

Tax Bulletin

August 2022

Foreword



This publication contains brief commentary on Circulars and SROs issued during July 2022 and important reported decisions.

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Executive Summary

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Income Tax Ordinance, 2001

Reported Decisions

1. (2022) 125 TAX 481 Supreme Court of Pakistan Fawad Ahmad Mukhtar and others VS Commissioner Inland Revenue

Applicable Sections: 2(19)(a), 4, 5, 8, 39 and 150 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

Pak Arab Refinery (the Company) paid its shareholders in the form of shares of Fatima Fertilizer as 'Dividend in Specie' in Tax Year 2008. The Company had not deducted tax under section 150 of the Ordinance, while paying the dividend, based on the ground that the transaction does not involve any payment in cash. The Tax Department, however, rejected the basis for non-deduction of tax and passed an order against the Company under section 161 of the Ordinance. The Commissioner Appeals decided the matter against the Company. The Company filed an appeal before the Appellate Tribunal, which decided the matter in favour of the Company confirming that no tax withholding was required by the Company at the time of paying dividend in specie. The Tax Department preferred Appeal before the High Court level, which was not decided in favor of the Department. Being aggrieved, the Department filed appeal before the Supreme Court of Pakistan.

Further, while the above appeal against the Company was pending before the High Court, the Department also initiated proceedings against the shareholders on the basis that amount of dividend in specie was not offered to tax as income by such shareholders. The shareholders contested the show-cause notice issued to them on the basis that Clause 103B of Part I of the Second Schedule to the Ordinance, introduced through Finance Act, 2010, provides exemption to such income and has

retrospective effect. Hence, Taxpayers were not liable to offer such income to tax. The matter was decided in favor of the shareholders by the Tribunal. Subsequently, Department took the matter before High Court which held that the clause 103B does not have retrospective effect, therefore, dividend in specie is taxable. Being aggrieved by the decision of the High Court, appeal was also filed by the shareholders, before the Supreme Court of Pakistan.

Decision:

The following matters were decided in the given case by the Supreme Court of Pakistan:

- Definition of income and dividend are inclusive in nature. Dividend in specie clearly falls within the scope of dividend income as there is an exact monetary value of the dividend received by the taxpayers and the books of account of Pak Arab also substantiates the same.
- Dividend is taxable as a separate of block of income under section 5 of the Ordinance; however, in case where any category of dividend is not covered under the scope of section 5, only in that case, dividend would be charged to tax under section 39 of the Ordinance;
- Exemption clause, 103B inserted through Finance Act, 2010 (subsequently omitted through Finance Act 2013) does not have retrospective effect merely on the basis that statutory provisions have a beneficial effect since it would counter the fundamental principle of law that each tax year is a separate unit of account and taxation. Further, the clause also does not expressly provide that it will be applicable from previous tax years;
- In the relevant tax year, in case of dividend in specie, no tax withholding was required at the time of

disbursement as it was then not covered under section 150 of the Ordinance.

Please note that through the changes brought via Finance Act, 2021, tax withholding in respect of dividend in specie is now covered under section 150(1) of the Ordinance, for collection of tax, accordingly, tax is now required to be collected on dividend in specie at the rates specified in the First Schedule to the Ordinance.

2. 2022 PTD 866 Sindh High Court (SHC) Atlas Honda Limited VS Pakistan & Others

Applicable Sections: 177, 213 and 214 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

Petitions were filed by various petitioners against the initiation of audit proceedings through notices issued under section 177 of the Ordinance. The petitioners argued that under section 177 of the Ordinance, the Commissioner is required to apply mind and should have reasons for selection of a taxpayer for audit, whereas selection for audit under section 214C of the Ordinance involves random or parametric balloting. In the instant case, FBR issued letters to Commissioner followed by main letter for sectoral audit, containing detailed directions for officers and setting out strict timelines for selection and completion of audit of the sectors including refineries, oil marketing companies, manufacturer/importer of electronic goods, automobiles, oil & Ghee, beverage and cement etc.

The effective question arising out of these petitions filed is whether the Commissioner can select taxpayer for an audit under section 177 of Ordinance on the directions of Federal Board of Revenue (FBR) based on sectoral audit.

Decision:

The case was decided in favor of the petitioners. It was held by the SHC that selection for the audit is arbitrary, mala fide, discriminatory and predatory in nature as FBR trespassed beyond the statutory limits of section 214C of the Ordinance by directing the Commissioner to conduct sector-wise audit, which is not permitted under the law. The SHC held that The purpose of section 214C is to ensure general compliance with the law by the taxpayers whereas Section 177 examines the veracity of a specific taxpayer's return based on Commissioner's own understanding and determination that the return requires such scrutiny and examinations.

SHC further observed that section 177 requires a logical reason in writing and not fishing expeditions for conducting audit. Tax officers shall ensure transparency while selecting tax payers for audit and if FBR can simply direct the Commissioner to select any taxpayer for audit, then distinction between sections 177 and 214C would collapse and would make either of the two redundant which principle cannot be applied while interpreting the independent provisions of a Statute.

3. 2022 PTD 888 Supreme Court of Pakistan Commissioner Inland Revenue VS M/s. Panther Sports & Rubber Industries

Applicable Sections: 161, 165, 174 and 214A of the Income Tax Ordinance, 2001 (the Ordinance) 29(4) and 44(4) of the Income Tax Rules, 2002 (the Rules)

Brief Facts:

M/s. Panther Sports & Rubber Industries (the Respondent) received notices in the year 2017 for Tax Years 2007 and 2009 seeking withholding statements under section 165 of the Ordinance and reconciliations under rule 44 of the Rules.

Respondent challenged the notices before High Court on the basis that notices issued are not lawful as the taxpayer is under no obligation to maintain records after a period of six years under Section 174(3) of the Ordinance. High Court passed judgment in favor of the Respondent and being aggrieved, the Department filed appeal before the Supreme Court of Pakistan.

Decision:

The Supreme Court of Pakistan dismissed the appeal filed by the Department and set-aside the notices issued under the above-mentioned sections rendering the notices ineffective and unenforceable. It was further clarified in the judgement that the Ordinance provides a time-limit of six years to maintain records and documents by a taxpayer under section 174(3) of the Ordinance which is also reiterated in rule 29(4) of the Rules. The purpose of defining a time limit for calling of records is to promote efficient and smart fiscal administration and governance.

The Supreme Court observed that no specific time-limit is provided for calling of records under sections 165 and 161 of the Ordinance; however the provisions require scrutiny of records which ultimately attract the provisions of section 174 of the Ordinance. Reliance in this regard was also placed on the decision of Lahore High Court where similar judgment was passed for furnishing of notices under the said sections after lapse of time-period of six years.

4. **2022 PTD 978** **Lahore High Court (LHC)** **Commissioner Inland Revenue** **VS M/s. Niagra Mills (Pvt.)** **Limited**

Applicable Sections: 114, 115, 120, 122, 133 and 169 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

Reference applications before LHC were filed by the Department against the decision of

Appellate Tribunal Inland Revenue (ATIR) relating to Tax Years 2014 and 2015 whereby, the matter relating to amendment of assessment under section 122(5A) of the Ordinance was decided in case where the taxpayer has filed statement of final taxation under section 115(4) of the Ordinance. In the order passed, it was held that amendment in assessment cannot be made if the taxpayer has filed statement of final taxation under section 115(4) of the Ordinance. Subsequently, the Department in the reference application filed before the LHC submitted that statement of final taxation is also considered as deemed assessment, therefore, can be amended accordingly. Three questions were raised by the Department in which the following question of law was pressed for determination:

Whether on the facts and circumstances of the case, the learned ATIR was justified in holding that proceedings under section 122(5A) cannot be initiated against taxpayer who has filed only statement of final taxation under section 115(4), because no assessment in that case is in the field?

Decision:

In the judgement passed, LHC allowed reference application filed by the Department and set-aside the order passed by the ATIR on the basis that section 122(5A) of the Ordinance does not distinguish between the return filed under sections 114 or 115(4) of the Ordinance. LHC held that Power of the Commissioner remains in place to review the assessment order and identify any misclassification of income causing loss of revenue to the Government.

5. **125 TAX 388** **Lahore High Court (LHC)** **Commissioner Inland Revenue** **VS Newage Cables Pvt. Limited**

Applicable Sections: 120, 122, 148, 153 and 177 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The Respondent, Newage Cables is a Private Limited Company which derives income from manufacturing and sale of cables, conductors and supply of cut to size pieces of copper cathode and nickel cathode plates. Return of income of the Respondent was selected for audit under section 177 of the Ordinance and deemed assessment order was amended under section 122(5) of the Ordinance on the basis of discrepancies identified during the audit proceedings.

The above-mentioned amendment included the treatment accorded to "cutting to size" pieces of copper cathode and nickel cathodes plates as a 'non-manufacturing activity' and taxing the import of both items under section 148(7) of the Ordinance. Resultantly, income treated by the Respondent under Normal Tax Regime (NTR) was taxed under Final Tax Regime. Being aggrieved by the above order, the Company filed appeal before the Commissioner Appeals who vacated the order of the tax officer. Subsequently, the tax officer filed appeal before the ATIR, who retained the order of Commissioner Appeals. The Department, therefore, filed appeal before the LHC.

Decision:

LHC decided the matter against the Department and upheld that the process of 'cut to sizes' Copper and Aluminum pieces is a manufacturing activity, as it is covered under the scope of activities of manufacturer defined under section 153(7)(iv)(a)(b) of the Ordinance, therefore, income derived from such activity would be subject to normal tax.

6. 2022 PTD 901 LAHORE HIGH COURT

Applicable Sections: 111, 111(1)(a), 111(d)(i), 122, 122(1), 127, 182, and 199 of the Income Tax Ordinance, 2001 [the Ordinance]

Brief Facts:

Assessments proceedings were finalized under Section 122 of the Ordinance against

various taxpayers from the Sugar Sector, who filed appeals before the Commissioner Inland Revenue-Appeal [CIRA]. The tax department also issued Show Cause Notice [SCN] under Section 182 of the Ordinance for imposition of penalty on account of furnishing inaccurate particulars of income and non-disclosure of income in the proper manner in their returns for the relevant tax years. The petitioners being aggrieved approached the Sindh High Court [SHC] to call into question such SCN warranting imposition of penalty, when appeals were already filed for adjudication on alleged grounds.

Decision:

The High Court **rejected** the petitioners' plea that the petitions in the present form are premature because penalty proceedings cannot be either dropped or deferred merely on the basis that appeals are pending for adjudication before CIRA and, accordingly, decided the case as follows:

1. The assessment proceedings and penalty proceedings are two separate and distinct proceedings and cannot be considered to be one of the same proceedings.
2. A SCN only demands to clarify the specified aspect and it is not necessary that SCN would always be followed by an adverse order against the taxpayer unless there is no sufficient submissions against the alleged observations.
3. It is a settled proposition of law that the factual controversy raised in SCNs could not be agitated in a writ petition before the High Court as factual aspects could only be decided or considered after obtaining reply from the petitioners.
4. Proceedings for imposition of penalty are either criminal or quasi criminal in nature and burden in this regard is always upon the department to prove that the person has brought himself in

the ambit of the penalty, as clearly spelt out under Sections 111 and 182 of the Ordinance, and simply on the ground that the assessee has failed to satisfactorily explain the amount /income would not /should not be considered as a valid reason warranting the department to impose the penalty. It may also be noted that in penalty proceedings the department has to establish independently, on the basis of the material available on record, the reasons for imposition of penalty.

5. Petitions were disposed directing the petitioners to give a proper /detailed reply to the department in respect of the SCNs issued by them, for imposition of penalty under Section 182 of the Ordinance, and the department in this regard is legally bound to consider the said reply and thereafter to pass a speaking order after granting opportunity of hearing to the petitioners strictly in accordance with law.

7. 2022 PTD 1019 LAHORE HIGH COURT

Applicable Sections: 113, 113(1), 113(3), 133(1) of the Income Tax Ordinance, 2001 [the Ordinance]

Brief Facts:

The tax department filed reference applications against the consolidated order

of the [ATIR] pertaining to certain tax years for the below identical issues in all the subject tax years;

1. Income qualified under Final Tax Regime [FTR] form part of the turnover and, therefore, same is covered under the Minimum Tax Regime [MTR] provided under Section 113 of the Ordinance.
2. Higher of the two taxes i.e. either minimum tax under MTR or final tax under FTR could be levied in context of MTR defined under Section 113 of the Ordinance.

Decision:

The High Court remanded back the matter to ATIR for afresh decision with the following observations:

1. It is crystal and clear explicit intention of legislature by way of explanation under Section 113 of the Ordinance that income qualified under FTR does not form part of turnover and, therefore, not covered under MTR.
2. The fact that higher of the two taxes that is either minimum tax under MTR or final tax under FTR to be levied is contrary to the mechanism of minimum tax. It is noteworthy that minimum tax liability is always construed as tax liability in addition to or without comparison of final tax liability under FTR.

Sales Tax Act, 1990

A. Sales Tax General Order (STGO)

i. STGO No. 01 of 2023, dated July 05, 2022 Tier-I Retailers - Integration with FBR's POS System

FBR has adopted practice of notifying retailers (who have not yet integrated with FBR's system) as Tier-1 Retailer [2(43A) of Sales Tax Act, 1990] through STGO. This STGO is issued every month in the first 5 days of the calendar month with effect from August 3, 2021.

Vide the subject STGO, a list of further 101 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by July 10, 2022. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of June 2022 would be disallowed up to 60% as per sub-section (6) of section 8B of the ST Act, without any further notice or proceedings, thus creating tax demand by the same amount.

Any of the notified retailer who claims itself to have been wrongly notified as Tier-1 Retailer and whose input tax adjustment has been reduced by 60%, may file Online application on IRIS portal for removal of this restriction following the procedure laid down in STGO No. 17 of 2022, dated May 13, 2022 and the Commissioner would decide the case in this regard.

B. Reported Decisions

i. 2022 PTD 967 Inland Revenue Appellate Tribunal Zaheer Soap Factory (Pvt.) Ltd. Vs Commissioner Inland Revenue, Zone- I, RTO, Faisalabad

Applicable Sections: 2(14, 2(37), 7, 8, 8A, 8(1)(d), 10, 11, 11(2), 11(5), 21, 22, 23, 26, 73 of the ST Act

Brief Facts of the Case:

- The Deputy Commissioner Inland Revenue (DCIR) passed ex-parte order and disallowed input tax of the registered person allegedly on account of fake/flying invoices issued by the vendors who are blacklisted, suspended, suspected and non-filers.
- The registered person being aggrieved with the Order, filed an appeal with the Commissioner Inland Revenue Appeals (CIRA). The CIRA partially set aside the order of DCIR, by allowing input taxes in respect of invoices issued by one of the vendors as no evidence of black listing of such vendor was provided by the Department. Moreover, recovery of certain amount of input tax was set aside being time barred. For the remaining input taxes, the CIRA confirmed the disallowance as per order of the DCIR on account of fake / flying invoices issued by black listed suppliers.
- Being aggrieved of the Order of (CIRA), both, the registered person and department filed appeal before the Appellate Tribunal Inland Revenue.

Decision:

The Tribunal decided cross appeals in the following manner.

- The Tribunal upheld the decision of CIRA of setting aside the recovery of input taxes pertaining to time barred periods as the period to which input taxes relate has been time barred; as per section 11(5) of the ST Act, SCN can be issued within 5 years of the relevant date.
- The tribunal remanded back the case on the remaining matters for further verification on following premises:
 - Initial burden lies on the department to establish that invoices had been issued during a period when the supplier was blacklisted or suspended. The DCIR being the assessing officer failed to prove the said matter and there is nothing on record that would suggest that the suppliers were black listed at the time of purchase;
 - The purchaser is also required to prove the mandatory compliance of section 73 of the ST Act to ensure veracity of the transactions in addition to verifying normal and operative status of his suppliers.
 - The taxpayer/purchaser failed to establish the genuineness of claim by providing requisite documentary evidence before the authorities such as proof of payment in terms of section 73, physical transfer of goods, genuineness of purchase invoices.

ii. **2022 PTD 1010 Inland Revenue Appellate Tribunal, Commissioner Inland Revenue, Zone-I, RTO, Faisalabad Vs Al- Sehar Manufacturer (Pvt.) Ltd.**

Applicable Sections: 11, 45B, 46 of the ST Act

Brief Facts of the Case:

- The Assistant Commissioner Inland Revenue (ACIR) observed discrepancies with regards to zero rated supplies of textile goods to the registered persons and accordingly passed the order. The registered person being aggrieved with the Order, filed an appeal with CIRA who partially set aside the order of ACIR.
- The ACIR being aggrieved by the order of CIRA, filed appeal with the Appellate Tribunal and argued that:
 - the learned Commissioner (Appeals) was not justified to accept the zero rating supplies of textile goods to those units whose supplies value did not match with the suppliers' returns.
 - the taxpayer has made supplies to units who are registered in sector other than "five zero rated sectors" and the buyers did not show any purchases in their sales tax returns.
 - the learned DR further submitted that the CIR(A) could not entertain the documents which were not produced during adjudication.

Decision:

The Tribunal decided appeal in following manner:

- Regarding legal objection raised by the ACIR that the CIR(A) could not entertain the documents which were not produced during adjudication, the Tribunal observed that section 45B(3) of the ST Act empowers the CIR(A) to make further inquiry for the purpose of deciding appeal and turned down the objection of the DR.
- Regarding other objection concerning factual verification on account of supplies value not matched and supplies made to other than five sector; the taxpayer submitted all proofs so the decision of CIRA is upheld.
- Regarding the ACIR observation that the buyers did not show any purchases in their sales tax returns, the tribunal framed its view by relying on the Hon'ble Lahore High Court judgment in a case reported as D.G Khan Cement v. FOP reported in PLD 2013 Lah. 693 holding that the supplier cannot be held responsible for any act or omission made by the buyer, accordingly, the appeal of the department was dismissed.

Here it may be noted that recently through Finance Act, 2020, subsection (5) of section 45B was inserted as per which CIRA shall not admit any documentary evidence which was not produced before the OIR unless he is satisfied that the appellant was prevented by sufficient cause from producing such material or evidence before the OIR. This provision was not under discussion in this appeal as the order of CIRA was made in 2014 when section

45B(5) did not exist. Accordingly, the instant decision of ATIR regarding powers of CIRA to entertain documents may not squarely apply on appellate orders passed after insertion of the said section (5) to section 45B.

Sindh Sales Tax on Services Act, 2011

A. Notifications

i. Notification No. SRB-3-4/17/2022, dated June 28, 2022

SRB through notification No. SRB-3-4/15/2019 dated June 27, 2019 had granted exemption from Sindh sales tax on services provided by Cable TV Operators as are classified under tariff heading 9819.9000 of the Second Schedule of the Act subject to certain conditions. Through the above notification No. 17, SRB has extended the period for exemption of such services till June 20, 2024 at which time the notice dated June 27, 2019 shall be rescinded. Furthermore, the notification also extended the period within which the following conditions may be complied with in order to obtain exemption under the notification dated June 27, 2019:

Condition	Extended Period
Filing of returns for the tax period from July 2016 to June 2020, if not filed earlier	Till July 31, 2022
Depositing tax liability for the tax period from July 2016 to June 2020, if not deposited earlier	Till August 31, 2022
Depositing Sindh sales tax not withheld by withholding agent for the tax period from July 2016 to June 2019, if not deposited earlier	Till August 31, 2022

ii. Notification No. SRB-3-4/18/2022, dated June 28, 2022

SRB through notification No. SRB-3-4/19/2021 dated June 30, 2021 provided for

the chargeability of services provided/rendered by recruiting agents as are classified under tariff heading 9819.9000 of the Second Schedule of the Act at the reduced rate of 5% during the financial year 2021-22 subject to certain conditions. Through the above notification No.18, SRB has extended the period for chargeability of such service at the reduced rate till June 20, 2024 at which time the notice dated June 30, 2021 shall be rescinded. Furthermore, the notification also extended the period within which the following conditions may be complied with in order to obtain benefit of reduced rate under the notification dated June 30, 2021:

Condition	Extended Period
c) Depositing tax liability for the tax period prior to June 2021, if not deposited earlier	Till July 15, 2022
e) Filing of returns for the tax periods prior to June 2021, if not filed earlier	Till July 20, 2022

iii. Notification No. SRB-3-4/19/2022, dated June 28, 2022

SRB through notification No. SRB-3-4/5/2019 dated May 8, 2019 had granted exemption from Sindh sales tax on Health Insurance services as are classified under tariff heading 9813.1600 of the Second Schedule of the Act subject to a condition. Through the above notification No. 19, SRB has extended the period within which such service shall remain exempt, till June 30, 2023.

iv. Notification No. SRB-3-4/20/2022, dated June 28, 2022

SRB through notification No. SRB-3-4/3/2013 dated July 1, 2013 had directed

the chargeability of certain services at the reduced rate subject to certain conditions as provided in the notification. Through the above notification No. 20, SRB has notified the following additional services (subject to conditions) which shall be charged at the specified reduce rate:

Tariff Heading No.	Description of Service	Rate of Tax	Conditions and Restrictions
9815.6000	Software or IT based system development consultants	3%	1. The registered person electronically submits his election or option in Form "S" by the prescribed due date. 2. Input tax credit/adjustment shall not be admissible.
9819.1300	Commission agents	8%	1. The reduced rate specified in column (3) shall apply only in relation to the commission earned by food delivery channels from home chefs for the tax periods from July, 2022 to June, 2024. 2. Input tax credit/adjustment shall not be admissible.
9835.0000	Services provided or rendered by Call Centers	3%	1. The registered person electronically submits his election or option in Form "L" by the prescribed due date.

Tariff Heading No.	Description of Service	Rate of Tax	Conditions and Restrictions
			2. Input tax credit/adjustment shall not be admissible.

v. Notification No. SRB-3-4/21/2022, dated June 28, 2022

SRB through notification No. SRB-3-4/7/2013 dated June 18, 2013 had granted exemption from Sindh sales tax to certain services subject to certain conditions as provided in the notification. Through the above notification No. 21, SRB has included the Toll manufacturing services in the said list of exempted services subject to the condition that such service charges have been subjected to federal sales tax under the Sales Tax Act, 1990:

Tariff Heading No.	Description of Service and the conditions and restrictions for exemption
9830.0000	Service provided in the matter of such manufacturing or processing for others on toll basis as are levied to Federal sales tax under the Sales Tax Act, 1990.

By this insertion, a long pending contention regarding taxation of toll charges appears to have been resolved between federal and provincial sales tax authorities. However, since the exemption has been provided prospectively with effect from July 01, 2022, the dispute regarding taxation of toll services prior to taking effect of this notification may still persist.

On the other hand, the above notification reduced the annual turnover threshold for exemption of services rendered by restaurants and caterers from Rs. 4 million to Rs. 2.5 million to enhance the scope of

sales tax and broaden the tax base in this sector.

vi. Notification No. SRB-3-4/22/2022, dated June 28, 2022

Through the above notification No. 22, SRB has granted exemption from Sindh sales tax on following services when provided/rendered to a German Development Agency named GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit):

Tariff Heading No.	Description of Service
9809.0000	Contractual execution of work or furnishing supplies
9814.1000	Architects or town planners
9814.2000	Contractor of building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air Conditioning, multi-disciplinary work including turnkey projects) and similar other works
9815.5000	Technical, scientific and engineering consultants
9815.9000	Other consultants including tax consultants, human resources and personnel development consultants
9824.0000	Construction services
9848.0000	Training services

The exemption shall be subject to following conditions:

- a) the services are provided or rendered by persons actually registered with the Sindh Revenue Board in terms of sections 24 of the Act;
- b) the registered person providing or rendering the services issues invoices in terms of sub-rule (1) of rule 29 of the Sindh Sales Tax on Services Rules, 2011, indicating the description and tariff heading of the service in row number (iv) and also showing the rate of sales tax as "exempt under notification No. SRB-3-4/22/2022 dated 28th June, 2022" in row (vi) of such an invoice; and
- c) enters the transaction in his tax return (Form SST-03).

vii. Notification No. SRB-3-4/23/2022, dated June 28, 2022

Through the above notification No. 23, SRB has made the following changes in the Sindh Sales Tax on Services Rules, 2011 (the Rules):

1. Definitions. (Rule 2):

A new sub rule 2 has been inserted under Rule 2, whereby any word not defined in the Rules shall have the same meaning as provided in the Sindh Sales Tax on Services Act, 2011.

2. Application for registration (Rule 5):

Previously, the provisional SRB registration certificate was to be legalized by SRB after 3 months of the issuance of provisional certificate. The Board through the notification has amended the condition to legalize the provisional certificate after satisfying that the registered person has e-filed at least four consecutive tax returns

after the issue of provisional certificate of registration.

3. Time and manner of submission of Annex-C of the return. (Rule 13A):

Previously, only domestic sales invoices issued during the tax period were required to be declared in the prescribed Annexure-C by the 10th of every month. The Board through the notification has now also required the Debit and Credit notes issued during the tax period to be declared along with the invoices by the 10th of every month.

4. Application/Revocation to charge SST at standard rate instead of reduced rate. (Rule 36, 42B, 42BB, 42C, 42CC, 42G):

For the services covered in the above mentioned rules, SRB has prescribed special procedures to be followed in case of certain services wherein reduced rate of SST have also been prescribed for such services. However, the registered persons can opt to pay SST at standard rate by applying to the SRB.

Previously such online application to exercise option was required to reach the concerned Commissioner SRB by 21st of July every year (i.e. 21 days from the date of commencement of every financial year) which was to remain valid for that financial year only.

The Board through the notification now requires that online application to exercise option shall be submitted on SRB web portal within 21 days from the commencement of a financial year and the option so exercised shall remain valid unless revoked by filing online application on SRB web portal at least 21 days prior to the financial year from which the person desires to revoke the option so exercised.

5. Registration requirement (Rule 42):

Previously, every such restaurant or caterer who is not located in the premises of a hotel, motel, guest house, marriage lawn or club but whose total annual turnover from the service of such food items exceeded Rs. 4 million per annum was required to obtain registration in the manner as specified the Rules. Such requirement has now been reduced to Rs. 2.5 million so as to bring the requirement in line with the exemption as discussed in point (v) above.

6. Procedures for Toll manufacturing services (Rule 42H):

Rule 42H provides procedures for toll manufacturing services; however, the Board through notification has inserted a proviso the sub rule 1 of Rule 42H whereby such rule may not be applicable on such toll manufacturing services which are exempt as discussed in point (v) above.

7. Rules for services rendered by software or IT based system development consultants and call centers (Rule 42I and 42J):

New rules 42I and 42J have been inserted which prescribe specific procedures to be followed in case of services rendered by software or IT based system development consultants and call centers respectively.

As per the above rules, the rate of SST for both services shall be standard rate of 13%; however, the registered person may apply to opt for reduced rate of 3% in both cases by submitting online application on SRB portal within 31 days of the commencement of the financial year i.e. by July 31, 2022 for 2022-23. Persons who are providing such services for the first time, may

apply for the option of reduced rate at least 14 days before the commencement of such economic activity.

The above option so exercised may also be revoked by online application on SRB web portal at least 21 days prior to a financial year from which the person desires to revoke the option so exercised.

It may be noted that unlike other reduced rated services, the default rate in these services shall be standard rate of 13% and the benefit of reduced rating may be availed upon filing of option.

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About Yousuf Adil

Yousuf Adil, Chartered Accountants provides Audit & Assurance, Consulting, Risk Advisory, Financial Advisory and Tax & Legal services, through nearly 550 professionals in four cities across Pakistan. For more information, please visit our website at www.yousufadil.com.

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