



TAXPAK

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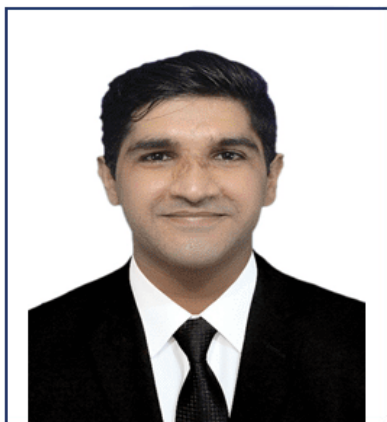
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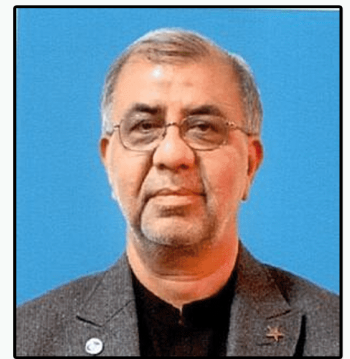
Topic of the Month

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 Supreme Court of Pakistan in which it was held that if powers for amendment of assessment were delegated through non-gazetted notifications which were not available on FBR's website, such delegation shall be deemed to be without lawful authority.

Towards the end of the newsletter, we have discussed our Topic of the month titled "Employees Share Scheme". The said topic provides an insight on the tax treatment of said benefit received by an employee.

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.

Tax Notifications

Sales tax on services notifications

1. FURTHER AMENDMENTS TO THE SINDH SALES TAX SPECIAL PROCEDURE (WITHHOLDING) RULES, 2014

The SRB, vide SRB/3-4/52/2023, dated 26th October, 2023, issued further amendment to the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014. As per the amendment, there will be no withholding of sales tax by the withholding agent from payments to an SRB registered insurance company. Earlier, the exemption from withholding, in the case of an insurance company, was only available with respect to services of life insurance and health insurance of individual persons. For further reading: [SRB](#)

2. PUBLIC NOTICE FOR SINDH SALES TAX AND SWWF/ SWPPF PAYMENTS

The SRB issued a public notice on 11th October 2023, whereby all tax payments shall now be through “ADC 1-Bill” only and all other payment options were discontinued. The notice also gave directions of how the challans [could](#) be made. For further reading:

Corporate Notifications

1. PROMULGATION OF THE UNLISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2023

The SECP, vide SRO No. 1441(I)/2023, dated 12th October 2023, published the Unlisted Companies (Buy-Back of Shares) Regulations, 2023 which had been earlier published for review and comments vide SRO No. 2066(I)/2022, dated 25th November, 2022. Through this promulgation, eligibility, procedure, obligations [of](#) buying back shares were tabled down for all unlisted companies. For further reading:

2. AMENDMENTS TO THE COMPANIES ACT, 2017

The SECP, vide SRO No. 1481(I)/2023, dated 18th October 2023, issued amendments to the Companies Act, 2017 for public suggestions and objections. Through this amendment, a Unique Document Identification Number (“UDIN”) shall be mentioned in all reports issued by the auditors. For further reading: [SECP](#)

3. NOTIFICATION FOR RECOGNIZING A CREDIT RATING INSTITUTION

The SECP, vide SRO No. 1482(I)/2023, dated 19th October 2023, issued a notification, whereby the China Chengxin (Asia Pacific) Credit Rating Company Limited was recognized as an international credit rating institution for entering into joint venture or technical collaboration arrangement with a credit rating company in Pakistan.

For further reading: [SECP](#)

4. GUIDELINES FOR MERGERS AND AMALGAMATIONS

The SECP issued guidelines for Mergers and Amalgamation whereby guidelines in respect of scheme of arrangement was issued, liability of transferor and transferee was made necessary to be fully disclosed when making agreements, and Swap Ratio/Share Exchange Ratio was made necessary to be determined upon the examination of the audited financial statements and other financial position of the companies.

For further reading: [SECP](#)

CASE LAW: DELEGATION WITHOUT PUBLIC NOTIFICATION IS NOT LAWFUL

INTRODUCTION:

The Supreme Court of Pakistan (“SC”) was moved by the Commissioner Inland Revenue, Zone-I, RTO, Peshawar and another (“**Petitioners**”) versus Ajmal Ali Shiraz M/s. Shiraz Restaurant, Peshawar (“**Respondent**”), against the order passed by the same bench of the SC in Civil Appeal No. 51 of 2020 (“**Said Order**”), for review of the said Order on grounds that the officer of the Inland Revenue was delegated powers to amend the assessment in terms of Section 122 of the Income Tax Ordinance, 2001 (“**ITO**”).

BRIEF FACTS OF THE CASE:

The matter pertained to the amendment of assessment under section 122 of the ITO. The powers for amendment of assessment were delegated to the Commissioner, Inland Revenue. However, in the instant case, the amendment was made by the Deputy Commissioner, Inland Revenue. Thus, the plea was taken by the Petitioners being aggrieved of the decision passed by the SC vide order dated 03-10-2022, therefore, the learned Petitioners filed Civil Review Petition before the SC.

ARGUMENTS BY THE LEARNED PETITIONERS:

The Petitioners argued that the court may review the said order, as the powers were delegated to the Deputy Commissioner Inland Revenue, hence, they contended that the said Order had been rightly passed in terms of aforesaid provision of the ITO.

FINDINGS OF THE SUPREME COURT:

By concluding and upholding the issue in question, the SC held that the delegation of powers from Commissioner to Deputy Commissioner Inland Revenue must be published in a gazette and should also be made available on the Federal Board of Revenue (FBR)'s website. As such, in this instant case, it was held that the Deputy Commissioner had no powers to amend the assessment under section 122 of the ITO. Hence, the said Order passed by the Deputy Commissioner was not sustainable in the eyes of law.

TOPIC OF THE MONTH:

Employees Share Scheme

Among many perquisites offered by the companies to their employees, often companies offer employees shares of the company, either free of charge or may charge an amount which could be lower than the fair market value resulting to an employment benefit. Therefore, in this month's edition we will focus on the law relating to "Employee share schemes" under section 14 of the Income Tax Ordinance, 2001 ("ITO").

An employee share scheme ("ESS") means an arrangement under which a company issues shares (of the company or associated company) to an employee or to the trustee of a trust under the trust deed where the trustee may transfer the shares to an employee of the company or to an employee of an associated company. In simpler words, shares under the ESS are issued to employees as an employment benefit therefore the same is treated under normal tax under the head of 'income from Salary'.

1. Right or option to acquire shares:

Sometimes, instead of issuing the shares directly to the employees, a company may grant a right or option to acquire shares of the company at a given price.

The value of the right or option to acquire shares shall not be taxable when obtained but shall be taxable only when the employee disposes of the option. In this case, the gain shall be computed as follows:

Consideration received – Cost of right or option.

(Fair market value of the right or option at the time it was granted shall not be taxable and shall be irrelevant).

For example, the employees were offered to purchase 'options to acquire' its shares at Rs. 2, whereas, the fair market value of such options were Rs. 5. Mr. X, an employee of the company, purchased the option at Rs. 2 and subsequently disposed off the option at Rs. 6. In such a case, Rs. 4 (Rs. 6 – Rs. 2) per option will be added in the salary of Mr. X.

2. Cost of shares:

For the purpose of calculating the cost of share, it shall be the sum of consideration (if any) given by the employee for the shares or any consideration paid by the employee for the grant of any right / option to acquire the shares.

3. Tax treatment where there is no restriction:

Where shares are issued to employees without any restriction, such that shares may be disposed of anytime, then such shall be taxable in the year of issue and shall be taxable according to the following:

Taxable at fair market value at the date of issue of shares – any consideration given by the employee for shares / option / right.

4. Tax treatment when there is restriction:

Where shares issued to an employee under an ESS are subject to a restriction on the transfer of the shares, for instance they cannot be transferred or sold for some specified time frame, then in this case no amount shall be chargeable to tax to the employee under the head “Salary” until the earlier of either:

- (i) the time the employee has a free right to transfer the shares; or
- (ii) the time the employee disposes of the shares;

Furthermore, the amount chargeable to tax shall be the fair market value of the shares as on the date the employee had free right to transfer/dispose the shares and shall be reduced by any consideration given by the employee for the shares (inclusive of any amount given as consideration for the grant of a right / option to acquire the shares).

5. Classification of Income

It is pertinent to note that option under the ESS shall be treated as a capital asset but shall be taxed under “salary” when disposed. Furthermore, an option is taxable only when disposed of.

In case of shares, any benefit to the employee will be split into two heads i.e. salary and capital gains, as under:

- a) The amount of fair market value of the shares (see heading 3 and 4 above) less cost to acquire the share will be added in the head ‘income from salary’ of the employee.
- b) The amount of sales proceeds of the shares less the amount of fair market value in (a) above, will be treated as capital gains.

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