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MOST BENEFICENT

KHILJI

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Chartered
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**FILE YOUR INCOME TAX
RETURN FOR TAX YEAR 2020
BEFORE DECEMBER 8, 2020**

NEWSLETTER SEPTEMBER 2020



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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 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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CONTENTS

- **COMMENTARY ON CASE LAW – APPELLATE TRIBUNAL INLAND REVENUE, ISLAMABAD TA. No. 1117/IB/2019**
- **COMMENTARY ON CASE LAW – APPELLATE TRIBUNAL INLAND REVENUE, AT-113**
- **COMMENTARY ON CASE LAW – SUPREME COURT OF PAKISTAN CP 398-L OF 2018**
- **NOTIFICATIONS / CIRCULARS**
- **BLOG OF THE MONTH**
- **SOCIAL MEDIA PRESENCE**

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنَ الْبَرَصِ وَالْجُنُونِ
وَالْجَذَامِ وَسَيِّئِ الْأَسْقَامِ

Oh Allah I seek Your refuge from leprosy, insanity,
mutilation and from all serious illnesses

COVID-19

PREVENTIVE MEASURES

- It is matter of our fundamental faith that Almighty Allah is the most merciful and beneficent and the foremost thing to do at all times particularly difficult times like these is to seek forgiveness from Allah for all our intentional and unintentional mistakes.
- Let us pray and seek forgiveness from Allah for all sins and wrongdoings committed by us deliberately or otherwise. May Allah keep all humanity including us and our families safe from this and all kinds of diseases. AMEEN
- While the spiritual prevention of all diseases including this CORONA should be sought through Namaz and Istaghfar however at the same time we have been taught through Quran and Sunnah to take all necessary measures and medicines against all such diseases while keeping faith that the power to cure remains with Allah.

APPELLATE TRIBUNAL INLAND REVENUE-ISLAMABAD

FORUM: ATIR-DIVISIONAL BENCH-I, ISLAMABAD
REFERENCE/CITATION: ITA. No. 1117/IB/2019
PARTIES INVOLVED: HAIDRI BEVERAGES (PVT.) LIMITED (**APPELLANT**)

VS.

COMMISSIONER IR, ZONE-II, LTU, ISB (**RESPONDENT**)

DATE OF ORDER: August 18, 2020
TAX YEAR: 2013
ISSUE INVOLVED: DISALLOWING THE CLAIM OF “**ADJUSTMENT/CREDIT OF MINIMUM TAX U/S 113(2)(c)**” OF THE ORDINANCE

TAXPAYERS’ BACKGROUND: **Category:** Company
Tax Office: LTO Islamabad
Nature of business: Manufacturing and sale of soft drink under the brand name of “**PEPSI**”

BRIEF FACTS:

The appellant has filed an appeal before tribunal against the appeal order bearing no. 64/2019 dated September 7, 2019 issued by Commissioner (Appeals-I) on the issue of “disallowance of adjustment/credit of minimum tax” amounting to Rs. 9,258,175/- paid for the tax year 2008 under section 113(2)(c) of the Ordinance against the tax payable for the tax year 2013 whereby he confirmed the treatment meted out by the AdCIR while concluding the proceedings-initiated u/s 122(5A) of the Ordinance by relying upon judgement of the Hon’ble SHC titled **Commissioner Inland Revenue, Zone-II, Karachi vs. M/s Kasim Textile Mills (Pvt.) Limited, Karachi, “2013 PTD 1420”**.

TAXPAYERS’ STANCE: The learned AR has argued the case on following grounds:

- *Section 113(1) is not a charging provision instead a machinery provision.*
- *Section 113(2) qualifies to be a charging section.*
- *Hon’ble SHC have not only erred but have also misdirected itself while construing section 113(2)(c) and omitted to consider section 113(1) and (b).*
- *Omitted to consider the Intent or purpose of the provision altogether thereby treating the claim of adjustment and carry forward of unadjusted/excess tax as “exemption”.*

DEPARTMENT DEFENSE:

The learned DR vehemently contended against the stated arguments pressed by the appellant and submitted that view taken by the Hon'ble Sindh High Court was correct and to be preferred over the view taken by the Hon'ble Lahore High Court. The learned DR urged that Hon'ble LHC has not dilated the issue in detail instead dismissed the reference of the Department on sole ground that the question framed by it do not rise any legal issue. As there is there is no legal infirmity involved, thus prays for dismissal of appeal.

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

- i) *Is there any rule of law / ratio decidendi to be followed while determining the interpretation applicable to fiscal statutes?*
- ii) *Whether benefit provided or available under section 113(2)(c) falls under the category of "Tax Credit" or "Exemption"?*
- iii) *Whether in the facts and circumstances of the case, the learned CIR(Appeals) has correctly upheld that the benefit u/s 113(2)(c) of the Ordinance is not available to taxpayer as decided by the learned AdCIR by relying on the ratio settled by Hon'ble Sindh High Court in its judgement reported as 2013 PTD 1420?*

DECISION:

Honorable ATIR particularly contemplated section 113(2)(c) of the Ordinance and wherever necessary discussed various previously settled cases involving similar instances and provisions of the Ordinance, during hearing of the case in order to establish the opposing claims, stressed upon by both the Appellant and the Respondent. Honorable ATIR after much sought discussion has decided the appeal application in favor of taxpayer by quoting the review [petition filed before the Hon'ble Supreme Court of Pakistan C.R.P Nos. 104-L of 2019 in C.P 257-L, 258-L/2019 titled as Farooq Hussain etc. (C.R.P No. 104-L/2019) Salman Asghar etc. (C.R.P No. 114-L/2019) vs. Sheikh Aftab Ahmed etc. in following words:

Quote:

"2. We have also noticed that one of the grounds for review is that the order under review is without any reason.

The order passed by this Court on 01.08.2019 was as under: -

"We have heard the learned counsel for the petitioners at some length and have gone through the impugned judgement of the High Court, the record of the case and the law on the subject. We have not been able to take any exception to the reasoning of the impugned judgement and are of the view that it does not warrant any interference. Leave is, therefore, declined and these petitions are dismissed."

It is emphasized that if this Court, having examined the judgement challenged before, it is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, this Court can simply endorse the impugned judgement and adopt the reasoning of the court below. In such a case, retracing the same path travelled by the court below appears to be an unnecessary exercise and a waste of public time-time which can be allocated to other cases where the decisions of the courts below have been overturned or modified. Findings no reversible error in the judgement, a concise, simple order can suffice. On the other hand, if the Court is to reverse or modify the judgement of the court below, the reasons for reversal or modification must be set forth.

3. This approach adopted by the court, is by no means a short-cut which is offensive to fair trial under Article 10-A of the Constitution nor does it in any manner undermine due process and fair play. It is simply a creative way forward that spares the Court from writing opinions where a mere adoption of a well-reasoned judgement of the court below through a short order serves the purpose adequately.

4. Nothing is cast in stone. Old practices evolve with changing time. Burgeoning populations and the corresponding rapid increase in litigation require imaginative solutions. Courts all over the world have moved on to efficient time and case management techniques. Therefore, this ground for review is absolutely misconceived.”

By following the above judgement of the Apex Court, the learned CIR(A) erred in law in holding that no opinion/findings were given by the Hon’ble Lahore High Court.

For what has been discussed above, the appeal of the appellant is accepted and both the orders passed by the lower authorities are vacated to the extent of subject matter of the instant appeal. Un-quote

INLAND REVENUE APPELLATE TRIBUNAL-SRB

FORUM: INLAND REVENUE APPELLATE TRIBUNAL
REFERENCE/CITATION: AT-113

PARTIES INVOLVED: ASSISTANT COMMISSIONER, SRB, KARACHI (APPELLANT)
VS.
MESSRS MOHSIN MEHMOOD (MANZOOR AHMAD)
(RESPONDENT)

DATE OF ORDER: MAY 17, 2019
TAX PERIOD: JULY 2015 TO JUNE 2016
ISSUE INVOLVED: NON-DECLARATION OF TAXABLE SERVICES RESULTING NON-PAYMENT OF SINDH SALES TAX

BRIEF FACTS:

The respondent is registered with SRB authorities under the service category of “Contractual execution of work or furnishing supplies” falling under tariff heading 9809.0000 of the second schedule of SST on Services Act, 2011 however taxable services rendered to Dow University of Health & Sciences amounting to Rs. 533.45 million involving SST of Rs. 74.68 million are not declared as a consequence a show-cause notice was served to respondent u/s 23(2) read with section 43 & 44 of the Act and after submissions of replies by the taxpayer the demand of Rs. 74.68 million along-with penalty of Rs. 3.73 million was raised. The respondent has filed an appeal before commissioner (Appeals-II) who set aside the order in original. Being aggrieved the department has preferred an appeal before Inland Revenue Appellate Tribunal-SRB Karachi.

TAXPAYERS' STANCE:

The learned AR has argued the case on following grounds:

- *Rendition of services to Dow University of Health & Sciences for construction of new buildings which is owned by the Government of Sindh and not meant for commercial purposes instead for use of educational institution*
- *The services rendered were exempt from Sindh sales tax vide Notification No. SRB-3-4/7/2013 dated 18-06-2013 in relation to tariff heading 9824.0000 thus entitled to relief from levy of SST under clause (iii) of the tariff heading 9824.000 being agency of the Government.*

DEPARTMENT DEFENSE:

The learned AC vehemently contended against the stated arguments pressed by the appellant and submitted that view taken by the taxpayer which is subsequently confirmed by the Commissioner (Appeals-II) by erroneously changing the tariff heading from 9809.0000 to 9824.000. He further argued that Dow University is a body corporate and its functions are governed under section 19, Chapter IV of the Dow University of Health Sciences Act, 2001 and is not a government department and the notifications referred by the taxpayer are not applicable in this case. As there is no legal infirmity involved, thus prays for vacation of appeal order issued by the Commissioner (Appeals-II).

OBSERVATION OF THE TRIBUNAL:

The learned tribunal has observed the following issues:

1. *Whether the appellant is providing services falling under tariff headings 9809.000 or 9824.0000?*
2. *Whether the Dow University is a government entity and is entitled to the exemption available under Notifications Nos. SRB-3-4/7/2013 dated 18.06.2013 and SRB-3-4/3/2011 dated 26.08.2011?*

DECISION:

The Honorable Tribunal after discussing the legal provisions and case laws presented before this forum has remanded back the case to the assessing officer in following words:

Quote:

“25. Apparently, the assessment order was passed only on the basis of registration of the appellant without properly determining the nature of services provided or rendered by the appellant. The assessing officer in para o is written submissions submitted that respondent has provided a confirmation letter of Dow University endorsing the services received from respondent which shows that out of nine services falls under the category other than construction services, 9824.0000. The Commissioner (Appeals) allowed exemption treating the Dow University as government entity and relying upon clause (92) of the Second Schedule of the Income Tax Ordinance, 2001 which was omitted by the Finance Act, 2013 (XXII of 2013) and was not available on the statute book. Both the order suffers from legal infirmities and are not sustainable in law.

26. In view of the above discussions both order-in-original and order in appeal are set aside. The case is remanded to the Assessing Officer for passing fresh assessment order after affording proper opportunity of hearing to the parties and after properly determining the nature of services provided or rendered by the appellant and the exemption if any available on the services provided by the appellant. **Un-quote**

SUPREME COURT OF PAKISTAN-ISLAMABAD

FORUM:	SUPREME COURT OF PAKISTAN, ISLAMABAD
REFERENCE/CITATION:	CP 398-L OF 2018
PARTIES INVOLVED:	COMMISSIONER IR, ZONE-III, RTO-II, LHR (PETITIONER) VS. HAMZA NASIR WIRE & 45 OTHERS (RESPONDENT)
DATE OF HEARING:	NOVEMBER 20, 2018
ISSUE INVOLVED:	DELEGATION OF POWERS BY COMMISSIONERS' TO THEIR SUBORDINATE OFFICERS INSTEAD OF EXERCISING THEMSELVES

BRIEF FACTS:

Issuance of notification (i.e. “**NOTIFICATION-I**”) by the Federal Board of Revenue on dated July 21, 2016 whereby appointing 8 commissioners IR heading different zones functioning under the CRTD, Lahore to exercise powers and perform functions as conferred under the Act & the Rules. Instead of exercising the powers themselves, Commissioner, RTO, Lahore issued subsequent notification (i.e. **NOTIFICATION-II**) on dated August 1, 2016 whereby CIR delegated the powers in favor of his sub-ordinate OIR's which was declared to be unlawful and void by the Hon'ble Lahore High Court hence subsequent notification and show-cause notices issued by the OIR's are also considered to be of no legal effect.

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

- i) *Whether Interpretation assigned to Section 30 of the Act, specifically sub-section (1) and (3) by the Lahore High Court is correct?*
- ii) *Whether show-cause notices issued by OIRs u/s 11(3) of the Act are valid?*
- iii) *Whether the distinction made by Hon'ble Islamabad High Court in case of “Zaver Petroleum” is correct?*

DECISION:

Honorable apex court particularly contemplated section 30(1) & (3), 45A(4), 2(25) of the ACT and wherever necessary discussed various previously settled cases involving similar instances and provisions of the Ordinance, during hearing of the case in order to establish the opposing claims, stressed upon by both the Appellant and the Respondent. Honorable Supreme Court after much sought discussion has decided the petition application in favor of department in following words:

QUOTE “In our considered view, the said finding is flawed. It has wrongly been assumed that simply because the FBR in exercise of its authority under Section 30(1) of the Act has assigned territorial and personal jurisdiction to CIRs for the exercise of their functions and powers under the Act, the latter were prevented from exercising their statutory power under Section 30(3) of the Act. The impugned judgment does not give any reasons for such a reading of Section 30(1) and (3) of the Act.

In fact, on a perusal of Section 30(3) it becomes clear that the said provision operates independently of Section 30(1) of the Act. Nowhere does Section 30(3) restrain the CIRs from delineating the territorial and personal jurisdiction of their subordinate OIRs. The conferment of power under Section 30(3) on the CIRs is meant to efficiently organize the team of officer's subordinate to them. In the present case this includes the fixing of territorial and personal limits of each of the twelve subordinate OIRs in Zone-III.

*By disallowing distribution of functions by the CIR, the impugned judgment expects all such functions to be performed by the CIR himself. Apart from rendering the subordinate OIRs redundant, the other immediate consequence of the impugned finding is that the CIR is disabled from exercising his administrative and supervisory functions under the Act. For instance under Section 45A(4) of the Act, the CIR can call for and examine the record of any proceedings under the Act or Rules pending before his subordinate OIRs to examine its legality or propriety. However, if the CIR is personally performing all the functions under Section 11 of the Act (as would be the case if the interpretation of the impugned judgment is adopted), then he will be prevented from exercising his supervisory power under Section 45A(4) of the Act. This is because the CIR cannot possibly supervise himself. Similarly, under Section 25(2) of the Act, the CIR can authorize an OIR to conduct an audit. However, if the view of the learned High Court is accepted then there is no competent statutory authority specified in the Act to authorize the conduct of an audit under Section 25(2) *ibid*. The same analysis applies to Section 47 of the Act which provides for a reference to be filed by a subordinate OIR before the High Court on the authorization of the CIR. Upon a careful evaluation, the finding of the learned High Court for the CIR to perform all functions of the OIRs under the Act is erroneous.*

There is a well settled principle of Law: "nemo dat quod non habet" (no one can give what he does not have). There is no reason why the same rule should not apply to the delegation of functions and powers. Accordingly, the FBR does not derive its power of assessment or recovery of tax from Section 11 of the Act. Equally, the Act does not provide for the delegation of FBR's powers to CIRs nor does Notification-I expressly or impliedly delegate any powers of the FBR to the CIRs. As there has not been any delegation of its powers by FBR to CIRs, therefore, the finding of sub-delegation in the impugned judgment is merely an illusion. Consequently, the said finding in the impugned judgment is faulty.

*Therefore, in the light of our discussion that there could not have been any delegation of the power of issuance of show cause notice in relation to assessment and recovery of tax by the FBR, which is actually conferred upon the OIRs by Section 11 of the Act, it is plain that the exercise of such powers by the OIRs forms a part of their functions under the Act. Accordingly, the opinion that Notification-I is the only source of vesting of powers in OIRs is incorrect. This view overlooks the effect of Section 31 of the Act and the proper meaning of the term 'functions' used in Section 30(2A) to (3) *ibid*. The impugned judgment has therefore failed to correctly appreciate the law discussed above. As a result, it is set aside. Accordingly, all these connected petitions are converted into appeals and allowed" **Un-Quote***

NOTIFICATIONS & CIRCULARS

ISSUING AUTHORITY:	FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S:	38(4) & 50 OF STA, 1990
NOTIFICATION NO:	SRO. 888(I)/2020
DATE OF ISSUANCE:	SEPTEMBER 21, 2020
EFFECTIVE FROM:	WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 21, 2020)
AMENDMENTS MADE IN:	SALES TAX RULES, 2006
LINK OF DOCUMENT	http://download1.fbr.gov.pk/SROs/20209221093637942SRO888of2020.pdf

COMMENTARY:

FBR has inserted new chapter in Sales Tax Rules, 2006 naming “**CHAPTER VIAB REAL-TIME ELECTRONIC ACCESS FOR AUDIT & SURVEY**”. Under this chapter, following rules are introduced;

44B. APPLICATION

Applicable for the purpose of real-time electronic access to the premises, stocks, accounts and record of the registered person or survey of person liable to be registered.

44C. DEFINITIONS: -

- (a) “authorized officer” means an officer of Inland Revenue duly authorized under sub-section (1) of section 38 of the Act;
- (b) “real-time electronic access” includes: -
 - (i) Real-time exchange of data including through SAF-T; or
 - (ii) Access through video link;
- (c) “SAF-T” (Standard Audit File for Tax) means electronic exchange of reliable accounting data in XML (extensible Markup Language) format, as approved by the Board, available on its website with complete technical instructions; and
- (d) “Video Link” means connection enabling communication audio-visually from a remote location.

44D. REAL-TIME ELECTRONIC ACCESS TO STOCKS, ACCOUNTS AND RECORD:

- (1) Authorized officer shall have uninterrupted and full real-time electronic access to the premises, stocks, record, accounts and data whether maintained electronically and exercise powers u/s 38 of the Act. The authorized officer shall have real-time electronic access to: -
 - (a) The operation of any computer system which stores, generates or receives data related to taxable activity;
 - (b) Supporting documentation including file structures, etc., operational and technical manuals, audit trail, controls, safe keeping and information on how the accounting system of the registered person is organized; and
 - (c) Any premises or place specified in sub-section (1) of section 38 of the Act.
- (2) An OIR duly authorized by the Board or CIR having jurisdiction in this behalf.

44E. STANDARD AUDIT FILE FOR TAX (SAF-T): -

- (1) The registered person shall as and when required, provide data on SAF-T on XML format as approved by the Board.
- (2) The SAF-T file shall be transferred through a website or electronic data carriers, as notified by board.
- (3) The basic structure of SAF-T shall, inter alia, include the following, namely: -
 - (a) Accounts books, including journals and ledgers;
 - (b) Bank details and bank statement;
 - (c) Inventory record;
 - (d) Record of sales of goods;
 - (e) Record of purchases, including exempt purchases against which no input claimed and
 - (f) Detailed record of invoices, including sale invoices, purchase invoices, invoices for advance sale and debit/credit notes.
- (4) The registered shall ensure integrity in order to prevent from loss or corruption during transmission or storage.
- (5) A back-up data should be established.

44F. ACCESS THROUGH VIDEO LINK: -

A complete video access should be provided by the registered person.

44G. RESPONSIBILITY OF REGISTERED PERSON: -

The registered person shall bear expenses of system updating if any.

44H. FAILURE TO PROVIDE REAL-TIME ELECTRONIC ACCESS: -

A registered person shall be liable to penal action as provided in the Act if he fails to comply with the provisions.

ISSUING AUTHORITY:	FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S:	53(2) OF ITO, 2001
NOTIFICATION NO:	SRO 922(I)/2020
DATE OF ISSUANCE:	SEPTEMBER 29, 2020
EFFECTIVE FROM:	WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 29, 2020)
LINK OF DOCUMENT	http://download1.fbr.gov.pk/SROs/20209291694828362SRO922(I)of2020.pdf

COMMENTARY:

FBR has inserted new clause “12I” after the existing clause “12H”, by providing specific exemption u/s 148 for collection of advance tax at the time of import. The clause will be read as follow;

“The provisions of section 148 shall not apply on the imports of 83X Micron sprayers for Anti-Locust Operation (Respective heading) by National Disaster Management Authority (NDMA).”

ISSUING AUTHORITY:	FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S:	237(1) OF ITO, 2001
NOTIFICATION NO:	SRO 923(I)/2020
DATE OF ISSUANCE:	SEPTEMBER 29, 2020
EFFECTIVE FROM:	WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 29, 2020)
AMENDMENTS MADE IN:	SRO 863(I)/2020 DATED SEPTEMBER 14, 2020
LINK OF DOCUMENT	http://download1.fbr.gov.pk/SROs/2020929129553567SRO923(I)of2020.pdf

COMMENTARY:

Through the aforesaid statutory order FBR has prescribed procedure and manner for applying exemption under section 152/159 of the Ordinance for non-resident or permanent establishment of NR.

APPLICATION

- (1) Exemption application or lower rate certificate u/s 159(1) shall be made in the form specified in Part VII(B) of the First Schedule.
- (2) Exemption application u/s 152(4B) for payment which constitutes part of an overall arrangement of a cohesive business operation as referred in section 2(41)(g)(ii) & payment to NR without deduction of tax u/s 152(5) shall be made in the form specified in part VII(C) the First Schedule.

CONDITIONS FOR ISSUANCE OF EXEMPTION

An exemption certificate shall be issued if the applicant;

- (i) Has filed return or returns of income when become due
- (ii) Is not in default in respect of any tax (including penalties u/s 182, default surcharge u/s 205, advance tax u/s 147 or tax payable u/s 137) unless stay has been granted by the relevant authorities.
- (iii) Filing of Affidavit by the non-resident person or permanent establishment of non-resident that neither its withholding agent (payer) nor payer's application or notice for exemption or reduced rate certificate has been rejected. In case of misrepresentation the issued EC will be cancelled.
- (iv) Filing of Affidavit by the resident person or permanent establishment of a non-resident that neither the payee has filed for exemption certificate or reduced rate certificate nor has it been rejected.
- (v) Submission of details of all the contracts made for sale of goods, rendering or providing of services or for execution of contract in Pakistan by the applicant.

OTHER CALLING OF INFORMATION BY COMMISSIONER

- (i) CIR may require any information including but not limited to cohesive business operation during proceedings for issuance of exemption certificate.
- (ii) CIR may require information from any person in connection with the application in order to determine amount is chargeable to tax being Pakistan source income under the Ordinance.

TIME LIMITATION:

CIR shall pass an order within thirty days of filing of application. Period of adjournment shall be excluded for calculating 30 days.

EX-PARTE ORDER:

CIR may issue ex-parte in case of default on date of hearing.

VALIDATION:

The certificate shall be valid for the period as allowed by CIR unless withdrawn earlier.

MAINTENANCE OF RECORD:

CIR shall keep and maintain all record, encompassing the application and notice, necessary enclosures and annexure and the orders passed.

ISSUING AUTHORITY:	FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S:	CLAUSE 46(J) OF SECTION 2 & 50 OF STA, 1990
NOTIFICATION NO:	SRO. 931(I)/2020
DATE OF ISSUANCE:	SEPTEMBER 30, 2020
EFFECTIVE FROM:	WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 30, 2020)
AMENDMENTS MADE IN:	SALES TAX RULES, 2006
LINK OF DOCUMENT	http://download1.fbr.gov.pk/SROs/20209301594147366SRO931-2020.pdf

COMMENTARY:

The FBR has issued rules to regulate the business of used-cars and collect sales tax from sales and purchase of used vehicles. If a used-car is sold at a price higher than the price of the first sale then the differential amount between sale and purchase would increase and the formula would keep this for valuation.

VALUATION FORMULA

A is money including charges and fees but excluding the amount of sales tax charged, received by the registered person from the buyer of the used vehicles (**Consideration Received**) and

B is money including all charges and fees, paid by the registered person to the seller of the used vehicles (**Cost Paid**)

AMENDMENT THROUGH FINANCE ACT, 2020

A large number of car dealers are engaged in the business of sale/purchase of used vehicles but they are neither registered with the tax authorities nor paying sales tax on the transactions. Under the Finance Act, 2020, an amendment was made into the Sales Tax Act 1990. "In case of registered person who is engaged in purchasing used vehicles from general public on which sales tax had already been paid at the time of import or manufacturing, and which paid at the time of import or manufacturing, and which are, later on, sold in the open market after making certain value addition, value of supply will be difference between sale and purchase price of the said vehicles on the basis of the valuation method prescribed by the FBR,"

PAYMENT THROUGH BANKING CHANNEL

The payment for sale/purchase has also been made mandatory through banking channels to identify seller/buyer.

CHARGING OF FURTHER TAX U/S 3(1A)

If the sale of a used car is made to an unregistered person then a 3% further tax under section 3(1A) will also be imposed.

CLARIFICATION BY FBR

Federal Board of Revenue (FBR) has issued clarification on the news appearing in print and electronic media regarding levying of 17 percent Sales tax on resale of used and refurbished vehicles. FBR has clarified that the existing law charged sales tax on full sale value which was harsh and excessive. On the request of business community who are engaged in such business and after seeking support of major chambers of commerce of the country, a clause was added in the Finance Act to provide relief and to encourage refurbishing of second-hand vehicles. This relief is available to only registered persons in Sales Tax and is restricted to 17% of value addition made by such players. No unregistered person can deduct or demand such sales tax from a buyer. It is further clarified that only rules have been finalized now

ISSUING AUTHORITY: FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S: 40 & 45A OF FEA, 2005 AND 40C & 50 OF STA, 1990
NOTIFICATION NO: SRO. 831(I)/2020
DATE OF ISSUANCE: SEPTEMBER 09, 2020
EFFECTIVE FROM: WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 09, 2020)
AMENDMENTS MADE IN: SALES TAX RULES, 2006
LINK OF DOCUMENT <http://download1.fbr.gov.pk/SROs/202099149101862SRO831of2020.pdf>

COMMENTARY:

Earlier FBR has made further amendments in Chapter XIV-B, in sub-chapter 1, of Sales Tax Rules, 2006 vide SRO 223(I)/2020 dated March 16, 2020. However, through captioned notification, following amendment has been made in clause (d) in rule 150ZG of Chapter XIV-B, in rule 150ZG of the said rules. Now, the new clause will be read as follow;

Existing	Substituted
“(d) “licensing committee” means a committee comprising at least three members on Inland Revenue Officers not below the rank of BPS-20 of FBR Headquarters, assisted by technical or IT expert and any other officer or authority designated by the Board;”	“(d) “ Licensing committee” means a committee comprising at least three officers of Inland Revenue Service not below the rank of Commissioner, headed by an officer not below the rank of Chief Commissioner, assisted by technical or IT experts and any other officer or authority designated by the Board;”

ISSUING AUTHORITY: MINISTRY OF FINANCE, ECONOMIC AFFAIRS, STATISTICS AND REVENUE
POWERS EXERCISED U/S: 13(2)(a) OF STA, 1990
NOTIFICATION NO: SRO. 929(I)/2020
DATE OF ISSUANCE: SEPTEMBER 29, 2020
EFFECTIVE FROM: WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 29, 2020)
AMENDMENTS MADE IN: SALES TAX ACT, 1990
LINK OF DOCUMENT: <http://download1.fbr.gov.pk/SROs/20209301793020927SRO929OF2020DATED29.09.2020.pdf>

COMMENTARY:

Through the aforesaid SRO, FBR has exempted the whole sales tax on imports of 83X Micron Sprayers for Anti-Locust Operation (Respective heading by National Disaster Management Authority (NDMA), in the light of decision made in Case No. 647/35/2020 dated September 08, 2020.

FBR Circular

FBR vide circular 4 of 2020 has extended the last date of filing of Annual Income Tax Returns for Tax Year 2020 upto December 8, 2020. This extension is being provided to Individuals, AOPs and Companies falling under such category.

<http://download1.fbr.gov.pk/Docs/20209302394923646Extensionindateoffilingofincometaxreturnfortaxyear2020.pdf>

ISSUING AUTHORITY:	FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S:	237(1) READ WITH SECTION 2(27A)(B) OF ITO, 2001
NOTIFICATION NO:	SRO 887(I)/2020
DATE OF ISSUANCE:	SEPTEMBER 18, 2020
EFFECTIVE FROM:	WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 18, 2020)
AMENDMENTS MADE IN:	SRO 823(I)/2020 DATED SEPTEMBER 08, 2020
LINK OF DOCUMENT:	http://download1.fbr.gov.pk/SROs/20209211394531870S.R.O.887Greenfield.pdf

COMMENTARY:

Through the aforesaid statutory order FBR has prescribed procedure and manner for applying and approving greenfield industrial undertaking.

220C. FILING OF APPLICATION FOR THE APPROVAL OF A GREENFIELD INDUSTRIAL UNDERTAKING: -

- (1) A "Greenfield Industrial Undertaking" as defined in section 2(27A) of the Ordinance shall file an application before Commissioner in a prescribed format as provided in the Rules.
- (2) Application shall be accompanied by;
 - (a) A duly attested copy of constitution, memorandum and articles of association, rules or bye-laws of the Industrial Undertaking.
 - (b) Details of members/directors of the Industrial Undertaking on the date of Application
 - (c) Certified copy of registration/Incorporation certificate if registered under companies Ordinance, 1984
 - (d) Audited Financial Statements signed by qualified chartered accountant.
 - (e) Copy of transfer/offer letter, sale deed, registration document at sub-registrar, land registry or any other documentary evidence of transfer of title, as the case may be.
 - (f) Copy of sale/purchase invoice(s), voucher(s), invoice of shipment, lease agreement, import goods declaration (GD) or bill of lading, as the case may be, of plant, machinery building or technology to be used in the Industrial Undertaking.

220D. PROCEEDING OF APPLICATIONS BY THE COMMISSIONER: -

- (1) CIR may inquire or require for any other information as he deemed necessary.
- (2) After scrutiny, CIR shall forward the application to Engineering Development Board (EDB), Government of Pakistan for seeking clarification to the effect that process or technology used has not earlier been used in Pakistan.
- (3) EDB shall finalize the application within the time specified by CIR and forwards his expert opinion with regard to the query raised to CIR.

220E. DECISION ON APPLICATION: -

- (1) After completion of formalities commissioner may approve the organization under 2(27A) of the Ordinance.
- (2) An approval granted shall be;
 - (a) Notified in the official gazette; and
 - (b) Such other conditions as levied by the CIR.

220F. REFUSAL TO GRANT APPROVAL:

- (1) The commissioner may refuse to approve if conditions of Green Industrial Undertaking are fulfilled.
- (2) Refusal to be issued in written form.
- (3) Notify statement of reasons for the refusal.

220G. FINALIZATION OF APPLICATIONS: -

Within fifteen days after the receipt of application.

220H. APPEAL AGAINST DECISION OF A COMMISSIONER INLAND REVENUE: -

Any taxpayer who is aggrieved with the decision of CIR may file an appeal before Appellate Tribunal Inland Revenue under section 131 of the Ordinance.

ISSUING AUTHORITY: FEDERAL BOARD OF REVENUE
POWERS EXERCISED U/S: 237(1) OF ITO, 2001
NOTIFICATION NO: SRO 845(I)/2020
DATE OF ISSUANCE: SEPTEMBER 10, 2020
EFFECTIVE FROM: WITH IMMEDIATE EFFECT (i.e. SEPTEMBER 10, 2020)
AMENDMENTS MADE IN: SRO 780(I)/2020 DATED AUGUST 26, 2020
LINK OF DOCUMENT: <http://download1.fbr.gov.pk/SROs/20201011410042866SRO845-2020.pdf>

COMMENTARY:

Earlier FBR has made amendments in Income Tax Rules, 2002 vide SRO 780(I)/2020 dated August 26, 2020. Now, FBR has made further amendments in Rule 231C in continuance of aforementioned SRO;

Existing	Substituted
Sub-Rule (2) Clause (a) "applicant" means a person or a class or persons who has brought a dispute for resolution under section 134A;	Sub-Rule (2) Clause (a) "applicant" means a person or a class or persons in case identical issues are involved, who has brought a dispute for resolution under section 134A
Sub-Rule (4) Clause (a) the Chief Commissioner, Large Taxpayers Unit or Commissioner, Medium Taxpayers Unit or any other Commissioner or officer of the Inland Revenue Department nominated by the Board;	Sub-Rule (4) Clause (a) the Chief Commissioner, Inland Revenue having jurisdiction over the case.
Sub-Rule (5) The Board may appoint one of the members of the Committee to be its Chairman	Sub-Rule (5) the Chief Commissioner Inland Revenue having jurisdiction over the case shall be the Chairperson of the Committee.
Sub-Rule (6) An application filed under this rule may be disposed of by the Committee within thirty days of its constitution:	Sub-Rule (6) "The committee shall decide the dispute through consensus within one hundred and twenty days from the date of its appointment by the board."
Sub-Rule (7) Clause (a) "to decide about the place of sitting of the Committee, in consultation with the Chief Commissioner Regional Tax Office, or as the case may be, the Chief Commissioner Large Taxpayer Unit."	Sub-Rule (7) Clause (a) "to decide about the place of sitting of the Committee."
Sub-Rule (7) Clause (c) "to supervise the proceedings of the Committee;"	Sub-Rule (7) Clause (c) "to conduct the proceedings of the committee as he thinks appropriate;"
Sub-Rule (11) "Omitted;"	Sub-Rule (7) Clause (c) "Omitted"
Sub-Rule (12) "The Chairman of the Committee shall send a copy of the recommendations of the Committee to the Board, applicant and the concerned Commissioner, simultaneously."	Sub-Rule (12) "The Chairman of the Committee shall communicate the decision of the Committee to the Board, applicant and the concerned Commissioner, simultaneously;"

<p>Sub-Rule (12A)</p>	<p>Sub-Rule (12A) “The decision of the committee under sub-rule (12) shall be binding on the Commissioner where the applicant has withdrawn the appeal pending before any appellate authority or the court of law and has communicated the order of withdrawal to the Commissioner; Provided that if the order of withdrawal is not communicated to the Commissioner within sixty days of the service of decision of the Committee upon the applicant, the decision of the Committee shall not be binding on the Commissioner.”</p>
<p>Sub-Rule (13) The Board on its own motion or on the request of the applicant, may refer back the recommendations of the Committee for rectification of any mistake apparent from record or for reconsideration of the facts or law, as the case may be, not considered earlier by the Committee.</p>	<p>Sub-Rule (13) “Omitted”</p>
<p>Sub-Rule (14) The Committee after rectification of the mistake or reconsideration of the facts or law as aforesaid shall furnish to the Board its fresh or amended recommendation within such period as specified by the Board.</p>	<p>Sub-Rule (14) “Omitted”</p>
<p>Sub-Rule (15) The Board, after examining the recommendations of the Committee shall finally decide the dispute or hardship and make such orders as it may deem fit for the resolution of the dispute or hardship within ninety days of receipt of such recommendations, under intimation to the applicant, Chairman of the Committee and the concerned Commissioner: Provided that the resolution reached by the taxpayer and the Board shall not bind them for tax year not covered by the agreement. Any such resolution shall not be used as precedent, except as provided in the agreement.</p>	<p>Sub-Rule (15) “Omitted”</p>
<p>Sub-Rule (16) The copy of order passed by the Board shall be provided to the applicant and to the Commissioner having jurisdiction over the case for modification of all decisions, orders and judgments passed in respect of the said dispute or hardship, within such period as may be specified by the Board in the order.</p>	<p>Sub-Rule (16) “Omitted”</p>
<p>Sub-Rule (17) On receipt of the Board's order as aforesaid, the Concerned Commissioner shall implement the order in such manner and within such period as may be specified by the Board in the order.</p>	<p>Sub-Rule (17) “Omitted”</p>

FBR CIRCULAR

INTRODUCTION

Federal Board of Revenue issues Circular No 3 of 2020 wherein FBR issued **EXPLANATION OF IMPORTANT AMENDMENTS MADE IN THE INCOME TAX ORDINANCE, 2001** brought about through Finance Act 2020

Note:

Khilji & Co has already published its detailed commentary on Finance Act 2020, which can be accessed at <https://khilji.net.pk/wp-content/uploads/2020/07/Tax-Briefing-2020-Finance-Act-compressed-1.pdf>

LINK OF DOCUMENT

https://khilji.net.pk/wp-content/uploads/2020/09/2020931892445579CircularNo.3of2020_compressed-min_compressed.pdf

FBR NOTIFICATION

Final Income Tax Return Forms for Business Individuals, Salaried Persons, AOPs, Individual Paper Return and Companies for Tax Year 2020

Federal Board of Revenue has issued S.R.O822(I)/2020. Though this notification, FBR has issued "Final Income Tax Return Forms for Business Individuals, Salaried Persons, AOPs, Individual Paper Return and Companies for Tax Year 2020"

[http://download1.fbr.gov.pk/SROs/2020981894741959SRO822\(I\)2020.pdf](http://download1.fbr.gov.pk/SROs/2020981894741959SRO822(I)2020.pdf)

In this regard, Khilji & Co has already issued the Information request intimation to its valued clients on Aug 11, 2020, upon which an appropriate response (*if applicable*), will be highly appreciated.

THE ISLAMABAD CAPITAL TERRITORY TRUST ACT, 2020

Government of Pakistan has issued The Islamabad Capital Territory Trust Act, 2020. this Act has come into force at once.

Please click below to read the entire act as published in The Gazette of Pakistan.

https://khilji.net.pk/wp-content/uploads/2020/09/The-Islamabad-Capital-Territory-Trust-Act-2020_compressed.pdf

FBR CIRCULAR

Introduction

Federal Board of Revenue has issued Sales Tax Circular 02 of 2020/IR Operations dated September 21, 2020. Vide this Circular it has issued SOPs to LTOs, RTOs, CTOs and MTO (whichever applicable) for processing of Condonation of Time Limit u/s 74 of Sales Tax Act 1990.

Please click below to read the complete Circular

<https://khilji.net.pk/wp-content/uploads/2020/09/202092116935107052020-09-21STCircular.pdf>

KPRA NOTIFICATION

Introduction

Khyber Pakhtunkhwa Revenue Authority (KPRA) had issued Khyber Pakhtunkhwa Sales Tax on Service Special Procedures (Withholding) Regulation, 2015 for prescribing rules and regulations relating to withholding of provincial sales tax. These regulations have now been repealed with the introduction of **'Khyber Pakhtunkhwa Sales Tax on Services (Withholding) Regulation, 2020' ("Regulations")** vide Notification No. F-16(4) KPRA/Notification/WH1394-99 dated August 13, 2020.

Commentary

These Regulations applies to the withholding agents receiving taxable services in, for or in respect of the province of Khyber Pakhtunkhwa (for use, consumption, enjoyment or for any other purpose therein).

A summary of Regulations is discussed below:

- The Regulations shall be effective from **the first day of September 2020**;
- Withholding is defined as an obligatory process involving:

--- retention of tax as per tax invoice or

--- deduction of tax leviable but not levied on non-tax or commercial invoice,

by a service recipient on or from the value of the **"taxable service"** paid, to be paid or payable to the service provider and deposit thereof with the Government as aforesaid:

Provided that in case of non-tax or commercial invoice, tax amount shall be calculated treating the value given in such invoice as exclusive of tax and the tax amount so calculated shall be withheld from within the invoice value and paid to the Government accordingly;

Explanation: Under no circumstances, withholding shall be deemed or treated as reverse charge where non-tax or commercial invoice value is or has been legally allowed to be treated as value inclusive of deductible and payable tax.

- **"Withholding agents"**- According to the Regulations all recipient of taxable services falling under any of the following categories shall be withholding agents.
 - All Federal Government Departments and officers etc.
 - The Departments and Offices of the Ministry of Defense
 - All other Federal government departments
 - All Departments and Offices of the KPK Government including District Government Departments
 - All Provincial Government Departments including District Government Departments
 - Environment Department of the KPK Government
 - All Divisional Engineers of the Departments or Irrigation, Public Health Engineering and Communication & Works including the Local and District Government Departments.
 - All public sector organizations, institutes, corporations, universities bodies, boards, projects, ventures entities, enterprises, Institutions authorities of the Federal, Provincial, District or Local Government including special purpose institutions
 - Companies as defined under sub-section (12) of section 2 of the Act including those located in the jurisdiction of or registered with any other tax authority for the purposes of payment of sales tax in respect of goods or services rendered or provided in the province of Khyber Pakhtunkhwa.
 - The above shall be treated as withholding agents regardless of the location of his or its head office or location of the business premises or jurisdiction of his or its registration or enrolment.

Self-Audit:- A new concept has been introduced which says that as and when need arises for the audit of the propriety of due payment of withholding tax amounts by the government department, public sector organizations or account offices etc. the Authority may instead of conducting audit itself, require them for their self-audit of such amounts and payment and to furnish audit report among with the certificate. However, this will not bar the Authority for any verification, investigation, or re-audit on this account.

- **Services not subject to withholding:-** The telecommunication services (excluding such services as are provided or received by telecom companies to or from each other) shall not be liable to withholding.
- **Compulsory Application of full Withholding:-** The following services shall be compulsorily liable to **full withholding** at application tax rates across the board:
 - Advertisement services of all description, categories and types;
 - Services provided by un-registered person or if registered, are inactive/non-active as per Active Taxpayers' List of the Authority;
 - Services provided or rendered to Federal or Provincial Government Departments or public sector institutions, organizations, entities and projects etc. regardless of the rate of tax on such services.
 - Services provided in the province of Khyber Pakhtunkhwa by persons from outside the province if such persons are not registered with the Authority;
 - Services liable to tax under the Act at reduce rate (less than the standard rate of 15%).
- **Extent of withholding in other cases:-** -- In all other cases not covered under aforesaid paragraph, only **fifty percent** of the amount of leviable tax shall be withheld by the withholding agent and deposited with the Government as provided under the regulation.
- **Input tax adjustment under withholding regime:-** The person who are compliantly paying the provincial sale tax on services at standard rate of 15% or at higher rate shall be entitled to take admissible input tax adjustment in case of services received from person other than unregistered or inactive registered persons subjected to full withholding under this regulation or in case of reduce rate of tax (including fixed rate of tax or payable on fixed basis).
- **Deposit time of withholding tax amount:-** If the withholding agent is registered with the Authority as Service provider, or if not registered with the Authority as such but registered with FBR under Sales Tax Act, 1990, the withheld tax amount shall be deposited by the prescribed due date of the month in which he claims input tax credit/adjustment or the date on which payment is made to the service provider whichever is earlier.
- Where withholding agent does not claim input tax credit for a period of six months succeeding the month in which the tax invoice was issued, or is otherwise not entitled to claim input tax credit, he shall deposit the withheld or withholdable amount of tax on the date on which he makes the payment to service provider or by the last day of the said six months from the date of invoice, whichever is earlier.
- In case of other withholding agents, the withheld tax amount shall be deposited by the 15th day of the following month in which payment is made to the service provider.
- **Registration of withholding agents under different categories.**
 - Separate registration with the Authority as withholding agent is not required for persons already registered as service providers. If not already done, they will have to make an online request for additional insertion as withholding agent in the relevant category in their original registration.
 - Unregistered persons shall apply for registration as withholding agents with the Authority. The Responsibility of any person as withholding agent shall not be affected in the absence of such registration and payment of tax will have to be made as per procedures as may be prescribed for such persons.
- **Procedure for accounting and deposit for withheld amount of sales tax:-** Regulation 10 provides procedure for accounting and deposit of withheld amount of sales tax on services under different accounting systems of the Federal and Provincial Governments.
- **Monthly withholding statements by other withholding agents:-** The withholding agent shall, for each month, electronically prepare and file a statement by 18th of the following month and in case no withholding transaction has taken place in any month, a nil statement shall be filed.
- **Conditions for withholding from unregistered service provider:-** Besides withholding leviable provincial sales tax, following shall be invariably taken:
 - (CNIC) from an unregistered individual service provider, or
 - National Tax Number (NTN) in case of Partnership/Company;
 - The information about the NIC and NTN shall be provided to the Authority through the very next statement, declaration, return filed.

- **Issuance of Withholding Certificates:** - On request by the service provider from whom tax withholding has been made, the withholding agent shall issue a withholding certificate and one copy of every such certificate shall invariably be sent to the Deputy Collector (Withholding) of the Authority.
- **Adjudication for failure or default in tax withholding:** - The officer of the authority not below the rank of Assistant collector may issue show cause notice to defaulting withholding agent. Accordingly, adjudicate the case as determine and recover the tax liability along with default surcharge and penalty in terms of the relevant provisions of the Act and rules and regulations made thereunder. Moreover, the failure to file a monthly statement shall be treated as failure to file a monthly return and shall be liable to penal action or penalty accordingly.
- **Miscellaneous matters:** - The withholding agents shall maintain all relevant records and documents of all their withholding transactions including invoices, proofs of tax payments, statements and withholding certificates etc for a period of five years.

Link of Document

<http://kpra.gov.pk/pages-files/kp-sts-withholding-regulation-2020.pdf>

BASED ON THE ABOVE KHYBER PAKHTUNKHWA SALES TAX ON SERVICE SPECIAL PROCEDURES (WITHHOLDING) REGULATION, 2015, KHILJI & CO HAS UPDATED ITS TAX RATE CARD 2020-21. KINDLY VISIT FOLLOWING LINK TO ACCESS THE COMPLETE TAX RATE CARD.

<https://khilji.net.pk/wp-content/uploads/2020/09/KCO-Tax-Rate-Card-2020-2021-SEP-2020.pdf>

SECP CIRCULAR

DISCLOSURE OF IMPACT OF COVID-19 PANDEMIC ON FINANCIAL STATEMENTS OD COMPANIES

SECP vide Circular No. 26 of 2020 dated August 31, 2020 requiring Companies to make disclosure under separate note titled “**Impact of Covid-19 on the Financial Statements**” in first set of Annual or Interim Financial Statements issued after August 31, 2020. The reason to make disclosure about impact of Covid-19 is to ensure that investors, potential investors, lenders, and other stakeholders have the required information to make rational decisions.

Specific disclosures required to be made in separate note titled “**Impact of Covid-19 on the Financial Statements**” are as follows: -

- The financial impact of COVID-19 on the carrying amounts of assets and liabilities or items of income and expenses, as required under the relevant accounting and reporting standards.
This note would be in addition to the information required to be disclosed in the financial statements under the relevant accounting and reporting standards as applicable in Pakistan.
- In cases, where there is going concern uncertainty due to COVID-19, the specific disclosure shall also provide information about management actions and plans to mitigate/handle the adverse financial implications and operational changes.
- In cases, where management has evaluated and concluded that there are no material implications of COVID-19 that require specific disclosure in the financial statements, this fact should be disclosed.
- The specific disclosure in the financial statements on impacts of COVID-19 would be subject to the materiality considerations in the context of IAS 1, ‘Presentation of Financial Statements’.

This Circular is applicable with immediate effect.

Please click below to read the original Circular

<https://khilji.net.pk/wp-content/uploads/2020/09/Circular-No-26-of-2020.pdf>

SECP NOTIFICATION

SECP has prescribed the Insurance Companies (Sound and Prudent Management) Regulations, 2012

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-933-i-2020-notification-to-replace-the-sro-1525/?wpdmdl=40359&refresh=5f8004bd6817c1602225341>

SECP NOTIFICATION

SECP vide S. R. O. 915 (I)/2020 dated September 25, 2020 issued amendments to the Collateral Management Companies Regulations, 2019.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-915-i-2020-amendments-to-the-collateral-management-companies-regulations-2019/?wpdmdl=40339&refresh=5f8004bd6bd481602225341>

SECP NOTIFICATION

SECP vide S. R. O. 925 (I)/2020 dated September 28, 2020 issued amendments to the Limited Liability Partnership Regulations, 2018.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-925-i-2020-amendments-to-the-limited-liability-partnership-regulations-2018/?wpdmdl=40349&refresh=5f8004bd6d9771602225341>
<https://www.secp.gov.pk/document/limited-liability-amendments-act-2020-gazette-copy/?wpdmdl=40369>

SECP NOTIFICATION

SECP vide S. R. O. 927 (I)/2020 dated September 28, 2020 issued amendments to the Companies (Incorporation) Regulations, 2017, the same having been previously published vide S. R. O. 865(I)/2020, dated September 11, 2020.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-927-i-2020-amendments-to-the-companies-incorporation-regulations-2017/?wpdmdl=40348&refresh=5f8004bd6f3ce1602225341>

SECP NOTIFICATION

SECP vide S. R. O. 928 (I)/2020 dated September 28, 2020 issued amendments to the Companies (General Provisions and Forms) Regulations, 2018, the same having been previously published vide S. R. O. 867(I)/2020 dated September 11, 2020.

Forms amended vide this SRO are

- Form 40
- Form 41
- Form 42
- Form 43
- Form 44
- Form 45

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-928-i-2020-amendments-to-the-companies-general-provisions-and-forms-regulations-2018/?wpdmdl=40346&refresh=5f8004bd710191602225341>

SECP NOTIFICATION

SECP vide S. R. O. 919 (I)/2020 dated September 28, 2020 issued Oversight Regulations for Self-Regulatory Bodies of Accountants, 2020.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-919-i-2020-oversight-regulations-for-self-regulatory-bodies-of-accountants-2020/?wpdmdl=40344&refresh=5f8004bd72d531602225341>

SECP NOTIFICATION

SECP vide S. R. O. 921 (I)/2020 dated September 28, 2020 issued Anti Money Laundering and Countering Financing of Terrorism Regulations, 2020.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-921-i-2020-securities-and-exchange-commission-of-pakistan-aml-cft-regulations-2020/?wpdmdl=40340&refresh=5f8004bd74fa71602225341>

SECP NOTIFICATION

SECP vide S. R. O. 926 (I)/2020 dated September 28, 2020 issued amendments to the Foreign Companies Regulations, 2018.

Please click below to read the complete SRO

<https://www.secp.gov.pk/document/sro-921-i-2020-securities-and-exchange-commission-of-pakistan-aml-cft-regulations-2020/?wpdmdl=40340&refresh=5f8004bd74fa71602225341>

BLOG OF THE MONTH

Khilji & Co. has initiated a “BLOG WRITING” competition between the team members of the firm. A committee comprising three partners will review and select best blogs based on pre-defined criteria. The winners will also be awarded with monetary rewards and will get the distinction of being named in the monthly newsletter. The same blog will also be published here as well.

During the period from Aug 16, 2020 to September 15, 2020, blogs of following team members are selected by the Committee.

1. Mr. Saif Uddin Khilji
2. Mr. Muhammad Kaleem Majeed
3. Mr. Syed Asim Habib
4. Mr. M. Nabeel

All the above team members will get monetary rewards.

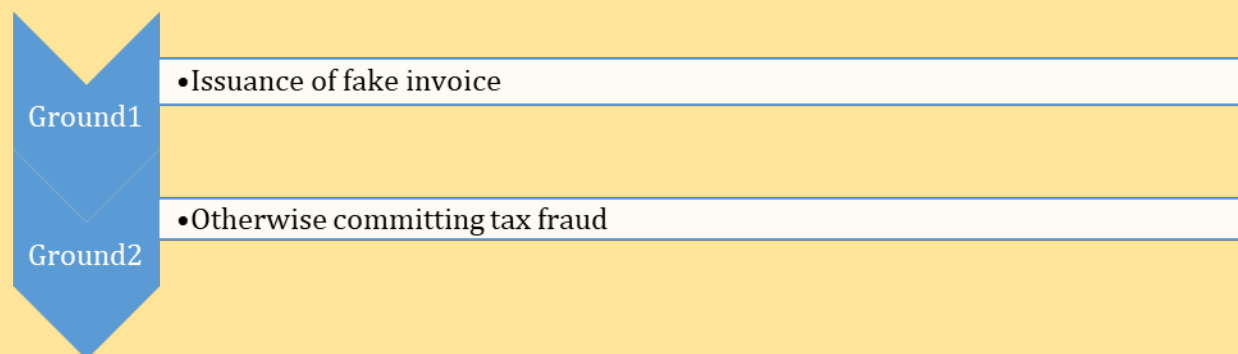
For this Newsletter, the blog selected for publishing is of Mr. Muhammad Kaleem Majeed.

BLACKLISTING AND SUSPENSION OF SALES TAX REGISTRATION

“We live on a mote of dust suspended in a sunbeam”

The purpose of this blog is to explain the lacuna of over-stretched powers given in Rule 12 of Sales Tax Rules, 2006 as compared to scope of the provisions of Section 21(2) of the Sales Tax Act, 1990.

Section 21(2) provides only **two grounds** (mentioned below) for blacklisting or suspension of taxpayers’ registration whereas Rule 12 is considered as a host of other situations on account of which taxpayers’ STRN may be blacklisted or suspended.



This can be exemplified as “If taxpayer doesn’t respond to a notice as per Rule 12(a)(vi)(A), his STRN could be suspended. Such engineered elasticity of Rule 12 clearly exceeds the scope and endurance limits of Section 21(2) to the disadvantage of a registered sales tax payer. In the case of NEPRA vs. FESCO (2016 SCMR 550) the Hon’ble Supreme Court has held **“Rules framed under a statute were to remain within the precinct of the statute itself and could not transgress the limits and parameters of the parent statute itself”**. [Emphasis Supplied]

Notwithstanding the above, by mere plain reading of section 21(2) one cannot fail to note that before exercising power under the aforesaid section, the Commissioner has to be **satisfied (i.e. convince beyond a reasonable doubt**” rather than having an “**opinion**” that RP is found to have issued fake invoices or has otherwise committed tax fraud. Here it is pertinent to keep in mind that in the tax jurisprudence the initial burden to prove tax fraud lies on the department coupled with fair trial process as enshrined in Article 10-A of the Constitution to be followed. It may kindly be noted that there is plethora of judgements preserving his fundamental right built around the legal maxim “**Audi Alteram Partem**”.

The vires of Rule 12(a)(i) has been examined in a recent judgement (2019 PTD 1213) rendered by a divisional bench of Lahore High Court whereby it has been held that Rule 12 conferred unbridled and unfettered powers to the concerned Commissioner to suspend taxpayers’ registration. Court observed that such drastic action of suspension/blacklisting of STRN could only be issued where the Commissioner had solid and tangible evidence and not on the basis of mere sweeping allegations.

Sindh High Court via C.P No. D-8101 of 2017 and others dated September 12, 2019 has decided the following:

Quoted

- i. Rule 12(a)(i) of the STR, 2006, to the extent it gives authority to the Commissioner to suspend sales tax registration of a registered persons (RP) “without prior notice” is hereby declared ultra vires to the Constitution, violative of principles of natural justice and in excess of authority vested u/s 21(2) of the STA, 1990.
- ii. All the orders of suspension of Sales Tax Registration issued to the petitioner in violation of express provision of Section 21(2), which requires the satisfaction of the Commissioner and only to be made where a registered person is found to have issued fake invoices, or has otherwise committed tax fraud, without confronting the RP with such reasons in writing, is declared to be without lawful authority and of no legal effect; and
- iii. All the order(s) of suspension of Sales Tax Registration, wherein SCN under section 21(2) has not been issued within seven days therefrom, and/or no order of blacklisting has been passed within ninety days of issuance of the notice of hearing, the suspension of Sales Tax Registration becomes void-ab-initio, accordingly their Sales Tax Registration stand restored.

Un-Quoted

MUHAMMAD KALEEM MAJEED
SEPTEMBER 4, 2020

THE OTHER WINNING BLOGS CAN BE ACCESSED AT FOLLOWING LINKS:

THIN CAPITALIZATION

THIS BLOG IS WRITTEN BY MR. SAIF UDDIN KHILJI. PLEASE READ THIS BLOG AND PROVIDE YOUR VALUED COMMENTS.

[HTTPS://KHILJI.NET.PK/WP-CONTENT/UPLOADS/2020/09/SUK-BLOG-01092020.PDF](https://khilji.net.pk/wp-content/uploads/2020/09/SUK-BLOG-01092020.PDF)

MINIMIZING TRADE DEFICIT

THIS BLOG IS WRITTEN BY MR. SYED ASIM HABIB. PLEASE READ THIS BLOG AND PROVIDE YOUR VALUED COMMENTS

[HTTPS://KHILJI.NET.PK/WP-CONTENT/UPLOADS/2020/09/SAH-BLOG-09092020.PDF](https://khilji.net.pk/wp-content/uploads/2020/09/SAH-BLOG-09092020.PDF)

EXPLANATION ABOUT ADVANCE TAX U/S 147 OF ITO, 2001

THIS BLOG IS WRITTEN BY MR. MUHAMMAD NABEEL AHMED. PLEASE READ THIS BLOG AND PROVIDE YOUR VALUED COMMENTS.

[HTTPS://KHILJI.NET.PK/WP-CONTENT/UPLOADS/2020/09/MNA-BLOG-15092020.PDF](https://khilji.net.pk/wp-content/uploads/2020/09/MNA-BLOG-15092020.PDF)

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.

- **FACEBOOK:** <https://www.facebook.com/khiljiandco/>
- **LINKEDIN:** <https://www.linkedin.com/in/khilji-and-co-chartered-accountants-982b73143/>
- **TWITTER:** <https://twitter.com/AndKhilji>
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