

The background of the cover is a collage of business-related images, including a bar chart with colorful bars, a pie chart with six segments, a line graph, and a laptop keyboard. The collage is overlaid with large, light blue geometric shapes that create a sense of depth and movement.

TAX PAK

Newsletter by

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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. Alhamdulillah, 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 (“FBR”) and its provincial counterparts. Moreover, Notifications from the corporate regulatory body i.e., SECP are discussed. As our main aim is to keep the masses updated regarding the developments in the Pakistani tax law, we usually discuss a (relatively) recent judgement passed by the courts of law. This edition of TaxPak consists a discussion of three judgments issued by the Provincial High Courts and the Supreme Court of Pakistan, regarding disallowance of input tax (passed by the Supreme Court), extra tax on sale of goods (passed by the Honourable High Court of Sindh) and Super tax – Section 4C (passed by the Honourable Islamabad High Court).

Towards the end of the newsletter, we have discussed our Topic of the month titled “Inland Revenue Rewards”. The said topic provides an insight on the reward procedure for Inland Revenue Rewards and practical applicability thereof under the said Rules for rewards.

All our readers are requested to visit our website **www.tolaassociates.com**, or download our mobile application in order to access previous published editions of 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.

FBR Notifications

A. Income Tax

1. Further amendments to Income Tax Rules, 2002

The FBR, vide SRP 934(i)/2023 dated 20th July 2023, issued a notification, draft of which was earlier issued vide SRO 842(I)/2023 dated 5th July 2023, wherein, amendment in respect of verification by the Commissioner for goods relevant to the activity of the taxpayer whose income was either exempt from tax under the ITO or was subject to 100% tax credit under section 100C shall now be applicable on all 100% tax credits extended under the Ordinance and not just under section 100C. For further reading: (<https://download1.fbr.gov.pk/SROs/20237201675327219SRO-No-934.pdf>)

2. Instructions regarding mode and manner for payment of tax u/s 7e of the income tax ordinance 2001, on sale/transfer of immovable property

The FBR, vide Circular No. 01 of 2023-24. dated 21st July 2023, issued instructions for the mode of satisfaction in relation to the condition introduced by the Finance Act, 2023 wherein vide section 236C(2A), the transferring authority is barred from registering/ attesting/ transferring any immovable property unless the seller provides evidence that the tax liability under section 7E of the ITO had been discharged/ exempted. The circular also stated that a seller having his/her name in the ATL shall submit a prescribed form to the Commissioner Inland Revenue having jurisdiction over the person, who shall examine the particulars and shall issue a certificate within 7 days of filing of the Form. However, where the seller's name is not in the ATL, (s)he shall pay the due amount separately and shall provide evidence of the payment at the time of transfer. Our brief comments on this notification can be found vide the following link:

([Brief-note-on-Section-7E-Instructions-issued-by-FBR.pdf \(tolaassociates.com\)](#))).

3. EXPLANATIONS REGARDING IMPORTANT AMENDMENTS MADE IN THE INCOME TAX ORDINANCE, 2001

The FBR, vide Circular No. 2 of 2023 dated 26th July 2023, issued explanations regarding important amendments made in the Income Tax Ordinance, 2001 through the Finance Act, 2023. A concise summary of the circular is as follows:

- Definition of Permanent Establishment (PE) has been enhanced to include virtual business presence as well, and services including consultancy services through an entity in Pakistan is also covered under the definition.
 - o Furthermore, the definition of PE shall apply for determination of status of the non-residents in Pakistan (“NRP”). However, it shall be applied keeping in mind the relevant provision of Agreement for Prevention and Avoidance of Double Taxation between Pakistan and the country of the NRP.
 - o Payments made by resident and non-resident persons having PE in Pakistan on supply of goods/ rendering of services/ execution of contract have been increased by 1% of their existing rates in case of ATL and by 2% in case of Non-ATL.
- Definition of Associate has been broadened and the Board is empowered to prescribe rules related to associates for a resident of a jurisdiction with zero taxation regime.
- Explanation has been inserted for Minimum tax (u/s 113) to remove the ambiguity that excess amount of minimum tax paid over actual tax shall be carried forward for adjustment against actual tax liability payable under Part-I, Clause (I) of Division I or Division II of the First Schedule to the Ordinance in the subsequent tax years.
- Amendment regarding Capital Gain on securities and shares (u/s 37 and 37A):
 - o The acquirer of the capital asset (shares of the company other than listed on the stock exchange and settled by NCCPL) shall deduct advance adjustable tax at the rate of 10% from gross amount of the sale consideration at fair market value of shares.
 - o Furthermore, a person acquiring the shares may obtain an exemption certificate / reduced rate certificate from the Commissioner holding jurisdiction where the person considers that the transaction of sale of shares does not attract any gain.
 - o Furthermore, within 30 days of disposing of shares, a person shall submit documents / information as prescribed to the Commissioner, however the Commissioner is empowered to call for documents / information within less than 30 days by a notice in writing.
 - o For outstanding shares of listed companies not traded on the stock exchange and not settled through the NCCPL, provisions of section 37 shall apply.
 - o Disposal of shares through initial public offer during the listing process will remain subject to tax provided that the detail of such disposal is furnished to NCCPL for the computation of capital gain and tax has been collected and paid.

- o Capital gains arising on disposal of securities acquired before 01-07-2013 shall be subject to 0% tax, and 12.5% tax shall apply on securities acquired on or after 01-07-2013 till 30-06-2022.
- o Reduced rate based on holding period shall continue to apply on securities acquired on or after 01-07-2022.
- The NCCPL has been empowered to compute and collect tax under section 4C as per rates specified.
- Bonus Shares:
 - o A company is responsible to withhold 10% of the bonus shares issued calculated at the day end price on the first day of book closure for listed company.
 - o If the shareholder does not acquire the withheld bonus shares, then the company shall sell and deposit the sales proceeds to the extent of tax liability on behalf of the shareholder. The tax shall be deposited by the company within 15 days of book closure and the company shall recover the tax from the shareholder by way of disposal of 10% withheld shares of such amount of tax from the shareholder. Tax collected by the company shall be treated as tax paid by the shareholder which shall be final discharge of tax liability of the shareholder on deemed income arising on account of issuance of bonus shares.
- Income slabs were revised for Super tax applicable for tax year 2023 and onwards, which are reproduced as follows:

S. No.	Income u/s 4C	TY 2023 and onwards
01	Income up to Rs. 150 million	0% of the income
02	More than Rs. 150 million up to Rs. 200 million	1% of the income
03	More than Rs. 200 million up to Rs. 250 million	2% of the income
04	More than Rs. 250 million up to Rs. 300 million	3% of the income
05	More than Rs. 300 million up to Rs. 350 million	4% of the income
06	More than Rs. 350 million up to Rs. 400 million	6% of the income
07	More than Rs. 400 million up to Rs. 500 million	8% of the income
08	Income exceeding Rs. 500 million	10% of the income

- o Banking companies will be required to pay super tax at 10% if income exceeds Rs. 300million.
- o Super tax liability computed by a person shall be paid along with monthly/ quarterly installments of advance tax.
- Person responsible for registering, recording, or attesting transfer of any immovable property shall only register, record, transfer or sale if the seller/ transferor has discharged tax liability under section 7E of the ITO and evidence has been furnished to the withholding agent in mode, form and manner prescribed for both ATL and Non-ATL persons.
- Persons not on the ATL list, except for persons covered under the Tenth Schedule, shall no longer be eligible to claim **certain exceptions** on deemed income (Section 7E of the ITO).
- Imposition of additional tax on windfall income profits and gains on company.
 - o The Federal Government shall prescribe any rate not exceeding 50% for any sector(s) but not limited to international price fluctuation on any commodity price in Pakistan or any sector of the economy and/or difference in income, profit or gains on account of foreign currency fluctuations and may exempt any person(s), income(s) from such imposition.
 - o It shall be applicable for the last three preceding tax years commencing from tax year 2023 and onwards and all notifications issued by the Federal Government will be presented before the National Assembly within 90 days of issuance or 30th June of the financial year whichever is earlier.
- Major revamping of the Alternate Dispute Resolution Mechanism has been introduced; one such example is that decision will be made within 45 days, extendable by 15 days for reasons to be recorded in writing.
- Commissioner Inland Revenue was empowered to recover outstanding amount of liabilities treated as income tax arrears and payable under any other laws enforceable.
- Builders and developers shall compute their advance tax liability on the basis of area and size of the building/land development project and the liability will be paid in terms of Advance Tax in 4 equal quarterly installments. The builder and developer will compute and pay the advance on project to project basis and rules will be notified.
- Automatic issuance of exemption certificate u/s 152- Payments to Non-residents:

- o Furthermore, if any adjournment period is requested, this period shall be omitted for 30 days' computation purposes.
- o The Commissioner Inland Revenue may modify or cancel the certificate automatically issued on the basis of reasons to be recorded in writing and after providing an opportunity of being heard to the taxpayer.
- An exporter of IT and IT enabled services shall be charged concessionary final tax rate of 0.25% for tax years 2024, 2025 and 2026 on export proceeds if the exporter is registered with the Pakistan Software Export Board (PSEB). Furthermore, the criteria that filing of sales tax return was mandatory for availing the concessionary final tax rate has been withdrawn. However, if respective statutes require the exporter to submit the Sales Tax Return, then such exporter shall submit accordingly.
- Imposition of advance adjustable tax at 0.6% from a person whose name is not appearing on the ATL at the time of making payment for a sum of cash withdrawal exceeding Rs 50,000/- in a single day in aggregate. This includes cash withdrawal from credit cards or from ATMs. However, tax shall not be deducted from the withdrawals of:
 - o Federal/ Provincial Government;
 - o Foreign diplomat/ diplomatic mission in Pakistan;
 - o Person who produces a certificate from the Commissioner that his income was exempt during the year.
- Advance tax of Rs 200,000 will be collected by any Pakistan authority issuing or renewing domestic aide visa to a foreign domestic worker.
 - o Advance tax shall be collected from the employer/sponsor/agency at the time of issuance/ renewal of domestic aide visa.
 - o The amount of Advance Tax shall be Rs. 400,000 in case the employer is not appearing on ATL.
- Tribal Areas were granted exemption from withholding under various provision of the ITO till 30.06.2023. The same has been extended till 30.06.2024.
- Tax on import of goods by commercial importers increased to 6% from 5.5%.
- Advance tax on Motor Vehicles has been increased and where engine capacity is not applicable and value of vehicle is Rs 5 million or more, then 3% tax will be collected on the value inclusive of custom duty, sales tax and FED if imported and 3% tax on invoice value if locally manufactured/assembled.

- Advance tax rates on sale and purchase of immovable property has been increased to 3%. The rate of advance tax in case of person not in ATL has been increased to 6% for seller and 10.5% in case of purchaser.
 - Advance tax rates in case of payments to non-resident persons through Debit/Credit card has been increased from 1% to 5% for persons in ATL and from 2% to 10% for persons not in ATL.
- For further reading:

(<https://download1.fbr.gov.pk/Docs/2023726177262062ExplanatoryCircular.pdf>)

FBR Notifications

B. Sales Tax

1. EXPLANATION OF IMPORTANT AMENDMENTS IN THE SALES TAX ACT 1990, ICT (TAX ON SERVICES) ORDINANCE, 2001 AND THE FEDERAL EXCISE ACT, 2005 MADE THROUGH THE FINANCE ACT, 2023

The FBR, vide Circular No. 02 of 2023-24 dated 21st July, 2023 issued concise explanations of important amendments made in the Sales Tax Act 1990 (“STA”), Islamabad Capital Territory (tax on services) Ordinance, 2001 (“ICT”) and the Federal Excise Act, 2005 (“FEA”) enacted through the Finance Act, 2023.

Among the various amendments contained therein, major amendments have been listed down below:

- Revamping of Alternative Dispute Resolution Mechanism;
- STA:
 - o Sales tax on supply of certain specified goods sold under brand names and trademarks; items include red chilies, ginger, turmeric, yogurt, butter, desi ghee, cheese, processed cheese (not grated/powdered), products of meat offal, meat of bovine animals/sheep/goat and uncooked poultry meat & fish and crustaceans are now chargeable to sales tax.
 - o Enhancement of rate of sales tax for Tier-1 Retailers of finished fabrics and articles of textile leather etc. from 12% to 15%

- o Enhancement in rate of further tax from 3% to 4%.
- o Imposition of sales tax on DAP at a reduced rate of 5% on import and local supply.
Furthermore, excess input tax shall not be admissible for refund.
- o Threshold increased from Rs 500 per 200 grams to Rs 600 per 200 grams for the milk preparations suitable for infants.
- o Exemption of sales tax in FATA/PATA extended from 30.06.2023 to 30.06.2024
- o Exemption on wheat bran introduced with effect from 1st July 2018
- o Requirement of shop area to determine Tier-1 Retailers shall no longer be in place.
- o Enhancement of scope of penal action for selling goods specified by the Board without barcodes/ tax stamps/ banderoles/ labels.
- o Enhancement of scope of reduced rate of 1% to Alternative medicines/ medicaments.
- **ICT:**
 - o Imposition of tax on electric power transmission services @15%
 - o Reduction in rate of sales tax to 5% on services provided by restaurants if payment is made by Debit/Credit cards.
- **FEA:**
 - o Enhancement of rate of FED on Tobacco mixture in an electrically heated tobacco product from Rs 5,200 per kg to Rs 16,500 per kg.
 - o Enhancement of rate of FED on sugary fruit juices, syrups etc from 10% to 20%.
 - o FED at Rs 2,000 per energy inefficient fan and 20% ad valorem on incandescent bulbs.
 - o 5% FED on all fertilizers.
 - o FED on royalty and technical services.

For Further reading:

(<https://download1.fbr.gov.pk/Docs/20237211773220909CircularNo.02of2023-24.pdf>)

• **Amendments in the Sindh Sales Tax on Services Rules, 2011**

The SRB, vide Notification No. 3-4/40/2023 dated 27th July 2023, issued amendments to the Sindh Sales Tax on Services Rules, 2011 whereby the following amendments were made:

- o Amendments were made for services provided by software or IT based systems and call centers according to which application for reduced rate should be submitted within 21 days from the commencement of the financial year instead of 31 days as earlier applicable.

- o The reduced rate in case of Software or IT based systems and call centers, which was applicable for the year 2022-23 only, has been extended without any sunset clause.
- o The permission of the Commissioner has been made mandatory for filing the return if the same has not been e-filled within 4 months of the due date.

For Further reading:

(https://www.srb.gos.pk/contents/Notifications/20230727_SRB_NOTIFICATION_40.pdf)

• **Amendments in the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014**

The SRB, vide Notification No. SRB/3-4/41/2023 dated 27th July, 2023 (which **shall be effective from 1st September 2023**) issued amendments to the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014, wherein, among the other amendments, it was held that a person resident in Pakistan residing outside of Sindh and not having business in Sindh will be treated as a withholding agent only if a form has been submitted online from a person having User ID, Password and Pin code from SRB. Furthermore, it was also held that the following withholding agents shall deduct and withhold 4/5th of the total amount of sales tax by the registered person and shall make payment of the balance to the registered person:

- (a) Offices and departments of Federal / Provincial/ Local/ District Governments,
- (b) Autonomous bodies; and
- (c) Public sector organizations including:
 - i. Public corporations;
 - ii. State-owned enterprises and regulatory bodies and authorities.

For Further reading:

(https://www.srb.gos.pk/contents/Notifications/20230727_SRB_NOTIFICATION_41.pdf)

• **Amendments in the Sindh Sales Tax Special Procedure (Online Integration of Business) Rules, 2022.**

The SRB, vide Notification No. SRB/3-4/42/2023 dated 31st July 2023, issued amendments to the Sindh Sales Tax Special Procedure (Online Integration of Business) Rules, 2022 whereby, the minimum turnover criteria for POS integration for services provided by restaurants has been reduced to Rs 5 million during the immediately preceding 12 tax periods, from the earlier minimum turnover limit of Rs 10 million.

For Further reading:

(https://www.srb.gos.pk/contents/Notifications/20230731_SRB_NOTIFICATION_42.pdf)

SECP Notifications

1. Amendment in the Companies (Postal Ballot) Regulations, 2018

The SECP, vide SRO 905(I)/2023 dated July 07, 2023, issued an amendment to the Companies (Postal Ballot) Regulations, 2018 which was earlier published vide SRO 228(I)/2023 dated, February 24, 2022 whereby, a company which has different categories for electing directors namely, female directors, independent director and other directors then the votes for each category will be counted separately. Furthermore, the form for voting through post was also substituted.

For Further reading: (<https://www.secp.gov.pk/document/s-r-o-905-i-2023-amendments-in-the-companies-postal-ballot-regulations-2018/?wpdmdl=48388&refresh=64c0f26626f461690366566>)

2. Amendment in Listed Companies (Code of Corporate Governance) Regulations, 2019

The SECP, vide SRO 906(I)/2023 dated July 07, 2023, issued amendments to the Listed Companies (Code of Corporate Governance) Regulations, 2019 which had been earlier published for public consultation vide SRO 227(I)/2023 dated 24.02.2023. Through this amendment, procedures and regulations with respect to voting in separate categories for female and independent directors in the election of directors was made.

For Further reading: (<https://www.secp.gov.pk/document/s-r-o-906-i-2023-amendments-in-the-listed-companies-code-of-corporate-governance-regulations-2019/?wpdmdl=48385&refresh=64c0f266292231690366566>)

3. Guidelines on Code of Conduct for Listed and Public Sector Companies

The SECP issued guidelines on the code of conduct for listed and public sector companies wherein it briefed legal requirements and principles for listed companies in laymen terms to ensure that companies are well aware of the codes of conducts as set out by law, for instance to avoid conflict of interest, be honest, independent and exercise due diligence.

For Further reading: (<https://www.secp.gov.pk/document/guidelines-on-code-of-conduct-for-public-listed-and-public-sector-companies/?wpdmdl=48627&refresh=64c0f2755c93c1690366581>)

CASE LAW: THE LEVY OF SUPER TAX UNDER SECTION 4C OF THE INCOME TAX ORDINANCE, 2001, PROSPECTIVE IN NATURE HELD BY THE HON'BLE HIGH COURT OF ISLAMABAD.

INTRODUCTION:

The Honourable High Court of Islamabad (“**IHC**”) was moved by M/s. Fauji Fertilizer Company Limited and others (“**Petitioners**”) versus Federation of Pakistan and others (“**Respondents**”) in respect of levy of super tax imposed under section 4C of the Income Tax Ordinance, 2001 (“**ITO**”) on income of high earning persons.

BRIEF FACTS OF THE CASE:

The levy of super tax was introduced vide the Finance Act, 2022 through section 4C of the ITO, whereby the super tax had been imposed upon income of every person exceeding Rs 150 million with effect from Tax Year 2022 and onwards. The Petitioners challenged the vires of levy of super tax.

ARGUMENTS BY THE LEARNED PETITIONERS:

The Learned Petitioners contended that the super tax was charged on events that had already been occurred on past and closed transactions which was violative to the fundamental rights enshrined under the Constitution of Pakistan, 1973. Further, the Petitioners argued that the super tax was conjured up by rehashing the existent classes of income and levied on a new category of income under section 4C(2)(ii) of the ITO, hence, it would remain irreconcilable and impermissible taxation being excessive and confiscatory in nature as imposition of this would result to double taxation. It had been further argued by the Petitioner that the computation of a new category of income under section 4C would tantamount to presumptive taxation. The Petitioners argued that the imposition of levy of super tax with retrospective effect had clashed the fundamental right which strived in preceding year. Moreover, the Petitioners claimed that the re-taxing on so-called windfall profit of high earning persons already taxed under the scheme of final tax of the ITO is against the norms of statute.

Furthermore, the Petitioners claimed that the levy of super tax under section 4C could not be charged on who held or continue to hold exemption from tax under section 53 of the ITO. The Petitioners also contended that the super tax under section 4C for petroleum and exploration (E&P) companies could not be charged by virtue of the protection conferred on them under the Petroleum Concession Agreement (PCA).

ARGUMENTS BY THE LEARNED RESPONDENTS:

The Learned Respondents relied on copious judgments claimed that the legislature was competent to give retrospective effect to an Act and it could take away the vested rights by such legislation. Furthermore, the Respondents argued that the tax liability remained in force with the very date of promulgation of statute, hence, the Petitioners were liable to be taxed from such date and also contended that the special tax year was a concession and did not confer a preferential right to Petitioners to avoid a tax liability imposed after the close of its accounting year. Furthermore, the Respondents claimed that the principle of permissibility of double taxation could be implemented by express language through such legislation. The Respondents further contended that the windfall profits on high earning persons would contribute a large share to the economy and tax base on the principle of progressive taxation.

Moreover, the Respondents argued that the exemption claimed under section 53 of the ITO was impliedly taken away by promulgation section 4C of the ITO. In addition to the above, the Respondents argued that exemption could be claimed on taxable income and not to the income computed under and the purpose of section 4C. Furthermore, the Respondents argued that levy of 4C would also extent to petroleum and exploration companies.

FINDINGS OF THE HON'BLE HIGH COURT:

The IHC concluded the matter as under:

1. Section 4C, as it stands now, falls to be ultra vires the fundamental rights under Articles 18, 23 and 24, read with Article 4 of the Constitution. Section 4C is “held to be against the scheme of the Constitution and should either be read down or declared ultra vires for the reasons given” in this judgment. With the preference to save rather than destroy, section 4C is to be read down in calculating the income taxable to super tax so as to:

- a) Exclude all classes of income enumerated therein, the tax on which is final under the other provisions of the Ordinance; and

- b) Remove the exclusions of brought forward depreciation, brought forward business losses, and brought forward amortization allowances available to the taxpayers under the other existing provisions of the Ordinance;
2. Section 4C, as read down, will have prospective application only, and will not apply to any transactions or events past and closed on or before 30th June 2022;
3. Section 4C, as read down, will not apply to the benevolent funds holding exemptions from tax under the other provisions of the Ordinance;
4. Section 4C, as read down, will not apply to petroleum and exploration companies to the extent its application results in the taxation of such companies exceeding the thresholds stipulated in Rule 4 of the Fifth Schedule to the Ordinance; and
5. All notices of demand or recovery impugned in the petitions are set aside, without prejudice to the revenue's right to issue fresh notices not inconsistent with this judgment.

CASE LAW: DISALLOWANCE OF INPUT TAX ON PACKING MATERIAL

INTRODUCTION:

The Hon'ble Supreme Court of Pakistan ("**SC**") was moved by M/s. Rajby Industries and others ("**Learned Petitioners**") versus The Federation of Pakistan ("**Learned Respondents**"), against the order passed by the Sindh High Court ("**SHC**") in respect of applicability of disallowance of input tax on packing material and challenged the vires of the amendment made effective vide SRO 491(I)/2016 dated 01.07.2016.

BRIEF FACTS OF THE CASE:

The Federal Government issued an SRO No. 491(I)/2016 (“said Amendment SRO”) dated 01-07-2016, wherein an amendment had been made in terms of proviso of condition (x) of the said SRO which was related to disallowance of input tax on packing material. The Petitioners had challenged the vires of proviso of the said SRO before the SHC. However, during the proceedings of the instant case, the amendment was withdrawn vide SRO 777(I)/2018 dated 21.06.2018 (“withdrawn SRO”) resulting to which the Learned Petitioners filed additional pleas that the amendment should be granted retrospective effect. However, this plea was thereafter dismissed by the SHC, and consequently, being aggrieved of the decision of the SHC the learned Petitioners filed Civil Petitions for leave to Appeal before the SC.

ARGUMENTS BY THE LEARNED PETITIONERS:

The Learned Petitioners argued that the amendment SRO was unconstitutional as it related to the disallowance of Input Tax on packing material. Furthermore, they argued that the powers stated under Section 8(b) of the Sales Tax Act, 1990 (“STA”) should be read with Section 7 and in context with the overall gist of Section 8. They also contended that the SHC did not identify that the amendment SRO was related to local supplies governed under section 4(b) and 4(c) and not to Exports (4a) as stated in the SHC judgement. It was also contented by the Learned Petitioners that the restrictions placed were unenforceable as sub-ordinate legislature could not expand or restrict the substantive provisions contained in the statute because Sections 7 and 8 of the STA were in place.

Thereafter, the Learned Petitioners argued that since the amendment SRO was withdrawn, it should be made with retrospective effect resulting to obliterating and annihilating the impact of proviso as if it never existed or was never in field. Moreover, the petitioners averred that the input tax adjustment against the taxable supplies is a fundamental part of the scheme and the powers given under section 8(1)b are not unfettered but are to be governed keeping the provisions of law in a harmonious manner.

ARGUMENTS BY THE LEARNED RESPONDENTS:

The Learned Respondents argued that the STA had empowered the government to deny input tax adjustment / refunds merely by issuing a notification. They also contended that Section 8 of the STA had an overriding effect and that withdrawing the SRO was a positive approach by the Government as Section 8 of the STA has an overriding effect by means of non-obstante clause, which accentuates that “notwithstanding anything contained”. Furthermore, the Respondents also argued that section 4 of the STA was not unrestricted and that the Government could place restrictions on any class of goods for denial of input tax claim or refund which cannot be claimed as a vested right.

FINDINGS OF THE SUPREME COURT:

The SC held that the Federal Government had been empowered to decide the entitlement or disentitlement with regard to reclamation or deduction of input tax by a Notification in the official gazette. It was held that the restrictions imposed for reclaiming input tax on packing material by way of the impugned SRO was not illegal, unlawful or without jurisdiction and was within the realm and domain of the powers vested in the Federal Government as under section 8 of the STA.

Furthermore, the SC held that a non-obstante clause is commonly put into operation to signify that the provision should outweigh regardless of anything to the contrary. It is well settled elucidation of law that a taxing statute should be construed strictly, even if the literal interpretation results in some hardship or inconvenience. Therefore, the Courts cannot put in words to broaden the scope and sphere of law to such an extent that was not covered under the statute. The conspectus of the numerous dictums laid down by the Superior Courts demonstrates that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect.

Furthermore, the SC held, while considering the veracity of vires, that the doctrine of ultra vires envisages that an authority can exercise only so much power as is conferred on it by law. The law can be struck down if it is found to be offending the constitution for absenteeism of lawmaking and jurisdictional competence or found in violation of fundamental rights. However, the Petitioners had only challenged the constitutionality of proviso, which debarred them from lodging the claim on packing material.

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein. If the enacting portion of a section is not clear, a proviso appended to it may give an indication as to its true meaning. Therefore, the challenge to the legitimacy of proviso was based on a misconceived notion which was *intra vires* (within the precincts of powers) to any provision of the STA or the Constitution. Moreover, the SC held that in order to claim retrospective effect on a beneficial legislation, it should be determined whether it is intended to clear up an ambiguity or oversight in the prevailing law and corrects/modifies an existing law which results to an error in misinterpretation of the statute. Therefore, and upon placing reliance on various cases, the SC held that the contentions of the Learned Petitioners in respect of retrospective applicability was misconstrued, therefore, the judgment passed by the SHC was endorsed resulting to dismissal of the instant petition.

CASE LAW: EXTRA TAX OF 2% HELD LAWFUL BY THE HON'BLE HIGH COURT

INTRODUCTION:

The Hon'ble High Court of Sindh, Karachi ("SHC") was moved by various petitioners in respect of the applicability of Extra tax of 2% (imposed under Rules 58S and 58T of the Sales Tax Special Procedure Rules, 2007 ("Rules") issued in terms of section 3(5) of the Sales Tax Act, 1990 ("STA")) on supply of specified goods.

BRIEF FACTS OF THE CASE:

The Petitioners primarily challenged SRO No. 896(1)/2013 dated 04-10-2013 read with Sales Tax General Order No.27 of 2014 dated 18-03-2014 whereby, an amendment had been made in the Rules by substituting and amending Rules 58S and 58T issued in terms of section 3(5) of the STA, through which extra tax @ 2% had been levied on goods notified in addition to the tax already levied in terms of section 3(1) of the STA. Later, an application was moved in terms of Order 6 Rule 17 of CPC for amending the petition, through which the vires of section 3(5) of the STA were also challenged.

ARGUMENTS BY THE LEARNED PETITIONERS:

The main objection raised by the Learned Petitioners was that the provision of section 3(5) was ultra vires to the STA inasmuch as it had delegated the authority of the legislature to the Executive which was impermissible and a violation to the Article 77 of the Constitution. Furthermore, the Learned Petitioners contended that the said delegation was made without any restrictive parameters, which resulted to a violation of the settled dicta, that if at all any such delegation of legislative powers could be validly made, it cannot have unfettered delegation without any guidelines by the legislature. They also argued that delegation was only possible where implementation pertained to policies and procedures and not to levy tax. Moreover, implementation of the same would result in conferring arbitrary and excessive powers to the Executive.

The Learned Petitioners also argued that it was impermissible taxation being excessive and confiscatory in nature as imposition of this would result to double taxation as this would create two charging sections in the STA. It was also further contented that this resulted to over burdening of tax which was primarily for the commercial importers and that the STA had already prescribed tax at 17% therefore, no extra tax in excess can be levied.

The learned Petitioners also contended that imposition was made on exempt supplies which was impermissible, following which the Learned Petitioners placed reliance on various cases and prayed for the imposition to be declared as ultra vires.

ARGUMENTS BY THE LEARNED RESPONDENT:

The Learned Respondents contended that the impugned levy under section 3(5) of the Act was permissible in addition to the tax already levied under section 3(1) of the Act, hence, the tax in question was neither confiscatory nor excessive, rather it was a normal tax which otherwise is not payable by the petitioners and it is an indirect tax upon the consumer. Furthermore, the Learned Respondent contended that the levy was not without limitations inasmuch as it could not exceed the maximum tax i.e. 17% under section 3(1) of the Act, hence, is not a case of conferring any unfettered discretion upon the Executive. The Executive is only collecting the impugned tax by way of simplifying procedure under the impugned SRO, whereas, the tax has been levied lawfully by the legislature, therefore, no exception can be drawn to such powers. The Learned Respondent placed reliance on various cases and prayed for dismissal of the petition.

FINDINGS OF THE HON'BLE HIGH COURT:

By concluding and upholding the validity of the levy, the SHC held that the legislature had exercised its power and had been delegating its authority to the Government for levying tax in such manner. It was further held that the law itself provided the framework and left it to the Federal Government to exercise the discretion in the manner laid down within the framework, hence it could not be regarded as an abdication of its function by the legislature but by law a valid delegation of a discretion to achieve the purpose of the law. Moreover, the legislature by its own wisdom had empowered the federal government to exercise such powers, as and when needed, to levy extra tax at the rate not exceeding the maximum rate of 17% as is applicable under section 3(1) of the STA. The levy had already been introduced by the legislature at the rate of 17% by enacting the provision in question, whereas it was only the effective date and the percentage (2%) which had been notified. However, the STA itself had delegated certain functions, which otherwise were more of procedural in nature as to the effective date and its paraphernalia regarding input adjustment and payment in lieu thereof; hence, it was not a case of excessive delegation.

Further, the SHC held that the incorporation of Rules 58S and 58T in SRO No. 480(I)/2007 was not per-se an introduction of a levy, rather, it was a procedure by way of which this extra tax was to be collected; adjusted and paid by the registered persons. It was just a mechanism to regulate that extra tax and nothing beyond that. The extra tax of 2% was being collected in terms of section 3(5) of the Act; however, sub-Rule (5) of Rule 58T also provided that the specified goods on which extra sales tax had been paid in the manner so provided, should be exempt from payment of sales tax on subsequent supplies including those as made by a retailer.

Furthermore, the Hon'ble High Court declared that levy of this tax was never a direct tax upon the Petitioners; but on the end-consumers and was to be made part of cost of goods and value of supply for the purposes of paying sales tax under the STA. Therefore, any challenge as to discrimination; being confiscatory in nature and impinging upon any fundamental rights was also ill-founded.

Lastly, the SHC held that no exception could be drawn to the competence and validity of the impugned legislation i.e. section 3(5) of the Act, as well as Rules 58S and 58T which was introduced by way of amending SRO 896(I)/2013 dated 04-10-2013. The impugned provision of the STA and the SRO in question were held to be validly and competently enacted / issued; hence, were declared intra vires.

TOPIC OF THE MONTH- THE INLAND REVENUE REWARDS

INTRODUCTION:

The FBR, vide SRO 78(i)/2021, dated 22nd January, 2021, and thereafter vide SRO 687(i)/2023 dated 14th June, 2023 issued the Inland Revenue Reward Rules, 2021 (“Rules”). The Rules shall apply to (a) officers and staff deputed to exercise powers, enforce or perform functions and duties designated entities under the specified statutes; and (b) informers/ whistleblowers. The Rules had pre-set the types of performances which were eligible for reward. The performances are:

- (a) Detections and assessment/recovery of tax sought to be evaded;
- (b) meritorious services; and
- (c) extraordinary performance.

Some important definitions for the purpose of understanding this segment are:

(a) Informer/Whistleblower means a person who is not an employee of the FBR but gets himself registered for the purposes of being an informer and provides information in the shape of concrete evidence which conclusively leads to detection of tax evasion, formulation of assessment /reassessment and recovery of the evaded taxes and lodges a claim on the prescribed format on the conclusion of the process.

(b) Tax Sought to be evaded:

- a. For Sales Tax, Federal Excise, ICT sales tax on services: Detection of an unregistered person liable to be registered and/or detection of evasion or non-assessment including short assessment of tax by a registered person or detection of payment of inadmissible refunds or claim of inadmissible input tax resulting in and leading to an assessment of tax owed to the state. (Provided that corresponding penalties prescribed in the Sales Tax Act, 1990 and Federal Excise Act, 2005 have been paid or imposed)

b. For Income Tax: the difference between tax originally paid on the basis of income originally assessed or declared and the tax calculated on account of re-assessment of income framed on the basis of information collected or provided resulting in and leading to an assessment of tax owed to the state. (Provided that corresponding penalties prescribed in the Income Tax Ordinance, 2001 have been paid or imposed)

(c) Meritorious services means exceptional performance in any or through combination of the below mentioned:

- a. Exceeding budgetary targets through extraordinary planning and efforts;
- b. Displaying exceptional results in the recovery of arrears;
- c. Enlarging the base of taxpayers by adding large number of new taxpayers whose contribution to revenues would be substantial;
- d. Exceptional performance in defending cases by the Departmental Representatives before the ATIR;
- e. Displaying extraordinary devotion to duty and acumen towards making some original contribution.

Authority responsible for disbursement of rewards:

Description	Competent Authority for disbursement of rewards
Officers or Members of staff deployed in Inland Revenue field formations (LTO, MTO, CTO, RTO or any associated & subordinate detachments).	Member Inland Revenue (Operations).
Officers or Members of staff deployed in Inland Revenue Directorate Generals and their field officers or any other entity notified by the FBR, Directorate General of DNFBPs, DG Anti Benami Initiative and Benami Zones, Inland Revenue. (Operations) Wing, or any FBR wing tasked with Inland Revenue functions.	Chairman-FBR.
Informer/ Whistleblower	Chairman-FBR.

Amount of Reward in respect of tax sought to be evaded.

Sno		Reward
01	For the three categories mentioned above:	Officer or member of staff detecting the tax evasion. Lower of: • 20% of tax sought to be evaded; or • 2 years' salary as at the time of detection or filing of the detection report.
		Officer or member of staff completing the adjudication or assessment. Lower of: • 20% of tax sought to be evaded; or • 2 years' salary as at the time of completion of adjudication or assessment.
02	If no appeal or revision has been filed against the assessment.	Whole of the admissible reward shall be paid immediately after expiry of limitation for filing of appeal/revision.
03	If appeal has been filed against the assessment order the admissible reward claim would be according to the following:	• 50% upon confirmation at 1st appeal forum; and • 50% upon completion of appellate process on point of fact (ATIR)
04	In case detection and assessment have been made by the same officer	Lower of: • 20% of tax sought to be evaded; or • 3 years' salary as at the time of detection or filing of the detection report.
05	In case of more than 1 claimants for reward on account of detection or assessment	Reward would be apportioned as per the recommendation of the Chief Commissioner or Director General concerned.
06	Informer/Whistleblower	Entitled to a reward at the rate of 20% (up to a maximum of Rs 5 million) of the tax sought to be evaded in a single case.

*the reward is paid only if at least 50% of the tax sought to be evaded has been recovered.

Reward for Meritorious services:

The FBR, during or at the close of every financial year, may give rewards to officers/ officials in recognition of the meritorious services rendered by them during the relevant period being not less than 1 month's salary and not more than 18 month's salaries in each single case.

Reward for Extraordinary Performance:

A competent authority may sanction reward for extraordinary performance under exceptional circumstances where the amount of reward shall not be less than 3 month's salaries and not more than 24 salary for each single case for each officer / staff involved in the assigned task.

Contribution to Inland Revenue Common Pool Fund, 2023 ("IRCPF")

The contribution to IRCPF shall be funded solely by rewards sanctioned under Tax Sought to be Evaded and not any other rewards, for instance rewards given due to meritorious services or extraordinary performances. Officers in BS-17 and above shall contribute 5% of the rewards whereas the officers below (BS 16) shall contribute 2.5% of the rewards. These contributions shall be simultaneously processed, approved and deposited into the IRCPF.

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