

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



# NEWSLETTER NOVEMBER 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.

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## **SINDH HIGH COURT-INCOME TAX ITRA NO.132 OF 2011**

<b>FORUM:</b>	SINDH HIGH COURT
<b>REFERENCE/CITATION:</b>	ITRA No.132 of 2011
<b>JUDGEMENT PASSED BY:</b>	MR. GHULAM SARWAR KORAI & MR. MUNIB AKHTAR.
<b>PARTIES INVOLVED:</b>	FEDERAL BOARD OF REVENUE <b>(PETITIONER)</b> <b>VS.</b> THE TAXPAYER COMPANY <b>(RESPONDENT)</b>
<b>DATE OF ORDER:</b>	MAY 05, 2013
<b>TAX YEAR:</b>	2009
<b>REFERENCE FILED BY:</b>	THE DEPARTMENT
<b>ISSUE INVOLVED:</b>	Applicability of the facility of carry forward of minimum tax under Section 113(2)(c) to a taxpayer having no normal tax liability.

### **BRIEF FACTS:**

The respondent taxpayer is a resident company engaged in the manufacture of yarn/cloth. The taxpayer declared loss but had to pay minimum tax u/s 113 of the ITO 2001 for tax year 2007 and 2008. The taxpayer claimed the benefit of the carry forward of minimum tax u/s 113 (2) (c) of the ITO 2001 during tax year 2009 for adjustment against normal tax liability in excess of the minimum tax. The assessing officer issued order for amendment of assessment and disallowed the carry forward of minimum tax by holding that the carry forward is allowed only in the case where tax paid or payable is less than the minimum tax calculated under section 113 of the ITO 2001 while in the instant case the taxpayer suffered losses and has no normal tax liability during tax year 2007 and 2008. The taxpayer filed appeal before CIR(Appeals) and the first appellate authority decided in favor of the taxpayer by holding that where normal tax liability is zero, the whole of the minimum tax is to be carried forward. The department filed appeal before ATIR and the ATIR upheld the order of the CIR(Appeals). The department filed appeal before the High Court.

### **OBSERVATION OF THE COURT:**

The learned court has observed the following issues:

In our view, the interpretation sought to be placed on subsection (2)(c) of section 113 by the tribunal is plainly erroneous. In particular, the finding that the "actual tax payable" under Part I, Division II of the First Schedule could be zero or otherwise" conveys no meaning. The language of clause (c) is plain. It speaks of tax payable and/or paid. Nothing could be clearer than that. An amount that is zero cannot be regarded as payable or paid in any meaningful sense.

## DECISION:

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the reference application in favor of department in following words:

### Quote:

*"In view of the foregoing, we conclude that the interpretation placed by the tribunal on section 113(2)(c) was erroneous and cannot be sustained. The Taxation officer had correctly interpreted and applied the law. Accordingly, the question referred to us is answered in favor of the Department and against the respondent taxpayer. The impugned order is set aside and this Reference Application is allowed".* **Un-quote**

## APPELLATE TRIBUNAL INLAND REVENUE - SALES TAX APPEAL NO.176/PB/2018

**FORUM:** APPELLATE TRIBUNAL INLAND REVENUE  
**REFERENCE/CITATION:** STA NO.176/PB/2018  
**JUDGEMENT PASSED BY:** MR. M.M. AKRAM (JUDICIAL MEMBER)  
MR. NADIR MUMTAZ WARRAICH (ACCOUNTANT MEMBER)

**PARTIES INVOLVED:** M/S Zaib Enterprises (**APPELLANT**)  
**VS.**  
The CIR, (Peshawar Zone), RTO, Peshawar (**RESPONDENT**)

**DATE OF ORDER:** August 08, 2019

**TAX PERIODS:** N/A

**APPEAL FILED BY:** THE TAXPAYER

**ISSUE INVOLVED:** SUSPENSION OF SALES TAX REGISTRATION WITHOUT ISSUANCE OF PRIOR SHOW CAUSE NOTICE AND BLACKLISTING AFTER THE EXPIRY OF 90 DAYS OF THE ISSUANCE OF SHOW CAUSE NOTICE IN RESPECT THEREOF.

## BRIEF FACTS:

Brief facts culled out from the record are that the Directorate of Intelligence & Investigation IR, Peshawar reported to the Commissioner Inland Revenue that inter alia the appellant is prima facie involved in tax fraud as defined in section 2(37) of the Act. The appellant is non-existent on the declared business address, and retail outlet and go down is also not in existence in the area. Further observed that the appellant is also evading sales tax payable of Rs.13,226,095/- on account of further tax and the appellant is maintaining huge stocks without declaration of sales in the sales tax returns.



On the aforesaid allegations, tax fraud in terms of section 2(37) was established vide assessment order No.25/2017 dated 15.05.2017, involving sales tax Rs.13,226,095/- on account of further tax along with default surcharge and penalty. **Therefore, on the basis of the aforesaid observations, the sales tax registration of the appellant was suspended without issuance of prior show cause notice vide order dated 13.04.2017.** Subsequently, a show cause notice dated 17.04.2017 was issued for black listing the sales tax registration of the appellant. The show cause notice was returned back with the remarks that no one exist on the given address. The learned Commissioner IR with the consultation of the Senior Auditors who appeared on behalf of the Directorate of I&I passed an impugned order whereby vide order dated 09.06.2017, the appellant was declared black listed under section 21(2) of the Act read with Rule 12 of the Sales Tax Rules, 2006. Feeling aggrieved of the said order, the appellant preferred an appeal before this Tribunal under section 46(1)(b) of the Act and has assailed the impugned order on number of grounds including that the following:

1. Suspension of sales tax registration without prior notice is a clear violation of Article 10A of the Constitution of Islamic Republic of Pakistan.
2. The impugned order of blacklisting has been issued after 90 days of the issuance of show cause notice which renders the impugned order void ab-initio in pursuance of Rule 12(b)(iii) of Sales Tax Rules 2006.

#### **OBSERVATION OF THE COURT:**

The learned court has observed the following issues:

- i) We have heard both the parties and perused the relevant record. The submissions of the learned AR of the appellant have substance. After insertion of Article 10A in the Constitution of Pakistan 1973, "fair trial" and "due process" are fundamental rights of every citizen for determination of his civil rights and obligations. Before suspension of the sales tax registration of the appellant the reason should be confronted and be given an opportunity of being heard. Reliance may be placed on in a recent judgment Sarfraz Saleem vs. Federation of Pakistan and others (PLD 2014 SC 232) has held: -  
"4.....every person, for determination of his civil rights and obligations or in any criminal charge against him shall be entitled to fair trial and due process."
- ii) The last submission of the appellant that the impugned order was issued after expiry of 90 days from the date of issuance of show cause notice is also tenable. The Rule 12(b)(iii) of the Sales Tax Rules, 2006 clearly provides that the order of blacklisting shall be issued within ninety days of the issuance of the notice of hearing. In case, the order of blacklisting is not issued within this time period the suspension of registered person shall become void ab-initio. In the instant case the record prima facie shows that the show cause notice for black listing the sales tax registration of the appellant was issued on 17.04.2017 and the impugned order of black listing was issued on 24.08.2017 after expiry of ninety days from the date of notice which is contrav to the provision of the Rule 12(b)(iii) ibid. The relevant Rule

**"Blacklisting: -**

1. ....
2. ....
3. the order of blacklisting shall be issued within ninety days of the issuance of the notice of hearing. In case, the order of blacklisting is not issued within this time period the suspension of registered person shall become void ab-initio;" (Emphasis supplied)

**DECISION:**

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the appeal in favor of the taxpayer in following words:

**Quote:**

*"For the foregoing reasons, the appeal of the appellant is accepted and the impugned order is set aside with the direction to the respondent to restore the sales tax registration number of the appellant forthwith in its original status i.e List of Active Taxpayer..".* **Un-quote**

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**APPELLATE TRIBUNAL INLAND REVENUE -INCOME TAX APPEAL No.332/IB/2018**

<b>FORUM:</b>	APPELLATE TRIBUNAL INLAND REVENUE
<b>REFERENCE/CITATION:</b>	ITA No.332/IB/2018
<b>JUDGEMENT PASSED BY:</b>	MR. M. M. AKRAM (JUDICIAL MEMBER) MR. NADIR MUMTAZ WARRAICH (ACCOUNTANT MEMBER)
<b>PARTIES INVOLVED:</b>	M/s Toyota Sargodha Motors ( <b>APPELLANT</b> ) <b>VS.</b> The CIR, Zone-1, RTO, Sargodha. ( <b>RESPONDENT</b> )
<b>DATE OF ORDER:</b>	August 27, 2019
<b>TAX YEAR:</b>	2012
<b>APPEAL FILED BY:</b>	THE TAXPAYER
<b>ISSUE INVOLVED:</b>	IMPLICATIONS OF THE PROVISIONS OF SECTION 113 OF THE ITO 2001 ON FTR AND OTHER RECEIPTS.

## BRIEF FACTS:

While submitting Income Tax Return for Tax Year 2012, the appellant made a mistake by not segregating the commission receipt/FTR sales and the sales/receipts on account of spare parts and repair maintenance services which under the law only come within the definition of turnover and are liable to minimum tax under section 113 of the Ordinance. The assessing officer issued order under Section 122 of the ITO 2001 and charged minimum tax u/s 113 of the ITO 2001 on the entire sales declared by the assessee. The CIR (Appeals) confirmed the order of the assessing officer. Being aggrieved the assessee preferred an appeal before ATIR.

**OBSERVATION OF THE COURT:** The learned court has observed the following issues:

- i) The perusal of the Authorized Dealer Agreement executed between the appellant and M/s Indus Motor Company Ltd clearly suggests that the appellant is a dealer of M/s Indus Motor ("the Company"). According to the agreement, the appellant is obliged to sell Toyota brand motor vehicles, and spare parts, accessories, oils, chemicals and tools for use in repair or maintenance service of the Toyota vehicles supplied by the Company. The Company has paid the commission to the appellant against the sale of motor vehicles and has deducted the tax thereon under section 233 of the Ordinance which is a final discharge of tax liability under the said head. The appellant had wrongly filed its income tax return by declaring the gross sales without segregating the commission receipt/FTR sales and the sales/receipts on account of spare parts and repair maintenance services which under the law only come within the definition of turnover and are liable to minimum tax under section 113 of the Ordinance. The appellant had to file the return under normal law along with the statement as required under section 115(4) of the Ordinance for the purpose of declaring sales on account of spare parts and repair maintenance service and commission receipt respectively. The assessing officer is under a duty to apply the correct law notwithstanding the claim of the appellant, even if the result would be favorable to the appellant. The declaring of gross sales in the income tax return being against the provisions of law would not serve as estoppel against the appellant.
- ii) The declaring of gross sales in the income tax return being against the provisions of law would not serve as estoppel against the appellant. It is a well entrenched rule that there can be no estoppel against law. Reliance may be placed on the judgment titled as *Pir Sabir Shah v. Shah Muhammad Khan* (PLD 1995 SC 66) and *CIT v. Ghazi Barotha Construction* (2004 PTD 1994). Resultantly, the sales on account of motor vehicles against which the appellant received the commission from the company and paid tax thereon under section 233 of the Ordinance would be excluded from the gross sales declared by the appellant in its income tax return for the tax year under consideration. The minimum tax @ 1% would only be charged on the sales/receipts of spare parts and repair of maintenance services "

## DECISION:

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the appeal by vacating orders of assessing officer/CIR(Appeals) and remanding back case to the assessing officer:

### Quote:

*"For the foregoing reason, we have set-aside both the orders passed by the lower authorities and the case is remanded back to the assessing officer with the direction to pass a fresh order in accordance with law after due consideration of the observations given in para 5 above. The appellant be given a reasonable opportunity of being heard before passing an order."* **Un-quote**

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## PESHAWAR HIGH COURT-SALES TAX W.P NO.753-P of 2013

**FORUM:** PESHAWAR HIGH COURT  
**REFERENCE/CITATION:** W.P NO.753-P of 2013.  
**JUDGEMENT PASSED BY:** MR. YAHYA AFRIDI (Chief Justice)  
**PARTIES INVOLVED:** AGRO PACK (PVT) LIMITED (**PETITIONER**)  
**VS.**  
FEDERATION OF PAKISTAN (**RESPONDENT**)  
**DATE OF ORDER:** November 20, 2019

**TAX PERIODS:** May 2005 to May 2007

**REFERENCE FILED BY:** THE TAXPAYER

### ISSUE INVOLVED:

ZERO RATING OF GOODS MANUFACTURED IN THE EXPORT PROCESSING ZONES OR IN MANUFACTURING BONDS AND EXPORTED TO AFGHANISTAN.

### BRIEF FACTS:

The petitioner has filed subject writ petition before Peshawar High Court on the issue of "zero rating of goods manufactured in the export processing zones or in manufacturing bonds and exported to Afghanistan" as the same 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"). The worthy counsel for the petitioners contended that the authority of the Federal Government to exclude the concession of Zero Rate of sales tax is only extended to export to a notified country and not to the supply of particular goods or class of goods, as specified in SRO 190. He further contended that the judgment of the apex Court in Agro Pack's case is not relevant to the issue in hand, as in the present case, the vires of SRO 190 have been challenged, while in the said case the refund was being sought by the petitioner Company for the sale tax already paid.



### OBSERVATION OF THE COURT:

The learned court has observed the following issues:

- i) 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.
- ii) 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 (iii) 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. "

### DECISION:

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the reference application in favor of department in following words:

#### Quote:

"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).

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. " **Un-quote**

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## **NOTIFICATIONS / CIRCULARS**

### **FBR INFORMATION**

#### **INTRODUCTION**

Federal Board of Revenue issued letter dated October 31, 2019

#### **COMMENTARY:**

Through this letter, FBR has extended date of Payment and Filing of Sales Tax and Federal Excise Return for Tax Period September 2019 are as follows:

Submission of Sales and Federal Excise Return                      November 8, 2019

Prior to above indicated extension the due date was October 25 respectively.

#### **DOCUMENT LINK**

<https://khilji.net.pk/wp-content/uploads/2019/11/2019103117105216465ExtensionSTFEReturnforSept2019-1.pdf>

### **FBR NOTIFICATION**

#### **INTRODUCTION**

The Federal Revenue Board (FRB) issued S.R.O. 1321(I)/2019 dated November 08, 2019.

#### **COMMENTARY**

Through aforementioned SRO, FBR made following amendment The Twelfth Schedule to the Sales Tax Act 1990 whereby the goods as specified in the Third Schedule on which tax is paid on retail price basis are excluded from levy of Value Addition Tax under Section 7A of the Sales Tax Act 1990.

#### **LINK OF DOCUMENT**

<https://khilji.net.pk/wp-content/uploads/2019/11/20191181911581877SR01321.pdf>

## SECP NOTIFICATIONS

### INTRODUCTION

Securities and Exchange Commission of Pakistan issued following SROs

1. S.R.O. 1283 (I)/2019 dated October 28, 2019
2. S.R.O. 1285 (I)/2019 dated October 28, 2019
3. S.R.O. 1286 (I)/2019 dated October 28, 2019
4. S.R.O. 1284 (I)/2019 dated October 28, 2019

### COMMENTARY

#### **AMENDMENTS IN "DEBT SECURITIES TRUSTEES REGULATIONS, 2017"**

SECP vide S.R.O. 1283 (I)/2019 dated October 28, 2019 made amendments in Regulation 7, in sub-regulation (1) of the Debt Securities Trustees Regulations, 2017 whereby requirement of deposit of Rs. 100,000 as renewal fee for license to act or perform functions of a debt securities trustee has been deleted.

#### **AMENDMENTS IN PUBLIC OFFERING (REGULATED SECURITIES ACTIVITIES LICENSING) REGULATIONS, 2017**

SECP vide S.R.O. 1285 (I)/2019 dated 28th October, 2019 made amendments in Regulation 7, sub-regulation (1) and Schedule II of the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017 whereby requirement of deposit of renewal fee for license to act or perform functions of a banker to an issue, consultant to the issue and underwriter has been deleted.

Further, Schedule II specifying fee different type of license under these regulations have been revised as under:

<b>"SCHEDULE II* [See regulation 5 and 7]</b>		
<b>Sr. No.</b>	<b>Name of regulated securities activity</b>	<b>Fresh license fee</b>
1	Banker to an issue	Rs. 500,000
2	Consultant to the issue	Rs. 200,000/-
3	Underwriter	Rs. 250,000/-
<i>Table of fee revised as per the directive of Policy Board vide S.R.O. 716(I)/2019, dated 2nd July, 2019 ] All the fees indicated above shall be paid through a bank challan in favour of the Securities and Exchange Commission of Pakistan."</i>		

Underwrite license fee has been revised from Rs. 500,000 to Rs. 250,000 while other two above remained unchanged while renewal fee in three categories have been deleted.

## **AMENDMENTS IN FIFTH SCHEDULE OF THE PUBLIC OFFERING REGULATIONS, 2017**

SECP vide S.R.O. 1286 (I)/2019 dated October 28, 2019 made amendments in Fifth Schedule of the Public Offering Regulations, 2017 whereby "Processing Fee" as mentioned under Fifth Schedule of the Public Offering Regulations, 2017 have reduced for public offering of equity securities of a company (listed/unlisted) to Rs. 200,000. Before substitution this was Rs. 500,000 for listed company and Rs. 500,000 plus 0.025% of the post listed paid-up capital in case of public offering of equity securities of an unlisted company.

## **AMENDMENTS IN THE SHARE REGISTRARS AND BALLOTTERS REGULATIONS, 2017**

SECP vide S.R.O. 1284 (I)/2019 dated 28th October, 2019 made amendments in the Share Registrars and BallotTERS Regulations, 2017 whereby requirement of deposit of Rs. 25,000 as renewal fee for license to act or perform functions of a Share Registrars and BallotTERS has been deleted. Accordingly, Form C for application of renewal of license has also been amended to delete sentence related to evidence of renewal fee.

### **DOCUMENTS LINK**

1. S.R.O. 1283 (I)/2019 dated October 28, 2019

<https://khilji.net.pk/wp-content/uploads/2019/11/Debt-Securities-Regulations.pdf>

2. S.R.O. 1285 (I)/2019 dated October 28, 2019

<https://khilji.net.pk/wp-content/uploads/2019/11/Public-offering-regulated-securities-regulations.pdf>

3. S.R.O. 1286 (I)/2019 dated October 28, 2019

<https://khilji.net.pk/wp-content/uploads/2019/11/Regulated-regulations.pdf>

4. S.R.O. 1284 (I)/2019 dated October 28, 2019

<https://khilji.net.pk/wp-content/uploads/2019/11/Share-registrars-regulations.pdf>

### **SECP NOTIFICATION**

#### **INTRODUCTION**

The Securities and Exchange Commission of Pakistan issued SRO 1332(I).2019 on November 7, 2019.

## COMMENTARY

SECP vide S.R.O. 1332(I)/2019 dated November 07, 2019 has modified the effective date of application of IFRS – Financial instruments (IFRS 9) for Non-Banking Finance Companies in place of International Accounting Standard (IAS) 39 (Financial Instruments: Recognition and Measurement) for Non-Banking Finance Companies.

***NBFCs were required to apply IFRS-9 for reporting period/year ending on or after 30 June 2019. Now IFRS 9 for Non-Banking Finance Companies (NBFCs) shall be applicable for reporting period / year ending on or after 30th June, 2020 (earlier application is permitted).***

## LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/11/Notification-IFRS-9.pdf>

## SECP NOTIFICATION

### INTRODUCTION

SECP vide S.R.O. 1233 (I)/2019 dated October 16, 2019 made Amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008.

Non-Banking Finance Companies (NBFCs) and Notified Entities Regulations, 2008 (*afterwards referred as "Regulations"*) apply to NBFCs, carrying out leasing, investment finance services, housing finance services, asset management services and investment advisory services and their business activities and notified entities being managed by the aforementioned NBFCs.

## COMMENTARY

### **SIGNIFICANT AMENDMENTS MADE IN REGULATIONS ARE AS FOLLOWS: -**

- ***Compliance of "The Listed Companies (Code of Corporate Governance) Regulations, 2019"***  
*Through these amendments, NFBCs engaged in carrying out "Asset Management Services" and "Deposit taking NBFCs", are now required to comply with "The Listed Companies (Code of Corporate Governance) Regulations, 2019, however the Commission may exempt any specific NBFC or class of NBFCs from compliance.*
- ***Appointment of Independent Directors***  
An NBFC shall ensure, while appointment of Independent Director, that: -
  - (a).Independent directors shall be selected from the data bank notified by the Commission in accordance with section 166 of Companies Act, 2017; and
  - (b). The independent directors shall be elected in the same manner as shareholder directors are elected in accordance with section 159 of the Companies Act, 2017."

### **OTHER PROCEDURAL AMENDMENTS ARE AS FOLLOWS: -**



**OTHER PROCEDURAL AMENDMENTS ARE AS FOLLOWS: -**

REGULATION REF NO.	AMENDMENTS
15B. Limit on aggregate liabilities of an NBFC	<p><b><u>After Sub-regulation (1), following Proviso is added:</u></b>            “Provided that for an NBFC engaged exclusively in the business of issuance of guarantees to enhance the quality of debt instruments issued to finance infrastructure projects in Pakistan, the aggregate liabilities, excluding contingent liabilities and security deposits shall not exceed ten times of its equity and qualified capital and for this purpose the Commission may specify, through circular, qualified capital and its terms and conditions.”;</p> <p><b><u>After Sub-Regulation (2), following proviso is added:</u></b>            “Provided that for an NBFC engaged exclusively in the business of issuance of guarantees to enhance the quality of debt instruments issued to finance infrastructure projects in Pakistan, contingent Liabilities shall not exceed the 10 times of the equity and qualified capital and for this purpose the Commission may, through circular, specify the qualified capital and its terms and conditions.”</p>
17. Maximum Exposure of NBFC to a single person, or Group	<p><b><u>In Sub-regulation (1), after proviso the following is added:</u></b>            “Provided further that for an NBFC engaged exclusively in the business of issuance of guarantees to enhance the quality of debt instruments issued to finance infrastructure projects in Pakistan, the total outstanding Exposure (fund based and non-fund based) by an NBFC to a person shall not at any time exceed forty per cent (40%) of the equity (as disclosed in the latest financial statements) and Qualified Capital and for this purpose the Commission may, through circular, specify qualified capital and its terms and conditions:            Provided also that this relaxation shall be applicable to the NBFC as mentioned above:            (i) for the first [five (5)] years of its operations; and            (ii) for total outstanding Exposure in relation to finance raised otherwise from the public.”</p> <p><b><u>In Sub-regulation (2), after proviso, the following is added:</u></b>            “Provided further that for an NBFC engaged exclusively in the business of issuance of guarantees to enhance the quality of debt instruments issued to finance infrastructure projects in Pakistan, the total outstanding Exposure (fund based and non-fund based) to any group shall not exceed fifty per cent (50%) of the equity (as disclosed in the latest financial statements) and Qualified Capital and for this purpose the Commission may, through circular, specify qualified capital and its terms and conditions:            Provided also that this relaxation shall be applicable to the NBFC as mentioned above:            (i) for the first [five (5)] years of its operations; and            (ii) for total outstanding Exposure in relation to finance raised otherwise from the Public.”</p>

<b>37. Terms and conditions to undertake asset management services.</b>	<p><b><u>Sub-regulation (2) and (3) is substituted with following:</u></b> “An AMC shall have at least one investment committee which shall be responsible for selecting and developing appropriate investment and risk management strategies for the proper performance of the collective investment schemes and developing internal investment restrictions limits and restriction for Collective Investment Schemes.”</p> <p><b><u>Sub-regulation (4) is substituted with following:</u></b> “(4) Any employee of Asset Management shall not;- (a) hold office as employee in another Asset Management Company; (b) hold any office including that of a director of another Asset Management Company; and (c) engage in brokerage services.”</p> <p><b><u>Sub-regulation (7)(e) is substituted with following:</u></b> “(e) participate in a joint account with others in any transaction on behalf of the Collective Investment Scheme, except for collection account of the Collective Investment Schemes managed by it or for placement of order under a single UIN subject to mechanism approved by the Commission;”</p> <p><b><u>In clause (h):</u></b> For the expression “fifteen” the expression “twenty-five” shall be substituted</p> <p><b><u>After clause (ja), following proviso is inserted:</u></b> “Provided that the subscription to an issue is allowed to the extent of limits prescribed under sub-regulation (3), (5), (6), (9) and (10) of regulation 55.”</p> <p><b><u>Sub-regulation (8) is omitted.</u></b></p>
<b>38. Obligations of the Asset Management Company</b>	<p><b><u>In sub-regulation (2) for clause (a)</u></b> “(a) account to the trustee for any loss in value of the assets of the Open End Scheme or Closed End Scheme where such loss has been caused due to its gross negligence or willful act or omission;”</p> <p><b><u>Clause (j) is substituted with following:</u></b> “(j) be obliged to allocate the redemption price on receipt of redemption application and process payment instrument immediately upon receipt of complete redemption application and to issue units not later than upon realization of proceeds accompanying an investment application complete in all respect;”</p> <p><b><u>After clause (t) the following is added:</u></b> “(u) act with due care, skill and diligence in carrying out its duties and responsibilities; (v) ensure that investments do not deviate from the Constitutive Documents or these Regulations or directions of the Commission; (w) develop and follow internal investment restrictions and policies; (x) review the performance of the Collective Investment Scheme on a regular and timely basis; (y) ensure that proper record of meetings and investment decisions is maintained; (z) record and sign decisions in line with guidelines and objective for investments and disinvestments separately for each Collective Investment Scheme; and (aa) develop criteria for appointing a diverse panel of brokers and monitoring compliance thereof to avoid undue concentration of business with any single broker.”</p>

<b>40. Eligibility requirements for registration</b>	<b><u>Clause (f), is substituted with following:</u></b> “(f) such other company subject to such terms and conditions as the Commission may specify through a circular.”
<b>41. Obligations of trustee of the Open End Scheme or Closed End Scheme</b>	<b><u>Clauses (i) and (j) are omitted</u></b>  <b><u>Clause (r), is substituted with following:</u></b> “(r) not invest or redeem units of Open End Schemes for which it acts as trustee in the cases where there is a likelihood of a change in investment objective of the scheme or there is a likelihood of change in account policy or a significant change in the valuation of any asset or class of asset and the same has not been communicated to the inventors; and”.
<b>44. Registration of Open End Scheme or Closed End Scheme</b>	<b><u>Sub-regulation (6) is substituted with following:</u></b> “(6) No amendments including any modification, alteration and addition shall be made in the Constitutive Documents without prior notice of seven days to the unit holders and consent of the trustee.”  <b><u>In sub-regulation (7).</u></b> For the expression “ninety” the expression “thirty” shall be substituted.
<b>55. Investment policy and diversification</b>	<b><u>Sub-regulation (10) clause (a), is substituted with following:</u></b> “Explanation: For the purpose of clause (a) of sub-regulations (10) of regulation 55, the term “group” means persons having at least 30% or more shareholding in any other company, as per publicly disclosed information;”  <b><u>In clause (b), the following is inserted:</u></b> “Provided that an Asset Management Company, on behalf of sector specific fund shall not take exposure more than 20% of net asset of collective investment scheme in listed group companies of the asset management company.”
<b>58. Limitations and prohibitions</b>	<b><u>In sub-regulation (1), in clause (j), for the explanation the following new explanations are inserted:</u></b> “Explanation I:- Reverse repo transactions involving Government Securities or other debt securities stated as authorized investments in the Offering Document under an agreement and spread transaction through ready buy and future sale or future buy ready sale transaction to unwind the existing spread transaction or MTS or replacement thereof which are protected by the clearing company shall not be attracted by clause (j) provided risk management parameters are disclosed in the offering document of the scheme. Explanation II:- For the purpose of sub-clause the expression “spread transactions” mean such transactions where shares of one company are purchased on one settlement date and simultaneously sold on another settlement date, that will be considered as one transaction and includes; ready buy and future sale and its unwinding or future buy and future sale and its unwinding.”;

<b>60. Expenses Chargeable to Collective Investment Schemes</b>	<p><b><u>In sub-regulation (3), for clause (i) the following is substituted:</u></b> “(i) formation cost of the Collective Investment Scheme not exceeding 1.5 per cent of the net assets at the close of initial public offering (IPO) in case of an Open End Scheme and one percent of the paid-up capital in case of a Closed End Fund or ten million rupees whichever is lower;”.</p> <p><b><u>After sub-regulation (5), the following new sub-regulations are inserted:</u></b> “(6) An AMC shall ensure adequate disclosure of the following expenses and sales load to investor before soliciting investment, - (i) Total Expense Ratio; (ii) Management Fee as a percentage of net assets; (iii) Selling and Marketing expenses as a percentage of net assets; and (iv) Front-end, back-end and contingent load as a percentage of net assets.” and (7) Asset Management Company shall prominently disclose on a daily basis, the following information regarding all Collective Investment Schemes on its website and on the website of Mutual Funds Association of Pakistan (MUFAP), - (i) Total Expense Ratio; (ii) Management Fee as percentage of net assets; (iii) Selling and Marketing expenses as percentage of net assets; and (iv) Front-end, back-end and contingent load as a percentage of net assets.”</p>
<b>66A. Sale and Distribution of units of Collective Investment Schemes</b>	<p><b><u>In clause (d), the following explanation is inserted: -</u></b> “Explanations:- For the purpose of this, AMC shall ensure proper acknowledgment from investors on risk profiling and recommended Collective Investment Scheme as per risk profiling and in case investor select high risk product on its own choice, AMC shall also ensure proper acknowledgment from investor of his such selection.”</p>

## DOCUMENTS LINK

<https://khilji.net.pk/wp-content/uploads/2019/11/Amendments-to-NBFC-Regulations.pdf>

## FBR NOTIFICATION

## INTRODUCTION

The Federal Revenue Board (FRB) issued S.R.O. 1320(I)/2019 dated November 08, 2019.

## COMMENTARY

Through aforementioned SRO, FBR has proposed draft amendments to The Income Tax Rules 2002. The draft is open for comments by any person affected by the proposed amendments within 7 days of the issuance of the subject notification.

A new Part – IV in Chapter VII of the Income Tax Rules 2002 has been proposed to be inserted which prescribes special instructions regarding books of accounts, documents and record to be maintained by Designated Persons (DPs) and reporting of Suspicious Transactions.

According to proposed rules, "Designated Person" or DP means

- (i) Jewelers; and
- (ii) Real estate agents.

### **Documents and record to be maintained by Designated persons**

### **Rule 33C**

- When the value of transaction inclusive of all applicable taxes and duties exceeds Rs. 2,000,000 in case of immovable property and Rs. 1,000,000 all other cases, DP is required to obtain and maintain record of documents (CNIC, NICOP, Passport, Pakistan Origin Card etc.) relating to buyers and sellers.
- Where DP has reason to believe that the customer is not the beneficial owner, documents as specified above in case of individual and CNIC of CEO in case of AOP and Company on whose behalf the transaction is being carried out together with NTN certificate of AOP or Company.
- Business license issued under section 181D of Income Tax Ordinance, 2001 for customer who show income from business as their source of funds.
- Copy of banking instruments used for payments.
- Copy of documents should be stamped as "Original seen" by DP after viewing the original documents.
- The DP shall, wherever possible, keep a list of all such documents where the business transaction was refused or needed to be closed either on account failure of the customer to provide the relevant documents as specified above or the original documents for viewing.
- The DP shall make arrangement for conducting reliable independent source verification of the customers in order to mitigate risk associated with a transaction.
- Sale and purchase register as per specified format to be maintained by DP.

### **Furnishing of documents**

### **Rule 33D**

- DP is required to upload on the IRIS online system, the sale and purchase register for immediately preceding month within 15 days of the end of the preceding month for transactions which-
  - (a) Which exceeds limit of Rs. 2 million or 1 million as described above; and
  - (b) are reportable under Rule 33E (Suspicious transactions)

### **Reporting of Suspicious transactions**

### **Rule 33E**

- DP is required to mark a transaction as suspicious in the IRIS online system if the DP has reasons to believe that the transaction-
  - (a) Involves funds derived otherwise than from the business activity or assets declared to the income tax authorities;
  - (b) Is designed to evade any requirement of the ordinance or to conceal the beneficial owner or his activity;
  - (c) has no apparent economic or lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or
  - (d) involves financing of terrorism, including fund collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individual concerned with terrorism.
- A transaction shall be marked as suspicious if the buyer or seller-



- (a) Frequently changes bank accounts;
- (b) Uses a bank account other than an account maintained in the name of beneficial owner;
- (c) Make or receives payments in cash or primarily in cash;
- (d) Maintains a creditors or debtors account with the DP and instructs the DP to adjust the balance of his account against a creditor debtor account of another buyer or seller.
- The DP shall not disclose the facts to the customer in relation to suspicious transactions.

## Monitoring and compliance

## Rule 33F

- Record to be maintained by DP shall be subject to spot inspection by income tax authorities.
- Where the record is not maintained in the prescribed form, the business license of the DP shall be suspended pending further investigations into the matter.
- Penalty and prosecution provisions of Income Tax Ordinance, 2001 would be applicable where a DP fails to comply with these rules.
- ON conclusion of investigation the officer may submit a report to the Commissioner and make recommendation regarding:-
  - (a) Cancellation or reinstatement of the business license; or
  - (b) Referral of the matter to specialized external investigating agency for further investigation under respective laws

## LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/11/201911816111728174SRO1320.pdf>

## SECP NOTIFICATION

### INTRODUCTION

The Securities and Exchange Commission of Pakistan issued SRO 1332(I).2019 on November 7, 2019.

### COMMENTARY

SECP vide S.R.O. 1332(I)/2019 dated November 07, 2019 has modified the effective date of application of IFRS – Financial instruments (IFRS 9) for Non-Banking Finance Companies in place of International Accounting Standard (IAS) 39 (Financial Instruments: Recognition and Measurement) for Non-Banking Finance Companies.

**NBFCs were required to apply IFRS-9 for reporting period/year ending on or after 30 June 2019. Now IFRS 9 for Non-Banking Finance Companies (NBFCs) shall be applicable for reporting period / year ending on or after 30th June, 2020 (earlier application is permitted).**

## LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/11/Notification-IFRS-9.pdf>

## FBR NOTIFICATION

### INTRODUCTION

Federal Board of Revenue issued letter dated November 20, 2019

### COMMENTARY:

Through this letter, FBR has extended date of Submission of Sales Tax and Federal Excise Return for Tax Period **October 2019** are as follows:

**Submission of Sales and Federal Excise Return                      November 25, 2019**

**Prior to above indicated extension the due date was November 18.**

### DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/11/20191120111638306ExtensioninSTFEReturnforOct.2019.pdf>

## FBR INFORMATION

### INTRODUCTION

Federal Board of Revenue issued letter dated November 25, 2019

### COMMENTARY:

Through this letter, FBR has extended date of Submission of Sales Tax and Federal Excise Return for Tax Period **October 2019** are as follows:

**Submission of Sales and Federal Excise Return                      November 29, 2019**

**Prior to above indicated extension the due date was November 18, which was extended upto November 25, 2019.**

### DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/11/2019112515114726562019-11-25ExtensionindateinSubmissioninSTReturn.pdf>

## FBR SALES TAX GENERAL ORDER

### INTRODUCTION

The Federal Revenue Board (FBR) issued Sales Tax General Order 107 of 2019 dated November 21, 2019.

### COMMENTARY

Through aforementioned Sales Tax General Order, FBR has issued clarification regarding chargeability of sales tax in Pakistan on the goods originating from Azad Jammu & Kashmir (AJ&K), which have been exempted from payment of sales tax under AJ&K law.

1. The sales tax on supplies originating from AJ&K is payable in AJ&K, however, dealers/distributors of such products located in Pakistan are required to discharge their liability on the value added on such products after adjustment of input tax paid in AJ&K as provided in section 7 read with section 2(14)(e) of the Sales Tax Act, 1990.
2. It is further highlighted that under an AJ&K Notification No. FD/Tax 1145-1245/95, dated 8.2.1995, sales tax is exempted on all goods manufactured in AJ&K except some specified items. It is emphasized that such notification shall not apply to supplies made in Pakistan and the distributors/dealers in Pakistan of such items originating from AJ&K shall charge sales tax at applicable rates and values, or printed retail price in case of items falling in the Third Schedule to the Act, and deposit the same in Pakistan as per law. In case of items exempt in AJ&K, there shall be no input tax paid in AJ&K, however, any deduction of any input tax paid in Pakistan shall be available under law.
3. In case a manufacturer in AJ&K, establishes self-owned distribution, wholesale or retail establishment in Pakistan and takes the pretext that the supply is originating from AJ&K and is not subject to sales tax law in Pakistan, it is clarified that the establishment of such a concern in Pakistan and making of supplies by the same, shall be construed as engaging in taxable activity and making supplies in Pakistan, and such distribution, wholesale or retail concern shall be required to get itself registered and deposit sales tax on its supplies in Pakistan as per law.
4. FBR officials are advised to identify distributors/ dealers of such items in Pakistan and ensure payment of due sales tax by them under law.

### LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/11/2019112116112739494STGONO.107OF2019DATED21.11.2019-SUPPLIESFROMAJK.pdf>

## BIG EVENT OF THE MONTH

Khilji and Co, Chartered Accountants organized a Full Day Workshop on Important Provisions of Income Tax and Changes in KPK Sales Tax on Services 2019 i.e. November 27, 2019, Peshawar.



## **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 on striving for this through various social media forums. Please visit our pages and do provide your valuable comments.

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- **WHATSAPP:** <https://chat.whatsapp.com/BHCSFRh1rfuIBSwtIWJWFp>
- **YOUTUBE:** [https://www.youtube.com/channel/UCA4UjhDS\\_AMKNOFVu7\\_Qjyg](https://www.youtube.com/channel/UCA4UjhDS_AMKNOFVu7_Qjyg)