

IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL,
MOST BENEFICENT



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DISCLAIMER

Khilji & Co (Chartered Accountants) is pleased to present Firm's Newsletter. The only purpose of this document is to provide updated information to our clients about recent circulars/ notifications issued by various authorities during this month and also to provide our clients with information on latest useful decisions of appellate courts. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This newsletter is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

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Supreme Court of Pakistan – ITR No. 1509 of 2016

Parties: PTV Corporation Ltd

VS CIR (Legal) LTU, Islamabad

Date of Order: 23-10-2018

Brief Facts:

The brief facts of this appeal are that a show cause notice (SCN) dated 23.05.2011 was issued to the appellant for the tax years 2006-2007, 2008-2009 and 2009-2010 raising four issues: (i) non-payment of Federal Excise Duty (FED) on receipt of PTV license fee; (ii) non-payment of sales tax on program sales; (iii) non-payment of sales tax on sales of fixed assets; and (iv) non-payment of sales tax on sale of scrap. After receiving two replies dated 08.06.2011 and 15.06.2011, the Deputy Commissioner Inland Revenue (DCIR) passed an Order-in-Original (O-in-O) dated 04.10.2011 for recovery of the amounts mentioned in the SCN along with default surcharge and penalty (all under the relevant provisions of law).

The appellant preferred an appeal against the O-in-O before the Commissioner Inland Revenue, Appeals-II (CIRA) which, vide Order-in-Appeal (O-in-A) dated 27.02.2012, was accepted to the extent that the matter of sales tax on sale of programs was remanded and the matters of non-payment of sales tax on sale of fixed assets and of scrap were vacated, whereas the appeal was dismissed on the point of non-payment of FED on receipt of PTV license fee. Thereafter the appellant filed an appeal before the Appellate Tribunal Inland Revenue (ATIR) which was also dismissed vide order dated 04.12.2012. This order was assailed before the learned High Court through a Sales Tax Reference (STA) which was dismissed through the impugned judgment. Hence, the instant appeal with the leave of the Court dated 23.05.2016 which reads as under:-

“Federal Excise Duty was levied on TV license fee which is being collected through electricity bills via various distribution companies. This levy was made under the Wireless Telegraphy Act, 1993 read with the Television Receiving Apparatus (Possession and Licensing) Rules, 1970 and in the circumstances no excisable services are being provided by the petitioners as defined under Section (1)(d) of the Federal Excise Act, 2005. It is stated by the learned counsel for the petition that the view set out by the learned High Court to the contrary is not based on a proper construction/interpretation of the requisite law...”

Decision:

The honorable Court after discussing the legal provisions, principle regarding favoring taxpayer while interpreting the taxation provisions and nature of amount involved i-e “license fee” to be a support payment allowed the appeal and set aside the impugned order in following words:

"15. The Television Receiving Apparatus (Possession & Licensing) Rules, 1970 (Rules) were framed under Section 10 of the Wireless Telegraphy Act. Rule 3(3) of the Rules, requires the "holder" to obtain a license "immediately after he comes into possession of a television set" [Emphasis supplied]. Rule 2(e) of the Rules defines a "holder" as "any person for the time being in possession of a television receiving apparatus" [Emphasis supplied]. Rule 2(i) of the Rules defines "Television Receiving Apparatus" as "any apparatus...capable of being used for receiving the telecasts and includes any apparatus which is temporarily incapable of being so used by reason of a defect..." [Emphasis supplied]. Although now the collection of TV license fee is made through electricity bills, the Wireless Telegraphy Act and the Rules make the Parliamentary intention clear. The license fee is paid not for any service provided by the appellant but by the holder of the TV set for its possession. The taxable event is not the provision of any service by the appellant. It is the possession of a television set by the holder. The Government of Pakistan allows the fee so collected to be used by the appellant for its maintenance and operations. The State has an interest in owning and operating a television corporation.

This requires money. It, therefore, decided to levy license fee, collect it and allow the appellant to receive and use it for its maintenance and operations. It is for this reason that the amount of license fee received by the appellant is disclosed in its financials. The contention of the learned counsel for the respondent that the receipt of fee by the appellant establishes that it is subject to FED is not correct. All that it establishes is that the Government of Pakistan which has levied the fee has decided to allow the appellant to receive it and to use this revenue for its maintenance and operations. For FED to be levied on this amount it must further be established that it is a "service" as defined in Section 2(23) of the Federal Excise Act and is subject to the charge levied under Section 3 thereof which, as discussed above, is clearly not the case. TV license fee not being the product of any service provided by PTV, FED cannot be levied on it.

*16. The foregoing are the detailed reasons for our short order of even date which reads as under:-
"For the reasons to be recorded later, this appeal is allowed and the impugned order is set aside.""*

Peshawar High Court – W.P. No. 753-P of 2013

Parties: Agro Pack (Pvt) Ltd VS Federation of Pakistan

Date of Hearing: 25-06-2015

Brief Facts:

Brief and essential facts relevant and necessary for adjudicating the issues raised in the present petition are that the petitioners are manufacturing concerns having of Manufacturing Bond Licenses issued under the enabling provisions of Customs Rules, 2001 ("Rule"). The supply of goods manufactured by the petitioners to Afghanistan, were not charged the zero rate of sales tax permissible under Section 4 of the Sales Tax Act, 1990 ("Act") due to the restrictions provided under SRO 190(I)/2002 dated 2.4.2002 ("SRO 190").

Earlier, Messrs Agro Pack (Pvt.) Ltd, (petitioner in W.P. No. 753-P/2010) had sought from the Revenue refund of sale tax paid from May 2005 to May 2007 on the electricity bills and locally manufactured packing materials on the ground that both were used for the products exported to Afghanistan in terms of Rule 247 (new 352) of the Rules. The refund was refused by the Revenue and the matter finally came up for consideration before the apex Court in Civil Petitions Nos. 271-P to 295-P of 2011 ("Agro Packs's case"), wherein the stance of the petitioner Company was not accepted vide judgment dated 24.1.2013.

Now, Messrs Agro Pack (Pvt.) Ltd, along with other Company have invoked the Constitutional jurisdiction of this Court, challenging the vires of SRO 190 through the instant petitions.
since the appellant was the owner of the properties.

Decision:

The honorable Court after discussing the legal provisions recorded its opinion that the Federal Govt has exceeded its powers, followed the order of the Supreme Court being binding on all Courts denied the prayer sought in the appeal filed in following words:

“10. Accordingly, this Court is of the considered opinion that the Federal Government has exceeded its powers in issuance of SRO 190 by excluding selected supply of goods, including those manufactured by companies, such as the petitioners having Bonded Licenses being exported to Afghanistan.

11. Having opined that the Federal Government has exceeded its jurisdiction and authority in issuance of SRO 190, yet this Court cannot render any finding in this regard, when faced that the findings already recorded by the apex Court in Agro Pack (Pvt.) Limited’s case (Civil Petitions Nos. 271-P to 295-F of 2011) decision dated: 24.1.2013, wherein the SRO 190 issued under section 4 of the Sales Tax Act, was commented upon in terms that:--

“SRO 190(I) of 2002 was issued by the Federal Government expressly in exercise of its powers under clause (Hi) of the first proviso of Section 4 of the Sales Tax Act. The exemption on exported goods under clause (e) of Section 4 is subject to the powers of the Federal Government under clause (iii) of the first proviso of Section 4, allowing the Government to withdraw the exemption from payment of sales tax on goods exported. The learned counsel was not in a position to dispute conferment of such statutory powers of the Federal Government or its exercise in terms of SRO 190(1) of 2002. “

12. No doubt, the above findings of the apex Court are obiter dicta, yet this Court is bound by the same under the command of Article 189 of Islamic Republic of Pakistan, 1973. The legal position of a findings recorded by the apex Court, even if obiter dicta has been adjudged to have binding effect upon all Courts including this Constitutional jurisdiction, in various pronouncement including Justice Khurshid Anwar Bhinder’s case (PLD 2010 SC 483), wherein it was held that:--

“Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of this Article and is binding on all Courts in Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to the high place which the Court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite ‘expression of the Court’s view on a legal principle, or the meaning of a law.’” (emphasis provided)

The above principle has been adhered to consistently by the superior Courts of our jurisdiction in cases including Syed Shabbir Hussain Kazmi’s case PLD 2006 Federal Shariat Court (1), Mian Manzoor Ahmad Wattoo’s case (2002 YLR 3433 Lahore), Faiz Bakhsb’s case 1986 CLC 507 Lahore), Aziz Ahmed’s case (1975 PCr.LJ 105 Karachi), and Zafar Ahmad Khan’s case (2009 PLC (C.S.) 415 Karachi).

13. For the reasons stated hereinabove, the prayer sought in the present petitions, cannot be granted by this Court in its Constitutional jurisdiction, hence the petitions are dismissed, accordingly.

NOTIFICATIONS / CIRCULARS

FBR Notification

Introduction

Federal Board of Revenue Revenue issued Notifications ref: SRO Ref: No 110(I)//2019. dated January 31, 2019.

Commentary

The aforementioned SRO has made following changes to SRO 1125(1)/2011 dated December 31, 2011:

- Deleted entry “h” for (imported cotton and ginned cotton) in table I, serial number 2 as the said effect has been incorporated in conditions as mentioned below.
- Substituted clause (a) of condition (ii) to include “in case of textile sector, for imports, raw and ginned cotton stages and onwards and for local supplies spinning stage onwards”. Hence extending the benefit of lower rates in terms of above mentioned SRO 1125 to onward stages for raw and ginned cotton imported and spinning stage and onwards for local supplies

Link of Document(s)

In order to make our respected clients completely informed, in addition to the latest SRO, the previous SROs are also uploaded hereunder

1. Latest SRO

<https://khilji.net.pk/wp-content/uploads/2019/02/20191311914336721SROI2019.pdf>

2. SRO 1125, first issue

<https://khilji.net.pk/wp-content/uploads/2019/02/20111231121223122892010SRO1125.pdf>

3. SRO 1125, significant change

<https://khilji.net.pk/wp-content/uploads/2019/02/20187131772912509S.R.O88112018.pdf>

FBR Circular

Introduction

Federal Board of Revenue Revenue issued Circular ref: Circular 1/2019. dated February 1, 2019.

Commentary

Through the aforementioned Circular FBR has extended the date of filing of revised return as specified in Clause iii of Section 214 E upto **February 28, 2019**

Link of Document(s)

Please click below to view the original Circular

<https://khilji.net.pk/wp-content/uploads/2019/02/201921172396952CircularIncomeTax.pdf>

SECP Notification

Introduction

Securities and Exchange Commission of Pakistan has issued S.R.O. 214 (I)/2019 dated February 08, 2019.

Commentary

SECP vide S.R.O. 214 (I)/2019 delegated powers and functions under the Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980 and the Modaraba Companies and Modaraba Rules, 1981 from the Registrar Modaraba to Joint Director Supervision and Enforcement Department, Specialized Companies Division. Powers and functions delegated under the Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980 are specified herein: -

S. No.	Relevant section of the Ordinance	Nature of power/functions
1	14	To call information/ documents with regard to annual audited accounts of a Modaraba.
2	21	To order an inquiry into the affairs of a modaraba company or a modaraba: - on his own motion, or - on receipt of application from the certificate holders.
3	34	To: (a) enforce attendance of a person and examine him on oath or affirmation; and (b) compel the discovery and production of documents.

Powers and functions delegated under Modaraba Companies and Modaraba Rules, 1981 are specified herein: -

S. No.	Relevant rule of the Rules	Nature of power/functions
1	3(2)(f)	To lay-down, receive and examine all reports, accounts and other documents referred to in section 14 and to pass orders for and receive such additional documents or reports or information as may be considered necessary.
2	3(3)	To: (i) Examine annual accounts and quarterly accounts received by him and return the deficient document for compliance, revision or correction. (ii) Allow a representative of the modaraba company to rectify or complete annual accounts and quarterly accounts.
3	3(4)	To call various fees as prescribed under 2nd Schedule to the Rules.
4	3(5)	To issue acknowledgement of filing of annual accounts and quarterly accounts.
5	3(6)	To maintain the annual and quarterly accounts in the manner provided under this rule.
6	3(7)	To make endorsement on the annual and quarterly accounts, the particulars as specified under this rule and sign, and affix his official seal, to every such endorsement.

7	3(8,9 & 10)	To maintain a register of modaraba companies and a register of modarabas and to enter therein the information relating to filing of annual and quarterly accounts in the manner as specified under sub-rules 8, 9 & 10 of rule 3.
8	3(11)	To permit members of the public to inspect such registers and annual and quarterly accounts maintained under sub-rules 8, 9 & 10 of rule 3.
9	3(13)	To grant copies of entries in the registers and annual and quarterly accounts on payment of the prescribed fees.
10	3(14)	To take cognizance of omission to file or register annual or quarterly accounts on due date or any other omission, lapse, irregularity or infraction of the law by or in relation to a modaraba company or modaraba.
11	3(16)	To prepare or cause to be prepared and keep a seal for the authentication of documents.
12	10	To receive the quarterly accounts of the modaraba.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2019/02/Delegation-of-powers-January-29-2019-1.pdf>

SECP Circular

Introduction

Securities and Exchange Commission of Pakistan (SECP) vide Circular # 3 of 2019 dated February 25, 2019, notified relaxation from requirement of Regulation # 7 of the Listed Companies (Code of Corporate Governance) Regulations, 2017 (afterwards referred as “Regulations”). Regulation # 7 required that, the Board of Directors (BOD) shall have at least one female director when it is next reconstituted not later than expiry of its current term or within the next one year from the effective date of this regulations, whichever is later.

Commentary

As explained in circular that SECP received application seeking exemption/relaxation from Regulation # 7 of the regulations, and in order to facilitate and understanding the impediments involved, SECP granted general relaxation/exemption to listed companies where BoD was reconstituted after the commencement of the Regulations but before the expiry of one year from the effective date of Regulations.

Therefore, all such listed companies shall appoint a female director on their respective BoD in following instances: -

- I. *On the Date of Next Election of BoD; or*
- II. *On Occurrence of a casual vacancy on the BoD before the date of next election of BoD.*

All such companies shall ensure compliance of the circular in due course.

Link of Document

Please click below to read the original Circular

<https://khilji.net.pk/wp-content/uploads/2019/02/Circular-No-3-of-2019-1.pdf>

FBR Notification

Introduction

Federal Board of Revenue issued Notifications ref: 250(1)/2019 dated Feb 26, 2019.

Commentary

Sales tax & Federal Excise:

The Chapter XIV-B have been substituted vide above mentioned SRO. The chapter titles "Electronic Monitoring and Tracking of Specified Goods and Licensing Thereafter". The Rules sub-chapter-1 applies on "Tobacco products, Beverages, Sugar, Fertilizers & Cement" for tracking and monitoring on real time basis. The Rules defines and prescribes goods to be affixed with tax stamps, banderoles, stickers, labels, barcodes, etc.

While sub-chapter-2 prescribes rules for following:

- Licensing of companies for electronic monitoring, tracking and tracing of specified goods
- Functioning of licensing committee
- Application for grant of a license
- Criteria for grant of license
- Procedure for grant of a license
- Rights granted to the licensee
- Terms and conditions of the license
- Renewal of the license

Sub-chapter-3 prescribes the following responsibilities of the Licensee:

- Licensee to run and manage the system
- Establishment of Central Control System
- Establishment of regional control rooms
- Requirement to be met at the factory premises and at imports
- Technical and training support

Sub-Chapter – 4 prescribes the supervision of the system, enforcement and early termination as follows:

- Responsibility of the Project Director
- Procedure for cancellation or termination of license

Sub-Chapter – 5 prescribes the fee and charges, its determination and revision.

Sub-chapter – 6 prescribes functions and responsibilities of others under the following heads:

- Functions and responsibilities of the manufacturer and importer of specified goods
- Functions of the Commissioner Inland Revenue
- Responsibility of persons involved in the supply chain

And Sub-chapter-6 under the head Miscellaneous states about the following:

- Liabilities of the licensee
- Establishment of Inland Revenue enforcement network
- Functioning of IR enforcement network
- Audit on yearly basis.

Link of Document(s)

<https://khilji.net.pk/wp-content/uploads/2019/02/2019226162246842SRO250of2019SalesTaxRules2006.pdf>

FBR Notification

Introduction

Federal Board of Revenue issued Notifications ref: SRO 253(1)/2019 dated Feb 26, 2019.

Commentary

A new chapter named as "Chapter XV" in sales tax (special procedure Rules) have been introduced after renumbering Rules 59 & 60 as 58U & 58V. The new chapter will be named as "Special Procedure for Sales Tax on Cottonseed oil expelled by Expelling mills and composite units of Ginning and Expelling". The chapter states Rules for "Application", "Scope & Levy of tax", "mode, manner and rate applicable for payment of sales tax", "monthly statement", "notice to be given by the ginning unit" and "Final statement to be furnished by the ginning unit".

The amendment is a result of declaring SRO 188(1)/2015 dated March 5, 2015 to be "ultra vires" by the Lahore High Court and upheld by the Supreme Court of Pakistan for issued with approval of Federal Cabinet. The said SRO provided Special procedure for payment of sales tax on cottonseed oil and to exempt cottonseed oil cake from payment of sales tax.

Link of Document(s)

<https://khilji.net.pk/wp-content/uploads/2019/02/20192261625138725SRO253of2019.pdf>

SECP Directive

Introduction

Securities and Exchange Commission of Pakistan (SECP) vide S.R.O. # 245 (I)/2019 dated February 22, 2019 issued directive to Regulated Persons. This directive, is issued in connection with SECP (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018, Anti Money Laundering Act, 2010 (VII of 2010), Anti-Terrorism Act, 1997 (XXVII of 1997) and SECP Guidelines for implementation of AML /CFT framework.

Commentary

Please click on the link below and read the Detailed Commentary on the above SECP Directive.

<https://khilji.net.pk/wp-content/uploads/2019/02/Commentary-on-245I2019.pdf>

Link of Document

Please click below to read the original Circular

<https://khilji.net.pk/wp-content/uploads/2019/02/Final-Directive-Anti-Money-Laundering-Reporting-22-02-2019.pdf>

BLOG OF THE MONTH

Khilji & Co, Chartered Accountants has initiated a host of programs to enhance the skills of its professional team. We strongly believe that learning is a continuous process. Every individual has its own way of thinking and interpreting experiences into words.

KCO has provided its professional team a platform in shape of KCO website to showcase their talent dynamics. Each member of the team has been asked to write his blog. Starting from this month, KCO will publish one selected blog as a whole in its monthly Newsletter.

This blog is written by **Mr. M. Kaleem Majeed, Manager Taxation Advisory Services**. Please read this blog and provide your valued comments.

COMMON TYPE OF NOTICES SENT BY FBR (PHASE-I)

“If you think compliance is expensive, try non-compliance as new taxes are still on the anvil”

NOTICE TO SUBMIT RETURN OF INCOME FOR ANY OF THE PREVIOUS 5-10 YEARS [SEC - 114(4)]

The Commissioner may, by notice in writing, require any person who, in the Commissioner's opinion, is required to file a return of income under this section for a tax year or assessment year but who has failed to do so to furnish a return of income for that year within thirty days from the date of service of such notice or such longer or shorter period as may be specified in such notice or as the Commissioner may allow.

A notice under above sub-section may be issued in respect of one or more of the **last five completed tax years or assessment years**.

Provided that in case of a person who has not filed return for any of the last five completed tax years, notice under subject sub-section may be issued in respect of one or more of the **last ten completed tax years**.

CONSEQUENCES OF NON-COMPLIANCE

1. Show cause notice for imposition of penalty u/s 182(1) of ITO, 2001

Such person shall pay a penalty equal to 0.1% of the tax payable in respect of that tax year for each day of default subject to a maximum penalty of 50% of the tax payable provided that if the penalty worked out as aforesaid is less than twenty thousand rupees or no tax is payable for that tax year such person shall pay a penalty of twenty thousand rupees.

The expression **“tax payable”** means tax chargeable on the taxable income on the basis of assessment made or treated to have been made under section 120, 121, 122 or 122C.

2. Show cause for best judgement assessment u/s121(1)/(ab)/(d) of ITO, 2001

The Commissioner may, based on any available information or material and to the best of his judgement, make an assessment of the taxable income/income of the person and the tax due thereon and the assessment, if any, treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.

As soon as possible after making an assessment under this section, the Commissioner shall issue the assessment order to the taxpayer stating—

- (a) the taxable income;
- (b) the amount of tax due;
- (c) the amount of tax paid, if any; and
- (d) the time, place and manner of appealing the assessment order.

An assessment order under this section shall only be issued **within five years after the end of the tax year or the income year to which it relates.**

Provided that where notice for furnishing a return of income under sub-section (4) of section 114 is issued in respect of one or more of the last ten completed tax years in pursuance of proviso to sub-section (5) of section 114 an assessment order under this section shall only be issued **within two years from the end of tax year in which such notice is issued.**

3. Recovery of tax (if not already paid) out of property and through arrest of taxpayer u/s 138

M. Kaleem Majeed

For more Blogs, please visit <http://khilji.net.pk/category/blog/>

SOCIAL MEDIA PRESENCE

We at Khilji & Co, Chartered Accountants are fully aware of the fact that in this modern day and age connectivity is the key. Hence, we keep of striving for this through various social media forums. Please visits our pages and do provide your valuable comments.

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