

# TAXPAK

## Newsletter by Tola Associates



**November 2024**





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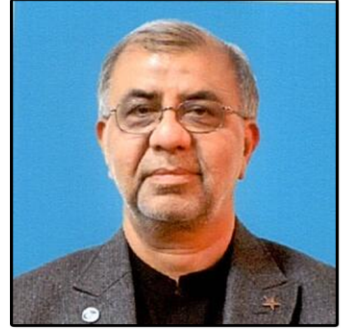
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## Disclaimer



## Chairman's Message

Assalam-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 one judgment, whereby the Hon'ble Supreme Court of Pakistan has allowed Input Tax Adjustment For Goods Damaged by Fire and upheld the celebrated case of Mayfair Spinning Mills.

Towards the end of the newsletter, we have discussed our Topic of the month titled "Delegation of Powers by the Commissioner Inland Revenue under Section 210 of the Income Tax Ordinance, 2001". The said topic provides a brief overview of the delegation of powers of the Commissioner Inland Revenue outlined in the Income Tax Ordinance, 2001.

All our readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com) or download our mobile application in order to access previously 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.**

# FEDERAL BOARD OF REVENUE (“FBR”) NOTIFICATIONS

## A. INCOME TAX NOTIFICATIONS

### 1. Convention between the government of the Islamic Republic of Pakistan and the government of the Republic of Latvia.

The FBR, vide S.R.O. 1734(I)/2024, dated 1st November, 2024 was pleased to communicate that the Islamic Republic of Pakistan and the Government of the Republic of Latvia have signed a Convention for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance. The purpose of the Convention is for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance and to further develop their economic relationship and to enhance their co-operation in tax matters.

For further reading: [FBR](#)

### 2. Regrading ADRC Rules

The FBR, vide S.R.O. 1786(I)/2024, dated 7th November, 2024 is pleased to direct that the further amendments shall be made in Rule 231C of the income Tax Rules, 2002 wherein in rule 231C, –

- (1) in sub-rule (11), for the expression “(ii)”, the expression “(iii)” shall be substituted; and
- (2) in sub-rule (12), for the expression “(10)”, the expression “(11)” shall be substituted.

For further reading: [FBR](#)

### 3. Regarding amendments SRO 1728(I)/2024 dated 29.10.2024

The FBR, vide S.R.O. 1812(I)/2024, dated 13th November, 2024 was pleased to direct that the following amendments shall be made in its Notification No. 1728(I)/2024, dated the 29th October, 2024 which pertains to Revision of Value of Immovable Properties of Rawalpindi.

1) For entry no. 5899, which is for the value of Commercial plot in mauza Capital Smart City, Chahan, Mandwal, tehsil Rawalpindi. As per S.R.O. 1812(I)/2024 the valuation of rates for open plot (Per Square Foot.) shall be reduced from Rs 5,243.3/- per square foot to Rs. 2,621/- per square foot.

2) For entry no. 5900, which is for the value of Residential plot in mauza Capital Smart City, Chahan, Mandwal, tehsil Rawalpindi. As per S.R.O. 1812(I)/2024 the valuation of rates for open plot (Per Square Foot.) shall be reduced from Rs. 2,169/- per square foot to Rs. 1,555/- per square foot.

For further reading: [FBR](#)

## **4. INLAND REVENUE REWARD RULES, 2021**

The FBR vide S.R.O. 1911(I)/2024 dated 20th November, 2024 was pleased to direct that the following further amendments shall be in the Inland Revenue Reward Rules, 2021, through which the FBR has sought to any service(s) performed as approved by the Prime Minister and directions are issued in this behalf, by the officers / persons governed by the aforesaid Rules, in the category of meritorious services, and that the reward for such service(s) shall be specified or directed by the Prime Minister. For further reading: [FBR](#)

## **B. INCOME TAX CIRCULARS**

### **1. REQUEST FOR CLARIFICATION / EXPLANATION ABOUT DOUBT IN NOTIFICATION NO. S.R.O. 1724(I)/2024, ISLAMABAD DATED 29-10- 2024, RELATING TO VALUATION TABLE OF KARACHI.**

The Commissioner-IR Zone V RTO 1 vide Clarification No. CIR/ZONE-V/RTO-1/2024-25/906 dated 26th November, 2024 was pleased to clarify the letter sent by Sub-Registrar Site Town, Karachi regarding the reduction rates Notification No. S.R.O. 1724(I)/2024 which pertained fair market value of the immovable properties in respect of residential, commercial, and industrial areas of Karachi. In relation thereto, it was clarified that the current Notification No. S.R.O. 1724(I)/2024 suppressed the S.R.O. 345(I)/2022. Hence, the previous notification was no longer in field. As a result, the calculation method of reduction rate is withdrawn and no reduction in value is offered in the current valuation table.

## **C. SALES TAX NOTIFICATIONS**

### **1. REGRADING FIX THE MINIMUM RETAIL PRICE OF IMPORTED AND LOCAL SUPPLY OF TEA**

The FBR vide S.R.O. 1735(I)/2024 dated 1st November, 2024 has fixed the minimum retail price of imported and local supply of tea for the purpose of payment of sales tax, at the rate as applicable and specified in clause (a) of sub-section (2) of section 3 of the said Sales Tax Act, 1990.

The table below provides the minimum retail price for Tea:

S. No.	Description	Minimum Retail Price (Excluding Sales Tax) per KG
(1)	(2)	(3)
1.	Tea	Rs.1,200/-

In case the value at which import or supply of above product is higher than the value fixed herein, the sales tax shall be charged on such higher value.

For further reading: [FBR](#)

## **CORPORATE NOTIFICATIONS**

### **A. SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (SECP)**

#### **1. IFRS 9 ECL Exemption Extension**

The SECP, vide S.R.O. 1784(i)/2024, dated 4th November, 2024 was pleased to notify that in respect of companies holding financial assets, due or ultimately due from the Government of Pakistan in respect of circular debt, the requirements contained in “IFRS-9 (Financial Instruments) with respect to application of Expected Credit Losses Method” shall not be applicable on such financial assets for the financial years ending on or before December 31, 2025:

Provided that such companies shall follow relevant requirements of IAS 39- Financial Instruments: Recognition and Measurement, in respect of above referred financial assets during the exemption period. For further reading: [SECP](#)

#### **2) Amendment in the Seventh Schedule of the Companies Act, 2017**

The SECP vide S.R.O.1806(i)/2024. dated 8th November, 2024 was pleased to make following alterations to the Seventh Schedule to the Companies Act, 2017 which is the Table of Fees to be paid to the Registrar and the Commission.



The table below shows the revision in the amount of fees:

S. No.	Item.	Previous Fee for submission of documents electronically (Amount in Rs.)	Revised Fee for submission of documents electronically (Amount in Rs.)	Previous Fee for submission of documents in physical form (Amount in Rs.)	Revised Fee for submission of documents in physical form (Amount in Rs.)
1	For registration of a company whose nominal share capital does not exceed 100,000 rupees, a fee of	1,100	5,500	2,200	10,000
2	Reservation of any proposed name for registration of a company from the registrar under section 10, a fee of	200	1,000	500	2,000

**Additionally, after sub-item (33) the following new sub-item shall be inserted namely, (33A) for registration as group.**

S. No.	Item.	Fee for submission of documents electronically (Amount in Rs.)	Fee for submission of documents in physical form (Amount in Rs.)
1	For registration as group under Regulation 138 of the Companies Regulations, 2024, a fee of....	100,000	150,000
2	For registration as group under Regulation 140 of the Companies Regulations, 2024, a fee of ...	100,000	150,000

For further reading: [SECP](#)

### 3. Amendments to the Consolidated Circular for Modarabas

The SECP, vide S.R.O. S.R.O.1861(I)/2024, dated 14th November, 2024 was pleased to make the following amendments to Consolidated Circular for Modarabas, published vide notification S.R.O. 2310 (I)/2022 dated December, 28, 2022 which was intended to facilitate and create an enabling environment for the Modaraba sector and to ensure compliance of statutory and regulatory requirements pertaining to the Modaraba sector.

Previously, Chapter 13 pertained to a formal mechanism known as the Shariah Compliance and Shariah Audit Mechanism (SCSAM) which was introduced to strengthen the Shariah compliance

by the modarabas. A Shariah advisor was appointed who would introduce a mechanism which will ensure procedures and policies adopted by the modaraba are in line with the Shariah principles. Additionally, an internal Shariah Auditor was appointed who would ensure that business transactions, agreements and investments of the modaraba are Shariah Compliant.

After the abovementioned notification, the provisions of the Shariah Governance Regulations, 2023, shall apply to modarabas and modaraba companies. Additionally, a modaraba company may voluntarily form, constitute, appoint or engage a Shariah supervisory board and until such board is formed, constituted, appointed or engaged, it shall mandatorily appoint a Shariah advisor registered under the Shariah Governance Regulations, 2023. Modaraba and modaraba companies will have a requirement to appoint an external Shariah audit which shall become effective and applicable for the period ending on or after June 30, 2025. For further insight: [SECP](#)

## **THE HON'BLE SUPREME COURT OF PAKISTAN ALLOWING INPUT TAX ADJUSTMENT FOR GOODS DAMAGED BY FIRE AND OTHER CONNECTED APPEALS AND PETITION(S).**

### **APPEAL ON LAHORE HIGH COURTS JUDGMENT**

#### **Introduction:**

The Hon'ble Supreme Court of Pakistan ("SCP") was moved by The Commissioner Inland Revenue, Legal Zone, Large Taxpayers Office, Lahore ("Petitioner") in Civil Appeal bearing No. 947 of 2002, against M/s Mayfair Spinning Mills Ltd ("Respondent"). The Petitioner was aggrieved with judgement passed by the Hon'ble Lahore High Court dated 04.12.2001 ("impugned judgment") in favour of the Respondent with regards to section 7 and section 10 of the Sales Tax Act, 1990 ("STA" or "the Act").

#### **Brief Facts of the Case:**

The Respondent is manufacturer of cotton yarn who purchased 28,899 bales of ginned cotton in December 1996 for a total value of Rs. 305.12 million with input tax amounting to Rs. 30.69 million. While submitting sales tax return for the month of December 1996, claimed a refund of Rs. 28.579 million while adjusting output tax of Rs. 2.113 million. A show cause notice was issued to the Respondent seeking justification of the claim and subsequently an order was passed on 15.09.1998 where the Tax Officer granted a partial refund of Rs. 12.95 million while disallowing the rest on the ground that some cotton bales were damaged or destroyed in a fire on 11.01.1997 rendering them unusable for the purpose of taxable supplies. The Respondent dissatisfied with the order appealed to the Collector (Appeals), who upheld the OIO and dismissed the Appeal of Mayfair Spinning Mills. Thereafter, the Respondent Appealed to the the Customs, Excise and Sales Tax Tribunal where the appeal was rejected vide order dated 01.05.1999.



The Deputy Collector of Sales Tax (Refund), Lahore appealed the order before the Hon'ble LHC where the appeal was decided in 2:1 majority in favour of the Respondent vide judgment dated 04.12.2001. The learned Judges in majority held that pursuant Section 7 of the STA, payment of input tax is available for adjustment and refund with respect of the input tax paid during a particular period. Additionally, it was held that the department as not justified to focus more on the goods rather than the input tax paid and that the claim is more related to tax period rather than the goods it was paid for. On the contrary, the learned Judge in minority was of the view that the right to seek adjustment will only be applicable when the same goods are used in further taxable supply.

The Appellant being aggrieved with the impugned judgment appealed before the Hon'ble SCP where leave to appeal was granted vide order dated 29.05.2022.

### **Arguments by the Learned Counsel of Appellant:**

The Counsel for the Appellant contended that the Hon'ble SCP to adopt the view of the dissenting Judge in the impugned judgement that the right to seek adjustment was only available when the goods on which input tax was paid are used in further taxable activities for making taxable supplies whereas goods damaged or consumed do not qualify for the same.

### **Arguments by the Learned Counsel of Respondent:**

The Counsel for the Respondent defended the majority view in the impugned judgement and argued that section 7 states that a registered person may deduct input tax paid for the purposes of taxable supplies already made but also the input tax paid for taxable supplies likely to be made in the future. Further, it was contended that to qualify for adjustment it is sufficient that the goods on which tax has been paid were intended for use in further taxable supplies and it is not necessary that the goods were actually used in production or manufacturing of taxable supplies in order to avail adjustment or claim a refund.

### **Issue:**

Entirety of arguments by both Counsels before the Hon'ble SCP revolved around one major question:

*1) Whether input tax deduction can be made under section 7 of the Sales Tax Act, 1990 in respect of goods which got destroyed by the fire and which do not remain available for making taxable supplies?*

## **Decision of the Hon'ble Supreme Court of Pakistan:**

The Hon'ble SCP held that the majority opinion in the impugned judgement of the Lahore High Court had applied the law aptly and hence no intervention was required by the SCP. Consequently, the appeal filed by the Appellant was dismissed.

The Hon'ble SCP arrived at this decision by bifurcating the issue into three main areas.

### **Section 7 of the Sales Tax Act, 1990**

The bare reading of Section 7 of the Act shows that to be entitled to deduct input tax paid from the output tax for adjustment purposes three things need to be considered:

- 1) The input tax paid on purchases of inputs or raw materials must be intended for the purpose of making taxable supplies.
- 2) The input tax paid must be for producing taxable supplies, irrespective of whether those taxable supplies have actually been made or are to be made in the future.
- 3) The input tax paid in a tax period is to be deducted from the output tax due for the same tax period and not against any future tax period.

The Respondent purchased the cotton bales for the purpose of making taxable supplies and paid the input tax for the same. Further, the input tax was adjusted against the output tax in the correct tax period before claiming the refund. Hence, the Respondent fulfilled all three conditions of Section 7 of the STA.

### **Refund of Excess Amount of Input Tax**

What qualifies as refund of excess amount of input tax. Section 10 and 66 of the STA. Section 10 states that where the input tax cannot be fully adjusted against the output tax. This was the scenario in the case at hand. Additionally, Section 66 stipulates the time frame when a claim is made which is one year which is not applicable in the present case.

### **Objection of the Tax Authority to the Refund Claim**

Section 8 of the Act stipulates where tax credit is not allowed. It was held that the objection raised by the Appellant that the claim is contrary to the mandate of Section 8 is not maintainable under the law as the provision does not apply to the case at hand.

For the abovementioned principles and reasons, the appeal was dismissed.

## **APPEAL ON SINDH HIGH COURTS JUDGMENT**

### **Introduction:**

The Hon'ble Supreme Court of Pakistan ("SCP") was moved by the Collector of Sales Tax & Federal Excise, Large Taxpayers Unit, Karachi in Civil Appeals No.980, 981, 982, 224-K and CP No.24 against M/s Johnson and Johnson Pakistan Pvt. Ltd. (in CA No.980) M/s Abbott Laboratories Ltd. (in CA No.981) M/s Merch Sharp & Dohme of Pakistan Ltd. M/s Glaxo Smith Kline Pakistan Ltd. (in CA No.982) (in CA No.224) M/s Wyeth Pakistan Ltd. (in CP No.246) ("Respondent")

### **Brief Facts:**

Respondents are registered manufacturers of pharmaceutical products, and each of them was served with a show-cause notice by the tax authorities disputing their input tax adjustments, in light of the amendment introduced through the Sales Tax (Amendment) Ordinance, 2002 ("Ordinance of 2002") and SRO No. 555(I)/2002 dated 23.08.2002 ("SRO No. 555"), as further amended by SRO No. 869(I)/2002 dated 30.11.2002 ("SRO No. 869"). Sales tax on pharmaceutical supplies was initially levied on 21.03.2002 and subsequently withdrawn on 23.08.2002, with the withdrawal being given retrospective effect from 01.07.2002 through SRO No. 869, issued on 30.11.2002. Respondents were issued show cause notices it was observed that they had adjusted the input tax paid on raw materials, which were not used in the manufacturing of taxable supplies, against the output tax, in contravention of sections 7 and 8 of the Sales Tax Act.

### **Arguments by the Learned Counsel of Appellant:**

The Counsel for the Appellant contended that SRO No. 555, as amended by SRO No. 869, effective from 01.07.2002, precluded the respondent-taxpayers from adjusting input tax against output tax after the specified date.

### **Arguments by the Learned Counsel of Respondents:**

The Counsel for the Respondent strongly opposed this position, arguing that their adjustments were validly during the period when sales tax was applicable to pharmaceutical products. They contended that the adjustments, having been completed during that period, constituted past and closed transactions, thereby creating vested rights in their favour.

### **Decision of the Hon'ble SCP:**

The Hon'ble SCP relied on the case of Commissioner Inland Revenue v. Mekotex (Pvt.) Ltd. (2024 SCP 316, where the court had ruled that the legislature could enact laws with retrospective effect, including altering past transactions. However, the present case is different because it involved



subordinate legislation (SROs) rather than primary legislation, and it concerns the extension of a tax exemption rather than the withdrawal of a benefit. The purpose of the SROs was to benefit taxpayers by exempting pharmaceutical products from sales tax, unlike the Mekotex case, which withdrew a tax credit benefit.

In conclusion, the respondents had already availed the financial benefits, and demanding repayment of those benefits based on the SROs would undo past transactions and affect vested rights. Therefore, the Sindh High Court's judgments were upheld, and the appeals and petition(s) were dismissed.

## **TOPIC OF THE MONTH: DELEGATION OF POWERS BY THE COMMISSIONER INLAND REVENUE UNDER SECTION 210 OF THE INCOME TAX ORDINANCE 2001**

The Commissioner Inland Revenue ("CIR") has been empowered under Section 210 of the Income Tax Ordinance 2001 ("ITO") to delegate his all his powers (other than the power of delegation) to any officer of the Inland revenue subordinate to him, other than the power to pass an Order under Section 122(5A) of the ITO and amendment of a recovery Order u/s 161(3) of the ITO, both of which can only be delegated to the Additional Commissioner Inland Revenue. The said delegation has to be through an Order in writing.

### **SECTION 210 OF THE ITO:**

210. Delegation. —

(1) The Commissioner 2[subject to sub-section (1A),] may, by an order in writing, delegate to any 3[Officer of Inland Revenue, subordinate to the Commissioner] all or any of the powers or functions conferred upon or assigned to the Commissioner under this Ordinance, other than the power of delegation.

[(1A) The Commissioner shall not delegate the powers of amendment of assessment contained in sub-section (5A) of section 122 [ and amendment of an order of recovery under sub-section (3) of section 161] to [an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue.]

[(1B) The Commissioner may, by an order in writing, delegate to a special audit panel appointed under sub-section (11) of section 177, or to a firm of chartered accountants or a firm of cost and management accountants appointed by the Board or the Commissioner to conduct an audit of person under section 177, all or any of the powers or functions to conduct an audit under this Ordinance.]

(2) An order under sub-section (1) may be in respect of all or any of the persons, classes of persons or areas falling in the jurisdiction of the Commissioner.

(3) The Commissioner shall have the power to cancel, modify, alter or amend an order under sub-section (1).

### **SECTION 122(5A) OF THE ITO:**

122. Amendment of assessments.— (1) Subject to this section, the Commissioner may amend an assessment order treated as issued under section 120 or issued under section 121 or by making such alterations or additions as the Commissioner considers necessary

...

(5A) Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue.

### **ALLIED BANK CASE (2023 SCMR 1166):**

In the said case, the moot point was whether the Commissioner had the power to delegate his functions / powers to the Additional Commissioner to pass an Order u/s 122(5A) of the ITO. The Supreme Court upheld previous cases, reported and unreported, wherein the Hon'ble SCP and the High Courts of Pakistan have held previously that the Commissioner can validly delegate his powers to the Additional Commissioner to pass an Order u/s 122(5A) of the ITO.

### **CONCLUSION**

The Hon'ble SCP has reiterated that the Additional Commissioner can pass an Order u/s 122(5A) of the ITO. This is also beneficial for taxpayers in those cases where officers below the rank of Additional Commissioner has assumed jurisdiction and passed an Order u/s 122(5A) of the ITO.

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