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Tax Bulletin

March 2023



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Foreword



This publication contains brief commentary on Circulars and SROs issued during February 2023 and important reported decisions.

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Karachi
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Executive Summary

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Direct Tax – SROs			
1	S.R.O. 213(I)/2023	Exemption introduced for profit on debt and capital gains arising from debt and debt instruments, approved by the Federal Government, derived by non-resident banking companies under rule 8 of the Seventh Schedule to the Income Tax Ordinance, 2001.	7
2	S.R.O. 226(I)/2023	Enhanced tax rates applicable for income attributable to Government securities, earlier introduced through Finance Act, 2019 will not apply to a banking company for tax year 2024.	7
3	S.R.O. 229(I)/2023	Rules introduced for submission of record of beneficial owners by companies and association of persons for the purpose of section 181E of the Income Tax Ordinance, 2001.	7
Direct Tax – Reported Decisions			
1	2023 PTD 96	Notice for amendment of assessment shall be issued by lawful jurisdiction / Unexplained income or assets shall be inquired through a separate notice Appellate Tribunal Inland Revenue held that proceedings for amendment of assessment shall be initiated by a lawful jurisdiction and a separate notice shall be issued for proceedings under section 111 of the Ordinance for unexplained income and assets. It was also emphasized that an order passed on a public holiday is unlawful.	8
2	2023 PTD 134	Applicability of minimum tax on Distributors of Fast Moving Consumer Goods (FMCG) ATIR held that the terms, dealers and distributors, cannot be interchangeably used while determining the status of a taxpayer for the applicability of minimum tax. Also, reduced rates for minimum tax are applicable for distributors of FMCG, meeting the criteria defined in section 2(22A) of the Income Tax Ordinance, 2001, which does not cover electric appliances.	9

S.No.	Reference	Summary / Gist	Page No.
3	2023 PTD 146	<p>Issuance of recovery notice under section 138 is mandatory before initiation of recovery proceedings under section 140</p> <p>Lahore High Court held that for recovery of tax demand notice under section 138 of the Income Tax Ordinance, 2001 is required to be issued for fulfilling the fundamental rights under article 10-A of the Constitution of Pakistan, before taking any action under section 140.</p>	10
4	2023 PTD (Trib.) 167	<p>Issuance of show-cause notice is a serious business and is not a casual correspondence.</p> <p>ATIR held that specific show cause notice under section 111 of the Ordinance is mandatory to let the taxpayer know which sections have been invoked for making additions.</p>	11
5	(2023) 127 TAX 233	<p>Workers Welfare Fund shall be recovered in the prescribed manner.</p> <p>Lahore High Court pronounced that workers welfare fund liability was adjustable with available tax refunds as per Circular dated February 17, 2000, which was withdrawn on March 18, 2021.</p>	11
6	(2023) 127 TAX 284	<p>Monitoring proceedings shall be conducted as per settled guidelines by the appellate authorities.</p> <p>Lahore High Court held that appellate authorities have from time to time specified guidelines for monitoring proceedings which have to be followed by the tax administration.</p>	12
7	Supreme Court of Pakistan	<p>Interim relief for discharge of 4% Super tax instead of 10% for high earning persons</p> <p>Supreme Court of Pakistan (SCP) issued instructions that high earning persons of specified business shall discharge super tax at 4% instead of 10% till final decision on account of discrimination.</p>	13

S.No.	Reference	Summary / Gist	Page No.
		SCP also held that taxpayers whose accounting year ends during tax year 2022, will be subject to Super Tax under section 4C.	
Sales Tax Act - Notifications			
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2.	SRO 297(I)/2023 Dated March 08, 2023	Increase in sales tax rate to 25% on import and supplies of certain taxable goods	15
3.	STGO 07 of 2023	FBR further identified 124 persons as Tier-1 Retailers	20
4.	Circular No. 01 of 2023	Through the Circular FBR issued explanation on the important amendments made to the Sales Tax Act, 1990 and the Federal Excise Act, 2005	20
Indirect Tax – Reported Decisions			
1.	2023 PTD 30	Adjudicatory mechanism is required before imposing penalty LHC held that a person must be adjudicated before penalizing as it is a settled law that when the basic order is without lawful authority then the superstructure shall have to fall on the ground automatically.	21
2.	2023 PTD 44	Supply of locally produced Milk was held to be zero rated as per SRO. 549/2008 LHC interpreted the phrase "Import and Supplies thereof" with broader scope to cover therein the local supply of imported milk as well as locally produced milk, for the purpose of application of zero rating	22
Federal Excise Act, 2005			
1.	SRO 178 (I)/2023	Federal excise duty was increased on locally manufactured cigarettes	24

Income Tax Ordinance, 2001

A. SROs

1. **S.R.O. 213(I)/2023 DATED FEBRUARY 22, 2023**

EXEMPTION GIVEN TO PROFIT ON DEBT AND CAPITAL GAINS OF DEBT AND DEBT INSTRUMENTS DERIVED BY NON-RESIDENT BANKING COMPANIES

Exemption is provided through the subject SRO to non-resident banking companies under by inserting a sub-rule 4 under rule 8 of the Seventh Schedule to the Income Tax Ordinance, 2001, which exempts profit on debt and capital gains derived by non-resident banking companies on debt and debt instruments approved by the Federal Government for the purpose of this sub-rule.

We may add that exemption in respect of profit on debt from debt and debt instruments is already given under clause (75) of Part I of the Second Schedule to the Ordinance to non-resident persons deriving profit on debt and capital gains from debt and debt instruments approved by the Federal Government.

2. **S.R.O.226(I)/2023 DATED FEBRUARY 27, 2023**

NON APPLICABILITY OF SUB-RULE (6A) OF RULE 6C OF THE SEVENTH SCHEDULE TO THE INCOME TAX ORDINANCE, 2001 IN TAX YEAR 2024

Sub rule 6A of Rule 6C of the Seventh Schedule to the Ordinance provides for enhanced tax rates upto 55% in respect of income attributable to investment in Federal Government securities. Through the captioned SRO, Federal Government has amended rule 8 of the Seventh Schedule to the Ordinance, whereby enhanced tax rates for taxable income attributable to investment in

Federal Government securities under sub-rule 6A of Rule 6C will not apply to a banking company for tax year 2024.

3. **S.R.O. 229(I)/2023 DATED FEBRUARY 28, 2023**

INTRODUCTION OF RULES FOR SUBMISSION OF RECORD OF BENEFICIAL OWNERS FOR THE PURPOSE OF SECTION 181E OF THE INCOME TAX ORDINANCE, 2001

Section 181E of the Ordinance was introduced through the Finance Act, 2022 through which companies and AOPs are required to furnish to the FBR record of their beneficial owners in the prescribed form and manner. FBR has now introduced rules through the subject SRO which prescribes the manner of submission of record, timeline to notify a change if there is any, important definitions and particulars of the record to be furnished.

The rules provide following timeline for submission of beneficial ownership record:

- (i) Every company and AOP, on its initial registration with FBR, shall electronically furnish the particulars of its beneficial owners to the Board as prescribed in Form (BOF-01) of Part IXA of the First Schedule to these rules through FBR's online system.
- (ii) Every company and AOP, already registered with FBR, shall electronically furnish the particulars of its beneficial owners to the Board on or before December 31, 2023, as prescribed in Form (BOF-01) of Part IXA of the First Schedule to these rules through FBR's online system.

For details, please refer the following link:

[https://download1.fbr.gov.pk/SROs/20232281925228758SRO229\(I\)of2023.pdf](https://download1.fbr.gov.pk/SROs/20232281925228758SRO229(I)of2023.pdf)

B. Direct Tax – Reported Decisions

1. NOTICE FOR AMENDMENT OF ASSESSMENT SHALL BE ISSUED BY LAWFUL JURISDICTION / UNEXPLAINED INCOME OR ASSETS SHALL BE INQUIRED THROUGH SEPARATE NOTICE

**2023 PTD 96
APPELLATE TRIBUNAL INLAND
REVENUE**

**THE COMMISSIONER INLAND
REVENUE, ZONE-X, RTO-III,
LAHORE
VS
MUHAMMAD IQBAL, PROP. BRIGHT
STAR ENGINEERING WORKS,
LAHORE**

**APPLICABLE SECTIONS: 111, 170
and 122 OF THE INCOME TAX
ORDINANCE, 2001 (THE
ORDINANCE)**

Brief Facts:

The taxpayer, being respondent in the instant case, is an individual who derives income from the manufacturing of motor cycle parts. The taxpayer in the original return of income of Tax Year 2007 declared income of Rs. 495,000. The taxpayer subsequently revised his return of income keeping the income same and further declared expenses of Rs. 5,545,000 and purchases of Rs. 34,750,312, resulting in a refund of Rs. 1,093,804 in the return of income. The taxpayer also filed a refund application in this regard. While processing the refund application, Tax Officer (TO) issued notices to the taxpayer after observing a difference between the purchases declared in the return of income and as declared in the sales tax returns filed by the taxpayer for the relevant tax periods. The taxpayer in response to the notice issued challenged the jurisdiction of Enforcement and

Collection for issuing the notice. The TO passed order rejecting the stance of the taxpayer and refund application filed.

The taxpayer being aggrieved by the decision of TO filed appeal before Commissioner Appeals (CA) challenging the jurisdiction of Enforcement and Collection to furnish notice to the taxpayer and pass order in this regard. The CA passed order in favor of the taxpayer and directed to issue refund which the department accordingly did. Subsequently, Additional Commissioner Inland (ADCIR) issued notice to the taxpayer for amendment of assessment under section 122(5A) of the Ordinance.

The taxpayer submitted detailed responses against the notice received after which the ADCIR passed order for amendment of assessment under section 122(5A) making the difference between purchases as per sales tax returns and income tax returns as unexplained source of investment under section 111(1)(d)(i) of the Ordinance. Hence, total income of the taxpayer after charging of WWF was computed at Rs. 10,869,476. The taxpayer filed appeal before CA which was decided in favor of the taxpayer. Being aggrieved, the tax department filed appeal before the ATIR on the grounds that the authority has lawful jurisdiction over the case and that the learned CA was not justified to hold that the declaration filed by the taxpayer under tax amnesty scheme 2008 covered the unexplained income.

Decision:

The ATIR decided the case in favor of the taxpayer on the following basis:

- i) Zone-X does not hold jurisdiction over manufacturers of automobiles and the individuals who are Directors in a company. This stance was also clarified by the Commissioner of Zone-VIII through letter dated 29.06.13.
- ii) The amended assessment order was passed by ADCIR on a public holiday which makes the order unlawful. Reliance in this regard was placed on

ATIR's decision in case of **2015 PTD 408**, whereby the order passed on a public holiday was declared as unlawful and was annulled.

- iii) The addition in income was made on the basis of section 111(1)(d)(i) through which addition can be made if the taxpayer concealed / furnished inaccurate income, suppressed any production, sales or any amount chargeable to tax. However, in the present case, the assessing authority made addition of the amount of alleged suppressed purchases which obviously does not fall under the segment of income as provided.
- iv) Clause (d) in sub-section 1 of section 111 was inserted in Tax Year 2012, whereas the proceedings relate to Tax Year 2007. Retrospective application in this respect is not permissible. In this regard, reliance was placed on ATIR's judgment in case of **2013 PTD 1557**.
- v) A separate notice under section 111 is required to be issued to make addition in income under the said section which is not evident in the instant case. Reliance in this regard was placed on the decision of Lahore High Court and ATIR in cases of **2019 PTD 1828** and **2013 PTD 900**, respectively.

2. APPLICABILITY OF MINIMUM TAX ON DISTRIBUTORS OF FAST MOVING CONSUMER GOODS (FMCG)

**2023 PTD 134
APPELLATE TRIBUNAL INLAND
REVENUE**

**NAEEM RAFIQUE BHATTI,
GUJRANWALA
VS
THE COMMISSIONER INLAND
REVENUE, RTO, GUJRANWALA**

**APPLICABLE SECTIONS: 2(22A),
113, FIRST SCHEDULE TO THE
INCOME TAX ORDINANCE, 2001
(THE ORDINANCE)**

Brief Facts:

The taxpayer in the instant case is an individual who deals with electronic goods and filed returns of income for Tax Years 2016, 2017 and 2018, respectively. Tax Officer (TO) issued show-cause notices under section 122(9) of the Ordinance to amend assessment under section 122(5A) of the Ordinance for the above-mentioned tax years on the basis that the taxpayer failed to pay minimum tax at the rate of 1% for Tax Years 2016 and 2017 and for Tax Year 2018 due to change of rate through Finance Act, 2017 at the rate of 1.25%.

The taxpayer in his response to the notices received submitted that he is a distributor of Haier Pakistan, Dawlance Electronics (Pvt.) Limited and PEL Marketing (Pvt.) Limited and claimed entitlement of 80% reduction in minimum tax liability under Sr. No. 2(a) of Division IX of Part I of the First Schedule to the Ordinance. The claim of the taxpayer was not supported well with the documentary evidences on the basis of which the TO in his order confirmed the applicability of minimum tax at the rate of 1% and 1.25% for the respective tax years.

Being aggrieved by the decision of TO, the taxpayer filed three appeals before the Commissioner Appeals (CA) who on the same grounds upheld the decision of TO. Subsequent to the CA's order, the taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR). For the applicability of the reduced rate of minimum tax, it was to be decided whether the status of the taxpayer is of a distributor and whether the electronic goods fall within the category of Fast Moving Consumer Goods (FMCG).

Decision:

The appeal was decided in favor of the tax department. To prove his claim of a distributor, taxpayer furnished certificates from PEL, Dawlance and Haier Pakistan which proved to be insufficient before the ATIR. The ATIR required supporting agreements including invoices, transaction record between

the above-mentioned companies and the taxpayer and also the record of transactions between the taxpayer and retailers along with the certificates for establishing the fact. Further, the certificate provided by PEL mentions the status of the taxpayer as dealer/distributor whereas the other two certificates termed the taxpayer as a dealer. The ATIR in its order also emphasized that Part I of Division IX of the First Schedule to the Ordinance does not use the words dealer and distributor interchangeably.

Further, for establishing whether taxpayer deals with FMCG or not, definition of FMCG as per section 2 (22A) introduced through the Finance Act, 2015 was deliberated which clearly specifies that goods should be of daily use and not durable in nature. Though electronic goods are of daily use but they are not perishable items. Hence, the claim of the taxpayer is not tenable, therefore, the ATIR confirmed the minimum tax charged by the TO in his order at the rate of 1% for Tax Years 2016 and 2017 and at the rate of 1.25% for Tax Year 2018.

The ATIR also held that reliance placed by the appellant on 2018 PTD 1582 in case of Hair Pakistan Limited is misplaced, as that deals with clause (8) of Part III of Second Schedule before omission vide Finance Act 2014. The said clause (8) covered consumer goods including FMCGs and therefore the Court had held that electronic appliances, being consumer goods, were covered under the said clause.

3. ISSUANCE OF RECOVERY NOTICE UNDER SECTION 138 IS MANDATORY BEFORE INITIATION OF RECOVERY PROCEEDINGS UNDER SECTION 140

**2023 PTD 146
LAHORE HIGH COURT**

**MUBASHIR YAMEEN
VS
ASSISTANT/DEPUTY
COMMISSIONER INLAND REVENUE,
RTO, RAWALPINDI AND OTHERS**

**APPLICABLE SECTIONS: 122, 137, 138 and 140 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)
Article 4 and 10-A OF THE CONSTITUTION OF PAKISTAN, 1973**

Brief Facts:

In the instant case, the Assistant / Deputy Commissioner Inland Revenue (A/DCIR) passed order against the taxpayer creating tax demand of Rs. 1,956,342. Pursuant to the order, demand notice was also issued under section 137(2) of the Ordinance. Being aggrieved, the taxpayer filed appeal against the order of A/DCIR before the Commissioner Appeals (CA) which was rejected by the CA. The taxpayer filed second appeal before the Appellate Tribunal Inland Revenue (ATIR). While the appeal before the ATIR was pending, the Inland Revenue Officer Audit and Enforcement issued notice under section 140 of the Ordinance directing the Bank to attach accounts of the taxpayer and handover the amount of tax demand to the department. Consequently, the Bank withdrew an amount of Rs. 600,000 from taxpayers account. Being aggrieved, the taxpayer filed petition before the Lahore High Court (LHC).

Decision:

LHC decided the case in favor of the taxpayer and directed the ATIR to decide the matter within sixty days of the order and instructed the tax department to refrain from taking coercive measures until the order of ATIR. The decision was made on the following basis:

- Notice under section 138 of the Ordinance for recovery of tax demand within a specific time period is required to be issued by the department before proceeding with recovery through attachment of bank accounts. Reliance in this regard is placed on the decisions of LHC in cases of **2021 PTD 162** and **2016 PTD 1799**; and
- Under Article 4 of the Constitution, it is an inalienable right of the citizen to be treated in accordance with law. Also,

the fair trial and due process are the fundamental rights of the every citizen of Pakistan under Article 10-A of the Constitution but in the instant case no notice under Section 138 was served before invocation of Section 140.

4. ISSUANCE OF SHOW-CAUSE NOTICE IS A SERIOUS BUSINESS AND NOT A CASUAL CORRESPONDENCE 2023 PTD (Trib.) 167

**APPELLATE TRIBUNAL INLAND REVENUE
SARWAR SONS, HAFIZABAD
VS
THE COMMISSIONER INLAND REVENUE, RTO, GUJRANWALA**

APPLICABLE SECTIONS: 111, 111(1)(b), 121 AND 122 OF THE INCOME TAX ORDINANCE (THE ORDINANCE)

Brief Facts:

The appellant [the taxpayer] an individual deriving income from business of arhat/Commission of food grain was issued notices under section 114(4) of the Ordinance by the Officer Inland Revenue (OIR) for non-filing of tax returns for tax years 2009 and 2010. The taxpayer duly filed its income tax returns for the subject tax years in compliance of notices issued by the OIR.

Subsequently, on receipt of certain information, the OIR confronted the taxpayer to explain the source of investment regarding the properties purchased during the said tax years. The taxpayer reverted with required explanation and documentary evidence; however, the OIR accepted the response in part only. Finally, the OIR finalized the proceedings, made additions under section 111(1)(b) of the Ordinance and issued the order under section 121(1)(d) read with section 122(5A) of the Ordinance.

Being aggrieved by order of the OIR, the taxpayer filed an appeal before the Commissioner Inland Revenue Appeals (the CIRA) who after hearing the matter reduced

the amount of additions made under section 111(1)(b) of the Ordinance by the OIR. Thereafter, the taxpayer approached the Appellate Tribunal Inland Revenue (the ATIR) against the order of the CIRA by taking plea that show-cause notice under the relevant provisions of law were never sent to the appellant confronting the allegations and the impugned additions/orders, therefore, additions should be deleted in favor of taxpayer.

Decision:

The ATIR accepted the appeal of the taxpayer and annulled the orders passed by the authorities below in the following manner:

- Contrary to the settled legal position by the apex Courts, the OIR failed to issue a show cause notice under the relevant provisions of the Ordinance thus taxpayer was not fully informed which provisions have been invoked and for which allegations.
- Proceedings finalized under section 121(1)(d) read with section 122(5A) of the Ordinance are not in accordance with the law as these both sections differ in nature and cannot be applied simultaneously while passing an order nor the application of one can be replaced by the other.
- Separate notice under Section 111 of the Ordinance has not been issued nor was the taxpayer specifically confronted with such proposed additions and, therefore, impugned additions are not justified in the eyes of law.

5. WORKERS WELFARE FUND SHALL BE RECOVERED IN THE PRESCRIBED MANNER

**(2023) 127 TAX 233
LAHORE HIGH COURT**

**SYNTHETIC PRODUCTS
ENTERPRISES LIMITED AND
OTHERS
VS**

FEDERAL BOARD OF REVENUE

APPLICABLE SECTIONS: SECTION 120(2A), 122(1), 122(5), 122(5A), 138(1), 168 AND 170 OF THE INCOME TAX ORDINANCE 2001, (THE ORDINANCE)

Brief Facts:

The respondent (the tax department) issued recovery notices to the petitioners (the taxpayers) under section 138 of the Ordinance for recovery of Workers Welfare Fund computed at 2% of the income determined under the Ordinance, where total annual income was not less than Rs 500,000. The petitioner challenged such recovery notices through various petitions by putting the following pleas before the Lahore High Court (the Court):

- Prior to recovering WWF, the tax department is bound to amend the deemed assessment.
- WWF shall be adjusted out of income tax refunds.

Decision:

The LHC disposed of the specified writ petitions in the favor of the taxpayers and held the following directions:

- System generated notice under section 120(2A) of the Ordinance was not issued with respect to adjustment of WWF, therefore, the WWF adjusted or allowed to be adjusted shall be deemed to be rightly adjusted amounts in deemed assessment order. Thus recovery notice can only be issued in pursuance of an amendment order under section 122 of the Ordinance in the prescribed manner.
- It is settled proposition that WWF is not a tax but its mode of payment, recovery and refund is same like the tax under the Ordinance. Further, WWF payable can be termed as tax liability under the Ordinance in terms of section 4 of the WWF Ordinance and, accordingly, tax

credit where not able to be credited shall be refunded under section 170 of the Ordinance. Thus, FBR circular dated February 17, 2000 duly allowed adjustment of WWF against the taxes paid in excess of due tax still holds the field.

- It is pertinent to mention that judgment by Supreme Court of Pakistan in East Pakistan Chrome Tannery Case reported as PLD 2017 SC 28 does not classify WWF as 'tax' and hence does not warrant its adjustment against tax liability or credit. The LHC held that this judgment cannot be applied retrospectively, as it was not available and enforced by the FBR till May 25, 2021 and, hence, the circular allowing adjustment of WWF shall remain valid in the instant petitions related to subject tax years.

6. MONITORING PROCEEDINGS SHALL BE CONDUCTED AS PER SETTLED GUIDELINES OF THE APPELLATE AUTHORITIES

**(2023) 127 TAX 284
LAHORE HIGH COURT**

**PEPSI COLA INTERNATIONAL (PVT) LIMITED
VS
FEDERATION OF PAKISTAN, ETC**

APPLICABLE SECTIONS: 161, 161(1B), 162, 173(4) & 174(3) OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) AND RULE 44 & 44(4) OF INCOME TAX RULES.

Brief Facts:

The petitioner challenged the orders passed under section 161 of the Ordinance by filing petitions before the Lahore High Court (LHC) related to the vires of the Commissioner's jurisdiction under section 161 and 162 of the Ordinance, adjudicated.

Decision:

The LHC disposed of the petition in the following manner:

- Show cause notice issued and impugned order passed are absolute contrary to the earlier settled positions by the Courts wherein it was held that assessee can only be declared as assessee in default, if tax required to be deducted from a payment made to a person has not been paid by such person. However, in the presence of sufficient evidence of failure to deduct/collect tax, the person being withholding agent may be served with imposition of default surcharge and penalty,
- When any proceedings are finalized without fulfilling prescribed legal obligations, then the final order passed remains susceptible to judicial review in constitutional jurisdiction.
- It is the duty of tax administration to ensure the periodic filing of withholding tax statements within the time specified by the Statute. This action would cater the occasions of issuing notices of monitoring of withholding of taxes for tax years beyond six years.
- It is for the department to make the most of the information provided to it and to pass speaking orders on the basis of which it will determine whether there is a failure to pay the tax collected or deducted without placing any burden on the taxpayer and its ability to produce the relevant documents.
- The time limit prescribed under section 173(4) should have been met, had the Commissioner fulfilled the duty of ensuring compliance of filing of statements under the Ordinance.

**7. Specified sectors to discharge Super Tax at 4% instead of 10% during pendency of petitions
C.P.3825 AND 3909 OF 2022, 126-K TO 131-K, 167-K TO 193-K OF 2023
SUPREME COURT OF PAKISTAN**

**FEDERATION OF PAKISTAN
THROUGH CHAIRMAN FBR
VS
SHELL PAKISTAN LIMITED KARACHI
AND OTHERS**

**APPLICABLE SECTIONS: 4C OF THE
INCOME TAX ORDINANCE, 2001
(THE ORDINANCE)**

Brief Facts:

**SUPER TAX RATE OF 10% FOR HIGH
EARNING PERSONS HAVE DECREASED TO
4%**

Through the Finance Act 2022, a super tax was imposed from tax year 2022 and onwards at the specified rates on the income of every person with specific exclusions and conditions. In pursuance of series litigations at the High Court(s) across the Pakistan, the respondent (the tax department) approached the Supreme Court of Pakistan (the SCP) by taking the plea that tax year 2022 for which super tax under section 4C has been imposed starts from 1st July 2021 until 30th June 2022.

Whereas the petitioners (the taxpayers) being high earning taxpayers of specified businesses with income greater or equal to Rs. 300 million, claim that they are not subject to super tax for two reasons.

- Firstly, because their accounting year starts from 1st January 2021 and ends on 31st December 2021 and, thus, tax department is demanding super tax with retrospective effect.
- Secondly, rates of super tax have been defined by way of table specified in Division IIB of Part I of the First Schedule to the Ordinance, however, through provision at the end of such table persons, earners of more than Rs. 300 million, of specified businesses have become subject to super tax at the rate of 10% which is 4% for earners of more than Rs. 300 million, in other industries or businesses.

Decision:

The SCP through instant interim relief declared the following:

- The provisions of section 4C are lawfully applicable for taxpayers whose accounting year ends during the course of tax year 2022.
- Specified persons liable to Super Tax at the rate of 10% in terms of first proviso of Division IIB of Part I of First Schedule of the Ordinance, have been instructed to pay Super tax at 4%. Tax department has been issued notices to rebut the contention of the petitioners for imposing 10% Super tax, being discriminatory.
- Where such specified persons have furnished bank guarantees earlier as per the directions of High Court(s), the tax authority is instructed to encash the same to the extent of 4% only.

Sales Tax Act, 1990

A. SROs

1. SRO 179 (I)/2023 DATED FEBRUARY 14, 2023

STANDARD RATE OF SALES TAX ENHANCED FROM 17% TO 18%

Through this SRO, the Federal Government has, through exercising powers conferred under section 3(2)(b) of the ST Act, increased standard sales tax rate in respect of taxable goods falling within the purview of section 3(1) of the ST Act from 17% to 18%. Since the enhancement of rate through notification is limited to 3(1) of the ST Act therefore its impact is not extended to items specified in Third Schedule to the ST Act (viz. items chargeable to sales tax on MRP) as well as on the supply of CNG by gas distribution companies which are covered under various provisions of section 3 other than subsection (1).

The date of SRO is February 14, 2023 and understandably the same is the effective date of the increase in rate. Later, amendment related to enhancement of standard rate on goods including those covered under Third Schedule was brought in ST Act through the Finance (Supplementary) Act, 2023 which was assented by the President of Pakistan on February 23, 2023.

2. SRO 297(I)/2023 DATED MARCH 08, 2023

SALES TAX ENHANCED ON LUXURY ITEMS FROM 18% TO 25%

Through this recent SRO, the Federal Government has, through exercising powers conferred under section 3(2)(b) read with first proviso to clause (a) of Section 3(2)(a) of the ST Act, increased the applicable sales tax rate to 25% on import and supplies of the taxable goods specified in Table – I below (including certain Third Schedule items) and on supply of locally manufactured taxable goods identified in Table – II below, except for the items covered under the Eighth Schedule of the ST Act in which case the applicable reduced rate as per Eighth Schedule, shall continue to apply:

Table - I List of imported goods:

S. No.	Description of goods	PCT Code			
(1)	(2)	(3)			
1.	Aerated water and juices	2201.1010,	2201.1020,	2201.9000,	2202.1010,
		2202.1090,	2202.9100,	2202.9900.	
		1704.1000,	1704.9010,	1704.9090,	1905.1000,
2.	Confectionary	1905.2000,	1905.3100,	1905.3200,	1905.4000,
		1905.9000,	2106.9060.		
		8703.2113,	8703.2119,	8703.2193,	8703.2195,
		8703.2199,	8703.2220,	8703.2240,	8703.2260,
		8703.2290,	8703.2313,	8703.2319,	8703.2323,

S. No.	Description of goods	PCT Code			
(1)	(2)	(3)			
		8703.2329,	8703.2490,	8703.3112,	8703.3129,
		8703.3139,	8703.3219,	8703.3223,	8703.3225,
3.	Vehicles in CBU condition	8703.3229,	8703.3390,	8703.4019,	8703.4029,
		8703.4032,	8703.4039,	8703.4049,	8703.4059,
		8703.4069,	8703.5019,	8703.5029,	8703.5039,
		8703.5049,	8703.5059,	8703.5069,	8703.6019,
		8703.6029,	8703.6032,	8703.6039,	8703.6049,
		8703.6059,	8703.6069,	8703.7019,	8703.7029,
		8703.7039, 8703.7049, 8703.7059, 8703.7069, 8703.9000.			
4.	Sanitary and bathroom wares	3922.1000, 3922.9000, 3924.9000, 6910.1010, 6910.1020, 6910J030, 6910.1040, 6910.1050, 6910.1060, 6910.1070, 6910.1080, 6910.1090, 6910.9000, 6911.9000, 7324.1010, 7324.1020, 7324.2100, 7234.2900, 7324.9000.			
5.	Carpets (excluding those from Afghanistan)	5701.1010, 5701.1020, 5701.1090, 5701.9000, 5702.1000, 5702.2000, 5702.3100, 5702.3290, 5702.3900, 5702.4110, 5702.4190, 5702.4290, 5702.9920, 5702.9990, 5703.1000, 5703.2990, 5703.3990, 5703.9000.			
6.	Chandeliers and lighting devices or equipment	9405.1110, 9405.1190, 9405.1910, 9405.1990, 9405.2100, 9405.2900, 9405.3100, 9405.3900, 9405.4990, 9405.5010, 9405.5090, 9405.6100, 9405.6900			
7.	Chocolates	1806.2090, 1806.3100, 1806.3200, 1806.9000.			
8.	Cigarettes, cigars and e- cigarettes	2402.1000, 2402.2000, 2402.9000, 2403.1100, 2403.1900, 2403.9100, 2403.9910, 2403.9990, 8543.4000, 9614.0000.			
9.	Com flakes and other ready -to-use cereals	1904.1010, 1904.1090, 1904.2000, 1904.9000.			
10.	Cosmetics and shaving items	3303.0010, 3303.0020, 3303.0090, 3304.1000, 3304.3010, 3304.3090, 3304.9110, 3304.9190, 3304.9910, 3304.9920, 3304.9990, 3305.3000, 3305.9010, 3305.9020, 3305.9090, 3307.1000, 3307.2000, 3307.3000, 3307.4900, 9615.1100, 9615.1900, 9615.9010, 9615.9020, 9615.9090, 9616.1000, 9616.2000.			
11.	Tissue papers	4818.1000, 4818.2000, 4818.9000.			

S. No.	Description of goods	PCT Code
(1)	(2)	(3)
12.	Crockery, kitchenware and tableware and household articles	3924.9000, 4818.3000, 6911.1010, 6911.1020, 6911.1030, 6911.1040, 6911.1090, 6912.0010, 6912.0090, 7013.1000, 7013.2200, 7013.2800, 7013.3300, 7013.3700, 7013.4100, 7013.4200, 7013.4900, 7013.9100, 7323.9100, 7323.9200, 7323.9300, 7323.9400, 7323.9900, 7615.2000, 8215.1000, 8215.2000, 8215.9910, 8215.9920, 8215.9990.
13.	Decorations or ornamental articles	3926.4010, 4420.1100, 4420.1900, 4420.9010, 4420.9020, 4420.9090, 6702.1000, 6702.9000, 6913.1000, 6913.9000, 6914.9000, 7013.9900, 9601.1000, 9601.9010, 9601.9090
14.	Dog and cat food only	2309.1000, 2309.9000.
15.	Doors and window frames	3925.2000, 4418.1100, 4418.1900, 4418.2100, 4418.2900, 4418.9990, 7308.3000, 7610.1000, 7610.9000.
16.	Fish	All tariff lines of Chapter 03 and the following: 1604.1100, 1604.1200, 1604.1300, 1604.1400, 1604.1500, 1604.1600, 1604.1700, 1604.1800, 1604.1900, 1604.2010, 1604.2020, 1604.2090, 1604.3100, 1604.3200, 1605.1000, 1605.2100, 1605.2900, 1605.3000, 1605.4000, 1605.5100, 1605.5200, 1605.5300, 1605.5400, 1605.5500, 1605.5600, 1605.5700, 1605.5800, 1605.5900, 1605.6100, 1605.6200, 1605.6300, 1605.6900,
17.	Footwear	6402.1200, 6402.1900, 6402.2000, 6402.9100, 6402.9900, 6403.1200, 6403.1900, 6403.2000, 6403.5100, 6403.5900, 6403.9900, 6404.1100, 6404.1900, 6404.2000, 6405.1000, 6405.2000, 6405.9010, 6405.9090.
18.	Fruits and dry fruits (excluding those imported through land route or barter mechanism)	All tariff lines of Chapter 08 of Pakistan Customs Tariff except 0801.1910, 0801.1200
19.	Furniture	9401.3100, 9401.3900, 9401.4100, 9401.4900, 9401.5200, 9401.5300, 9401.5900, 9401.6100, 9401.6900, 9401.7100, 9401.7900, 9401.8000, 9403.1000, 9403.2000, 9403.3000, 9403.4000, 9403.5010, 9403.5020, 9403.5030, 9403.6000, 9403.7000, 9403.8200, 9403.8300, 9403.8900,

S. No.	Description of goods	PCT Code
(1)	(2)	(3)
20.	Home appliances CBU	8414.5120, 8414.5130, 8414.5140, 8414.5190, 8415.1019, 8415.1029, 8415.1039, 8415.1099, 8415.8190, 8415.8290, 8415.8390, 8418.1090, 8418.2190, 8418.2990, 8418.3090, 8418.4090, 8418.6939, 8418.6990, 8422.1100, 8450.1190, 8450.1290, 8450.1919, 8450.1999, 8450.2090, 8508.1190, 8508.1990, 8509.4010, 8509.4020, 8509.4030, 8509.8000, 8516.1090, 8516.2100, 8516.2900, 8516.3100, 8516.3200, 8516.5090, 8516.6010, 8516.6020, 8516.6030, 8516.6090, 8516.7100, 8516.7200, 8516.7990, 8516.8010, 8516.8090, 8518.1090, 8518.2100, 8518.2200, 8518.2990, 8518.3000, 8521.1010, 8521.1020, 8521.1090, 8521.9010, 8521.9090, 8528.7211, 8528.7219, 8528.7290,
21.	Ice cream	2105.0000.
22.	Jams, jellies, preserved fruits and fruit and vegetable juices	2001.1000, 2001.9010, 2001.9090, 2002.1000, 2002.9090, 2003.1000, 2003.9000, 2004.1000, 2004.9000, 2005.1000, 2005.2000, 2005.4000, 2005.5100, 2005.5900, 2005.6000, 2005.7000, 2005.8000, 2005.9100, 2005.9900, 2006.0000, 2007.1000, 2007.9100, 2007.9900, 2008.1100, 2008.1900, 2008.2000, 2008.3000, 2008.4000, 2008.5000, 2008.6000, 2008.7000, 2008.8000, 2008.9100, 2008.9300, 2008.9700, 2008.9900, 2009.1100, 2009.1200, 2009.1900, 2009.2100, 2009.2900, 2009.3100, 2009.3900, 2009.4100, 2009.4900, 2009.5000, 2009.6100, 2009.6900, 2009.7100, 2009.7900, 2009.8100, 2009.8900, 2009.9000
23.	Leather jackets and apparels	4203.1010, 4203.1020, 4203.1030, 4203.1090, 4203.2910, 4203.2920, 4203.2930, 4203.2990, 4203.3000, 4203.4000.
24.	Mattress and sleeping bags	9404.1000, 9404.2100, 9404.2900, 9404.3000, 9404.9000,
25.	Fresh , chilled, frozen, preserved or processed meat	All tariff lines of Chapter 02, and the following tariff lines under Chapter 16 of Pakistan Custom Tariff: 1602.3100, 1602.3200, 1602.3900, 1602.5000, 1602.9000, 1603.0000.
26.	Musical instruments	9201.2000, 9201.9000, 9202.1000, 9202.9000, 9205.9000, 9206.0000, 9207.1000, 9208.9000,
27.	Pasta.	1902.1100, 1902.1910, 1902.1920, 1902.1990, 1902.2000, 1902.3000, 1902.4000
28.	Arms and ammunition excluding defense stores	Respective Heading of Chapter 93 of PCT
29.	Shampoos	3305.1000
30.	Sunglasses	9004.1000, 9004.9000

S. No.	Description of goods	PCT Code
(1)	(2)	(3)
31.	Tomato ketchup and sauces	2103.1000, 2103.2000, 2103.3000
32.	Travelling bags and suitcases	4202.1120, 4202.1190, 4202.1210, 4202.1220, 4202.1290, 4202.1900, 4202.2100, 4202.2200, 4202.2900, 4202.3100, 4202.3200, 4202.3900, 4202.9100, 4202.9200, 4202.9900
33.	A ship designed or adapted for use for recreation or pleasure or private use	Respective headings
34.	An aircraft designed or adapted for use for recreation or pleasure or private use	Respective headings
35.	Articles of jewelry (both precious metals and imitation)	71.13, 71.17
36.	Wristwatches	91.01, 91.02

Table – II Supply of locally manufactured goods:

S. No.	Description of goods	PCT code
(1)	(2)	(3)
1	Locally manufactured or assembled SUVs and CUVs	87.03
2	Locally manufactured or assembled vehicles having engine capacity of 1400cc and above	87.03
3	Locally manufactured or assembled double cabin (4x4) pick-up vehicles	87.04

B. Sales Tax General Orders (STGOs)

i. STGO No. 07 of 2023, DATED FEBRUARY 09, 2023

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 as defined in section 2(43A) of Sales Tax Act, 1990 (ST Act).

Vide the subject STGO, a list of further 124 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by February 10, 2023. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of January, 2023 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 retailers 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.

C. Circular

1. CIRCULAR No. 01 of 2023 DATED FEBRUARY 28, 2023

EXPLANATION ON THE IMPORTANT AMMENDMENTS

a. Enhancement in Standard Rate of Sales Tax

The standard sales tax increased from 17% to 18% in order to increase tax to GDP ratio.

b. Federal Government's powers to enhance Sales Tax rate

Currently, the revision of applicable sales tax rate on such goods as specified in the Third Schedule, can only be done through amendment in the ST Act. Proviso in clause (a) of sub-section (2) of section 3 to the ST Act is now added, by virtue of which the Federal Government is now empowered to impose higher rate of sales tax on the items mentioned in the Third Schedule of the ST Act through issuance of notification subject to certain restriction and conditions.

c. Rationalization of Eighth and Ninth Schedule

To align with the increase in standard rate of Sales tax from 17% to 18% made in section 3, amendment is also made in the sales tax rate of locally produced coal and Potassium Chlorate which are specified in entry no. 47 and 56 of Table-I of Eighth Schedule of the ST Act.

Similarly, the standard rate of sales tax on imported mobile phones valuing up to US\$ 500 is increased to 18% and for those having value exceeding US\$ 500 rate is increased to 25% (Table-II of Ninth Schedule of the ST Act).

d. Increase in rate of FED on Aerated Water and Imposition of FED on Sugary Drinks

The rate of FED on all type of aerated water is increased from 13% to 20%. Moreover, 10% FED is imposed on sugary fruit juices, syrups and squashes, waters whether or not containing added sugar or artificial sweeteners.

e. FED on Locally Manufactured Cigarettes

The rate of FED on Locally produced cigarettes under S. No. 9 and 10 of Table-1 of the First Schedule to the FEA is increased from Rs. 6,500 to 16,500 per thousand cigarettes (where on-pack printed retail price exceeds Rs.9,000 per 1,000 cigarettes); and from Rs.2,050 to 5,050 per thousand cigarettes (where on-pack printed retail price does not exceed Rs.9,000 per 1,000 cigarettes); through Finance (Supplementary) Act, 2023.

The threshold of minimum price is also enhanced from 45% to 60% of the retail price of locally produced cigarettes by means of amendment in the clause viz. "Restriction-3-Minimum Price".

Furthermore, a new condition "Rate of Duty" has been added after the Table-1 in First Schedule to FEA to ensure that no cigarette brands become liable to lesser FED.

f. Enhancement of FED on Cement

The rate of FED on cement which was reduced to Rs. 1.5/Kg during Covid-19 pandemic through Finance Act, 2020, is now brought back to the rate prevailing prior to July 01, 2020 i.e. Rs. 2/kg.

g. Enhancement of FED on International Air Travel in Club, Business and First Class

A fixed IATA region-wise FED is imposed on international air travel in club, business and first class. There has been no change in FED on international travel through economy class and domestic air travel.

Further, it has been clarified that the amendment in FED will be applicable in respect of air tickets issued on or after the date of commencement of Finance (Supplementary) Act, 2023.

D. Reported Decisions

1. ADJUDICATORY MECHANISM IS NECESSARY BEFORE IMPOSING PENALTY

**2023 PTD 30
[LAHORE HIGH COURT]**

**SHAHBAZ HUSSAIN
Vs FEDERATION OF PAKISTAN**

Applicable Provision: Section 3(9A), 11, 33(25) & 40C of the Sales Tax Act, 1990 (the ST Act)
Rule 150ZEF of Sales Tax Rules, 2006

Brief Facts:

The Department passed the Order and imposed penalty of Rs.1.0 million under section 33(25) of ST Act for not integrating the business of the Appellant through installation of point of sales (POS) software with the system of the Federal Board of Revenue (FBR) as required under section 3(9A) read with section 40C of the ST Act.

The Appellant challenged the Order-in-Original before the Hon'ble Lahore High Court (LHC) through constitutional petition

which the learned Single Judge dismissed on the ground that as the Appellant failed to establish that he has complied with the legal requirements envisaged under sub-section (9A) of section 3 read with section 40C of the ST Act, hence, the respondent Department was justified in imposing penalty under section 33(25) of the ST Act and principle of audi alteram partem was not violated as show cause notice was issued to the Appellant.

Being aggrieved, the Appellant filed intra-court appeal and submitted that section 11 of the ST Act lays down the adjudicatory mechanism and is necessary for the attraction of penal provisions of section 33(25). Since the mechanism and procedure laid down under section 11 has not been followed through, therefore, the imposition of penalty is illegal and unlawful.

Further, the Appellant contended that he was not obligated to integrate his business with FBR system as TIER-1 retailer, and in this respect, his appeal is pending before ATIR. He further contended that without waiting for the outcome of the case pending before the ATIR, a show-cause notice for imposition of penalty was issued that culminated into passing of the Order-in-Original, which is not justified and sustainable under the law.

Decision:

The court decided the matter in favor of the Appellant by allowing Intra Court Appeal and declared the Order-In-Original to be illegal, with the following observations:

- The registration as TIER-1 Retailer is a necessary step rendering a registered person to certain liabilities; however, a straight jump to penal consequences under section 33 without resort to adjudicatory mechanism for the determination of the fact that whether such person qualifies to be registered as a TIER-1 Retailer or not, overrides the procedural itinerary relating to determination of liability and consequential penal actions.

- Thus, the appellant has been clearly hard done by deprivation of procedural safeguards for determination of the fact that whether he is liable to be registered as a TIER-1 Retailer and subsequent consequences thereof. This is more so when the appeal against the compulsory registration as TIER-1 Retailer filed by the appellant is admittedly pending which is yet to be decided.
- However, the Court allowed the respondent Department to initiate proceeding against the appellant strictly in accordance with law by issuing proper notice in terms of section 11 read with enabling provisions of the Act as well as the Rules.

2. SUPPLY OF LOCALLY PRODUCED MILK ALSO COVERED UNDER SRO. 549/2008

**2023 PTD 44
[LAHORE HIGH COURT]**

**COMMISSIONER INLAND
REVENUE, LEGAL ZONE,
LARGE TAX PAYER OFFICER,
LAHORE
Vs. M/S. SAPPHIRE DAIRIES (PVT)
LTD.**

Applicable Provisions: Section 2(39), 2(41), 2(48), 3, 13, & 47, Notification SRO No. 549(I)/2008 of the Sales Tax Act (the Act)

Brief Facts:

The registered person being the producer and supplier of dairy products claimed credit of input tax against zero rated supplies of "Milk" for the period from July 2009 to June 2013, which was disallowed by the department by interpreting the zero rating condition i.e. "Import and Supplies thereof" narrowly as mentioned against "Milk" in the SRO. 549(I)/2008.

The department was of the opinion that the zero rating facility is available only to importer-cum-supplier which is not the case of the registered person.

The Appellate Tribunal allowed input tax, the Department being aggrieved, challenged the decision of Tribunal and raised the following questions of law:

1. Whether the ATIR was justified to direct that the refund claim should be issued on the basis of credit of input of sales tax whereas the said claim was rejected on the grounds that the registered person was not entitled for Zero-rated tax regime on the condition of "Import and supplies thereof"?
2. Whether the ATIR was justified to allow the credit of input sales tax which was disallowed on the basis of entry at serial No.4 of SRO 549(I)/2008 which restricted the admissibility of credit of said tax to the extent of imported dairy products?
3. Whether the ATIR was justified to allow credit of input sales tax due to the reason that sales of dairy products were exempted from levy of sales tax vide SRO 501(I)/2013?

Decision:

The reference application was decided by the High Court against the Department in terms of questions 1 and 2 which were answered in affirmative with the observations as stated in the ensuing paragraphs. Whereas, the Court did not express any opinion regarding question 3 mentioning it as unnecessary and irrelevant to interpret the SRO.501(I)/2013 dated June 12, 2013 in the case under reference.

The High Court referred the spirit and scheme of the enactment, in interpreting the expression "Import and supplies thereof", and held that disjunctive reading of column (3) of Sr.4, of the SRO.549(I)/2008,

conveys more meaningful, natural, rational and practical meaning to the expression "Import and supplies thereof", whereof the evident intent was to cover the goods, either subject of import-cum-supplies or supplies made of locally produced / manufactured goods.

Federal Excise Act, 2005

A. SRO

SRO 178 (I)/2023 DATED FEBRUARY 14, 2023

INCREASE IN FED - LOCALLY PRODUCED CIGARETTES

Through this SRO, the Federal Government has, through exercising powers conferred under section 3(3)(b) of the Federal Excise Act, 2005 (FE Act), increased federal excise duty on locally manufactured cigarettes.

The date of SRO is February 14, 2023 and understandably the same is the effective date of the increase in the excise duty. The amendments related to said excise duties have also been brought in FE Act through the Finance (Supplementary) Act, 2023 which was assented by the President of Pakistan on February 23, 2023.

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