stage”. The said topic provides an insight on the taxes levied at import stage on goods imported into Pakistan.

All our readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com), or download our mobile application 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.

**Ashfaq Tola**  
Editor in Chief

## 1. NOTIFICATIONS/ CIRCULARS

### A. INCOME TAX

#### 1. DRAFT AMENDMENTS IN THE INCOME TAX RULES, 2002

The FBR vide SRO 2052(I)/2022, dated 22nd November 2022, issued a draft amendment for public objections and suggestions. A proviso was inserted whereby a form shall be submitted by the 31st of December 2022 for those who have filed their returns before the issuance of SRO 189(I)/2022 dated 13th October 2022.

This SRO was applicable on persons having capital assets as defined under Section 7E (Deemed Income) which was inserted in the Income Tax Ordinance, 2001 vide the Finance Act 2022.

We understand that the draft should be amended such that the requirement of filing the form lies only on the persons liable to pay tax on deemed income, instead of every person holding the capital assets.

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

Vide Circular 18 of 2022, dated 30th November 2022, the FBR announced a further extension in date for filing of annual returns and statements for the tax year 2022, which were originally required to be filed by 30th September 2022, from 30th November 2022 to 15th December 2022.

### B. SALES TAX

#### 1. SUSPENSION OF POS PRIZES TILL 31.01.2023

The FBR, vide SRO No. 2042(I)/2022, dated 15th November 2022, inserted sub-rule 10 in Chapter XIC-AC in Rule 150ZEL of the Sales Tax Rules, 2006, wherein it was recorded that the POS prize scheme shall not be effective from 15.11.2022 till 31.01.2023. However, it was further stated in the SRO that all the invoices verified during this period shall be included in the next prize draw/schemes.

#### 2. EXEMPTION OF SALES TAX ON SERVICES (SRB) BY CUSTOM AGENTS AND PORT & TERMINAL OPERATORS FOR FLOOD RELIEF OPERATIONS

The SRB, vide notification no. SRB 3-4/39/2022, dated 4th November 2022, issued a notification wherein the whole amount of sales tax was exempted from tax on services

provided or rendered by port operators and terminal operators for handling, storage and clearance of the consignments imported for flood relief operations, and for services provided or rendered by Customs Agents in relation to the clearance of the consignments imported for flood relief. It was also stated that such exemptions shall be deemed to have been made since 13th September 2022 and that no refund shall be entitled for any person for the amount of tax paid or already paid.

#### 3. ADDITION IN THE PUNJAB SALES TAX ON SERVICES (DEFINITION) RULES, 2002

The Punjab Revenue Authority, vide its SRO No. PRA/Orders.06/2021/242, dated 24th November 2022, inserted brief definitions of services provided by a Cab aggregator and Real estate aggregator as under:

- 'Cab Aggregator' means a digital intermediary or operator for a passenger or driver to connect them through telephone, cellular phone, internet, web-based services, Global Positioning System, General Packet Radio Services or other electronic or digital means for the purpose of transportation by motor vehicles including taxi, cab, car, van, motorcycle and rickshaw, whether or not he charges or collects any fee, fare, commission, brokerage or other charges or consideration for providing such service.
- 'Real estate aggregator' means a person who owns and operates an on line real estate portal or platform or web interface or website to facilitates persons including buyers, sellers, investors, tenants, real estate developers, by connecting them through such digital means in relation to purchase, sale, invest, rent, sub-let or lease the real estate

#### 4. CHECK POSTS ESTABLISHED ON ROUTES ORIGINATING FROM TAX-EXEMPT AREAS

The FBR, vide SRO No. 2061(I)/2022, dated 25<sup>th</sup> November 2022, established 16 check posts along with mobile teams, on routes originating from tax-exempt areas for the purpose of examining the goods carried and the documents related thereto.

## 2. CORPORATE NOTIFICATIONS / CIRCULARS

### 1. AMENDMENT IN THE SEVENTH SCHEDULE OF THE COMPANIES ACT, 2017

The SECP issued an updated table of fees to be paid to the Registrar and/or the Commission for certain forms, on its website which can be accessed through the following link:

<https://www.secp.gov.pk/document/seventh-schedule-updated-till-05-08-2022/?wpdmdl=46114&refresh=63848b6c3a5721669630828>

### 2. REAL ESTATE INVESTMENT TRUST REGULATIONS, 2022

The SECP, vide SRO 267(I)/2022, dated 28th November 2022, issued the Real Estate Investment Trust Regulations, 2022 which had earlier been published for public opinion vide the Notification SRO 1766(I)/2022 dated 26th September 2022. The said regulations provided guidelines for transfer, registration, documentations and related matters thereto for Real Estate Investment Trust (REIT).

### 3. DRAFT PROPOSAL FOR UNLISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2022

The SECP, vide its SRO 2066(I)/2022, dated 25th November 2022, issued a draft proposal for Unlisted Companies (Buy-Back of Shares) Regulations, 2022 for public comments, suggestions or objections to be made within a period of fourteen days. The said regulations provided grounds as to who was eligible to purchase shares, obligations and restrictions of the purchasing company, powers of the Commission and proposed penalty in case of contravention. The said regulations were also annexed with a format of the form and statement of compliance/declaration.

## 3. LABOUR & CARRIAGE SERVICES ARE “SERVICES” UNDER SECTION 153(1)(b)

### INTRODUCTION

In this month’s edition, a brief insight about a Section of Income Tax Ordinance, 2001 (“**ITO**”) has been interpreted by the Supreme Court of Pakistan through its appellate jurisdiction. An important point came out in the Petition filed by the Commissioner Inland Revenue -RTO Faisalabad (“**Petitioner**”) versus Abdul Hameed (“**Respondent**”), mentioning the difference between subjects of Final Tax

Regime (erstwhile presumptive tax regime) and Normal Tax Regime while proceeding an appeal regarding the domain of rendering labour and carriage services under Section 153(1)(c) of the ITO, along with highlighting the difference in rendering different labour and carriage services (in Civil Petitions Nos. 6309 to 6312 of 2021).

### 1. RELEVANT PROVISIONS

The relevant provisions that are discussed in this appeal are 153(1)(b), 1(c), (6), and (9) of ITO.

### 2. BACKGROUND

Four tax references were filed by the aforesaid Respondent (PTRs Nos. 527 to 530 of 2020) against the FBR as questions asked in the references were regarding the status of rendering labour and carriage services. The Lahore High Court (“**LHC**”) decided in favor of the aforesaid Respondent on grounds that the said question of law already stood decided by the LHC in the case of ‘Rehman Enterprises’.

Being aggrieved of the above, the FBR/Petitioner filed a Civil Petition for Leave to Appeal (“**CPLA**”) with the Honourable Supreme Court of Pakistan (“**SC**”)

### 3. QUESTION OF LAW

The question of law involved was to identify that ‘whether the contract for rendering labour and carriage services by the taxpayer fell under Section 153(1)(c) of the Income Tax Ordinance, 2001’ to determine the liability on income of the taxpayer as either final tax regime or normal tax regime.

### 4. ARGUMENTS BY THE PETITIONER

The Petitioner filed four CPLAs as the Orders were issued for four different tax years. During the hearing, the representatives of the Petitioner did not answer the question raised by the SC about challenging the judgement of Rehman Enterprises, instead they mentioned another judgement by the Sindh High Court (“**SHC**”) (‘Judgement of Premier Mercantile’) outcome whereof was in their favour, to showcase the conflicting opinion of the two High Courts on the very same point.

When the SC inquired about challenging the judgement (of the Rehman Enterprise case) by the Petitioner, it turned out that the pursued appeal by department had been dismissed, and the same case was approved by the Court in two other cases as well.

The Petitioner (for rebuttal of the Rehman Enterprises case) relied on Circular No. 11 of 1991 stating that the judgments mentioned by the Respondent did not relate to Section 153(1)(c) of the ITO.

#### 5. ARGUMENTS BY THE RESPONDENT

The Respondent argued that their contract of rendering labour and carriage services was in fact covered under Section 153(1)(b) and also by the exception to Section 153(1)(c) of the ITO which is subject to the final tax regime (erstwhile presumptive tax regime) rather than the normal tax regime.

#### 6. FINDINGS OF THE SUPREME COURT

The SC noted that the definition of 'services' in subsection (9) of section 153 is not exhaustive and uses the word 'includes' and then mentions a few services. In the case of Premier Mercantile, 'services' were declared to be a basket of 'professional' services and labour and carriage services were excluded as these were not provided by a professional by applying the interpretational rule of ejusdem generis (as the same kind). However, the word 'professional' was omitted from section 153(9) by the Finance Ordinance, 2003 and the word 'professional' in section 153(1)(b) of the Ordinance was omitted by Finance Ordinance, 2002. 'Services' mentioned in section 153(9) of the Ordinance are, consequently, not exhaustive and may include other services, including labour and carriage services.

Therefore, to exclude labour and carriage services it would be discrimination, which is not permissible. The reliance placed by the petitioner on section 153(1)(c), (6) and (9) is misplaced, and as noted (above) the judgment of the Sindh High Court in Premier Mercantile is not applicable on account of the change in the law. The SC further noted that that the view taken in Rehman Enterprises was subsequently followed by the Lahore High Court in the case of Muhammed Ali, and the SC endorsed the view taken in these two judgments.

The CPLAs were therefore declined, and petitions were dismissed. As a contract for rendering labour and carriage services was in fact covered under Section 153(1)(b) and under the exception to Section 153(1)(c) so, it was indeed subject to the final tax regime rather than the normal tax regime.

#### 4. TOPIC OF THE MONTH

##### TAXES AT IMPORT STAGE

#### INTRODUCTION

In this month's edition, we have decided to discuss at length taxes on import stage. We will refer to applicable taxes under the Income Tax Ordinance, 2001 ("**ITO**"), Sales Tax Act 1990 ("**STA**") and the Customs Act 1969 ("**CA**").

#### A. INCOME TAX ORDINANCE, 2001

Under Section 148 of the ITO, the Collector of Customs shall collect advance tax from every importer of goods on the value of the goods subjected to the Custom Duty, Federal Excise Duty ("**FED**") and Sales Tax, as determined under the CA. The rate of advance tax varies depending on which of the three parts of the Twelfth Schedule the product is classified. For instance, if the product is mentioned in Part I of the Twelfth Schedule of the ITO then the advance tax amount shall be 1 % of the import value. It is pertinent to mention that the import value means the value of the product including Customs Duty, FED duty and Sales tax amount. Following on, goods classified under the Part II of the Twelfth Schedule of the ITO shall be charged at 3.5%, in case it has been imported by a commercial importer or 2%, in other case(s). Lastly, collection of advance tax on goods falling under the Part III of the Twelfth Schedule of the ITO shall be at the rate of 5.5% of the import value.

However, there are some exceptions where the withholding rates mentioned above do not apply. These exceptions are manufacturers of Five Export Oriented sectors, where the applicable rate of tax collection is 1%; in case persons are importing finished pharmaceutical products certified by the Drug Regulatory Authority and are not manufactured in Pakistan, the rate is 4%; in case of importers of CKD kits of electric vehicles for small cars or SUVs with less than or equal to 50kwh battery; in case of LCVs with less than or equal to 150 kwh the applicable rate is 1%; and on import on mobile phones- as per rates specified in the Part II of the First Schedule of the ITO.

The tax collected at import stage under Section 148 is adjustable in case the goods (except edible oil, packaging material, paper and paper board, or plastic) are imported by an Industrial Undertaking for its own use.

An Industrial Undertaking is defined as an undertaking set up in Pakistan employing, —

- (1). 10 or more persons in Pakistan and involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy; or
- (2). 20 or more persons in Pakistan and does not involve the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy and which is engaged in, —
  - a) The manufacture of goods / materials/ the subjection of goods or materials to any process which substantially changes their original condition; or
  - b) Ship-building; or
  - c) Generation, conversion, transmission or distribution of electrical energy, or the supply of hydraulic power; or
  - d) The working of any mine, oil-well or any other source of mineral deposits;
  - e) A person directly involved in the construction of buildings, roads, bridges and other such structures or the development of land, to the extent and for the purpose of import of plant and machinery to be utilized in such activity, effective from the 1st day of May, 2020, subject to such conditions as may be notified by the Board ;
  - f) A resident company engaged in the hotel business in Pakistan, effective from the first day of July, 2020; and
  - g) Telecommunication companies operating under the license of Pakistan Telecommunication Authority (PTA).;]

In all other cases, the tax so collected shall be minimum tax on the income of the taxpayer arising from such imports.

## **B. SALES TAX ACT, 1990**

Under the STA, imported goods are taxable at the standard rate of 17%. In case rates of any product is specifically provided under any of the Schedules of the STA, the specified rates will apply subject to the specified conditions, if any. The STA has also clearly specified that the liability to pay tax shall be on the person making the import.

If there is any change in the rate of tax then the imported goods shall be charged at the rates on the date mentioned in the Goods Declaration (“GD”) depending on whether goods imported were for home consumption or cleared from warehouse. In case of home consumption, the applicable rate will be the rate applicable as on date of presenting GD and if they are cleared from the warehouse, then rate of tax shall be as on the date on which the GD for clearance was presented. Where the GD was presented in advance of the arrival of goods imported then the tax shall be charged as in force on the date on which the manifest of the conveyance was delivered. Furthermore, if tax is not paid within 7 days of the date of GD, then tax shall be charged at the rate as in force on the date on which tax is actually paid. The Federal Government may allow payment of sales tax on installments basis by the Federal / Provincial Governments or any public sector organization on import / supply of any goods or class of goods subject to conditions, limitations, and restrictions as per the official Gazette.

Goods such as rice, wheat, wheat and mesilin flour, pulses etc. and others mentioned in the Sixth Schedule of the STA shall be exempted from sales tax subject to conditions specified by the Federal Government.

A value addition tax of 3% shall also be applicable on imported goods. However, twelfth schedule of STA provides a list of certain items which enjoy exclusion from this additional 3% value addition tax.

The value addition tax paid at import stage shall form part of input tax, and the importer shall deduct the same from the output tax due for the tax period for determining his net liability. The excess of input tax over output tax shall be carried forwarded to the next tax period in normal

manner. However, any excess value addition tax shall not be refunded except as used in making zero-rated supplies

### **C. AS PER CUSTOMS ACT, 1969**

Custom duties shall be levied at rates in the First schedule of the CA on (a) goods imported into Pakistan; (b) goods brought into from any foreign country to any customs stations and without payment of duty there, transshipped or transported for or carried to and imported at any other customs-station; and (c) goods brought in bond from one custom station to another. Goods other than those specified in the above shall be charged at the rates mentioned in the Fifth Schedule of the CA.

The Federal government may by notification in the official Gazette levy an additional customs duty on such imported goods as specified in the First Schedule of the CA at a rate not exceeding 35% of value of such goods.

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