

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



# NEWSLETTER APRIL 2019



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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.

### **EDITORIAL GROUP:**

- 1. Mr. Abdul Hafeez**
- 2. Syed Asim Habib**

**Principal Editor**  
**Section Editor**

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## Case Law – Lahore High Court, STR No. 54 of 2016, Date of order April 23, 2019

### Brief Facts:

A two-member bench of the Lahore high court, headed by Justice Sajid Mehmood Sethi, announced the reserved verdict on numerous petitions. In connected constitutional petitions, taxpayers were aggrieved of proceedings / orders passed by the applicant-department to recover sales tax for the tax period prior to their sales tax registration and in some petitions recovery of sales tax through electricity bills has been challenged.

On the other hand, Learned Legal Advisors for applicant-department along with Commissioner Inland Revenue, Corporate Regional Tax Office, Lahore contended that taxpayers are obliged to comply with all the provisions of the Sales Tax Act, 1990 and Sales Tax Rules, 2006, and applicant-department is not debarred from taking legal and penal action to recover the sales tax on taxable supplies made by respondent-taxpayers. They argue that sales tax can be recovered from a person who is liable to be registered under the Act of 1990 but has not been registered.

### Decision summary:

- i. Following questions of law, asserted to have arisen out of impugned order dated 16.11.2015, passed by learned Appellate Tribunal Inland Revenue Lahore Bench, Lahore (“Appellate Tribunal”), proposed for opinion of Honorable Court:-
  - a. “Whether on the facts and in the circumstances of the case, the decision of the learned ATIR is consistent with the provisions of Sections 2(25), 3, 6, 14, 22, 23 & 26 of the Sales Tax Act 1990 read with Rule 4 of Chapter-1 of SRO 555(1)/2006 dated 05.06.2006 of Sales Tax Rules 2006?
  - b. Whether under the facts and circumstances of the case, the learned ATIR was justified to set aside the orders passed by both the authorities below holding that the Order-in-Original was finalized without registration or compulsory registration, ignoring that a person liable to be registered is also included in the definition of the registered person under section 2(25) of the Sales Tax Act, 1990?”
- ii. The case of the applicant-department is that the decision of the learned ATIR is not consistent with the provisions of Sections 2(25), 3, 6, 14, 22, 23 & 26 of the Act of 1990 read with Rule 4 of the Rules of 2006. The Honorable High Court held that prior to recovery of tax from unregistered persons, proper opportunity on being heard is required to be given by concerned tax office.

**Quote:** “Rule 6 of the Rules of 2006 provides that where a person, required to be registered under the Act of 1990, did not apply for registration, Local Registration Office or any other office as may be authorized by the Federal Board of Revenue or the Commissioner concerned, after such inquiry as deemed appropriate, was satisfied that such person was required to be registered, it would issue notice to such person and, after receiving a written reply within time prescribed in notice and allowing him opportunity of being heard, pass an order whether or not such person was liable to be registered compulsorily.” **Unquote**



- iii. The court held that it is responsibility of tax department to provide the taxpayer proper opportunity of hearing by issuing notice and upon receipt of reply from taxpayer, a speaking order should be passed.

**Quote:** *"..the well-established principle of natural justice i.e. audi alteram partem i.e. no one should be condemned unheard, is to be observed. A notice was to be issued to the taxpayer confronting the material which in the opinion of applicant-department was sufficient to bring it within the scope of „liable to be registered“. After receipt of reply and providing sufficient opportunity of hearing, a speaking order could be passed holding taxpayer liable to be registered and, after registration, demand could be raised by the applicant-department. Needless to say that no order affecting the right of a party / person could be passed without affording opportunity of hearing."* **Unquote**

- iv. The Honorable Court held that where a person is liable to be registered, before charging sales tax to such, tax department is required to compulsorily register such person in accordance with provisions of Sales Tax Act, 1990 and Sales tax Rules, 2006.

**Quote:** *"In view of the above, our answer to the proposed questions is that the combined reading of the provisions of the Act of 1990 and the Rules framed thereunder manifestly disclose the intention of the law maker that, where a person is liable to be registered, the applicant-department is first required to register that person compulsorily or otherwise in accordance with law, and then charge sales tax from it under Section 3 of the Act of 1990, and may proceed against that person regarding prior to registration contravention of the provisions of the Act of 1990, if any."* **Unquote**

#### **Case Law – Lahore High Court, W.P.No. 17371 of 2015, Date of order March 28, 2019**

##### **Brief Facts:**

The taxpayer was issued notice under sub-section (4) of section 114 of Ordinance of 2001 and show cause notice issued under section 122-C of the Income Tax Ordinance, 2001 ("the Ordinance"). The matter relates to tax year 2009. Petitioner questioned the legitimacy of notice on the ground of limitation in terms of sub-section (5) of section 114 of Ordinance of 2001, despite objection notice under section 122-C was issued. Confronted with the situation, the petitioner filed writ petition No. 14151 of 2015, the matter was sent to Commissioner IR to consider objection qua limitation. The matter was heard and vide order dated 02.06.2015, the Commissioner rejected said objection and notice under section 122-C of the Ordinance of 2001 was held legal. The taxpayer being aggrieved filed this petition.

##### **Decision summary:**

- (i) The taxpayer contends that notice under sub-section (4) of section 114 can validly be issued in respect of one or more of the last five completed tax years. However, in this case notice was issued on 10.02.2015 directing the taxpayer to submit return of income for the tax year 2009. No notice for tax year 2009 in terms of sub-section (5) of Section 114 could be issued after 30.06.2014. Reliance is placed on unreported judgment dated 10.05.2019 in case titled as MUHAMMAD SOHAIL v. COMMISSIONER IN LAND REVENUE, ETC (Writ Petition No.21489 of 2015).

- (iii) Tax department was of the view that expression 'completed tax year' would mean last day of the financial year next during, which return of income for preceding tax year has to be filed. It is explained that return of income, for the tax year 2009, was due within next succeeding financial year, which date would be 30.06.2010 in this case. Therefore, notice dated 10.02.2015 under sub-section (4) of section 114 of Ordinance of 2001, for the tax year 2009, can be validly issued till 30.06.2015.
- (iv) The question before Honorable Court was the determination of cut-off date for the issuance of notice under sub-section (4) of section 114 of Ordinance of 2001 for the tax year 2009. The Honorable Court held that the tax department understanding of completed tax year is not correct and it cannot be construed to enlarge the limitation beyond period of twelve months.

**Quote:** "Department's version, reiterated by learned counsel, was that period of limitation of five years would commence from the last day of the financial year next during which return of income for preceding year had to be filed in terms of sub-section (2) of section 118 of Ordinance of 2001, which period of five years for the purposes of sub-section (5) of section 114 of the Ordinance, in this case, would be reckoned from 30.06.2010. The argument is misconceived when examined in the wake of sub-section (5) of section 114 of the Ordinance of 2001. The expression 'completed tax year' - employed therein - cannot be construed to enlarge the limitation beyond period of twelve months ending on 30th day of June of relevant calendar year." **Unquote**

- (v) The court further held that the tax department submission to consider the last day of next financial year or on the date prescribed in terms of clause (b) of sub-section (2) of section 118 of Ordinance of 2001 for purpose of complete tax year is illegal.

**Quote:** "The submission of the department to consider relevant tax year complete - for the purposes of sub-section (5) of section 114 of Ordinance of 2001 - on the last day of next financial year or on the date prescribed in terms of clause (b) of sub-section (2) of section 118 of Ordinance of 2001 is illegal. The time would not run from the date of the default, when return of income has to be normally submitted, but to be reckoned from 30th day of June, for which period return of income had to be submitted but was not done. The interpretation put forward by the department through order dated 02.06.2015 is erroneous and based on mis-application of law. It is nonsensical to assume and hold that limitation in terms of sub-section (5) of section 114 of Ordinance of 2001 can be varied by changing the date prescribed under clause (b) of sub-section (2) of section 118 of Ordinance of 2001, which would then give department an option to vary period of limitation, which is contrary to the law and judicial pronouncements." **Unquote**

## NOTIFICATIONS / CIRCULARS

### FBR ---- Significant Statement

Federal Board of Revenue has issued a Statement of significance on his website and all platform of main-stream and social media. In this Statement, FBR claimed that the journey of "Broadening Tax Base in Pakistan", the department has achieved a huge milestone. i.e. For the first time in the history of Pakistan the number of Income Tax Returns filed has crossed the mark of 1.8 Million.

*This milestone has been achieved for the Tax Year 2018*

The Original Statement is appended below:

#### **Quote: "First time in FBR's history - 1,800,000 Tax Returns Filed**

FBR for the first time in its history has crossed the mark of 1,800,000 Income Tax Return filers for Tax year 2018. FBR is committed to broadening the Tax Base to truly make it a self-reliant country. FBR will continue with its efforts of creating awareness about the importance of paying taxes not only as a civic duty but also for the growth of the economy. The institution is devoted to facilitating the public in helping to not only fulfill their tax obligations but also to create an enabling environment that fosters economic growth. The institution is also geared to act against those found guilty of not fulfilling their tax obligations. FBR could not have achieved this landmark without the cooperation of our tax paying public. Together with your support we can truly make the dream of a vibrant Pakistan a distinct reality" **Unquote**

<http://download1.fbr.gov.pk/Docs/201933111357596FirsttimeinFBR%E2%80%99shistory-1,800,000.pdf>

### ICAP Circular

ICAP has issued Exposure Draft of the Code of Ethics for Chartered Accountants (Revised) for your comments.

ICAP as a member of the International Federation of Accountants is committed to the adoption of the IESBA issued ethical requirements.

The draft Code of Ethics for Chartered Accountants (Revised) (Draft Revised Code) is based on the IESBA issued Restructured Code of Ethics.

The Draft Revised Code can be accessed at

<http://icap.net.pk/wp-content/uploads/2019/codethic/DraftICAPCodeofEthics2019.pdf>

Original Circular <https://khilji.net.pk/wp-content/uploads/2019/04/Circular-No1-of-2019.pdf>

Appendix to Circular <https://khilji.net.pk/wp-content/uploads/2019/04/Appendix-A-to-Circular-No.1.docx.pdf>

## **FBR Audit Policy 2018**

Federal Board of Revenue has issued The Audit Policy 2018.

According to this Audit Policy 2018, the FBR would conduct computer ballot on parametric basis for selection of 2.3% of cases for audit out of the total filers after exclusions in Income Tax for Tax Year 2017. For Sales Tax and FED, the FBR would select 2.5% and 7.7% cases for audit respectively out of the total filers after exclusions for tax periods corresponding to accounting period adopted for the purpose of return of income for TY 2017 under the Income Tax Ordinance 2001. For Audit Policy 2018, the FBR would select an overall 2.3% of total cases available after exclusions for Audit in Income Tax, Sales Tax, and FED.

Please click on the link mentioned hereunder to view the Entire Audit Policy 2018.

<https://khilji.net.pk/wp-content/uploads/2019/04/201944154200838AuditPolicy2018forWEB.pdf>

## **SECP Circular**

### **Introduction**

Securities and Exchange Commission of Pakistan issued Circular No 01 of 2019 dated January 15, 2019.

### **Commentary**

Circular No. 01 of 2019 - Dated January 15, 2019 issued by SECP, whereby format is prescribed for undertaking required under Clause 1 of the Anti-Money Laundering Notification Directive S.R.O 1525 (I)/2018 dated December 14, 2018 from every eligible person who has made application for issuance of license / renewal of license, as an insurance surveyor pursuant to Section 112 of the Insurance Ordinance 2000.

The Contents and Format of Undertaking has been provided as Annexure A of aforementioned Circular.

### **Link of Document**

<https://khilji.net.pk/wp-content/uploads/2019/04/Circular-no.-1-of-2019-Undertaking-required-under-AML-notification-Directive-SRO-1525I-2018-from-Insurance-Surveyors-1.pdf>

## SECP Notification

### Introduction

SECP vide SRO # 437(i)/2019 dated April 8<sup>th</sup> 2019 made amendment by inserting provisos in Rule 5(5) and Rule 7(2)(ba) in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

### Commentary

#### ***Following new Provisos inserted in Rule 5(5) of Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003***

New provisos require that persons engaged in business of Micro-Financing shall for grant of license apply in writing to the commission within six months from the date of publication of this notification or within extended date as may be specified through notification in official gazette.

Exception to the above: person shall not be required to obtain license, if engaged in business of micro financing, but having less than five thousand active borrowers or having outstanding loan portfolio of less than fifty million rupees.

Proviso to the exception: such person should be receiving funding or financing from a bona fide source such as local or international donor agencies of repute or Federal or Provincial Governments or their agencies or entities regulated by the Commission or State Bank of Pakistan or such other sources as specified by the Commission and such providers of fund shall endeavor to route the funding through proper banking channels and to oversee its operations so that these are conducted legitimately, as specified by the Commission.

#### ***Following new Provisos inserted in Rule 7(2)(ba) of Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003***

Provided further that non-banking microfinance companies may set up non-financial subsidiaries with intimation to the Commission, whose business is conducted so as to supplement or complement the community service objective of the non-bank microfinance company:

Provided also that the conditions and modalities pertaining to these investments shall be specified by the Commission and any exceptions thereto shall be decided by the Commission on case to case basis.

### Link of Document

<https://khilji.net.pk/wp-content/uploads/2019/04/final-consolidated-notification-Amendment-in-NBFC-Rules-2003-sent-MOF-clean.pdf>



## KPRA Notification

### Introduction

Government of Khyber Pakhtunkhwa (Finance Department) issued Notification BO(Res-III)/FD/2-2/2018-19/Vol II dated April 2, 2019.

### Commentary

Through notification No. BO (Res-III)/ FD/2-2/2018-19/vol-II-Dated April 02, 2019 issued by Government of the Khyber Pakhtunkhwa the rate of sales tax on “*services provided by Accountants, Auditors and tax consultants*” has been changed from 15 to 5 percent but *without input adjustment* and has been inserted as serial number 37-A in the Schedule II.

Earlier the above mentioned services were mentioned in Schedule II against serial No 37 as “*Services provided or rendered by professionals and consultants; health care consultants legal practitioners or consultants, management consultants software or IT based system development consultants accountants, auditors and tax consultants services provided by other consultants*” to be taxed at 15%. Now the same has been excluded from serial No. 37.

### Link of Document

<https://khilji.net.pk/wp-content/uploads/2019/04/KPRA-Notification.jpeg>

## SECP Notification

### Preamble

We at KCO always strive to provide our valued clients quality information. In addition to usual notification emails to our respected clients we are also in process of sending short yet well descriptive commentaries on the SROs and Circulars. You can read the detailed commentary by the clicking on the link mentioned hereunder

### Introduction

Securities and Exchange Commission of Pakistan issued S.R.O. 491 (I)/2019 dated April 15th 2019. This SRO indicates the amendments to the Employees Contributory Funds (Investment in Listed Securities) Regulations, 2018

### Link of the Document(s)

#### Detailed Commentary:

<https://khilji.net.pk/wp-content/uploads/2019/04/Detailed-Commnetary-for-SECP-SRO-491.pdf>

#### SECP SRO:

<https://khilji.net.pk/wp-content/uploads/2019/04/Amendments-to-Employees-contributory-Funds-Regualtions.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 **Mr. Zahid Mehmood Malik, FCCA, ACA Director**. Please read this blog and provide your valued comments.

## IFRS 15 REVENUE FROM CONTRACTS WITH CUSTOMERS

### REASON TO DEVELOP NEW STANDARD

- Remove inconsistencies and weaknesses in the current revenue recognition literature
- Provide a more robust framework for addressing revenue recognition issues
- Improve comparability of revenue recognition practices across industries, entities within those industries, jurisdictions and capital markets
- Reduce the complexity of applying revenue recognition requirements by reducing the volume of the relevant standards and interpretations
- Provide more useful information to users through expanded disclosure requirements

### EFFECTIVE DATE

For annual reporting periods beginning on or after 1 January 2018.

### TRANSITION TO IFRS 15

Transition retrospectively to each prior period presented or retrospectively, with the cumulative effect of initial application recognized in the current period.

### WHAT HAS CHANGED AS COMPARED TO PREVIOUS STANDARDS?

1. IFRS 15 **superseded** IAS 11 (Construction contracts), IAS 18 (Revenue), IFRIC 13 (Customer royalty programmes, IFRIC 15 (Real Estate Sales), IFRIC 18 (transfer of assets from customers), and SIC 31 (Advertising barter transactions).
2. **Revenue recognition** is based on transfer of control of goods or services to the customer whereas it was based on risk and rewards under previous standard.

3. A standardized 5 steps **revenue recognition** model to recognize all types of revenues whereas there was different recognition criteria for different types of incomes under previous standards.
4. There is significant guidance on identification of contract whereas concept was not addressed specifically.
5. Significant explanatory and application guidance on identification of separate performance obligation.
6. Contract modification covered for all revenue contracts whereas previously covered only in IAS 11 relating to construction contract only.
7. There is specific guidance relating to warranties, significant financing component, broader explanation of contract cost applicable to all contracts and detailed guidance covering types of variable consideration arrangements, estimation methods etc.
8. Detailed guidance covering various scenarios on consideration payable to customers.
9. Detailed guidance on determination, allocation and changes in transaction price etc., supplemented with illustrative examples.
10. There is detailed guidance on licensing arrangement which may lead to different revenue recognition under licensing
11. Require new and extensive disclosures in the financial statements.

## **MOST IMPACTED INDUSTRIES**

1. Telecom
2. Technology
3. Real Estate

**Zahid Mehmood Malik, FCCA, ACA**

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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