



TAXPAK

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CONTRIBUTORS



**Mr. Muhammad Furqan
ACA**
Head of Editorial Board



Mr. M. Amayed Ashfaq Tola
Co-Head of Editorial
Board



**Ms. Baria Khushnuma
Hashmi**
Contributor



Mr. Rahool Roy
Contributor

CONTENTS

Chairman's Message

Tax Notifications

- A. FBR Notifications
- B. Sales Tax on Services
Notifications

Corporate Notifications

Super Tax Under Section 4C of the ITO, 2001 will not be applicable retrospectively on income earned by the taxpayer during the tax year 2022

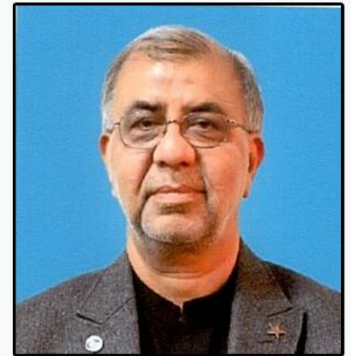
Topic of the Month

Disclaimer



Chairman's Message

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 a judgment issued by the Appellate Tribunal Inland Revenue Karachi that Super Tax Under Section 4C of the ITO, 2001 will not be applicable retrospectively on income earned by the taxpayer during the tax year 2022.

Towards the end of the newsletter, we have discussed our Topic of the month titled "Sales Tax De-registration". The said topic provides an insight on the Sales Tax Rules for cancellation of multiple registrations, De-registration, Blacklisting, suspension, reasons and effects if a registered person becomes a non-active taxpayer, and restoration as an active taxpayer.

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,

Ashfaq Yousuf Tola, FCA

Chairman

Tola Associates.

FBR Notifications

A. INCOME TAX

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

The FBR, vide Circular No.4 of 2023-24 IR-Operations, dated 30th June 2023, announced an extension for annual return filing for the tax year 2023. The date for filing of the annual income tax return for Tax Year 2023 has been extended up to 31st of October, 2023. It has also been stated in the said Circular that no further extension will be granted for filing of the income tax returns for Tax Year 2023.

For further reading: [202310210103013965IncomeTaxReturnDate.pdf \(fbr.gov.pk\)](#)

B. SALES TAX

1. STANDARD OPERATING PROCEDURES (SOPS) FOR FAKE/ FLYING INVOICES

The FBR vide STGO No.12 of 2023 dated 07th September 2023, issued Standard Operating Procedures (“SOPs”) to deal with cases involving fake / flying invoices. The eight procedures were as under:

1. Identification of fake/flying invoices by dedicated staff

Each Chief Commissioner-IR (“CCIR”) shall dedicate at least two senior competent officers who shall identify fake/ flying invoices and registered bogus or dummy firms in their respective jurisdictions. Their function shall be assigned to the Assessment and Processing Cell. They will be provided with uninterrupted and full access to sales tax and FED data available on portals such as IRIS, ITMS, CREST, FASTER and other relevant automated systems and shall coordinate with the Member IT for getting access to these data from which they will extract and create data and examine the whole supply chain through scrutiny of registered persons’ sales tax returns and registrations and shall also scrutinize forward and backward transactions.

Major focus area shall be on the characteristics of registered persons’ declarations for discovery of raudulent use of fake/ flying invoices which, as per the SOPS, are follows:

- a. High volume or value of transactions with little or no net sales tax payment;
- b. Value of purchases and input tax are equal or greater than the value of supplies and output tax respectively;

- c. Consistently huge carry forwards, with unrealistic levels of stocks;
- d. Meager capital amount declared in wealth statement company's accounts vis a vis huge stocks;
- e. Use of frequent & huge credit notes to avoid payment of due sales tax;
- f. Recent registration, usually less than 2 years, with high value purchases or supplies or sudden start of voluminous transactions after a long dormant period;
- g. Registered persons' addresses in low income, residential or remote areas;
- h. Income tax returns are either not filed, or filed with very low income. No withholding tax deduction despite declaration of huge transactions;
- i. Nature of supplies vary from purchases;
- j. Focus on the cases of commercial importers, dealers/distributors of large companies and dealers of petroleum products which are generally engaged in issuing flying in voices. In such cases, a diligent comparison of goods imported/purchased with the nature of business of the buyers shall establish the wrong doing by the registered person(s).

Upon obtaining the above information, the staff shall confirm that there is physical existence of these registered persons and shall prepare a report which shall be part of the record.

2. Suspension/ blacklisting

Subsequent to identification, the concerned Commissioner-IR shall immediately suspend their registration and must promptly follow statutory action for blacklisting. It is pertinent to mention that all actions entailed for blacklisting a registered person should be followed and a show cause notice should be issued within 7 days. Moreover, during this process the Commissioner concerned shall prepare a report on the physical verification of the registered person to determine existence or non-existence and availability of reasonably sufficient manufacturing facilities. The SOPs also emphasized that the blacklisting procedure shall be completed with an order for blacklisting that shall be issued within 90 days from the date of the issuance of the show-cause notice. Further, the order should be made with utmost care and be a speaking order clearly mentioning the reasons so that the persons blacklisted do not obtain any relief from appellate authorities.

3. Action against beneficiaries

In order to efficiently capture the case, the RTO staff must pursue the cases of the beneficiaries which are real and existing firms. For this, the officers shall identify the actual buyers/ suppliers of fake/bogus firms to reach the real culprits. Immediate action must commence under relevant assessments, enforcement and penal provision against the beneficiaries, and similarly the show cause notice and orders must be drafted really carefully to avoid any undue relief at appellate stage.

4. Registration of FIRS

Moreover, an FIR against the perpetrators of such tax fraud shall be made under the relevant legal provisions and shall vigorously be pursued during the prosecution stage. The officers will track the IP addresses, coordinates with the help of automated systems of the perpetrators of such crime and take statutory action accordingly.

5. Action against e-intermediaries

E-Intermediaries shall be jointly and severally liable for consequences along with the registered person if he knowingly or willfully submitted a false or incorrect information and therefore, his license shall be revoked in addition to proceedings being initiated against him.

6. Action against Insiders

The Chief Commissioners and Commissioner-IR shall keep constant vigilance on their RTO staff and, upon evidence of any insider job, shall take swift action against the departmental officials found involved or in connivance. Furthermore, whenever any fraud is detected in an RTO, the responsibility shall also be fixed on those officials who neglected to detect such activity and take appropriate action at the earliest.

7. Other Jurisdictions

Where buyers/ suppliers of fake/ bogus firm(s) fall under the domain of other jurisdictions, then it is the responsibility of the Chief Commissioner to immediately share details of such cases to the relevant jurisdictions and intimate them with clear directions of this. The Commissioner-IR who issues orders for suspension/ blacklisting should endorse a copy of the order to the respective jurisdictions where the beneficiaries are located.

8. Reporting to the Board

The field formations shall share reports to the Board for an analysis at Board level on how to improve upon the existing automated systems and statutory procedures to eliminate it and safeguard government revenues. The field formations may give widespread circulation to detection of such fraudulent activities without disclosing particulars of the taxpayers and with the motive to create awareness among the masses and establishing deterrence.

For further reading: [FBR](#)

9. AMENDMENT TO THE SALES TAX RULES, 2006

The FBR vide SRO 1185(I)/2023 dated 05th September 2023, issued amendments to the Sales Tax Rules, 2006, whereby a new annexure was inserted for Domestic sales invoice for petroleum products.

further information: [FBR](#)

B. Sales Tax on Services Notifications

1. Public Notice for SRB ATL List

The SRB issued a public notice on 4th September 2023, whereby it informed that SRB would be maintaining and publishing the Active Taxpayers' List on its website and that the list would be updated regularly.

For further reading: [20230904_PUBLIC_NOTICE.pdf \(srb.gos.pk\)](#)

2. Amendments to the Second Schedule of the Punjab Sales Tax on Services Act, 2012

The PRA issued amendments to the Punjab Sales Tax on Services Act, 2012 vide Notification No. SO(TAXI-2/97) (Pt.XIV), dated 12th September 2023, whereby taxability on certain services in Punjab was increased or bifurcated. These amendments have been converted into a tabular form for easier comprehension, and are specified as follows:

Sr. No	Service:	Earlier	After the amendment	Effect:
01	Franchise service including intellectual property rights services and licensing services.	5% without input tax adjustment for services related to educational services; and 16% for others	0% without input tax adjustment for services related to educational institutions for information technology; 5% without input tax adjustment for services by other than information technology-educational institutions; and 16% for others	Bifurcation between educational institutions providing information technology courses. No change

02	IT and IT enabled including real estate aggregators	5% without adjustment.	input tax	<p>1. Insertion of streaming/ over-the-top (OTT) services at 0%</p> <p>2. 0% without input tax adjustment for services by software/IT based system development persons; and</p> <p>3. 5% without input tax adjustment for others.</p>	Now, OTT platforms shall also be subject to tax, and IT based developers/software services shall be charged at 0%, while 5% shall be for the other services contained therein.
03	Services by various consultants prescribed in thereunder, for instance human resouese and personnel development services, exhibition services...etc.	16%		<p>1. 0% without input tax adjustment for training services related to IT; and</p> <p>2. 16% without input tax adjustment for others.</p>	Reduction in rate for IT services-training .
04	Services provided for manufacturing or processing on toll or job basis, including industrial and commercial packaging services and similar outsourcing of industrial or commercial processes.	5% without input tax adjustment		Omitted	Such services shall no longer fall under taxable services.
05	Ride-Hailing Services	4% without input tax adjustment		5% without input tax adjustment	Increase of 1%

For further reading: [Notification under Sec.5 of PSTS Act dt. 12.9.2023.pdf \(punjab.gov.pk\)](#)

Corporate Notifications

1. Amendments to the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

The SECP, vide SRO 1313(i)/2023, dated 14th September 2023, issued amendments to the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 which were earlier published vide SRO 1604(i)/2022 dated 22nd August 2022, whereby certain amendments were made to the definition of the Rules and conditions of granting license, along with amendments in presentation of the Form II contained therein. Furthermore, an addition was made to Schedule I for Pension Fund Scheme Business that a fund management NBFC with a valid investment advisory license and minimum 3 years' experience in managing discretionary or nondiscretionary portfolios for institutional clients was needed.

For further reading: [SECP](#)

2. Promulgation of the Shariah Governance Regulations, 2023.

The SECP, vide 1314(i)/2023, dated 14th September 2023, promulgated the Shariah Governance Regulations, 2023 which had been earlier published vide Notification No. SRO 230(i)/2023 dated 01st March 2023 whereby, regulations pertaining to management, prohibition, functions of the shariah supervisory board and various other ancillary regulations were documented.

For further reading: [SECP](#)

3. Conditions and requirements for issuance of further shares to any person (by way of other than right) either for cash or for consideration other than cash in case of a private company.

The SECP, vide SRO 1331(i)/2023, dated 18th September 2023, issued conditions and requirements for issuance of further shares to any person (by way of other than right) either for cash or for other consideration in case of a private company, whereby such powers should be specifically mentioned in the Articles of Association of the company and the issue should be proposed and approved by the board. Also, if issue of shares is by way of other than right offer, then a special resolution shall be required. The SRO also provided the details that should be mentioned in the

the proposal and the company shall ensure to issue the shares within 60 days from the date of passing of the special resolution or within an extended period of 30 days with the approval of the board.

For further reading: [SECP](#)

4. Acceptable quantitative tolerance levels and other conditions for Shariah screening of securities and companies.

The SECP, vide SRO 1348(I)/2023, dated 19th September 2023, notified the acceptable quantitative tolerance levels and other conditions for Shariah screening of securities and companies whether listed or not according to the criterion specified therein. Furthermore, a separate minimum acceptable tolerance level was notified for listed securities. However, for unlisted securities, no minimum acceptable tolerance level was specified, but direction for prior approval of the Commission was necessary.

For further reading: [SECP](#)

5. Draft amendments to the Futures Brokers (Licensing and Operations) Regulations, 2018.

The SECP, vide SRO 1350(I)/2023, dated 19th September 2023, issued draft amendments to the Futures Brokers (Licensing and Operations) Regulations 2018, whereby requirements and definition of Agri-Only category of futures brokers was inserted along with a specification that an applicant for a futures broker shall follow a minimum net worth requirement for each category i.e. Rs 10 million for Futures Broker and Rs 5 million for Agri-Only Futures Broker. Furthermore, amendments in respect of the Agri-Only Futures Broker was also incorporated to the various forms of the Futures Brokers (Licensing and Operations) Regulations, 2018.

For further reading: [SECP](#)

6. Draft amendments to the Associations with Charitable and Not for Profit Objects Regulations, 2018.

The SECP, vide SRO 1355(I)/2023, dated 20th September 2023, issued draft amendments to the Associations with Charitable and Not for Profit Objects Regulations, 2018 whereby, regulations in respect of donations were made and it was also specified that the company shall clearly disclose its policy for receipt, investment of Islamic donations in the financial statement and disclose amount of such donations and avenues where it was utilized.

For further reading: [SECP](#)

7. Amendments to the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020.

The SECP, vide SRO 1356(I)/2023, dated 21st September 2023, issued amendments to the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020, whereby various amendments pertaining to the addition of the words “Combating the Financing of Terrorism and Countering Proliferation Financing” were inserted. Moreover, numbers of years to determine a dormant or inoperative account in which no transaction or activity is conducted has been decreased from five years to three years. Furthermore, certain definitions were also included such as for proliferation financing, designated person, person with mental disorder etc. were included. Many annexures were also amended. For further reading: [SECP](#)

8. Licensing and allied applications with sponsors/ directors as foreign individuals/ entities.

The SECP, vide Circular No. 14 of 2023, dated 5th September 2023, issued directions that license of licensed activities of insurers/ insurance intermediaries would only be issued upon receipt of clearance from the Ministry of Interior if proposed sponsors/ directors/ shareholders are foreigners. For further reading: [SECP](#)

9. Pricing caps for Lending NBFCs providing digital nano-lending.

The SECP, vide Circular No. 15 of 2023, dated 25th September 2023, issued pricing caps for lending NBFCs providing digital nano-lending, for instance an NBFC can extend a nano-loan upto 30 days and shall not roll over a loan more than twice. Similarly, annualized percentage rate limit was also fixed, such as this rate should not exceed 10 times of the policy rate issued by the State Bank of Pakistan. Furthermore, maximum amount of permitted costs, interest charge and late payment charges, loan disbursement and collection were issued along with a self-explanatory illustration. It was also specified that the NBFCs shall ensure compliance within 7 days of issuance of the Circular. For further reading: [SECP](#)

CASE LAW: SUPER TAX UNDER SECTION 4C OF THE ITO, 2001 WILL NOT BE APPLICABLE RETROSPECTIVELY ON INCOME EARNED BY THE TAXPAYER DURING THE TAX YEAR 2022.

INTRODUCTION:

The Hon'ble Appellate Tribunal Inland Revenue, Karachi ("ATIR") was moved by M/s. Tourism Promotion Services (Pakistan) Ltd, Karachi ("Appellant") and The CIR Zone-VI, LTO, Karachi ("Respondent") in respect of applicability of Super tax (imposed under section 4C of the Income Tax Ordinance, 2001 ("ITO")) on the income earned by the taxpayer during the Tax Year 2022.

BRIEF FACTS OF THE CASE:

The Appellant is a Private Limited Company, engaged in the business of ownership, development and operation of hotels, leisure facilities and other activities related to tourism industry. The Appellant filed income tax return for the Tax Year 2022 ("Tax Return") and did not offer Super Tax u/s. 4C of the ITO. The Respondent while examination of Tax Return, revealed that Appellant was under legal obligation to pay Super Tax @ 4% on declared income in terms of section 4C(2) of the ITO. Hence, the Show cause Notice u/s 4C was served accordingly, in response to this, the Appellant furnished reply, but, the Respondent found unsatisfactory, thereby, the order was passed by creating a tax demand in terms of section 4C of the ITO. Being aggrieved of the decisions passed by the earlier authorities, the Appellant approached the ATIR for adjudication the matter in question.

ARGUMENTS BY THE LEARNED COUNSEL FOR THE APPELLANT:

The learned counsel for the Appellant argued that CIRA was not justified to confirm the tax liability of super tax for the Tax Year 2022. As the recent judgment passed by the Hon'ble High Court of Sindh has held that the Super Tax under section 4C of the ITO shall not be applicable for the Tax Year 2022. The Appellant further submitted that the recovery proceedings were initiated by serving notice u/s 140 without issuing a notice under section 138 of the ITO which is mandatory requirement under the statute of ITO.

ARGUMENTS BY THE LEARNED COUNSEL FOR THE RESPONDENT:

The learned counsel for the Respondent supported the earlier orders and stated that the CIRA had rightly confirmed the order passed by the officer in terms of section 4C of the ITO.

FINDINGS OF THE ATIR:

The Hon'ble ATIR held by relying on judgment passed by the Hon'ble High Court of Sindh in CP No. D-5842 of 2022 dated 22-12-2022 that the Super Tax under Section 4C will not be applicable retrospectively on income earned by the Appellant during the Tax Year 2022. Further, the ATIR also excerpt the earlier order of same bench that the computation of capital gain arising on the disposal of capital assets / immoveable properties by Appellant must, for the purposes of Section 4C, be computed in terms of section 37(3A) of the ITO. Hence, the order in this instant case, carries illegality and infirmity. Therefore, the appeal of the Appellant was allowed and orders passed by the authorities below was held illegal and unlawful, annulling the instant case on law points and on merits.

TOPIC OF THE MONTH:

Sales Tax De-registration

There are many instances where despite being registered under the Sales Tax Act, 1990 (“STA” or “Act”), a person may still face different categorization such as being suspended or intending to deregister. Therefore, for this month’s edition, we have decided to explore into the depths of cancellation of multiple registrations, De-registration, Blacklisting, suspension, reasons, and the effects, if a registered person becomes a non-active taxpayer, and restoration of his status as an active taxpayer.

A. CANCELLATION OF MULTIPLE REGISTRATION:

Often at times, a person may have more than one registration for sales tax, for example having two sales tax registration numbers for the same business. In such cases, if a person holds multiple sales tax registrations, all such registration shall be merged into one and the liabilities under those registrations shall also be combined and shall fall under only one registration number. The remaining registration numbers should be surrendered to the concerned Commissioner Inland Revenue (“CIR”) in the respective RTO(s) through an intimation. However, for manufacturing units located in different LTU or RTO, the Board may allocate separate registrations on basis of the jurisdictions of those manufacturing units. For example, if one manufacturing unit is in Lahore and the other is in Karachi, then two sales tax registration number may be allotted (subject to approval of the Board).

B. DE-REGISTRATION:

Where a registered person would like to cease his business operations or where his supplies have become exempt from tax, or he ceases to remain registered, he shall apply to the concerned CIR for cancellation of his registration by submitting a prescribed form. The CIR shall upon receipt of an application or on his own motion, may issue an order for deregistration or cancellation within 90 days from the date of application or settlement of all outstanding dues (whichever is later). Such effect shall result in deregistration from the computerized system as well. A person shall not be de-registered unless and until he provides record for the purpose of audit or inquiry. Moreover,

the CIR is also empowered to deregister any person by order and through the computerized system if he fails to file tax return for 6 consecutive months despite being given an opportunity of being heard. For clarification, even if the person is deregistered / cancelled, any obligation or liability standing out from the tenure of the business shall not be affected by this change of status.

C. BLACKLISTING AND SUSPENSION OF REGISTRATION:

The registration of a taxpayer shall be suspended or blacklisted, whenever the CIR or Board has reasons to believe that the registered person is to be suspended or blacklisted. The following procedure shall be undertaken:

• SUSPENSION

Where the CIR, having jurisdiction, is satisfied that the registered person issued fake invoices, evaded tax, or committed tax fraud, the registration of such person may be suspended through the system, without prior notice, pending further inquiry.

The following factors shall assist the CIR to obtain such satisfaction:

- i. Non-availability of the registered person at the given address.
- ii. Refusal to allow access to business premises or refusal to furnish records to an authorized Inland Revenue Officer;
- iii. Abnormal tax profile (excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover);
- iv. Substantial purchases from or making supplies to other blacklisted or suspended person(s);
- v. non-filing of sales tax returns;
- vi. on recommendation of a commissioner of any other jurisdiction;
- vii. any other reason to be specified by the CIR;

On suspension of sales tax registration, the adjustment of input tax / refund shall not be admissible. The CIR shall issue a show cause notice to the registered person within 7 days of suspension order (failure of such would render the suspension order void-ab-initio). Dispatch of such notice shall be through post or courier to the registered person with an opportunity of hearing within 15 days of issuance of such notice. In this notice, the CIR shall clearly dictate that

that if the person does not reply or does not provide the requested documents/ access to premises or any other reason (as per the CIR), then such registered person shall be blacklisted. If the person's address is not available, then the notice shall be affixed on the main notice board of the LTU/RTO. Also, if the CIR is satisfied by the response from the registered person, he may revoke such suspension by passing an order to this effect.

• **BLACKLISTING**

Where despite providing an opportunity of being heard, an offense is committed, the CIR shall issue an appealable self-speaking order for blacklisting of the registered person and shall proceed to take legal and penal action under the relevant provisions of the STA.

The order of blacklisting shall contain the following:

- The reasons for blacklisting,
- The period for which any refund or input tax claimed by such person or by any other registered person on the strength of invoices issued by him from the date of his registration shall become inadmissible, and
- any recovery to be paid or penalties to be imposed.

The order of blacklisting shall be issued within 90 days of the issuance of the notice of hearing. In case the order of blacklisting is not issued within the aforesaid period, the suspension of registered person shall become void ab-initio. Copies of the order passed shall be circulated to all LTUs/RTOs/FBR/PRAL, STARR computer system and Customs Wing computer system. Thereafter, each LTU/RTO shall circulate all lists to their refund / audit section and to other concerned staff to ensure implementation of the order.

Moreover, all LTUs/RTOs shall further circulate the copy of the order along with the system generated list of invoices issued by the blacklisted persons to all officers of the Inland Revenue having jurisdiction over those registered persons who claimed input tax/ refund on the strength of invoices issued by the blacklisted person. Upon which the officer of Inland Revenue shall issue a notice to the registered person for rejecting input tax / refund claim and shall further proceed to decide the matter through a self-speaking appealable order and upon providing a reasonable opportunity of being heard.

D. NON-ACTIVE TAXPAYER:

A registered person's name shall be removed from the list maintained for the active taxpayers by the Board resulting him/her being a non-active taxpayer if any of the following case:

- i. Blacklisted or registration is suspended; or
- ii. Fails to file the return by the due date for two consecutive tax periods;
- iii. Fails to file his/her Income Tax return by the due date; and
- iv. Fails to file quarterly or annual withholding tax statement as required under the Income Tax Ordinance, 2001 ("ITO");

No person, including government departments, autonomous bodies, and public sector organizations, shall make any purchases from a non-active taxpayer. In case, if a non-active taxpayer has already issued an invoice, the input tax credit shall be inadmissible.

Furthermore, a non-active taxpayer shall not be entitled to:

- a) File goods Declarations for import or export;
- b) Issue sales tax invoices;
- c) Claim input tax or refund; or
- d) Avail any concession under the Act or rules made thereunder.

E. RESTORATION AS AN ACTIVE TAXPAYER:

The registration of a non-active taxpayer may be restored as active taxpayer in either of the following cases:

- a) The registered person files the return or statement along with payment of any tax due under the Act or the Income Tax Ordinance, 2001 (XLIX of 2001);
- b) Recommendation to the Board by the RTO or LTU having jurisdiction, upon satisfaction by conducting such audit or other investigation as may be necessary; and
- c) The Board issues an order to such effect.

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