

TAXPAK

Newsletter by

Tola Associates



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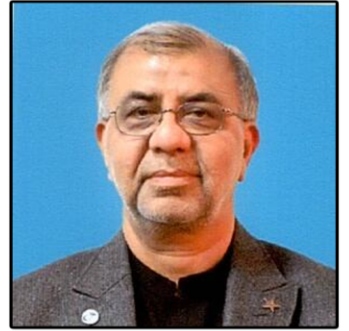
Case Law: The hon'ble appellate tribunal inland revenue, division bench-i islamabad, interpreting and giving meaning to the word "person" as defined in the newly substituted section 131 of the income tax ordinance, 2001.

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Disclaimer

Chairman's Message

Assalam-o-alaikum everyone! First and foremost, we would like to extend our heartfelt wishes for a joyous and prosperous New Year. May this year bring you happiness, success, and countless opportunities to achieve your goals. 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. The Hon'ble Appellate Tribunal Inland Revenue, Islamabad, interpreting and giving meaning to the word "Person" as defined in the newly substituted Section 131 of the Income Tax Ordinance, 2001.

Towards the end of the newsletter, we have discussed our Topic of the month titled The Concepts of Eligible Person, Ineligible Person and Sufficient Resource. The said topic provides a brief overview of the proposed amendment introduced vide the Tax Laws (Amendment) Bill, 2024 which has reportedly been approved by the Senate.

All our readers are requested to visit our website 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,
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Tola Associates.

FEDERAL BOARD OF REVENUE (“FBR”) NOTIFICATIONS

A. INCOME TAX NOTIFICATIONS

1) SWAPS Agents

The FBR, vide Notification bearing reference No. S.R.O.2041(i)/2024, dated 10th December, 2024, was pleased to communicate that the below mentioned banks integrate with Synchronized Withholding Administration and Payment Software (“SWAPS”) as agents for the purpose of deduction and collection of withholding taxes. The following banks will integrate with SWAPS:

Sno	NTN	Name of Withholding Agent
(1)	(2)	(3)
01	2554922-7	Al Baraka Bank (Pakistan)Limited
02	801428	Allied Bank Limited
03	0709045-5	Askari Bank Limited
04	10698202-6	Bank Al-Falah Limited
05	0709857-0	Bank Al-Habib Limited
06	2238845	Bank Islami
07	7483913	Bank of China Limited
08	0700253-0	Citi Bank N.A
09	0700245-9	Deutsche Bank AG
10	2395184-2	Dubai Islamic Bank Pakistan
11	0815065-6	Faysal Bank Limited
12	0700268-8	First Women Bank Limited
13	0698187-9	Habib Bank Limited
14	0711167-3	Habib Metropolitan Bank Limited
15	3751229-3	Industrial and Commercial Bank of China
16	0700285-8	Industrial Development Bank of Pakistan Limited
17	2663703-7	JS Bank Limited
18	0700267-0	MCB Bank Limited
19	4422426-5	MCB Islamic Bank Limited
20	0787226-7	Meezan Bank Limited
21	0700271-8	National Bank of Pakistan
22	0801400-7	Punjab Provincial Cooperative Bank Limited
23	1804331-3	Samba Bank Limited
24	816469	SILK Bank Limited
25	3654008-7	Sindh Bank Limited

26	1471147-8	SME Bank Limited
27	0801438-8	Soneri Bank Limited
28	2731134- 1	Standered Chartered Bank Pakistan Limited
29	2663705-7	Summit Bank Limited
30	0000092-2	The Bank of Khyber
31	0800543-5	The Bank of Punjab
32	0801164-8	United Bank Limited
33	2567068-9	Zarai Tarqiati Bank Limited
34	9011209	State Bank of Pakistan

The aforementioned SWAPS Agents shall be liable to collect and deposit withholding taxes under sections 153(i)(a) and 153(i)(b) of Income Tax Ordinance,2001, through SWAPS Portal.

For further reading: [FBR](#)

2) AMENDMENTS IN INCOME TAX ORDINANCE, 2001 (ORDINANCE NO. X OF 2024)

The Ministry of Law and Justice vide publication No. F. No. 2(1)/2024-Pub, dated 29th December, 2024, communicated that the President of Islamic Republic of Pakistan, in exercising of powers conferred by Article 89 of the Constitution of Islamic Republic of Pakistan, 1973 was pleased to promulgate the Ordinance No. X of 2024 which introduces certain amendment to the 2001 Ordinance focused on banking companies.

The first amendment comes forth in the Part I, Division II of the First Schedule of the Income Tax Ordinance, 2001 wherein the tax rate of 39% for banking company shall be substituted. The new tax rates are reproduced hereunder:

"Type of Company	Rate of Tax		
	(1)	(2)	
Banking Company	Tax Year 2025	Tax Year 2026	Tax Year 2017 and onwards
	44%	43%	42%

Further, there shall be an amendment in sub-rule (6A) of rule 6C Seventh Schedule. The Seventh Schedule governs the taxation framework regarding banking companies. Sub-rule 6A of Rule 6C of the Seventh Schedule focuses on the taxation of income from investments in Federal Government securities by banks. For the expression "2022 and onwards" the figure "2023" shall be substituted. The existing explanation at the end shall be numbered as Explanation 1. Following Explanation 2 and proviso shall be added:

"Explanation-2, - For removal of doubt, it is clarified that the: term "gross advances and deposit" referred to in this sub-rule for the: purpose of computing gross advances to deposit ratio shall be the amount of "gross advances and deposit" at the end of the accounting period and as disclosed in the annual audited accounts:

Provided that from tax year 2025 and onwards profits and gains of a banking company shall be subjected to tax rates under Division I of Part I to the First Schedule and nothing contained in this sub-rule shall apply. to compute part or whole of the tax liability of a banking company."

Further, the explanation 2 clarifies the term gross advances and deposit shall be the gross amount at the end of accounting period and as disclosed in the audited accounts. The following proviso states that from Tax Year 2025 and onwards the profit and gains of a banking company shall be subjected to tax at the rates specified in Part I, Division II of the First Schedule which have been mentioned above. Due to this change, the impact will be that the Asset to Deposit Ratio tax that was supposed to apply for tax year 2025 on Banking companies shall not be applicable as the abovementioned proviso excludes the banking companies from the ambit of this rule for Tax Year 2025 and onwards.

3) Separate Notice/ Proceedings u/s 111 of the Income Tax Ordinance, 2001

The FBR, vide letter bearing reference No. C.No. 1(76)SS(A&A)/2023, dated 13th December, 2024 has issued instructions that a separate notice/proceeding under section 111 of the Income Tax Ordinance, 2001 is a prerequisite before invoking the provisions of section 122 of the Income Tax Ordinance, 2001. The letter cites cases like The Commissioner Inland Revenue v Millat Tractors (Ltd) (2024 SCMR 700) and Zubair Khan v Commissioner Inland Revenue Jhelum Zone (2024 PTD 1112) where the courts have held that before invoking section 122, the officer/departments need to conclude proceeding u/s 111. Further, the FBR has instructed its officers that since sequence of proceeding is based on the judgment of the Hon'ble Supreme Court of Pakistan, it is binding on all officers and appellate fora.

SALES TAX ON SERVICES NOTIFICATIONS

A. SINDH REVENUE BOARD (SRB)

1. Amendment in Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

The SRB, vide Notification No. SRB-3-4/70/2024, dated 19th December, 2024 was pleased to direct following further amendments shall be made in the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 which prescribes procedures for withholding where following amendments shall be made:

1) In rule 1, in sub-rule (2), in clause (f), the words "or services of transportation or carriage of goods by road (tariff heading 9836.0000, other than those through pipeline or conduit or through specialized car carriers or through the fleet of logistic service providers owning not less than 25 goods transport vehicles)," shall be omitted

Rule 1 sub-rule (2) specifies withholding agents for the purpose of deduction and deposit of tax which apply to taxable services provided and rendered by the persons mentioned in the sub-rule 2. The amendment omits services of transportation or carriage of goods by road for the purpose of withholding.

2) In rule 3, in sub-rule (5), for the comma and words ", renting of immovable property and transportation or carriage of goods by road (other than the services of transportation and carriage of goods through truck addas or through bus/wagon stands)", the words "and renting of immovable property" shall be substituted.

Rule 3 pertains to the responsibility of a withholding agent. The amendment in sub-rule 5 states that a person who receives or renders *transportation or carriage of goods by road* cannot deduct amount of sales tax as mentioned in the invoice.

For further insight: [SRB](#)

2. Introduction of Sindh Sales Tax Special Procedure (Collection Agent) Rules, 2024

The SRB, vide Notification No. SRB-3-4/71/2024 dated 19th December, 2024 was pleased to prescribe the abovementioned rules. The rules shall apply in relation to collection and payment of tax on the services as specified in the table below:

Sr. No.	Description of taxable service	Collection agent	Tariff heading	Rate of tax	Collection rate
1.	Services provided or rendered by restaurants (including homechefs) registered under section 24, specified in 24A or 248 of the Act	Food delivery platforms/third party food delivery service providers	9801.2000 9801.6000	a) 8% without input tax credit/adjustment where payment against tax invoice for the services is received through debit or credit cards, mobile wallets or QR scanning; and b) 15% for others	50% of amount of sales tax as payable at the rate specified in column (5)
1.	Services provided or rendered by restaurants (including homechefs) not registered under section 24, specified in 24A or 248 of the Act	Food delivery platforms/third party food delivery service providers	9801.2000 9801.6000	15%	1% of amount of sales tax as payable at the rate specified in column (5)

The collection agent shall charge and collect the amount of sales tax at the collection rate as specified in column (6) of the above Table on the gross value of the specified service. Further, The tax amount, as applicable, shall be declared in row 14b of the monthly return (Form SST-03) and should be deposited by the collection agent, without any adjustments or deductions, into the Sindh Government's account "B-02384" by the 15th day of the month following the tax period in which the tax is collected at the applicable collection rate. For further reading: [SRB](#)

3. Amendments in Sindh Sales Tax on Services Act, 2011

The SRB, vide Notification No. SRB-34/72/2024 dated 19th December, 2024 was pleased to direct following further amendments shall be made in the Sindh Sales Tax on Services Rules, 2011. In rule 37, which pertains to Custom House Agents, Clearing Agents and Shop-Chandlers. After the full stop at the end, following Proviso shall be inserted:

"Provided that the value of taxable services in relation to the documents filed, as specified in column (2) of the Table below, shall not be less than the minimum benchmark level per document as indicated in column (3) of the TABLE:-

Sr. No.	Document	Minimum Value of Taxable Services
1.	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for home consumption or into-bonding in terms of section 79 of the Customs Act, 1969	Rs.8,500
2.	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for ex-bonding in terms of section 104 of the Customs Act, 1969	Rs.1,750

3.	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for export in terms of sections 105 or 131 of the Customs Act, 1969	Rs. 2,500
4.	Application filed for issuance of permit for transshipment or transit of goods in terms of sections 121 and 127, respectively, of the Customs Act, 1969	Rs.1,750
5.	Goods Declaration filed under sections 79, 104, 105, 131 or 139 of the Customs Act, 1969 in relation to import or export or clearance of goods or of un-accompanied baggage through Air Freight Unit (AFU) at any customs airport	Rs.1,750
6.	Rebate or duty drawback claims filed at any customs station in relation to export of goods	0.25% of the amount of rebate/duty drawback claimed

The amendment introduces a benchmark of the minimum value of taxable service for the documentation filed as specified in the abovementioned table. For further reading: [SRB](#)

CORPORATE NOTIFICATIONS

A. SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (SECP)

1) Delegation of Powers to Commissioner and Other Officers

The SECP, vide S.R.O.1963(i)/2024, dated 24th November, 2024, in supersession of its earlier notifications No. S.R.O. 603(i)/2021 dated May 25, 2021, and S.R.O. 1726(i)/2022 dated September 06, 2022 which pertained to the delegation of powers and functions of the Commission to its Commissioner and the officers. The new S.R.O describes in detail the delegatory powers and functions of the Commissioner and other officers such as Divisional Head (LRD)/Executive Director, Registrar of Companies/Head of Department (CRD), Registrars Concerned of the Companies Registration Offices and Incharge Business Centre. For further insight: [SECP](#)

THE HON'BLE APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I ISLAMABAD, INTERPRETING AND GIVING MEANING TO THE WORD "PERSON" AS DEFINED IN THE NEWLY SUBSTITUTED SECTION 131 OF THE INCOME TAX ORDINANCE, 2001.

Introduction:

The Hon'ble Appellate Tribunal Inland Revenue, Division Bench-I Islamabad ("Tribunal" or "ATIR") was moved by The Commissioner Inland Revenue, Zone-IV, Large Taxpayers Office, Islamabad ("Appellant") in ITA No. 1305/IB/2024 Tax Year 2018, against M/s Supernet Limited ("Respondent"). The Appellant was aggrieved with judgement passed by the Commissioner Inland Revenue (Appeals-I) dated 30.04.2024 by the appellant under the newly substituted Section 131 of the Income Tax Ordinance, 2001 ("the Ordinance").

Brief Facts of the Case:

The appeal was filed on 17.05.2024, after the amendment in Section 131 through the Tax Laws (Amendment) Act, 2024, which became effective from 03.05.2024.

The post amendment Section 131(1) stipulates:

"131. Appeal to the Appellate Tribunal. —(1) Subject to Section 126A, **any person**, other than an SOE, aggrieved by any order passed by an officer of Inland Revenue, Commissioner, Chief Commissioner, Board, or Commissioner (Appeals) under this Ordinance or its rules may, within thirty days of receiving such order, appeal to the Appellate Tribunal or refer the matter to the High Court."

Prior to the amendment, Section 131(1) stated:

"131. Appeal to the Appellate Tribunal. —(1) Where the **taxpayer or Commissioner** objects to an order passed by the Commissioner (Appeals), the **taxpayer or Commissioner** may appeal to the Appellate Tribunal against such order."

The question that arose before the ATIR was whether the substituted act applied in the current scenario. If yes, whether the substituted act limits the Commissioner to file an appeal before the ATIR.

Arguments by the Learned Counsel of Appellant:

The learned DR argued that the appeal was filed before the implementation of the amendment. The DR asserted that, at the time of filing the appeal, the unamended provision of Section 131(1) was applicable, which allowed either the "taxpayer or Commissioner" to file an appeal before the Appellate Tribunal.

Arguments by the Learned Counsel of Respondent:

The learned AR for the respondent raised objections regarding the applicability of Section 131 of the Ordinance, which was amended through the Tax Laws (Amendment) Act, 2024.

Issue:

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

1) Does the term "Commissioner," as defined in Section 2(13) of the Income Tax Ordinance, 2001, fall within the scope of "person" as defined in Section 2(42), read with Section 80 of the Ordinance, thereby entitling the Commissioner to file an appeal under the newly substituted Section 131.

Decision of the Hon'ble Tribunal:

The Tribunal analyzed whether the Commissioner falls within the definition of person for the purpose of Section 131. **Section 2(42)** provided the definition of a "person" as having the same meaning as provided in **Section 80** wherein it is stated that a person can be individuals, companies, associations of persons, and various types of legal and artificial entities such as governments and trusts. The definition does not explicitly include Commissioner. Whereas, the term Commissioner is defined in Section 2(13) separately.

The Tribunal further analyzed the Legislative Intent of the amendment wherein it was concluded that the exclusion of the term "Commissioner" suggests that the legislature intended to limit the appeal rights to persons as defined under section 2(42). Therefore, under the new section 131, the Commissioner may not have the right to appeal to the ATIR.

TOPIC OF THE MONTH: THE CONCEPTS OF ELIGIBLE PERSON, INELIGIBLE PERSON AND SUFFICIENT RESOURCE

The Tax Laws (Amendment) Bill 2024 ("the Bill") has proposed to introduce certain amendments in, inter-alia, the Income Tax Ordinance 2001 ("ITO"). The Bill has reportedly been approved by the Senate.

ELIGIBLE PERSON

The Bill has proposed to introduce the concept of an "eligible person", through enacting a new

Section 114C to the ITO. An eligible person has been defined in Section 114C(5)(b) as a person, who has filed a return of income for the tax year immediately preceding the year of transaction mentioned in sub-section (i) and has sufficient resources in the wealth statement in case of an individual, or financial statement in case of a company or an association of persons, as the case may be, for such transaction. Further, as per the proviso to the aforesaid sub-section, in case of an individual, the eligible person shall include his immediate family members.

For e.g. if a person opts to buy an immovable property during Tax Year 2025, he will be an eligible person if he has filed a return of income for Tax Year 2024 and has sufficient resources (130% of the cash and cash equivalent declared by a person in his wealth for Tax Year 2024).

INELIGIBLE PERSON

An ineligible person has been defined under Section 114C(5)(d) as a person who is not an eligible person.

For e.g. if a person that wants to buy an immovable property in TY 25, but has not filed his income tax return for TY 24 then that person shall be an ineligible person. Another example could be where Mr. A has filed his return of income for TY 24 and has declared his wealth at PKR 100, but wants to purchase an immovable property worth PKR 500. In this case, even though Mr. A is a filer, however, due to insufficient resources, he will be categorized as an ineligible person.

SUFFICIENT RESOURCE

The Bill has proposed to define sufficient resources as 130% of the cash and equivalent assets, declared by a person in his wealth statement filed for the latest tax year or in the case of a company or association of persons cash and equivalent assets, declared in the financial statements attached with the income tax return for the latest tax year.

RESTRICTIONS IMPOSED ON INELIGIBLE PERSONS

- Application for booking, purchase or registration of a motor vehicle shall not be accepted or processed by manufacturer of motor vehicle or vehicle registering authority of excise and tax department.
- Application or request to any authority responsible for registering, recording or attesting transfer of any immovable property, more than such value in aggregate in a tax year as may be notified by the Board from time to time, shall not be accepted or processed. This means that the restriction shall not apply on purchase or sale of immovable property unless the FBR notifies the threshold vide a SRO / Notification.
- Any person, authorized to sell securities including debt securities or units of mutual funds including a person authorized to open and maintain an account or clear such transactions, shall not sell, open an account or clear sale of securities, mutual funds, to an ineligible person being an

individual or an AOPs; • Banking Companies have been restricted from opening or maintaining an already opened current, savings or an investor account of those persons that have been notified by the Board. This means this restriction will become effective once the names are notified by the FBR.

CERTAIN TRANSACTIONS CARVED OUT FROM THE AFORESAID RESTRICTIONS

- An ineligible person can purchase rikshaws, motorcycle rickshaws or tractors;
- An ineligible person can purchase a pick-up vehicle upto 800CC;
- An ineligible person can purchase motor vehicles other than the above, or trucks and buses, subject to the limitations notified by the Board. This means that for vehicles other than rikshaws, motorcycle rikshaws, tractors, or a pick-up vehicle up to 800CC, an ineligible person cannot purchase the same until the Board notifies the limitations and restrictions;
- A transaction conducted by a public company or a non-resident person, except for cash withdrawals from their bank accounts.

WHAT HAPPENS IF AN INELIGIBLE PERSON FILES AN INCOME TAX RETURN FOR THE LATEST / PREVIOUS TAX YEAR?

- If an ineligible person files their income tax return for the latest completed tax year, and files a source of investment and expenditure statement / declaration on the Board's web portal specifying the sources of funds for making such transaction. It may be noted that the sources of investment and expenditure statement filed by the person and sufficient resources mentioned in sub-section (5), shall not be construed as nature and source of income for the purposes of Section 111.

PRACTICAL CONSIDERATIONS

- The concept of sufficient resource needs to be revisited. Pursuant to the Bill, if Mr. X owns an immovable property and has declared it in his wealth statement at PKR 100 (cost), and sells it after 10 years at PKR 500, and wishes to purchase a property worth PKR 400, then he will not be considered an eligible person as his wealth statement for the previous tax year shall include the property at the cost of PKR 100. This is violative of Article 23, as the restriction in question is not reasonable.
- Filing of sources of investment and expenditure statement is against the self-assessment scheme under the ITO. Therefore, it may be held to be ultra vires the ITO by the Hon'ble Courts of law in Pakistan. Further, it is unclear whether the ineligible person may file an expenditure and income statement for every transaction after filing his income tax return for the latest tax year. If this requirement is for every transaction, then it will be a cumbersome exercise for the taxpayer, and compliance cost for the taxpayer will increase.

CONCLUSION

The concepts of (in)eligible person and sufficient resource needs to be revisited as currently the same may be impractical and be challenged in the High Courts of Pakistan.

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