



TAXPAK

Newsletter by

Tola Associates
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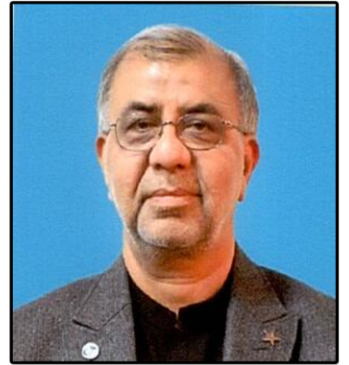
Recovery procedures under section 140 of the ITO cannot be initiated without issuing notice under section 139 of the ITO.

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 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 Hon'ble Supreme Court of Pakistan with respect to Profits from the operation of ships in International Traffic under the Double Taxation Conventions signed by Pakistan with Denmark and Belgium and another judgement passed by the Hon'ble Lahore High Court whereby it was decided, inter-alia, that recovery procedures under section 140 of the ITO cannot be initiated without issuing notice under section 139 of the ITO.

Towards the end of the newsletter, we have discussed our Topic of the month titled "Fake and/or flying sales tax invoices". The said topic provides an insight on the menace of fake or flying invoices and the consequences of the issuance thereof under the Sales Tax Act 1990.

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 Sales Tax Notifications:

1. Notification pertaining to the implementation of Digital Invoicing for FMCG Sector:

The FBR, vide SRO No. 28(1)/2024, dated 10th of January 2024, issued a Notification requiring registered persons to electronically transmit sales tax invoices under Chapter XIV of the Sales Tax Rules 2006, including importers, manufacturers, wholesalers, distributors, and wholesaler cum-retailers of Fast-moving consumer goods. Moreover, this Notification shall be made effective from February 1, 2024, and only registered persons may apply for an extension by making an application to the Commissioner.

For further reading: [FBR](#)

2. Rationalization of Negative list of STGO via Exclusion of items:

The FBR, vide direction dated 12-01-24, and on the request of letters received from MTO Karachi and RTO Sialkot, decided to exclude certain items from the negative list mentioned earlier in the STGO No. 09 of 2023, dated 15th March 2023, and therefore allowed input tax adjustment on purchase of the following raw materials for the Leather & sports sector, and Tents & canvas sector, considering the fact that the following raw materials were an integral part of the manufacturing process:

Code as per STGO 09 of 2023	Leather & Sports	Code as per STGO 09 of 2023	Tents & Canvas
2519	Natural Magnesium Carbonate	4404	Hoopwood split poles piles, pickets. stakes of woods.
3909	Amino-resins, Phenolic resins Polyurethanes	7303	Tubes, pipes and hollow profiles of cast iron.
7018	Glass Beeds, imitation pearls, precious stones, glass smallwares, glass microspheres.	7305	Tubes and pipes, internal and external circular cross-sections of iron or steel.
7019	Glass fibres	7306	Tubes, pipes and hollow profiles of iron or steel.
9607	Slide fasteners and parts thereof.		

For further reading: [FBR](#)

Sales Tax On Services Notifications:

1. Guidelines for Collection and Payment of Sales Tax by a Collection Agent:

The SRB, vide Circular No. 01/24, dated 04-01-24 issued guidelines for scheduled banks to collect and pay Sindh Sales Tax (SST) on specified services. The guidelines included charging 13% SST for debit or credit card payments for advertisement services, 3% for software or IT-based system development consultants, 13% for over-the-counter payments, and 3% for services under the State Bank of Pakistan's outward remittances code. The collected SST must be declared as an output tax in the tax return, and must be deposited into the treasury by the 15th day of the month following the tax period.

For further reading: [SRB](#)

Corporate Notifications:

1. Amendments to the Auditors (Reporting Obligations) Regulations, 2018

The SECP, vide SRO No. 9(i)/2024, dated 2nd January 2024, has made amendments to the Auditors (reporting Obligations) Regulations, 2018, whereby amendments to relevant regulations were made to ensure that a “Unique Identification Number” (“UDIN”) shall be mentioned on all reports issued by the auditors.

For further reading: [SECP](#)

2. Requirement To Mention Unique Document Identification Number on The Initial And Revised Audit Reports

The SECP, vide Direction No. 02 of 2024, dated 17th January 2024, directed that it would be mandatory for all Modaraba companies and Modarabas to mention a “Unique Identification Number” (“UDIN”) on their initial and revised audit reports.

For further reading: [SECP](#)

Case Law: Profits from the operation of ships in International Traffic under the Double Taxation Conventions signed by Pakistan with Denmark and Belgium

INTRODUCTION:

The Hon’ble Supreme Court of Pakistan (“SCP”) was moved by the Commissioner Inland Revenue Zone-IV, Karachi (“Petitioner” or “Appellant”) to overturn the ruling of the Hon’ble High Court of Sindh (“SHC”), against M/s A.P. Moller Maersk and M/s Safmarine Container Line (“Respondents”). The Petitioner sought to ascertain whether the revenue generated by Container Detention Charges (CDC), Container Service Charges (CSC), and Terminal Handling Charges (THC) qualifies as “profits from the operation of ships in international traffic” under the terms of the double taxation conventions that Pakistan and Denmark, and Pakistan and Belgium have signed.

BRIEF FACTS OF THE CASE:

The respondents were two non-resident companies. One was incorporated in Denmark, while the other was in Belgium. They were engaged in cargo transportation and used M/s Maersk Pakistan Limited, being the authorized agent, to carry out their commercial operations within Pakistan. The respondents reported income from freight charges, CDC, CSC, and THC in their income tax filings, and claimed tax benefits under Article 8 of the Pakistan–Denmark Convention, and Pakistan–Belgium Convention. Whereas, the Petitioner agitated that CDC, CSC, and THC were not eligible under the beneficial provisions of the Pakistan–Denmark Convention and the Pakistan–Belgium Convention.

The petitioner remained unsuccessful before the Commissioner Inland Revenue–Appeals (“CIRA”), Appellate Tribunal Inland Revenue (“ATIR”), and the Hon’ble High Court of Sindh (“SHC”). The Petitioner being aggrieved and dissatisfied with all the forums, approached the Hon’ble Supreme Court (“SCP”) for adjudicating upon this matter.

ARGUMENTS BY THE PETITIONER:

The learned counsel for the learned Deputy Commissioner Inland Revenue (“DCIR”) argued that CDC, CSC, and THC were not entitled for the benefits of the Pakistan–Denmark and Pakistan–Belgium Conventions, which according to him did not fall within the ambit of Article 8 of either Conventions for the beneficial taxation on "profits from the operation of ships in international traffic."

ARGUMENTS BY THE RESPONDENT:

The counsel for Respondent claimed tax benefits under as stipulated under Article 8 of the Pakistan–Denmark Convention, and the Pakistan–Belgium Convention, was to avoid double taxation and fiscal evasion of income.

FINDINGS OF THE HON’BLE SCP:

The Hon’ble SCP maintained Status quo, and held that the state’s responsibility in a bilateral agreement was to implement its terms rather than to interpret them unilaterally. The Hon’ble SCP further held that tax treaties differ from domestic tax legislation in terms of language, scope, and intent. These treaties are curative in nature and seek to avoid double taxation, whereas domestic tax law imposes taxes in limited circumstances. Moreover, tax treaties necessitate a broad purposeful interpretation, and that interpretation may be more liberal than domestic law. Therefore, the profits earned from CDC, CSC, and THC are related to the operation of ships engaged in international shipping, and thus were clearly covered under the umbrella of the

phrase "profits from the operation of ships in international traffic." Consequently, the respondents' collection of CDC, CSC, and THC is considered as part of the revenue from shipping in international traffic and therefore should be treated within the terms of the corresponding Pakistan-Denmark Double Taxation Convention and the Pakistan-Belgium Double Taxation Convention.

Case Law: Recovery procedures under section 140 of the ITO cannot be initiated without issuing notice under section 139 the ITO.

INTRODUCTION:

The Hon'ble Lahore High Court ("LHC") was moved by Sardar Waseem Ilyas ("Petitioner") against Commissioner Inland Revenue, Lahore ("Respondent") as the Petitioner was aggrieved by the act of withdrawing an amount from his personal bank account by the commissioner on the pretext of invoking Section 140 of the Income Tax Ordinance, 2001 ("ITO").

BRIEF FACTS OF THE CASE:

The personal bank account of the petitioner was debited on the ground that the income tax demand of the company, M/S Modern Building Maintenance (Pvt) Ltd ("Company") was outstanding and that the Petitioner being the director of the company was liable to set off the liability in his own capacity. In this regard, the Respondent had issued a notice to the bank under section 140 of the ITO without disclosing any details or reasons for the demand without issuing a notice under section 139 of the ITO, which was a pre-requisite requirement before invoking section 140 of the ITO.

Moreover, the Respondent did not mention the reasons for the non-recoverability of the demand from the Company in the impugned notice. Thereby, the petitioner being aggrieved and dissatisfied, approached the LHC by invoking its constitutional jurisdiction under Article 199 for the redressal of his grievances.

ARGUMENTS BY THE PETITIONER:

The Petitioner contended that the impugned notice that was sent to the bank lacked any information regarding the demand made, nor was it in accordance with the assessment order issued against the Petitioner.

ARGUMENTS BY THE RESPONDENT:

The Respondent justified its action under Section 140 and claimed that it was against the company of which the petitioner was a director. It was also argued that notice under Section 139 had been served on the petitioner before taking action under Section 140.

FINDINGS OF THE HON'BLE LHC:

The Hon'ble LHC held that notices for recovery must include necessary details such as assessment, finality, demand, and coercive measures. It further ruled that forceful withdrawal of an amount from personal and business accounts of taxpayer without due process was a violation of the fundamental rights as enshrined under Article 23 of the Constitution and detriment to taxpayers' business activities. It also held that Section 140 could be invoked only when the Commissioner believes that the taxpayer may evade with the demand, which would result to be irrecoverable forever. Moreover, the LHC directed that the Respondent should have obtained prior approval from the FBR before invoking the provisions of Section 140.

Furthermore, the LHC held that reckless recovery by taxation officers was a violation of the fundamental rights and could lead to disciplinary proceedings. The LHC also directed the FBR to issue notifications to Taxation Officers warning them of disciplinary proceedings on charges of misuse of powers, infringing fundamental rights. The Hon'ble LHC further held that recovery under Section 140, without complying with the command of Articles 10A and 19A of the Constitution and that too by ignoring the statutory procedure and law laid down in binding judgments, is a misconduct, proceedable under the Service Laws. It was also held that protection under Section 227 of the ITO was only for actions in good faith and that the FBR under Section 227(2) can always recommend for disciplinary proceeding for infringing fundamental rights or for non-compliance of judgments by superior Courts.

The Hon'ble LHC concluded the verdict in favour of the Petitioner while issuing directions that the amounts so recovered be returned to the Petitioner within a period of 15 days.

TOPIC OF THE MONTH: FAKE AND/OR FLYING SALES TAX INVOICES

INTRODUCTION:

In this month's edition, we will discuss the phenomena of 'fake and/or flying' sales tax invoices, that have plagued the tax system of Pakistan. Fake invoices refer to documents that are deliberately created to misrepresent transactions or financial records. This can include inflating the value of goods or services, creating fictitious transactions, or providing false information on invoices. The purpose of generating fake invoices is often to evade taxes, inflate profits, or deceive stakeholders.

DEFINITION:

The word 'fake invoice' has not been defined under the Sales Tax Act 1990 ("STA" or "Act"). As such, the word "fake" (as a noun) has been defined by the Black's Law Dictionary, 10th Edition to be *"something that is not what it purports to be"* and word "fake" (as a verb), it means *"to make or construct falsely"* at its page 717.

CONSEQUENCES OF ISSUING FAKE INVOICES:

Section 21(2) of the Act empowers the Commissioner to blacklist or suspend the registration of a taxpayer if the said Commissioner is "satisfied" that the taxpayer/registered person has "issued fake invoice" or "has otherwise committed tax fraud".

The aforesaid provision provides that where the department has reasons to believe that a registered person is engaged in issuing fake or flying invoices, claiming fraudulent input tax or refunds, does not physically exist or conduct actual business, or is committing any other fraudulent activity, refunds or input tax adjustments, the department may blacklist such person or suspend his registration in accordance with such procedure.

Further, appropriate legal action can also be taken against such person. The phrase "appropriate legal action" means that action is not only confined to punitive measures under the Act, but it also embraces penal laws of the land which deal with fabrication, preparation of false documents and using the same dishonestly with an intention to defraud any person including government for wrong gain.

Further, fake invoices are being used by persons that either supply to unregistered persons to avoid further tax charge and claim relevant input tax, or purchase from unregistered persons in order to claim input tax or refunds in their monthly sales tax returns. This fraudulent practice causes a severe revenue loss to the National exchequer. Falsifying of sales tax invoices to understate the tax liability or overstate the entitlement to tax credit or tax refund or loss of tax has been defined as 'tax fraud' under Section 2(37) of the Act.

Section 2(37) of the STA is as under:-

"(37) 'Tax fraud' means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused)

(i) doing of any act or causing to do any act; or

(ii) omitting to take any action or causing the omission to take any action, including the making of taxable supplies without getting registration under this Act; or

(iii) falsifying or causing falsification of the sales tax invoices, in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax liability for two consecutive tax periods or overstating the entitlement to tax credit or tax refund to cause loss of tax.

BURDEN OF PROOF:

Upon a perusal of the aforesaid definition, it may be noted that legislative intention under section 2(37) of the STA is not to opt for a fishing or suppositional exercise. Further as per **2020 PTD (Trib.) 465**, titled as M/s. Hilal Chemical, Lahore V/s. Commissioner Inland Revenue Appeal, Lahore, the initial burden of proof lies on the department to show that an assessee "knowingly", "dishonestly" or "fraudulently" and without any lawful excuse has done any act or has caused to be done or has omitted to take any action or has caused the omission to take any action in contravention of duties or obligations imposed under the Sales Tax Act 1990 or Rules or Instructions issued there under the intention of understating the tax liability or underpaying

the tax liability. Once this burden is discharged by the Department, only then the burden is shifted to the assessee to establish that the act done was without any knowledge on his part or without any intention of dishonesty or fraud and was done without any lawful excuse.

CONCLUSION

The issuance of fake or flying invoices is a menace that needs to be dealt with swiftly, and with an iron fist. Further, it is imperative upon the department to investigate properly before issuing a show-cause Notice for tax fraud under Section 2(37) of the STA on the basis of fake or flying invoices, as the initial burden of proof is upon the department, as stated above..

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