TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

TAXPAK
Newsletter by
Tola Associates

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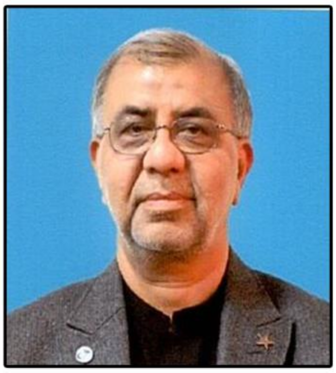

Asalam-o-alaikum everyone! Hope this monthly issue of TaxPak finds you in good spirits and immaculate health! We welcome you to another edition of TaxPak, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhamdulilah, so 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 also 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 (Islamabad) in which it was held by the Hon'ble ATIR that **reduced minimum tax** on flour mills is not applicable on dal mills.
Towards the end of the newsletter, we have discussed our Topic of the month titled "Taxability of Bahbood Income Certificate, Pensioner's benefit account". The said topic provides an insight on the misconception that incomes received by way of Bahbood and Pensioner's benefit account were exempt from tax.

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

FBR Notifications

1. Amendment to the Income Tax Ordinance, 2001

The FBR, vide SRO 1588(I)/2023, dated 21st November 2023, issued a Notification in respect of Section 99D ("Windfall income, profits and gains") of the Income Tax Ordinance, 2001. The said Notification specified the sector, rate of tax and methodology of computation of the windfall tax rate. Furthermore, our commentary on the said notification can be accessed by clicking on the following link for a better and easier understanding on the said subject matter: Windfall Tax on Bank
For further reading: FBR

2. Further amendments to the Sales Tax Rules, 2006

The FBR, vide SRO 1525(I)/2023, dated 10th November 2023, issued further amendments to the Sales Tax Rules, 2006 whereby rules for electronic transmission of sales tax invoices by registered persons was established, along with maintaining the record and documentations on electronic media for a period of six years and subsequent consequences for noncompliance.
For further reading: FBR

Sales Tax On Services Notifications:

1. LAUNCHING OF A WEBSITE AS PER THE SINDH TRANSPARENCY AND RIGHT TO INFORMATION ACT, 2016

The SRB, vide Circular No. AT/SRB/Circular/2023, dated 06th November 2023, stated that the Appellate Tribunal, SRB- Karachi had launched a website **www.atsrb.gos.pk** which shall contain all official business, cause lists, judgements, notifications, circulars and information regarding hearings of appeals.
For further information: SRB

Corporate Notifications

1. Revised timelines for approval of IPO application and listing of securities

The SECP, vide Circular No. 16 of 2023, dated November 08th, 2023 issued a circular whereby the overall Initial Public Offering ("IPO") and listing process has been reduced and the revised timelines shall optimize the capital formation function of the SECP. The timelines have been specified in the annexure to this Circular which all stakeholders such as PSC, Issuers, Book Runners and others shall follow.

For further reading: SECP

2. Directive regarding Zero Tolerance for Surrogate Companies

The SECP, vide SRO 1636(I)/2023, dated 14th November 2023, issued a directive being a reproduction of the relevant portion of the directive issued by the Ministry of Information and Broadcasting through letter number M/oI&B U.O No. 1(1)/2023/press/Misc. dated September 25th 2023, whereby all Companies and Limited Liability Partnerships (LLPs) were directed to ensure that they do not enter into any form of agreement which directly or indirectly (through surrogate betting companies) results to gambling, betting, or in such manner that it would move untaxed money out of the country in dollars. Inclusive in this list were transactions with PCB, PSL, PSL Franchises, club crickets, magazines, and various other platforms which would relate to gambling / betting.

For further reading: SECP

3. AMENDMENTS IN THE FUTURES EXCHANGES (LICENSING AND OPERATIONS) REGULATIONS 2017

The SECP, vide SRO No. 1666(I)/2023, dated 17th November 2023, issued a Notification whereby, amendments in the Futures Exchanges (Licensing and Operations) Regulations 2017 were made, which had been earlier published for review vide SRO 770(I)/2023 dated 19th June 2023. Through this Notification, few regulations were amended such as the requirement to either deposit money belonging to futures brokers and their customers in one or more designated bank accounts in Pakistan or have them invested in Treasury Bills or Sukuks (with original maturity of 1 year or less, and issued by the Government of Pakistan). Furthermore, records of such investment were required to be maintained along with records of profit on such amounts. Moreover, promoters of futures exchanges are required to establish a proven track record of successfully running a business enterprise for at least 10 years.

For further information: SECP

CASE LAW: REDUCED MINIMUM TAX ON FLOUR MILLS CANNOT BE APPLIED TO DAL MILLS

INTRODUCTION:

The Hon'ble Appellate Tribunal Inland Revenue ("ATIR") was moved by M/s. Fazal Dall and Foods Mills, Islamabad ("Appellant") against the Order passed by The Commissioner Inland Revenue RTO, Islamabad ("Respondent") in respect of the chargeability of minimum tax on turnover under section 113 of the Income Tax Ordinance, 2001 ("ITO").

BRIEF FACTS OF THE CASE:

The Appellant being an owner of Dal Mill, was engaged in the business of manufacturing and sale of gram flour (besan) made from pulses (Dal). As such, the Appellant paid reduced minimum tax on turnovers for the respective tax years in question, as per clause 2 of Division IX of Part-I of 1st Schedule of the ITO. The Additional Commissioner Inland Revenue ("ACIR") issued a show cause notice under section 122(9)/122(5A) of the ITO for the Tax years 2016 to 2021, wherein it confronted the Appellant to pay minimum tax at 1%, 1.25% and 1.5% instead of 0.2% and 0.25% for the tax years under question. However, despite the contentions of the Appellant, the proceedings were finalized and orders were passed under section 122(5A) of the ITO against the Appellant following which an appeal was preferred before the Respondent, who also ruled in favour of the ACIR. Again, being aggrieved of the decisions passed by the earlier authorities, the Appellant approached the ATIR for adjudication against the matter by raising the following contention:

> *Whether the Appellant's Dal Mill, which manufactures besan out of dal can come within the meaning of "Flour Mills" and is entitled to claim reduction in minimum tax under section 113 of the Ordinance provided in Division IX of Part-I of the 1st Schedule of the Ordinance?*

ARGUMENTS BY THE LEARNED COUNSEL FOR THE APPELLANT:

The learned counsel for the Appellant argued that the minimum tax on turnover for Flour mills was already provided in terms of clause 2 of Division IX of Part-I of 1st Schedule of the ITO. As such, it was contended that the Appellant had rightly paid tax as per the given tax rates by relying on the word "Flour Mills" and further submitted that the word flour had not been defined in the ITO itself. Therefore, upon relying the dictionary meaning of the expression "Flour", the counsel for the Appellant contended that it refers predominantly to "soft powder or fine powder" obtained from the grinding of wheat but also includes soft powder or fine powder of any substance, foodstuffs, edible roots, nuts, vegetables, etc. The counsel for the Appellant also further argued that when the legislature has used the word "Flour" without an adjective, the intent of the legislator is clear that it includes all types of flour and does not restrict to any particular type of flour. Reliance was also placed by the counsel for the Appellant on Sales tax Circular C. No.1/2-STB/2019, dated 15th July 2019, and clause (24C) of Part-II of the Second Schedule of the ITO.

ARGUMENTS BY THE LEARNED COUNSEL FOR THE RESPONDENT:

The Learned counsel for the Respondent argued that the order passed by the CIRA was a speaking order, and that there was no infirmity in the impugned order. Hence, the Learned counsel for the Respondent pleaded for disposal of the instant appeal.

FINDINGS OF THE HONOURABLE ATIR:

The Hon'ble ATIR held that the words "Flour mills" written in division IX of Part-I of 1st Schedule of the ITO under consideration was in fact used with reference to the trade or business of flour that is made from grains and relied on the definition provided in The Flour Mills (Control) Order, 1959 No. SOF-III-IV-15/58 (1180), therefore it held that it should be understood according to its trade and business sense. Whereas the ATIR while relying on definition provided by The Essential Commodities Act 1955 read with The Maharashtra Scheduled Commodities Whole-Sale Dealers' Licensing Order, 1998 found that a "Dal Mill" is a facility that processes pulses (dal) such as chana dal, moong dal, urad dal, and others. As such, the process involves cleaning, grading, de-husking, splitting, and polishing pulses. The final product is a split pulse with an outer husk removed and split into two halves, and it held that both are independent units thus reduced rate was intentionally given to flour mills only. The ATIR also held that, in case of exemption, where there is any doubt or if there are two possible interpretations, then the one favouring chargeability of tax should be considered and that exemption presupposes chargeability. Therefore, the appeals of the Appellant was dismissed.

Topic of the Month

Taxability of Bahbood Income Certificate, Pensioner's benefit account.

One of the biggest misconceptions of the person(s) making investments in Bahbood / Pensioner's benefit account or Shuhada Family Welfare Account schemes ("BPS") offered by the National Savings Center (NSC), is that income from such investments is exempt from any tax. In order to clarify this misconception, we have decided to discuss this issue in context with the Income Tax Ordinance, 2001 ("ITO") in detail. The discussion involves the following:

1. Taxability;
2. Requirement to file tax returns; and
3. Non-applicability of Section 7B/151 on these incomes;

Introduction

Bahbood Income Certificates are a type of investments that have a 10 year maturity period and were launched by the Government of Pakistan specifically for the widows, senior citizens, disabled people having disability cards from Nadra, and for Special Minors through guardians. This certificate is issued by the National Savings Center ("NSC") and at the time of payment of income, the NSC does not withhold any amount of tax, which means that 100% profit is paid without any tax deductions.

The Government also launched the Pensioners' Benefit Account with a 10 years' maturity period and unlike bahbood certificates, this is in the form of deposits with the NSC. Similarly, Shuhadas Family Welfare Account is another form of investment offered to the families of Shuhadas of Armed Forces, Law Enforcement agencies and civilians. It offers an umbrella to the senior citizens, pensioners, widows, physically challenged persons and family members of the Shuhadas. As with bahbood, no taxes are withheld from incomes from investments in these two categories of investments as well.

Taxability

Since no taxes are withheld at the time of disbursement of profit/ yield, a misconception among the investors has grown that these specific incomes are exempt from tax. This misconception further generated another misunderstanding that since profits are exempt, there is also no requirement of filing of income tax returns.

It is important to note that if a person derives income from bahbood only, and that does not cross the preset taxable income benchmark of Rs 600,000/-, an annual return of income shall be submitted nonetheless. In simpler words, if Ms. B received a total of Rs 550,000/- being income from bahbood, it is clear that since it's below the threshold, so she won't be taxed on this income, but this does not relieve her of her responsibility to furnish an annual income tax return.

According to clause 6 of the Second Schedule of the ITO ("Clause 6"), any amount paid as Bahbood Savings Certificate or Pensioners Benefit or Shuhada Family Welfare Account ("BPS") shall be taxed and this tax shall not exceed 5% of the profit. In other words, the tax shall be levied at the lower of either 5% or tax rate as per normal tax slab.

According to clause 6 of the Second Schedule of the ITO ("Clause 6"), any amount paid as Bahbood Savings Certificate or Pensioners Benefit or Shuhada Family Welfare Account ("BPS") shall be taxed and this tax shall not exceed 5% of the profit. In other words, the tax shall be levied at the lower of either 5% or tax rate as per normal tax slab.

	Scenario 1	Scenario 2	Scenario 3
Bahbood/ Pensioner's benefit/ Shahuda Account annual profit	Rs.950,000/-	Rs.600,000/-	Rs.1,240,000/-
Normal Tax liability (1)	Rs.37,500/-	Rs.45,000/-	Rs.83,000/-
5% of profit as per Clause 6 (2)	Rs.47,500/-	Rs.30,000/-	Rs.62,000/-
Tax liability- Lower of either (1) or (2)	**Rs.37,500/-**	**Rs.30,000/-**	**Rs.62,000/-**

If Mr. X receives other income as well, then the taxpayer shall receive tax credits as per the below mentioned formula, which shall reduce the tax liability in the following manner:
Formula:

$$\left(\left(\frac{Normal\ Tax\ Liability}{Total\ Income}\right) * Profit\ (B.P.S)\right) - 5\%\ Cap$$

	Scenario 1	Scenario 2	Scenario 3
Bahbood/ Pensioner's benefit/ Shahuda Account annual profit (A)	Rs.950,000/-	Rs.600,000/-	Rs.1,240,000/-
Other Income	Rs.500,000/-	Rs.500,000/-	Rs.500,000/-
Total Income (C)	**Rs.1,450,000/-**	**Rs.1,100,000/-**	**Rs.1,740,000/-**
Normal Tax liability (B)	**Rs.125,000/-**	**Rs.60,000/-**	**Rs.183,000/-**
5% of profit as per Clause 6 (D)	Rs.47,500/-	Rs.30,000/-	Rs.62,000/-
Tax credit: ((B/C) * A) – D	Rs.34,397/-	Rs.2,727/-	Rs.68,414/-
Tax liability less credit	**Rs.90,603/-**	**Rs.57,273/-**	**Rs.114,586/-**

Requirement to File Annual Return

The next misconception with respect to these incomes, is that no return of income needs to be filed if a person derives income only from BPS. This is incorrect, as even if the person's income is below Rs 600,000/- (being the minimum amount of income on which no tax shall apply), a person is still required to file the annual return of income. Since, this income is not exempt, then non-filing of return shall be non-compliance and shall be eligible for penalty and surcharge as provided in the ITO.

Non-applicability of Section 7B / 151 on these incomes

Under normal circumstances, profits derived by investment in normal certificates or bank accounts are subject to tax being withheld at 15% under section 151 by the companies or institutions where these amounts are invested and this tax is withheld at the time of disbursement under section 151 of the ITO and then deposited in the national treasury. However, in the case of BPS and under the provisions of Clause 36A of the Second Schedule to the ITO, no tax shall be withheld for any profit derived under BPS. For instance if Mr. X has investment in regular income certificates and bahbood income certificates then the National Savings Center, being the institution paying yield, shall withhold 15% tax on regular income certificate and none for bahbood income certificates.

Likewise, the provisions of Section 7B, which provide that profit on debt shall be charged at 15% (subject to certain exceptions), shall also not be applicable under Clause 103 of the Second Schedule to the ITO. This is in line with clause 6 which provides that the rate of tax shall not be higher than 5% as discussed in the preceding paragraphs.

In conclusion, it evident that the perception that profits received from BPS are not taxable, is misconceived. As such, the profits received from BPS are taxable and an annual return of income should also be filed declaring these incomes.

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