



TAX PAK

NEWSLETTER BY TOLA ASSOCIATES



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JANUARY 2023



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EDITORIAL NOTE

Asalam-o-alaikum everyone! Hope this monthly issue of TAXPAK finds you in good spirits and immaculate health! We 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.

Moreover, we 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. 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 of TaxPak discusses the recent judgement passed by the Hon'able Sindh High court dismissing the constitutional petitions that challenged the vires of Section 8 of the Finance Act 2022 (Capital Value Tax).

We have discussed in our newsletter our Topic of the month titled "Tax filing and compliance deadlines for taxpayers". The said topic provides an insight on the tax filing and compliance deadlines provided for under the tax laws in Pakistan.

All our readers are requested to visit our website 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.

Warm Regards,

Tola Associates.

1. NOTIFICATIONS/ CIRCULARS

A. INCOME TAX

1. FURTHER AMENDMENT TO THE SECOND SCHEDULE OF THE INCOME TAX ORDINANCE, 2001

The FBR, vide SRO 72(I)/2023, dated 25th January 2023, notified that the exemptions on goods required and imported for relief operation for flood affectees as certified by the National Disaster Management Authority / Provincial Disaster Management Authority would commence three months from 1st December 2022 instead of the earlier term of ninety days. This entry in the Second Schedule had been made earlier vide SRO 634 (1)/2022, dated 30th August, 2022.

2. DRAFT RULES FOR THE SHARING OF DECLARATION OF ASSETS OF CIVIL SERVANTS RULES, 2023

The FBR, vide SRO 76(I)/2023, dated 26th January 2023, issued draft rules titled as the Sharing of Declaration of Assets of Civil Servants Rules, 2023, for general public comments to be communicated to the FBR within five days of the issuance of the Notification. The said rules shall apply to civil servants in BS 17-22 and are for the purpose of sharing information with banking companies. Moreover, the said rules contain compliance requirements and responsibilities of the banking companies, procedures and applicability on these civil servants. The draft rules may be perused through the following link [202312621102714sro76-2023.pdf \(fbr.gov.pk\)](https://www.fbr.gov.pk/202312621102714sro76-2023.pdf)

B. SALES TAX

1. EXEMPTION OF WHOLE OF SALES TAX ON OLD CONTINGENT OWNED EQUIPMENT (COE)

The FBR, through SRO 01(I)/2023, dated 03rd January 2023 granted complete exemption of sales tax on Contingent Owned Equipment (COE) or used stores of Civil Armed Forces which were repatriated and arrived at the Karachi Port after completion of United Nations Peacekeeping mission in Darfur (Sudan).

2. EXEMPTION FROM SALES TAX ON THE IMPORT AND SUPPLY OF THE DONATION CONSIGNMENTS AND RELIEF ITEMS AS CERTIFIED BY NDMA OR PDMA FOR RELIEF OPERATIONS FOR FLOOD AFFECTEES

The FBR, through SRO 70(I)/2023 dated 25th January 2023, notified that complete sales tax exemption for 3 months, commencing from 1st December 2022, shall be applied on the import and supply of the donation/relief items for the relief operation for flood affectees on the items notified by the National Disaster Management Authority / Provincial Disaster Management Authority.

3. CONDONATION OF THE DATE FOR ONLINE SUBMISSION OF OPTION/ELECTION FORM

The SRB, vide Circular No. 01/2023, dated 5th January 2023, granted condonation of delay in electronic submission of the online Option/Election Form "S" for a period of up to 16th January 2023. Under Form "S" persons providing/ rendering the services of software/ IT based system development consultants can opt for payment of tax at the reduced rate of 3% (instead of the standard rate of 13%).

4. SALES TAX GENERAL ORDER NO. 6 OF 2023 - TIER-1 RETAILERS - INTEGRATION WITH FBR'S POS SYSTEM

The FBR issued a Sales Tax General Order bearing No. 06 of 2023, dated 10th January 2023, wherein the identified Tier-1 Retailers have been directed to get themselves integrated with the FBR by the 10th of January 2023. 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. The list may be perused through the following link: [20231101612054461STGO6-2023.pdf \(fbr.gov.pk\)](https://www.fbr.gov.pk/20231101612054461STGO6-2023.pdf)

2. CORPORATE NOTIFICATIONS / CIRCULARS

AMENDMENTS TO THE CORPORATE RESTRUCTURING COMPANIES RULES, 2019

The SECP vide S.R.O. 43 (I)/2023, dated 18th January, 2023, proposed amendments to the Corporate Restructuring Companies Rules, 2019 to streamline investment processes for Corporate Restructuring Companies & provide greater flexibility for restructuring operations. The said draft amendments can be accessed at <https://www.secp.gov.pk/document/draft-crc-rules-amendments-with-mol-changes-for-po/?wpdmdl=46713&refresh=63d0e35b316fa1674634075>

2. PROCEDURE FOR OBTAINING LICENSE BY AN ASSOCIATION HAVING NOT FOR PROFIT OBJECTS UNDER SECTION 42 OF THE COMPANIES ACT, 2017 & ITS INCORPORATION AS A COMPANY LIMITED BY GUARANTEE

The SECP issued brief guidelines for obtaining a license for Not-for-Profit Organizations and for companies limited by guarantee. The comprehensive guideline also included step-by-step processes and specimens of the forms needed for submission. The guidelines may be accessed through the following link [securities and exchange commission of pakistan \(secp.gov.pk\)](https://www.secp.gov.pk/document/secure-exchange-commission-pakistan)

3. GUIDELINES FOR OFFERING ISLAMIC FINANCIAL SERVICES, 2023

The SECP issued guidelines for offering Islamic Financial services applicable to persons engaged in offering Islamic financial services in the financial services markets. It is pertinent to mention that these guidelines are not applicable on the financial services exclusively regulated by the State Bank of Pakistan. The guidelines may be accessed through the following link.

<https://www.secp.gov.pk/document/guidelines-for-offering-islamic-financial-services->

[2023/?wpdmdl=46632&refresh=63da2344e769c1675240260](https://www.secp.gov.pk/document/circular-no-01-of-2023-master-circular-for-mutual-funds-mf-collective-investment-schemes-cis-investment-advisory-services-ias-updated-dec-31-2022/?wpdmdl=46689&refresh=63da22ee460a31675240174)

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

The SECP, vide Circular 01 of 2023, dated 19th January 2023, issued a master circular containing consolidated circulars issued up to December 31, 2022 to facilitate and create an enabling environment for the Asset Management Companies (AMCs)/ Investment Advisor (IAs) and to ensure compliance of statutory/regulatory requirements for Mutual funds/ Collective Investment Schemes/ Investment Advisory Services. The circular may be accessed through the following link.

<https://www.secp.gov.pk/document/circular-no-01-of-2023-master-circular-for-mutual-funds-mf-collective-investment-schemes-cis-investment-advisory-services-ias-updated-dec-31-2022/?wpdmdl=46689&refresh=63da22ee460a31675240174>

5. DRAFT AMENDMENTS TO THE COMPANIES (REGISTRATION OFFICES) REGULATIONS, 2018

The SECP, vide SRO 66(I)/2023, dated January 19, 2023, issued a notification seeking feedback and comments from those who would likely be impacted which is due within 14 days from the notification's issuance. The Companies (Registration Offices) Regulations, 2018's Annexure D, "Time Frame for the disposition of certain proceedings," has been replaced by the aforementioned notification. The notification may be accessed through the following link <https://www.secp.gov.pk/document/s-r-o-66i-2023-draft-amendments-to-the-companies-registration-offices-regulations-2018/?wpdmdl=46754&refresh=63da23bc807751675240380>

6. APPLICATION OF IAS 39 ON THE APPLICATION OF EXPECTED CREDIT LOSSES METHOD

The SECP, vide SRO 67(I)/2023, dated 20th January 2023, notified that companies holding financial assets, due or ultimately due from the Government of Pakistan (for circular debt) shall apply IAS 39- Financial Instruments: Recognition and Measurement for the financial years ending on or before December 31, 2024 instead of IFRS 9 (Financial Instruments) on the application of Expected Credit Losses Method.

3. TOPIC OF THE MONTH

TAX FILING AND COMPLIANCE DEADLINES FOR TAXPAYERS

INTRODUCTION

In Pakistan, the general public is well versed with the deadlines of the annual income tax returns, due to the media attention it receives, such as the date being extended at the very last minute being presented in almost all forms of social media. However, many people aren't aware that there are other returns which are also of equal importance and that submission of those are equally mandatory. Therefore, we decided to apprise our readers with the requirements and compliance deadlines for taxpayers.

1. INCOME TAX ORDINANCE, 2001:

A. RETURN OF INCOME

Every person, who is required to file a return of income under section 114 of the Income Tax Ordinance, 2001 ("ITO"), is required to file the same within the following timeline:

Persons	Last date
Individual / Association of Persons (AOP)	On or before 30 th September
Company having its tax year between 1 st January to 30 th June	On or before 31 st December
All other companies	On or before 30 th September

FOR EXAMPLE, if ACB (Pvt) Limited's tax year is 1st Jan 2022 to 31st Dec 2022, then it shall file its return of income by 30th September 2023, and if its tax year is 1st July 2022 to 30th June 2023 then it shall submit their return of income on or before 31st December 2023.

B. WEALTH STATEMENT (SECTION 116)

Every resident taxpayer being an individual, who is required to file a return of income for any tax year shall also submit along with the return of income a wealth statement and wealth reconciliation statement for that year. Therefore, the last date to submit this statement shall be the same date as of the return of income.

C. FOREIGN INCOME STATEMENT (SECTION 116A)

A foreign income and assets statement shall be filed by every individual being a resident taxpayer whose foreign income is at least USD 10,000 or foreign assets have a value of at least USD 100,000/- or more, i.e the said individuals shall be liable to file the said return. This statement is also required to be submitted along with the return of income.

D. STATEMENT OF WITHHOLDING OF TAXES (SECTION 165)

Every person who withholds tax or is required to withhold tax shall submit a quarterly withholding statement for each quarter as under:

Period	Quarter	Furnish return by
January-March	March Quarter	On or before 20 th April
April-June	June Quarter	On or before 20 th July
July-September	September Quarter	On or before 20 th October
October-December	December Quarter	On or before 20 th January

F. ANNUAL STATEMENT (SECTION 149)

Every person deducting tax against salary shall furnish an annual statement (under section 149) in the prescribed form by 31st July after the end of a financial year.

G. ANNUAL STATEMENT (SECTION 165)

Furthermore, every person deducting/ collecting advance tax or deducting tax at source shall e-file an annual statement within 30 days of the end of the tax year i.e., on or before 30th July, in addition to the statement mentioned in point F.

H. RECONCILIATION STATEMENT

Every person submitting the statements mentioned in point G, shall submit a reconciliation wherein the amounts mentioned in the annual statement should reconcile with the amounts declared in the return/ audited accounts / financial statements along with the return of income.

I. ADVANCE TAX (SECTION 147)

Every taxpayer who is required to pay advance tax is required to pay the same as per the following timeline:

AOP / Company		
Period	Quarter	Payment by
July-September	September Quarter	On or before 25 th September
October-December	December Quarter	On or before 25 th December
January-March	March Quarter	On or before 25 th March
April-June	June Quarter	On or before 15 th June

Individual		
Period	Quarter	Payment by
July-September	September Quarter	On or before 15 th September
October-December	December Quarter	On or before 15 th December
January-March	March Quarter	On or before 15 th March
April-June	June Quarter	On or before 15 th June

Furthermore, any taxpayer and a banking company shall estimate the tax at any time before the second installment is due, if the tax payable is more than the amount the taxpayer is supposed to pay then he shall submit to the Commissioner on or before the due date of the 2nd quarter an estimate of the amount and thereafter shall pay 50% of the amount by the due date of the 2nd quarter, the remaining 50% shall be paid after the 2nd quarter in two equal installments payable by the due date of the 3rd and 4th quarter of the tax year.

2. SALES TAX ACT, 1990

Every Registered person is requested to file monthly sales tax returns in the following manner:

Category	Last date
Submission of Annexure C-Sales Invoices	By the 10 th of the following tax month
Payment of tax liability	By the 15 th of the following tax month
Submission of Monthly return	By the 18 th of the following tax month

FOR EXAMPLE, ABC (Private) Limited intends to file its November 2022 sales tax return then it shall submit Annex "C" by the 10th of December 2022, pay the tax liability by 15th December 2022 and thereafter submit the return on 18th December 2022.

Certain sectors such as the below mentioned, have been granted special dates as under:

S No.	Category	Due date	
		For payment	For Filing
1	Electricity distribution companies	18 th of the following month	21 st of the following month
2	Independent Power Producers	22 nd of the following month	25 th of the following month
3	Gas transmission and distribution companies	15 th of the following month	18 th of the following month
4	Petroleum exploration and production companies	18 th of the following month	21 st of the following month
5	CNG dealers (quarterly basis)	15 th of the month following the end of the quarter of the financial year	18 th of the following month
6	Brick manufacturers (brick kilns paying tax under Tenth Schedule to the Act) (on quarterly basis)	15 th of the month following the end of the quarter of the financial year	18 th of the following month

Furthermore, a manufacturer, in addition to the monthly returns, is also required to file the same annually, for a financial year by 30th September of the following financial year.

3. PROVINCIAL TAX RETURNS

REQUIREMENT FOR REGISTRATION WITH SRB/BRA/PRA/KPRA:

Time frame for the provinces has been stipulated by their respective provincial authorities. Every person registered with their respective provincial authorities shall file their Sales tax on services monthly statement in the following time and manner:

Provinces	Sindh	Punjab
Authorities	Sindh Revenue Board	Punjab Revenue Authority
For Submission of Annex C (Sales Invoices)	10 th of the following month	10 th of the following month
Payment	15 th of the following month	15 th of the following month
Submission of return	18 th of the following month	18 th of the following month

Balochistan	Khyber Pakhtunkhwa Revenue	Islamabad Capital Territory
Balochistan Revenue Authority	Khyber Pakhtunkhwa Revenue Authority	Federal Board of Revenue
10th of the following month	10 th of the following month	Same manner and time as per the STA
15th of the following month	15 th of the following month	Same manner and time as per the STA

18th of the following month	18 th of the following month	Same manner and time as per the STA
Balochistan Revenue Authority	Khyber Pakhtunkhwa Revenue Authority	Federal Board of Revenue

4. THE CVT HELD TO BE INTRA VIRES OF THE CONSTITUTION OF PAKISTAN 1973. BY THE HONORABLE HIGH COURT OF SINDH

1. BACKGROUND

A tax has been levied/charged on the value of assets at the rate specified in the First Schedule of Section 8 of the Finance Act, 2022 for tax year 2022 and onwards. The said Capital Value Tax (“CVT”) has been levied on various immovable and movable assets. CVT on foreign assets is applicable where value of such assets in aggregate exceed Rs 100 million on the last day of the tax year. As per Section 8(13)(c), Foreign Assets has been defined as including (but not limited to) the following assets; real estate, mortgaged assets, stocks and shares, bank accounts, bullion, cash, jewelry, paintings, accounts and loan receivables, assets held in dependents’ name, beneficial ownership or beneficial interests or contribution in offshore entities/trusts were also to be considered in computing CVT. The Petitioners challenged the vires of the CVT on Foreign Assets on, inter alia, the ground that the said imposition cannot be enforceable as the Parliament could not impose tax on immovable property, and even if it did, it could not apply on immovable assets situated outside of Pakistan.

2. ARGUMENTS BY THE LEARNED PETITIONER’S COUNSEL

The Learned petitioners argued that post the 18th Amendment, the powers of the Parliament to impose any tax on immovable properties was taken away, and that once the power to impose tax on immovable property is

beyond the competence of the Parliament then it is not relevant as to where the property is located. Moreover they argued that if tax cannot be imposed directly then it cannot be taxed indirectly, and that this tax is in contravention with the Income Tax Ordinance, 2001 (“ITO”) and with various other tax treaties. Furthermore, they also argued that the levy of CVT is discriminatory as it is only on individuals and not all persons who declared their foreign assets pursuant to the amnesty scheme and challenged that this imposition is beyond the competence of the Parliament ultimately resulting to this effect being ultra vires to the Constitution. They further stated that the words “not including” was to be treated as a proviso creating an absolute exception.

3. ARGUMENTS BY THE LEARNED RESPONDENTS’ COUNSEL

The Learned Respondents’ counsel argued that after availing amnesty under the tax amnesties offered previously (in 2018 and 2019) by the Federal Government, which was also legislated by the Parliament, the petitioners cannot now object as to the competence of the Parliament. Moreover, they further argued that the immovable property can be taxed by the Parliament pursuant to Articles 141 & 142 read with Article 97 of the Constitution, and that even otherwise it is within the competence of Federal Legislature to levy such tax pursuant to Entry 50 which must be read with Entry 58 of the Federal Legislative List. Furthermore, they further argued that provinces cannot legislate in respect of immovable properties located abroad, that the Parliament can deal with legislation beyond territorial waters of Pakistan, and that under the Foreign Assets Act (i.e previous two tax amnesties as mentioned above) protection was provided in respect of any adverse action in relation to the conduct of the taxpayer by concealing any declaration. Nevertheless, they also argued that the mandate of the Constitution does not prohibit or restrict the powers of the Parliament to levy any tax, and that whatever cannot be taxed by a Province can be taxed by the Parliament. They also argued that the essence is not a

tax on property, rather in the capital assets declared in the Wealth Reconciliation Statement, and that any of the two legislatures (Province or Parliament) must have powers to legislate and impose tax. Finally, the Learned Respondents prayed for the dismissal of the petition filed on the grounds laid above.

4. ARGUMENTS BY THE COUNSEL OF LEARNED ASSISTANT ATTORNEY GENERAL

The Learned Assistant Attorney General argued that it is within the competence of the Parliament to levy the impugned tax as it is always within the competence of the Parliament to legislate extra territorial limits, that the words in the Article 141 of the Constitution expressly vests competence in the Parliament to levy impugned tax, that any other interpretation would result to redundancy, that the Indian Constitution under Article 245(1) & (2) has dealt with the doctrine or nexus and extra territorial limits, and that the tax in question cannot be levied competently by the Province and therefore, prayed for the dismissal of the petitions filed.

5. FINDINGS OF THE HON'ABLE HIGH COURT OF SINDH

The SHC, in its judgement, briefly elaborated as to how prior to the 18th Amendment, there were two separate legislative lists, i.e. Federal Legislative List and Concurrent Legislative List, while under the Article 142(e) of the Constitution of Pakistan 1973 ("Constitution") it was provided that Provincial Assembly shall have the power to make laws with respect to any matter not enumerated in either of the aforementioned lists and not the Parliament.

Entry 11 of the Concurrent Legislative List empowered the Province to legislate in respect of transfer of property other than agricultural land, registration of deeds and documents. The court also found that according to Article 142(d) it is clearly established that the Parliament shall have exclusive powers to make laws for all matters pertaining to areas in the Federation which are not included in any province, therefore summarizing that

Parliament shall have competence to legislate against all fields of legislation except when it falls within a province. It further found that any property beyond the territorial limits of the province would still remain within the competence of the Parliament for purposes of imposition of tax in terms of Entry 50 of the Federal Legislative List, which can be deemed to be including any property outside Pakistan. The SHC also found that as per Article 141, the Parliament may make laws for the whole / any part of Pakistan and the Provincial Assembly shall make laws for the Province or any part thereof. Furthermore, the SHC distinguished that the words "not including" and "except" were not to be taken as synonyms instead the word "not including" curtails the powers of the Federal Legislature in a limited manner.

It was also clarified that the concept of taxation in respect of foreign income is now a worldwide phenomenon and majority of the countries had incorporated provisions relating to taxing incomes of resident individuals. The SHC found that no substantial arguments were made by the Learned Petitioners' Counsel on the taxability of foreign assets excluding immovable properties. The SHC also remarked that the main focus of the Petitioner's counsel was in respect of immovable properties held abroad and use of the word "not including" in Entry-50, and that no ground was raised for movable assets. Therefore the SHC declared that the CVT imposition was not ultra vires to the Constitution and thereby dismissed the petitions.

STATUS OF PENDING COURT CASES OF SUPER TAX, DEEMED INCOME AND CAPITAL VALUE TAX

1) Super Tax (Section 4C)		
S. No	Jurisdiction	Case Status
1.	Sindh High Court	Decided as under: <ul style="list-style-type: none"> • No Super Tax Applicable for Tax Year 2022. • Proviso of additional 10% Super Tax applicable to certain sectors having income above PKR 300 million held to be ultra vires. • Super Tax itself held not to be ultra vires.
2.	Lahore High Court	<ul style="list-style-type: none"> • Final decision pending. • Conditional interim stay order in favor of the petitioners (both normal and special tax years).

2) Deemed Income (Section 7E)		
S.No	Jurisdiction	Case Status
1.	Sindh High Court	<ul style="list-style-type: none"> • Decided against the petitioners. • Appeals against the judgment have been preferred before the Supreme Court of Pakistan.
2.	Lahore High Court	<ul style="list-style-type: none"> • Final outcome pending. • Interim stay order against the Notice(s) issued u/s 176 pertaining to deemed income is operating, whereby no final assessment order under the said Notice(s) can be given by the FBR.
3.	Balochistan High Court	<ul style="list-style-type: none"> • Final outcome pending. • Interim stay order in favour of the petitioner has been issued whereby FBR has been restrained from taking any coercive measures against the Petitioners.

3) Capital Value Tax (Section 8 of the Finance Act 2022)		
S.No	Jurisdiction	Case Status
1.	Sindh High Court	<ul style="list-style-type: none"> • The petitions have been dismissed, upholding the provision of law. Appeals against the judgment have been preferred before the Supreme Court of Pakistan.
2.	Lahore High Court	<ul style="list-style-type: none"> • All petitions have been dismissed.

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