

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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CASE LAW – LAHORE HIGH COURT – Writ Petition No. 257828 of 2018

The Writ Petition was filed by Faisalabad Electric Supply Company Limited (FESCO) being aggrieved of the rejection of its claim of ‘retrospective application of the proviso added to Section 25(2) of the Act by the Finance Act, 2018 to the pending audit proceedings pertaining to tax periods prior to 1st July, 2018’.

Section 25(2) of the Act states,

Quote“(2) The officer of Inland Revenue authorized by the Commissioner, on the basis of the record, obtained under sub-section (1), may, once in a year, conduct audit: Provided that in case the Commissioner has information or sufficient evidence showing that such registered person is involved in tax fraud or evasion of tax, he may authorize an officer of Inland Revenue, not below the rank of Assistant Commissioner, to conduct an inquiry or investigation under section 38: Provided further that nothing in this sub-section, shall bar the officer of Inland Revenue from conducting audit of the records of the registered person if the same were earlier audited by the office of the Auditor-General of Pakistan. Provided also that audit under this section shall be conducted only once in every three years.” **Unquote**

The proviso added to Section 25 (2) *ibid*, through the Finance Act, 2018, provides that audit under said Section shall be conducted once in every three years. This amendment aims at restraining repeated and protracted audit proceedings eroding constitutional rights and safeguards available to taxpayers under the provisions of the Constitution. The proviso added by the Finance Act, 2018 to Section 25(2) of the Act of 1990 restrains excessive use of power in conducting audit while retaining just and fair application of law for the purposes of the statute.

Hence, the honorable Lahore High Court allowed the Writ Petition confirming the retrospective application of the proviso added to Section 25(2) of the Act by the Finance Act, 2018 in following words:

“In view of the above, this petition, along with connected petitions, is allowed. The impugned letter dated 03.11.2018 is declared to be illegal and without lawful authority. The proviso added to subsection (2) of Section 25 of the Act of 1990, being procedural, beneficial and curative, will apply retrospectively and respondent-authorities are directed to proceed in accordance with law.”

LAHORE HIGH COURT – STR No. 136 of 2013

The appeal was filed by M/s Asif Ali, M.M. Akram, Usman Khalil, H.M. Majid Siddiqui and Qamar-ud-Din Ahmad, Advocates whereby applicant-taxpayer submit that the learned Appellate Tribunal was not justified to uphold the order of CIR (Appeals) by holding that compliance of Section 73 of the Act of 1990 was mandatory as well as substantive in nature, which could not be termed as technical lapse.

Section 73 of the Act of 1990 states, “73. Certain transactions not admissible.-- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, payment of the amount for a transaction exceeding value of fifty thousand rupees, excluding payment against a utility bill, shall be made by a crossed cheque drawn on a bank or by crossed bank draft or crossed pay order or any other crossed banking instrument showing transfer of the amount of the sales tax invoice in favour of the supplier from the business bank account of the buyer; Provided that online transfer of payment from the business account of buyer to the business account of supplier as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective buyer and the supplier. (2) The buyer shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under this Act if payment for the amount is made otherwise than in the manner prescribed in sub-section (1), provided that payment in case of a transaction on credit is so transferred within one hundred and eighty days of issuance of the tax invoice. (3) The amount transferred in terms of this section shall be deposited in the business bank account of the supplier, otherwise the supplier shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under this Act.

Explanation-- For the purpose of this section, the term “business bank account” shall mean a bank account utilized by the registered person for business transactions, declared to the Commissioner in whose jurisdiction he is registered through Form STR1 or change of particulars in registration database.”

The honorable Court perused the aforesaid provision of Law in order to determine whether a provision of statute can be termed mandatory or directory. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceedings. It is settled law that when the word „shall“ is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word „shall“ by the legislature brands a provision as mandatory, especially when an authority is required to do something in a particular manner.

Hence, the honorable Lahore High Court decided against applicant-taxpayer and in favour of respondent-department in following words:

“In view of the above, since compliance of Section 73 to the extent of making payment through banking channel is mandatory, our answer to the proposed question is in negative i.e. against applicant-taxpayer and in favor of respondent-department.”

NOTIFICATIONS / CIRCULARS

KCO Tax Brief Finance Act 2019

Khilji & Co Chartered Accountants is pleased to present this briefing, which is primarily aimed to help in understanding the impact of the Finance Act 2019.

Please click on link mentioned below to access and study the Commentary

<https://khilji.net.pk/wp-content/uploads/2019/07/KCO-Tax-Brief-Finance-Act-2019.pdf>

KCO RATE CARD 2019-20

Khilji and Co is proud of serving our valued and most respected clients in every possible professional way. We always strive to keep our clients well informed. As a regular annual practice, we have prepared our Tax Rate Card for 2019-20. This rate card is prepared on the basis of Finance Act 2019 and the changes it has brought about in Income Tax and Sales Tax. In addition to this the changes occurred due to Provincial Finance Acts are also mentioned in this Rates Card.

In order to facilitate our valued clients, we have arranged two-prone strategy, i.e. this Rate card will also be published in Hard Form. Please feel free to share your contact details like, Full name, Complete Address and Cell Numbers so that the needful can be done.

Link of Document(s)

The Rate Card can be accessed at:

<https://khilji.net.pk/wp-content/uploads/2019/07/KCO-Rate-Card-2019-20-VIIIXIX-WS.pdf>

SECP Notification

Introduction

SECP issued SRO ref: 592(I)/2019 on May 28, 2019.

Commentary

SECP vide S.R.O No.592 (I)/2019 dated May 28, 2019 made amendments to the Securities Brokers (Licensing and Operations) Regulations, 2016, by substituted regulation 12 sub-regulation 7. Now a securities broker shall advertise its business publically only in accordance with the guidelines issued by the securities exchange under its regulations.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2019/06/Notification-amendments-to-securities-brokers-regulations-advertisement.pdf>

SRB Notifications

Introduction

Sindh Revenue Board (Government of Sindh) issued following Two Notifications ref:

1. SRB-3-4/9/2019
2. SRB-3-4/10/2019

Both the above SROs were issued on June 15, 2019

Commentaries

1. SRB-3-4/9/2019

Through the above mentioned notification, the whole of the amount of Penalty and such of the default surcharge on the Principal amount of contribution of outstanding Sindh Workers Welfare Fund as on 31st May, 2019 have been exempt, provided that the principal amount outstanding contribution along with 1% of the amount of additional amount thereon if deposited in the prescribed manner during the period from 17th June, 2019 to 22nd June, 2019; and 2% of the amount of additional amount thereon if deposited during the period from 24th June, 2019 to 30th June, 2019.

The benefits of this notification shall also be available in cases where Industrial Establishment has late paid the Principal amount of Contribution prior to the date of this notification but has not yet discharged the liability of Penalty.

This notification shall not apply to the refund or adjustment of any amount of fund or default surcharge or penalty as has already paid before the 31st May, 2019.

After the expiry of aforementioned payment period, the provisions of Sindh Sales Tax on Services Act, 2011 in the matter of charge of additional charge or tax, penalty and prosecution matters shall apply in case of any additional charge or amount, penalty and prosecution under Sindh Workers Welfare Fund Act, 2014.

2. SRB-3-4/10/2019

Through the above mentioned notification, the amount of Penalty prescribed under section 5(1) of the Sindh Companies Profits (Workers Participation) Act, 2015 and interest as per paragraph 2 of the scheme of the 2015-Act and penalties/default surcharge under Sindh Sales Tax on Services, 2011 have been exempt, provided that the leftover amount of contribution of Sindh Worker Participation Fund outstanding along with 1% of the amount of penalty/interest if deposited in the prescribed manner during the period from 17th June, 2019 to 22nd June, 2019; and 2% of the amount of penalty/default surcharge if deposited during the period from 24th June, 2019 to 30th June, 2019.

The benefits of this notification shall also be available in cases where Industrial Undertaking has late paid the leftover amount of contribution of Sindh Worker Participation Fund outstanding prior to the date of this notification but has not yet discharged the liability of Penalty.

This notification shall not apply to the refund or adjustment of any amount of fund or default surcharge or penalty as has already paid before the 31st May, 2019.

After the expiry of aforementioned payment period, a penalty which may extend to twenty thousand rupees and, in case of a continuing failure, a further sum which may extend to two thousand rupees for every day after the first during which the failure continues shall apply in accordance with section 5(1) of the Sindh Companies Profits (Workers Participation) Act, 2015. Furthermore, Interest will be charged as per paragraph 2 of the scheme of the aforesaid Act-2015.

Link of SROs

1. SRB-3-4/9/2019:

https://khilji.net.pk/wp-content/uploads/2019/06/SRB-20190615_notification_3-4-9.pdf

2. SRB-3-4/10/2019:

https://khilji.net.pk/wp-content/uploads/2019/06/SRB-20190615_notification_3-4-10.pdf

Assets Declaration (Procedure & Conditions) Rules, 2019

Khilji & Co Chartered Accountants is pleased to present this briefing, which is primarily aimed to help in understanding the impact of the **Assets Declaration (Procedure & Conditions) Rules, 2019**

Please click on link mentioned below to access and study the Commentary

1. <https://khilji.net.pk/wp-content/uploads/2019/06/Amnesty-Rules-and-Procedures-2019.pdf>

You may also click on the links below to read the Original Rules and Ordinance.

- a. <https://khilji.net.pk/wp-content/uploads/2019/06/20195251352115562SRO578of2019.pdf>
- b. <https://khilji.net.pk/wp-content/uploads/2019/05/2019515353034828ADO2019.pdf>

SECP Notification

Introduction

Securities and Exchange Commission of Pakistan (SECP) vide S.R.O. 639 (I)/2019 dated June 20, 2019 makes the amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008.

Commentary

Please click on link below to read the detailed commentary

<https://khilji.net.pk/wp-content/uploads/2019/06/Detailed-Commentary-for-SECP-S.R.O.-639.pdf>

Link of Document

<https://khilji.net.pk/wp-content/uploads/2019/06/Final-Notification-NBFC-Reg..pdf>

FBR Circular

Federal Board of Revenue has issued Circular No 4 of 2019 (ref: C.No.2(1)Contd/I.Tax/2018 on June 3, 2019. This Circular states that in view of Assets Declaration Ordinance 2019, FBR has extended the following filing dates:

1. The date of filing of Returns of Total Income/Statement of final taxation which were due on August 31, 2018, has been extended upto **June 30, 2019**.
2. The date of filing of Returns of Total Income and Statement of final Taxation for Companies, Individuals and Association of Persons which were due on September 30, 2018 has been extended **upto June 30, 2019**.
3. The date of filing of Returns of Total Income and Statement of final taxation for companies which were due on December 31, 2018, has been extended upto **June 30, 2019**.

Please click below to read the entire Circular

<https://khilji.net.pk/wp-content/uploads/2019/06/2019631364226690CircularNo04of2019IncomeTax.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. Shafaat Ali, Assistant Manager Taxation Advisory Services**. Please read this blog and provide your valued comments.

INCOME FROM BUSINESS- INADMISSIBLE DEDUCTION

Income from business is a 3rd source of income from which a person can derive income. Income from business is chargeable to tax under section 18 of the Income Tax Ordinance, 2001. Let us define business and deduction allowed against the income under the ITO, 2001.

Business

A business is an organization or enterprising entity engaged in commercial, industrial, or professional activities. Businesses can be for-profit entities or nonprofit organizations that operate to fulfill a charitable mission or further a social cause. Business is also the organized efforts and activities of individuals to produce and sell goods and services for profit.

Deductions Not Admissible (Section 21)

Certain expenses have been charged to profit and loss account by the business entity, but these expenses are not admissible for the purpose of taxation, these expenses have been added back to the net profit of the company. The following expenses are not admissible by the tax authorities under the ITO, 2001.

- Amount paid or payable on account of any cess, rate or tax levied on profits or gains of business or assessed as percentage or otherwise on the basis of such profits or gains. Tax shall include any tax paid or payable in Pakistan or in a foreign country. Note: In case where sales tax paid by a tax payer is not charged by him to his customers, such sales tax shall be allowed as deduction.
- Any amount of tax deducted at source under division III of Part V of Chapter X. being tax deducted at source u/s 149 to 158.
- Any sum paid on account of salary, profit on debt, brokerage, commission, rent, payment to non-resident, payment for services or fee paid by the person unless tax is paid or deducted at source and paid under Income Tax Ordinance, 2001.
- Any entertainment expenditure in excess of such limits or in violations of such conditions as may be prescribed.

Limits prescribed for allowing any expenditure on entertainment are as under (Rule 10).

Expenditure should be incurred in deriving income from business chargeable to tax and should not be in excess of following limits or in violation of condition specified:

a) Such expenditure is: -

1. Incurred outside Pakistan on entertainment in connection with business transactions: or
2. Allocated as head office expenditure; or

b) Incurred in Pakistan on the entertainment of foreign customers & suppliers;

c) Incurred on the entertainment of customer & clients at the person's business premises

d) Incurred on the entertainment at the meeting of shareholders, agents, directors or employees

e) Incurred on entertainment at the opening of branches.

Note All these person (who are entertained) should be related directly to the person's business.

- Any contribution to un-recognized provident fund, unapproved pension, superannuation or gratuity funds. Moreover, contributions to any fund unless effective arrangements are made to deduct tax shall also be inadmissible.
- Any sum paid by an association of persons to a member of the association on account of profit on debt, commission, salary, brokerage or any other remuneration.
- Any expenditure paid or payable exceeding Rs. 10,000 on a single item is inadmissible if the balance under relevant head of account exceeds Rs.50,000 and the payment is made otherwise than through crossed bank cheque or crossed bank draft or crossed pay order or any other crossed banking instrument showing transfer of amount from the business bank account of the taxpayer.
- Provided that online transfer of payment from the business account of the payer to the business account of payee as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective payer and the payee.

However, this shall not be applicable in case of payments for:

- freight charges; -
- travel fare; -
- postage; -
- utility bills; and -
- taxes, duties, fee, fines or other statutory obligation
- Salary exceeding Rs.15,000 per month not paid through crossed cheque or bank transfer to employee's account.
 - Any payment of a fine or penalty for the violation of any law or rule or regulation.
 - Any personal expenditure.
 - Any amount carried to a revenue fund or capitalized in any way.
 - Any capital expenditure. However, depreciation or amortization shall be allowed in respect of a depreciable asset, intangible or pre-commencement expenditure.

Hafiz Muhammad Shafaat Ali

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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